

Chapter 701

2011 EDITION

Construction Contractors and Contracts

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CONSTRUCTION CONTRACTORS AND CONTRACTS

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OCCUPATIONS AND PROFESSIONS

GENERAL PROVISIONS

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

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

701.005 Definitions. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

structures with the intent of selling the structures.

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

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

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

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

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

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

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

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

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

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

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

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

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

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

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

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

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

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

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

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

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

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

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

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

- (a) Residential general contractor;
- (b) Residential specialty contractor;
- (c) Residential limited contractor; or
- (d) Residential developer.

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

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

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

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

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

(D) A modular home constructed off-site;

(E) A manufactured dwelling;

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

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

(b) "Residential structure" does not mean:

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

(B) Transient lodging;

(C) A residential school or residence hall;

(D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;

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

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

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

(H) A nursing home;

(I) A hospital; or

(J) A place constructed primarily for recreational activities.

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

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

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

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

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

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

(17) "Small commercial structure" means:

(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the

lowest flooring to the highest interior overhead finish of the structure;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

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

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

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

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

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

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

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

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

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

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

(b) A general partner in a limited partnership.

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

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

(e) A trustee.

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

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

(a) Residential general contractor;

(b) Residential specialty contractor;

(c) Residential limited contractor; or

(d) Residential developer.

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

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

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

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

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

(D) A modular home constructed off-site;

(E) A manufactured dwelling;

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

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

(b) "Residential structure" does not mean:

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

(B) Transient lodging;

(C) A residential school or residence hall;

(D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;

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

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

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

(H) A nursing home;

(I) A hospital; or

(J) A place constructed primarily for recreational activities.

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

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

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

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

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

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

(17) "Small commercial structure" means:

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

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

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

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

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

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

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

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

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

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

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

(2) A person who is constructing, altering, improving or repairing a structure lo-

cated 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 before, upon or after completion. It is prima facie evidence that there was an intent of offering the structure for sale if the person who constructed, remodeled or repaired the structure or arranged to have the structure constructed, remodeled or repaired does not occupy the structure after its completion.

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

(7) A person performing work on a property that person owns or performing work as the owner's employee, whether the property is occupied by the owner or not, or a person performing work on that person's residence, whether or not that person owns the residence. This subsection does not apply to a person performing work on a structure owned by that person or the owner's employee, if the work is performed in the pursuit of an independent business with the intent of offering the structure for sale before, upon or after completion.

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

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

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

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

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

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

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

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

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

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

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

(12) A person involved in the movement of:

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

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

(13) A 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.

(14) 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.

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

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

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

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

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

(20) A person performing work that is subject to ORS 527.610 to 527.770 on forestlands for which notice of operation has been filed under ORS 527.670. [1971 c.740 §20; 1979 c.312 §1; 1981 c.618 §9; 1983 c.616 §5a; 1989 c.928 §2; 1991 c.181 §2; 1991 c.463 §1; 1993 c.18 §152; 1995 c.644 §1; 1997 c.814 §8; 1999 c.32 §4; 1999 c.325 §5; 1999 c.402 §12; 2001 c.196 §3; 2001 c.197 §10; 2003 c.285 §1; 2003 c.329 §1; 2003 c.675 §70; 2005 c.254 §12; 2005 c.432 §7; 2005 c.609 §22; 2007 c.541 §42; 2007 c.639 §1; 2007 c.836 §57; 2009 c.259 §31; 2009 c.483 §5; 2011 c.174 §1]

701.013 Intent relating to certain business license requirements. It is the intent of the Legislative Assembly to reduce the number of city business licenses that construction contractors are required to obtain in order to conduct business in the Portland metropolitan area. It is the purpose of this section and ORS 701.015 to enable construction contractors to secure from the metropolitan service district one business license that will permit the conduct of business by construction contractors in cities in which the contractors perform a limited amount of work and in which they do not have a principal place of business. Furthermore, it is also the intent of the Legislative Assembly that this section and ORS 701.015 apply only to construction contractors engaged in the building trades and crafts without regard to any subsequent expansion of the jurisdiction of the Construction Contractors Board over other trades and crafts. It is declared to be the policy of this state that, to the maximum extent possible consistent with the requirements of this section and ORS 701.015, the cities within the boundaries of the metropolitan service district be al-

lowed to control the imposition of business license taxes and to maintain the level of revenues obtained from those taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect the construction business activity within the participating cities. [1991 c.79 §1; 2001 c.409 §10; 2007 c.541 §43]

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

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

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

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

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

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

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

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

business license tax under subsection (1) of this section; and

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

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

(6) As used in this section:

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

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

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

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

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

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

LICENSING

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

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

- (a) Residential general contractor.
- (b) Residential specialty contractor.
- (c) Residential limited contractor.
- (d) Residential developer.

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

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

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

- (a) Commercial general contractor level 1.
- (b) Commercial specialty contractor

level 1.

(c) Commercial general contractor level 2.

(d) Commercial specialty contractor level 2.

(e) Commercial developer. [2007 c.836 §2; 2010 c.57 §1]

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

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

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

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

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

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

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

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

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

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

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

(A) Sole proprietorships, partnerships, corporations, 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.

(3) If a person who is licensed as exempt 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. If a person who is licensed as exempt under subsection (2)(b) of this section hires one or more employees, the person is also subject to licensing sanctions under ORS 701.098. The person must reapply to the board in the correct class.

(4) The decision of the board that a person is an independent contractor applies only when the person is performing work of the nature described in ORS 701.021.

(5) A person that is within the exempt class described in subsection (2)(b) of this section and is licensed as a commercial contractor shall procure and maintain workers' compensation insurance as authorized by ORS 656.128. [1989 c.870 §4; 1995 c.216 §1; 1999 c.402 §13; 2007 c.836 §15; 2009 c.408 §§2,3]

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

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

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

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

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

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

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

(a) The endorsement being sought.

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

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

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

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

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

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

(h) The name and address of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Is in compliance with ORS 701.091.

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

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

(5) An applicant shall conform to the information provided by the applicant on the application and to the terms of the application. [Formerly 701.075; 2009 c.11 §§90,91; 2009 c.226 §3]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A license may be renewed by submitting an application for renewal on the prescribed form, providing any additional information required, including evidence of completion of any required education, and submitting the appropriate application fee, as provided by Construction Contractors Board rule.

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

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

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

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

701.065 [1971 c.740 §8; 1973 c.832 §55; 1975 c.654 §1; 1979 c.874 §1; 1983 c.616 §8; 1989 c.870 §§10,10a; 1989 c.928

§6; 1997 c.818 §3; 1999 c.402 §16; 2003 c.675 §71; 2007 c.793 §6; 2007 c.836 §58; renumbered 701.131 in 2007]

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

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

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

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

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

(5) If the amount the licensee must pay against the bond under subsection (3) of this section exceeds the amount of the bond, the

board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under ORS 701.081 or 701.084.

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

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

(8) Upon issuance of a determination under ORS 701.145 or 701.146 for a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the determination in a manner determined by the board by rule. The notification shall include a list of all board determinations for payment by the surety from the bond.

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

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

(a) Costs;

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

(c) Twice the amount that the board determined the surety must pay on the complaint, if the surety arbitrarily and capriciously refused to pay. [Formerly 701.085; 2009 c.225 §1; 2011 c.630 §39]

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

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

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

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

(4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a complaint described in ORS 701.140, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the applicable amount set forth in ORS 701.081 or 701.084 unless a higher amount is required by a board condition or rule described in subsection (5) or (6) of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

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

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

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

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

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

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

(a) Costs;

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

(c) Twice the amount of any damages that the board ordered the surety to pay on the complaint, if the surety arbitrarily and capriciously refused to pay upon order of the board.

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

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

701.073 Insurance required of licensed contractors. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, including the covering of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions, for an amount not less than the applicable amount set forth in ORS 701.081 or 701.084.

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

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

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

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

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

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

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

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

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

(2) A residential specialty contractor shall:

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

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

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

(3) A residential limited contractor shall:

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

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

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

(4) A residential developer shall:

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

(b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$500,000. [2007 c.836 §3]

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

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

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

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

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

(2) A commercial specialty contractor level 1 shall:

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

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

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

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

(3) A commercial general contractor level 2 shall:

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

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

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

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

(4) A commercial specialty contractor level 2 shall:

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

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

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

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

(5) A commercial developer shall:

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

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

701.085 [1971 c.740 §10; 1975 c.383 §4; 1975 c.721 §3; 1979 c.874 §2; 1981 c.618 §1; 1983 c.616 §10; 1989 c.430 §3; 1989 c.624 §3; 1989 c.928 §10; 1991 c.181 §4; 1995 c.771 §2; 1997 c.301 §2; 1999 c.325 §3; 1999 c.344 §2; 1999 c.402 §21a; 2001 c.157 §1; 2001 c.196 §6; 2001 c.197 §12; 2003 c.675 §74; 2007 c.648 §22; 2007 c.793 §7; 2007 c.836 §61; renumbered 701.068 in 2007]

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

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

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

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

(3) The board may charge a contractor a fee to cover any expense incurred by the board in allowing the contractor to substi-

tute a letter of credit or cash deposit under this section.

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

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

701.088. (1) As used in this section:

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

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

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

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

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

701.091 Responsible managing individual. (1) A business licensed under this chapter must at all times have at least one responsible managing individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because the licensee or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming the lien.

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

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

permit, electrical permit, mechanical permit or plumbing permit.

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

- (A) Two sole proprietors;
- (B) One partnership;
- (C) One corporation; or
- (D) One limited liability company.

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

- (A) Murder;
- (B) Assault in the first degree;
- (C) Kidnapping;
- (D) Rape, sodomy or unlawful sexual penetration;
- (E) Sexual abuse;
- (F) Arson in the first degree;
- (G) Robbery in the first degree;
- (H) Theft in the first degree; or
- (I) Theft by extortion.

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

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

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

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

(2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based upon information submitted to the board under ORS 701.046, submitted in a registration of securities described in ORS 701.046 (2) or discovered by a board investigation under ORS 701.225.

(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for

hearing that any person has violated ORS 701.021.

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

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

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

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

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

(E) Failure to pay a construction debt.

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

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

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

(c) If the board receives a timely request for a hearing concerning an order issued under this subsection, the board shall schedule the hearing no later than 30 days after receiving the request. The board shall mail written notice of the hearing to the person by first class mail with certificate of mailing

no later than seven days before the scheduled hearing date.

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

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

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

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

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(h) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual for the contractor business has successfully completed the training and testing described in ORS 701.122. [Formerly 701.135; 2009 c.226 §§4,5; 2009 c.408 §§6,7]

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

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

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

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

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

(c) An owner, officer or responsible managing individual of the business was an owner, officer or responsible managing individual of another business at the time the

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

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

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

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

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

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

(a) ORS 87.007 (2).

(b) ORS chapter 316 or 317.

(c) ORS 446.225 to 446.285.

(d) ORS 446.395 to 446.420.

(e) ORS 447.010 to 447.156.

(f) ORS chapter 455.

(g) ORS 460.005 to 460.175.

(h) ORS 479.510 to 479.945.

- (i) ORS 480.510 to 480.670.
- (j) ORS chapter 656.
- (k) ORS chapter 657.
- (L) ORS 670.600.
- (m) ORS 671.510 to 671.760.
- (n) ORS chapter 693.

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

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

(2) If the Construction Contractors Board receives a complaint that a contractor certified under ORS 701.119 has failed to comply with a wage and hours standard for work on a project financed under the energy efficiency and sustainable technology loan program, the board shall forward the complaint to the Bureau of Labor and Industries. If the bureau determines that the contractor has violated a wage and hours standard for work on a project financed under the loan program, the bureau shall notify the board of the determination. [2009 c.753 §52]

701.109 Reporting of final judgments.

(1) As used in this section, “judgment” means:

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

(2) A contractor shall send the Construction Contractors Board a copy of a final judgment entered by a circuit court of this state, or by an equivalent court in another state, if the judgment orders the contractor to pay damages that arise from a breach of contract or from negligent or improper work and that relate to the construction or proposed construction of a residential structure. The contractor shall cause the copy of the final judgment to be delivered to the board

no later than 45 days after the final judgment is recorded.

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

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

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

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

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

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

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

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

701.117 Contractor to notify board of address change; effect of mail to last-known address. A contractor shall notify

the Construction Contractors Board of any change of address while licensed and for one year following the date the contractor's license expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail. [Formerly 701.080; 2011 c.630 §41]

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

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

701.119 Certification to participate in small scale local energy project program.

(1) A licensed contractor that possesses an appropriate endorsement may apply to the Construction Contractors Board for certification to participate in the construction of small scale local energy projects financed through the energy efficiency and sustainable technology loan program. The board may issue the certification to a contractor that meets the standards established by the State Department of Energy under ORS 470.560. The board may charge a reasonable fee for certifying a contractor.

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

(3) The board shall give the department notice of the issuance or revocation of a certification under this section. [2009 c.753 §51]

701.120 Specialized education programs; standards; specialized education notation in credentials; removal of notation; rules for use of credentials. (1) As used in this section, a "specialized education

program" means one or more of the following:

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

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

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

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

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

(4) The board shall include professional credentials described in this section in releases of contractor licensing information by the board. The board shall adopt rules to permit the inclusion of professional credentials described in this section in advertising or other information holding forth to the public the qualifications of a contractor. [2001 c.428 §1]

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

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

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

contractors. The board shall adopt standards for programs that provide training that meets the requirements of this subsection.

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

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

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

701.123 Education and training program approval. (1) The Construction Contractors Board may approve private and public education and training programs as programs that may be credited toward meeting the continuing education requirements for residential contractors adopted by the board under ORS 701.126. The board may determine the number of hours to be credited to an approved program.

(2) Programs approved by the board under this section must be designed to directly contribute to the professional competency of residential contractors. [2011 c.170 §6]

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

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

(3) Notwithstanding subsection (1) of this section, if a commercial general contractor

level 1 or commercial specialty contractor level 1 has no more than four key employees, the contractor shall have a key employee, or combination of key employees, that completes continuing education each year equivalent to the number of key employees multiplied by eight hours.

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

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

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

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

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

(b) As provided by rule by the Construction Contractors Board. [2007 c.836 §9]

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

701.126 Continuing education; rules; fees. (1) The Construction Contractors Board shall adopt rules establishing a continuing education system for all persons licensed by the board. The rules adopted by the board shall include, but need not be limited to, rules establishing the required number of hours and course content for continuing education. The board may establish reasonable fees for courses and instruction provided by the board, or for approving the course content and instruction for continuing education provided by other sources.

(2) The continuing education required for a contractor may include training in construction means and methods, compliance with the state building code and business practices.

(3) A person may not renew a license issued by the board unless the person certifies to the board at the time of license renewal that the licensee has completed the amount and type of continuing education required by the board.

(4) Subsections (1) to (3) of this section do not apply to a licensed developer. [2007 c.648 §2]

701.127 Continuing education exemption. (1) Notwithstanding ORS 701.126, the Construction Contractors Board shall adopt criteria for allowing the exemption of a residential contractor from any board rule requiring continuing education in state building code compliance or requiring building exterior shell training.

(2) The board may require a residential contractor to take continuing education or training in other subjects to offset the reduction in continuing education or training hours created by the exemption described in subsection (1) of this section. [2011 c.170 §5]

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

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

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

COMPLAINTS

701.131 License required to perfect lien or obtain judicial or administrative remedy; exception. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a construction lien, file a complaint with the Construction Contractors Board or commence an arbitration or a court action for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid license issued by the board and properly endorsed for the work performed:

(a) At the time the contractor bid or entered into the contract for performance of the work; and

(b) Continuously while performing the work for which compensation is sought.

(2) The board, arbitrator or court may not apply the provisions of subsection (1) of this section to a contractor if the board, arbitrator or court determines that:

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

(A) The contractor was not aware of the requirement that the contractor be licensed or properly endorsed for the work performed, and the contractor submitted a completed application for a license within a number of days established by the board, but not more than 90 days, of the date the contractor became aware of the requirement;

(B) At the time the contractor perfected a construction lien or commenced any proceeding subject to the provisions of subsection (1) of this section, the contractor was licensed by the board and properly endorsed for the work performed; and

(C) Enforcement of the provisions of subsection (1) of this section would result in substantial injustice to the contractor;

(b) The contractor was licensed by the board for some but not all of the times required under subsection (1) of this section and had a lapse in the license and:

(A) The contractor was not aware of the lapse in the license for more than a number of days established by the board, but not to exceed 90 days, before submitting a completed application for license renewal with the board;

(B) Except for perfection of a construction lien and a court action to foreclose the lien, at the time the contractor commenced any proceeding subject to the provisions of subsection (1) of this section the contractor's license was renewed under ORS 701.063 to include the entire time period for which a license was required under subsection (1) of this section; and

(C) For perfection of a construction lien and a court action to foreclose the lien, the contractor's license was renewed under ORS 701.063 for the entire time period for which a license was required under subsection (1) of this section, but not later than 90 days following perfection of the lien; or

(c) The proceeding:

(A) Is directed against a person or entity that:

(i) Is subject to this chapter or ORS chapter 671 or 672;

(ii) Provides construction or design labor or services of any kind; or

(iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, systems or products; and

(B) Arises out of defects, deficiencies or inadequate performance in the construction, design, labor, services, materials, supplies, equipment, systems or products provided.

(3) A contractor that falsely swears to information submitted to the board under ORS 701.046 or submitted in a registration

of securities described in ORS 701.046 (2), or that knowingly violates the provisions of ORS 656.029, 670.600 or 701.046, may not perfect a construction lien, file a complaint with the board or commence an arbitration or a court action for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure that is subject to this chapter. [Formerly 701.065; 2009 c.226 §§8,9]

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

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

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

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

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

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

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

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

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection. [Formerly 701.147; 2010 c.107 §§49,50; 2011 c.595 §137; 2011 c.630 §§42,43]

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

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

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

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

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

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

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

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

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

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

701.135 [1971 c.740 §15; 1975 c.721 §7; 1979 c.874 §3; 1981 c.618 §6; 1987 c.414 §40b; 1989 c.430 §7; 1989 c.744 §4; 1989 c.870 §§11,11a; 1989 c.928 §15; 1991 c.67 §186; 1991 c.181 §7; 1993 c.446 §1; 1995 c.216 §2; 1999 c.344 §4; 1999

c.402 §28c; 1999 c.689 §10; 2001 c.160 §3; 2001 c.196 §9; 2001 c.850 §6; 2005 c.432 §14; 2007 c.114 §10; 2007 c.648 §28b; 2007 c.793 §10; 2007 c.836 §63; renumbered 701.098 in 2007]

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

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

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

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

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

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

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

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

(c) Involving work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146. [2001 c.197 §3; 2001 c.414 §5a; 2007 c.793 §11; 2007 c.836 §64; 2009 c.225 §2; 2011 c.170 §2; 2011 c.630 §44]

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

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

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

(2) A complaint against a commercial contractor that is not also endorsed as a residential contractor

involving work on a small commercial or large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

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

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

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

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

(4) Notwithstanding subsections (1) to (3) of this section and except as provided in ORS 701.144, with prior agreement of the complainant and the licensed contractor, a complaint may be resolved by the board through binding arbitration under ORS 701.144.

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

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

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

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

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

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

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

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

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

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

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

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

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

701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the performance, of work that requires a contractor license issued by the Construction Contractors Board. The complaint must be of one or more of the following types:

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

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

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

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

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

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

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

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

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

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

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

701.143 Requirement for timely filing of complaints; timelines. The Construction Contractors Board may not process a complaint against a licensed contractor, including a complaint based upon a court judgment

or an arbitration award, unless the complaint is filed with the board in a timely manner as follows:

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

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

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

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

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

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

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

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

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

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

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

(8) If the licensed contractor's employee, subcontractor or material or equipment sup-

plier files the complaint, the board must receive the complaint no later than one year after the date the contractor incurred the indebtedness. [2001 c.197 §2 and 2001 c.414 §2; 2007 c.793 §13]

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

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

(3) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (1) and (2) of this section must substantially conform with the provisions of ORS 36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

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

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

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

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

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

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

(a) If the party requests to have a complaint resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection,

deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

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

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

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a court action and complies with paragraph (b) of this subsection, the filing of the court action supersedes the request for a contested case hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) The board shall send the surety on the contractor bond required under ORS 701.068 a copy of the final judgment or bureau final order, and a copy of a determination issued by the board that the surety must pay the amount stated by the board. A determination issued by the board may not include payment of any attorney fees awarded in the final judgment or bureau final order. The determination issued by the board is an order in other than a contested case proceeding. The determination order is not recordable under ORS 701.153 (1) and (2) to create a lien. [1971 c.740 §16; 1979 c.874 §4; 1983 c.616 §14; 1989 c.167 §2; 1989 c.928 §17; 1991 c.181 §10; 1991 c.717 §2; 1993 c.470 §3; 1993 c.471 §1; 1995 c.771 §4; 1997 c.301 §4; 1999 c.331 §1; 1999 c.344 §5; 1999 c.402 §31; 1999 c.849 §§172,173; 2001 c.197 §§14,15; 2001 c.414 §§9a,10a; 2007 c.288 §16; 2007 c.793 §14; 2007 c.836 §66; 2011 c.630 §46]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Refer the matter for hearing.

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

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

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

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

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

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

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

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

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

(c) The 30th day before:

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

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

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

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

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join a surety as a party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety

elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

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

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a determination that the surety must pay the amount stated by the board. The determination issued by the board is an order in other than a contested case proceeding. The determination shall include the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety. [2001 c.197 §4; 2003 c.294 §1; 2003 c.598 §50; 2005 c.263 §1; 2007 c.793 §15; 2007 c.836 §67; 2011 c.630 §47]

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

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

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

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

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

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration. The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the surety on the bond by delivering to the surety a

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

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

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

(c) The 30th day before:

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

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

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

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

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

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

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

surety's maximum liability to the complainant. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:

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

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

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

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

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

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

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

(2) ORS 183.605 to 183.690 do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or referral for arbitration, to resolve complaints against contractors filed under ORS 701.139. [2005 c.207 §2; 2007 c.793 §18; 2011 c.630 §48]

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

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

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

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

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

(5) In assigning administrative law judges for arbitration and contested case hearings conducted under this section, the chief administrative law judge of the

Office of Administrative Hearings established under ORS 183.605 shall defer to board requests.

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

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

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

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

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

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

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

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

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

Note: The amendments to 701.150 by section 69, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

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

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

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

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

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

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

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

701.153 Recording of order as lien; satisfaction of order against residential contractor. (1) If an order of the Construction Contractors Board determines a complaint against a residential contractor that was filed with the board prior to July 1, 2011, and the order becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt of an order described in subsection (1) of this section, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order described in subsection (1) of this section in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to a board determination under ORS 701.145 are satisfied in the following priority in any 90-day period:

(A) Board determinations as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

(B) If the determinations described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due under board determinations for all other types of residential or small commercial structure complaints filed with the board within that 90-day period may be paid from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

(4) If the total amount payable under determinations issued by the board for complaints against a residential contractor filed with the board within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for payment, subject to the

priorities under this section, the board shall decide how payment of the determined amounts from the bond is to be apportioned.

(5) If the total amount payable under determinations issued by the board as a result of complaints that were filed with the board within 90 days after the board receives notice of the first complaint do not exceed the amount of the bond available for payment, those determinations have payment priority over amounts due under determinations resulting from subsequently filed complaints.

(6) The total amount paid from a residential contractor bond for costs and interest under all determinations issued by the board under ORS 701.145 may not exceed \$3,000. [2007 c.836 §10; 2007 c.836 §52; 2011 c.630 §50]

Note: The amendments to 701.153 by section 70, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.153. (1) If an order of the Construction Contractors Board that determines a complaint under ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

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

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

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

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

(6) The total amount paid from a residential contractor bond for costs, interest and attorney fees may not exceed \$3,000.

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

701.157 Satisfaction of order against commercial contractor. (1)(a) Payments from the surety bond of a commercial contractor pursuant to Construction Contractors Board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of complaints against a commercial contractor by a person furnishing labor to a contractor or owed employee benefits by a contractor have payment priority to the full extent of the bond over all other types of complaints.

(B) If the complaints described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of small commercial or large commercial structure complaints may be satisfied from the bond, except complaints for costs, interest and attorney fees.

(C) If complaints described in subparagraphs (A) and (B) of this paragraph do not exhaust the bond, then complaints for costs, interest and attorney fees resulting from small commercial or large commercial structure complaints may be satisfied from the bond.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

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

(3) If the total amounts due as a result of complaints filed with the board within 90 days after the first complaint is filed do not exceed the amount of the bond available for those complaints, all amounts due as a result of complaints filed within the 90-day period shall have priority over all complaints subsequently filed until the amount of the bond available for the payment of complaints is exhausted. [2007 c.836 §11; 2007 c.836 §53]

701.160 Nonlawyer may represent certain forms of businesses before board; rules for additional business forms. Notwithstanding ORS 9.320:

(1) A party may appear or be represented by an individual who is not a member of the Oregon State Bar in a proceeding before the Construction Contractors Board if:

(a) The party is a corporation and the individual is an officer of the corporation;

(b) The party is a partnership, or a limited liability partnership or foreign limited liability partnership as those terms are defined in ORS 67.005, and the individual is a partner in the partnership, limited liability partnership or foreign limited liability partnership;

(c) The party is a limited partnership as defined in ORS 70.005 and the individual is a general partner in the partnership;

(d) The party is a manager-managed limited liability company as defined in ORS 63.001 and the individual is a manager of the company; or

(e) The party is a member-managed limited liability company as defined in ORS 63.001 and the individual is a member of the company.

(2) In addition to parties described in subsection (1) of this section, the board, by rule, may recognize particular business forms as parties that may appear or be represented by an individual who is not a member of the Oregon State Bar in a proceeding before the board. A board rule adopted under this subsection must identify the business form of the party and specify the required relationship between the party and the individual. The board may allow appearance or representation of a party only by an individual who is a director, officer, partner, trustee, manager or authorized regular employee of the party. [1985 c.599 §3; 1989 c.928 §19; 1995 c.480 §1; 2001 c.163 §1; 2003 c.75 §109]

701.170 [1989 c.430 §4 and 1989 c.928 §20; repealed by 1993 c.18 §153 and 1993 c.470 §5]

701.175 [2001 c.850 §3; 2007 c.793 §20; renumbered 701.315 in 2007]

701.180 Alternative mediation or arbitration process; waiver and compliance. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a complaint under ORS 701.145 is a waiver by the contractor of any contractual right to a mediation or arbitration process in lieu of mediation by the board under ORS 701.145. If the parties do not resolve or settle the dispute pursuant to board mediation under ORS 701.145, unless otherwise provided by law regarding a dispute described under ORS 652.140 or 653.010 to 653.261, the complainant must comply with any contractual provision for mediation or arbitration of the dispute as a condition for obtaining the judgment required under ORS 701.145 (5). [Subsection (1) enacted as 1989 c.430 §5; subsection (2) enacted as 1989 c.928 §21; 1991 c.67 §187;

1991 c.181 §12; 2001 c.197 §17; 2001 c.414 §11; 2003 c.598 §52; 2007 c.793 §21; 2011 c.630 §51]

Note: The amendments to 701.180 by section 71, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a complaint under ORS 701.145 is a waiver by the contractor of any contractual right to mediation or arbitration.

CONSTRUCTION CONTRACTORS BOARD

701.205 Construction Contractors Board; members; terms; confirmation; vacancies; qualifications. (1) The Construction Contractors Board is established, consisting of nine members appointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three of the members shall be residential contractors who primarily work on residential or small commercial structures, including one contractor engaged in the business of remodeling, two shall be public members and one shall be an elected representative of a governing body of local government. Two of the members shall be commercial general contractors who primarily work on large commercial structures, and one shall be a commercial specialty contractor who primarily works on large commercial structures or a residential limited contractor. One member who is a contractor may be certified as a home inspector.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment immediately effective for the unexpired term.

(3) In order to be eligible for board membership, the six contractor members of the board shall be licensed under this chapter and shall maintain their licenses in good order during their term of office. [Subsections (1) and (2) enacted as 1971 c.740 §3; subsection (3) enacted as 1971 c.740 §5; 1975 c.721 §8; 1977 c.537 §1; 1981 c.618 §13; 1987 c.414 §40; 1989 c.928 §22; 1991 c.181 §14; 1993 c.470 §4; 1997 c.814 §4; 1999 c.402 §33; 2001 c.197 §18; 2007 c.836 §34]

701.215 Officers; quorum; compensation and expenses; advisory committees. (1) The Construction Contractors Board shall select from among its members a chairperson, a vice chairperson and such other offi-

cers 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 dem-

onstrate proof of compliance with the licensing requirements of this chapter, the inspector is authorized to order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector may not order the work stopped until at least 10 days after the copies of the notice of noncompliance have been served upon or delivered to the owners or mailed to the mortgagees and trust deed beneficiaries specified in this subsection.

(4) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter.

(5) If any person fails to comply with a subpoena issued under subsection (4) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

(6) Notwithstanding the provisions of subsection (3) of this section:

(a) The board may order the work stopped immediately if the contractor is working on a structure and the contractor was not licensed by the board when the work began; or

(b) The board may order the work stopped after 10 days' notice to the persons listed in subsection (3) of this section if the contractor is working on a structure and was licensed by the board when the job began but has let the license lapse. [1971 c.740 §18; 1975 c.721 §9; 1987 c.414 §40d; 1989 c.744 §3; 1989 c.928 §26; 1991 c.561 §1; 1999 c.402 §34]

701.227 Disqualification from eligibility for certain public contracts; list of disqualified contractors. (1) The Construction Contractors Board shall begin an action to determine whether a contractor or a subcontractor shall be considered not qualified to hold or participate in a public contract for a public improvement upon receipt of information from a public contracting agency or from any person who supplied labor or materials in connection with a public contract for a public improvement indicating that the contractor or subcontractor has not made payment to persons who supplied labor or materials within 60 days after the date when the payment was received by the contractor or subcontractor and that the payment was not a subject of a good faith dispute as defined in ORS 279C.580.

(2) If the board determines after notice and opportunity for hearing that a contractor

or a subcontractor did not make payment to persons who supplied labor or materials in connection with a public contract for a public improvement within 60 days after the date when payment was received by the contractor or subcontractor, the board shall place the contractor or the subcontractor on the list of persons who have been determined to be not qualified to hold or participate in a public contract for a public improvement. The board may not place a contractor or subcontractor on the list if the only reason that the contractor or subcontractor did not make payment to a person when payment was due is that the contractor or subcontractor did not receive payment from the public contracting agency, contractor or subcontractor when payment was due. The contractor or subcontractor shall remain on the list for a period of not less than six months.

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

(4) The board shall create and maintain a list of contractors and subcontractors who have been determined to be not qualified to hold or participate in a public contract for a public improvement. The list may include any corporation, partnership or other business entity of which the contractor or subcontractor is an owner, shareholder or officer of the business or was an owner or officer of the business. The board shall provide access to the list to all public contracting agencies, contractors and subcontractors. [1999 c.689 §9; 2003 c.794 §318; 2005 c.409 §§1,2; 2007 c.793 §22]

701.230 Board to provide names of unlicensed or improperly endorsed contractors to other state agencies. At least once each month, the Construction Contractors Board shall provide to investigative units of the Department of Revenue, Department of Consumer and Business Services and Employment Department the name and address of each person who acts as a contractor in violation of this chapter or who knowingly assists an unlicensed person or a licensed contractor that is not properly endorsed to act in violation of this chapter. [1983 c.616 §2; 1989 c.928 §27; 1999 c.402 §35; 2007 c.836 §35]

701.235 Rulemaking. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

- (a) Establish language for surety bonds;
- (b) Establish processing requirements for different types of complaints described in this chapter;
- (c) Limit whether a complaint may be processed by the board if there is no direct contractual relationship between the complainant and the contractor;
- (d) Subject to ORS 701.145, 701.153 and 701.157, exclude or limit recovery from the contractor's bond required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from commencing the arbitration or court action and proving damages; and
- (e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.068. [1971 c.740 §19; 1989 c.928 §28; 1991 c.181 §13; 2001 c.197 §19; 2003 c.778 §6; 2007 c.793 §23; 2007 c.836 §36; 2011 c.630 §52]

Note: The amendments to 701.235 by section 72, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

- (a) Establish language for surety bonds;
- (b) Establish processing requirements for different types of complaints described in this chapter;
- (c) Limit whether a complaint may be processed by the board if there is no direct contractual relationship between the complainant and the contractor;
- (d) Subject to ORS 701.153 and 701.157, exclude or limit recovery from the contractor's bond required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from commencing the arbitration or court action and proving damages; and
- (e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.068.

701.238 Determination of licensing application fee; rules. (1) Before July 1 of each year, the Construction Contractors Board shall determine the amounts of the

fees to be charged for applications under ORS 701.056 for the issuance or renewal of contractor licenses. The fee amounts are subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adoption. The fee amounts shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fee amounts established under this section may not exceed the cost of administering the regulatory program of the board under this chapter, as authorized by the Legislative Assembly within the board's budget, as the budget may be modified by the Emergency Board.

(2) The amounts of the fees determined by the board under subsection (1) of this section shall be effective as set by rule. [Formerly 701.130]

701.240 Provision of licensed contractors list to other state agencies; rules. (1) The Construction Contractors Board shall supply the Department of Revenue and the Employment Department with a partial or complete list of licensees as deemed necessary by the board.

(2) The lists required by subsection (1) of this section shall contain the name, address, Social Security or federal employer identification number of each licensee or such other information as the departments may by rule require. [1989 c.870 §6; 1999 c.402 §36; 2005 c.22 §479]

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

701.246 Confidentiality of information; permissible disclosures. (1) Social Security numbers, driver license numbers, dates of birth and other personal identifier information included in a license or certificate application filed under this chapter are confidential. Except as provided in this section, the Construction Contractors Board may not disclose personal identifier information contained in a license or certificate application.

(2) Subsection (1) of this section does not prohibit the board from making the following disclosures:

(a) Disclosures made with the written consent of the person to whom the personal identifier information pertains.

(b) Disclosures of information that a license or certificate holder is required by law or rule to disclose to the public, including but not limited to board-issued license or certificate numbers.

(c) Disclosures for the purpose of causing, conducting or assisting an investigation into possible violations of law, rules or regulations, including but not limited to disclosures to an administrative agency, law

enforcement agency or district attorney office. A public body receiving information from the board under this paragraph may not disclose the information except as necessary to an investigation or as necessary to criminal, civil or contested case proceedings. [2009 c.226 §2]

701.250 Board to provide licensee's status on request; fee. (1) Any individual may request and the Construction Contractors Board shall provide notification of the status of one or more licensees. Status information provided by the board shall include any professional credentials earned by the contractor as described in ORS 701.120.

(2) The board may charge a standard fee for the notification described in subsection (1) of this section not to exceed the cost of preparation and provision of such notices. [1989 c.870 §7; 1999 c.402 §37; 2001 c.311 §4; 2001 c.428 §2; 2002 s.s.1 c.6 §§2,7; 2003 c.778 §11]

701.252 [1999 c.174 §2; 2001 c.104 §281; 2007 c.793 §24; repealed by 2007 c.836 §51]

701.255 Funds retained for collection of civil penalties. The Construction Contractors Board may retain 20 percent annually from the funds collected under ORS 701.992. The amount retained under this section shall be continuously appropriated for the board's costs of collection of civil penalties imposed by order of the board. [1989 c.928 §29; 1995 c.771 §5]

701.260 Appeal committee; membership; duties. (1) From within its membership, the Construction Contractors Board shall appoint three members, including one of the public members or the elected official, as an appeal committee. The board may appoint one or more appeal committees. At least one residential contractor shall be appointed to any committee that hears appeals involving residential complaints.

(2) An appeal committee shall hear appeals on proposed orders and on petitions for reconsideration and rehearing and motions for stays that were originally appealed to the board as proposed orders.

(3) The Construction Contractors Board shall not consider an appeal of a decision of an appeal committee. However, the full board may act as an appeal committee. The parties affected by a decision of an appeal committee shall retain the right to appeal the decision to the Court of Appeals. [1989 c.928 §24; 1993 c.470 §1; 1993 c.742 §53]

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

701.280 [1991 c.732 §§2,3,4; 1995 c.216 §5; 1997 c.814 §5; 1999 c.173 §1; 1999 c.402 §38; 2001 c.160 §7; repealed by 2005 c.432 §18]

701.285 [Formerly 456.752; repealed by 2001 c.160 §8]

701.290 [1995 c.560 §1; repealed by 2001 c.850 §8]

701.295 Board duty to investigate and seek prosecution of illegal activity. The Construction Contractors Board shall investigate allegations of illegal activity in the construction industry and seek civil or criminal prosecution of illegal activity that warrants more than an administrative sanction. [2001 c.850 §4]

701.300 [1989 c.928 §11; repealed by 1991 c.181 §16]

CONSTRUCTION CONTRACTS AND NOTICES

701.305 Requirement for written contract with residential property owner; standard contractual terms; rules. (1) A contractor may not perform work to construct, improve or repair a residential structure or zero-lot-line dwelling for a property owner without a written contract if the aggregate contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the property owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000. Failure to have a written contract will not void the contract.

(2) The Construction Contractors Board shall adopt rules that require a contractor to use standard contractual terms in a construction contract for which subsection (1) of this section requires a written contract. The standard contractual terms shall be clear, use words of common understanding and shall include but need not be limited to:

(a) A statement that the contractor is licensed by the board;

(b) The name, license number, address and telephone number of the contractor as shown on board records on the date the contract is entered into;

(c) An acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(d) A list of the notices required under ORS 87.093 or under rules adopted under ORS 701.330 and 701.335 (2) on the contractor's bid proposal; and

(e) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a claim with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule. [2007 c.648 §7; 2009 c.408 §8; 2009 c.409 §1]

701.310 Cancellation of contract. (1) A property owner who enters into an initial written contract for the construction, improvement or repair of a residential structure or zero-lot-line dwelling on real property owned by the property owner may cancel the contract by delivery of a written notice of cancellation anytime prior to 12 midnight at the end of the next business day. The notice of cancellation may be delivered in any written form or by any means that can readily be converted to written form, including, but not limited to, facsimile, electronic mail and regular mail. The notice must state the intention of the property owner to cancel the contract.

(2) Subsection (1) of this section does not allow a property owner to cancel a contract:

(a) If both parties agree that work is to begin before the cancellation period has expired;

(b) After a contractor substantially begins the residential construction, improvement or repair; or

(c) When an initial contract is being modified after expiration of the initial cancellation period. [2007 c.648 §8; 2009 c.409 §2]

701.312 Additional grounds for placing contractor on probation. Notwithstanding the conditions specified for probation in ORS 701.102 (3), the Construction Contractors Board may place a contractor on probation as provided in ORS 701.102 (3) if the contractor offers to perform a home improvement, accepts a deposit of more than 50 percent of the total contract price and:

(1) Fails to perform diligently and in accordance with the contract specifications the home improvement for which the contractor received the deposit; or

(2) Fails to perform the home improvement for which the contractor received the deposit and fails to return the deposit within 10 days after a reasonable demand to return the deposit. [2010 c.77 §6]

701.315 Contents of contract for work on residential structure. A contract that is for the performance of work on a residential structure and that is subject to this chapter may not contain a provision that limits the right of a person to file a complaint described in ORS 701.140 with the Construction Contractors Board. A contract described in this section may contain a provision requiring mediation or arbitration of a dispute arising from the contract. [Formerly 701.175]

701.320 Offer of warranty; withdrawal of contract offer. (1) A contractor that enters into a contract to construct a new residential structure or zero-lot-line dwelling, or to sell a new residential structure or zero-

lot-line dwelling constructed by the contractor, shall make a written offer to the property owner or original purchaser of the structure or dwelling of a warranty against defects in materials and workmanship for the structure or dwelling. The property owner or original purchaser of the structure or dwelling may accept or refuse the offer of a warranty by the contractor. If a contractor makes the written offer of a warranty before the contractor and the property owner both sign a written construction contract and the property owner refuses the offered warranty, the contractor may withdraw the offer to construct the structure or dwelling.

(2) Subsection (1) of this section does not apply to a residential structure that is a manufactured dwelling as defined in ORS 446.003. [2007 c.648 §11; 2009 c.409 §3]

701.325 Condition for obtaining building permit; information notice; business licenses; local regulation. (1) If a person is required under this chapter to be licensed as a contractor, a city, county or state agency may not issue the person a building permit unless the person has a current, valid contractor license properly endorsed for the work to be performed. A city, county or state agency that requires the issuance of a permit for the construction, alteration, improvement, demolition, movement or repair of a building, structure or appurtenances to a structure shall, as a condition for issuing the permit, require the applicant for a permit to file a written statement signed by the applicant. If the applicant is a contractor, the contractor shall provide the contractor's license number and state that the license is in full force and effect. If the applicant is exempt from licensing under this chapter, the applicant shall state the basis for the exemption. The city, county or state agency shall list the contractor's license number on the permit issued to that contractor.

(2) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the city, county or state agency shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state agency may not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:

(a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and

(b) I own, reside in or will reside in the completed dwelling. My residential general contractor is _____, Construction Contractors Board license no. _____, li-

cense expiration date _____. I will instruct my contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board and properly endorsed for the work to be performed; or

(c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.

(d) I will be my own contractor and, if I hire contractors, I will hire only contractors licensed with the Construction Contractors Board and properly endorsed for the work to be performed.

(e) If I change my mind and do hire a residential general contractor, I will contract with a contractor who is licensed with the Construction Contractors Board and properly endorsed for the work to be performed. I will immediately notify the office issuing this building permit of the name and license number of the contractor _____.

(3) The Construction Contractors Board shall adopt by rule a form titled "Information Notice to Property Owners About Construction Responsibilities" that clearly describes in everyday language the responsibilities property owners are undertaking by acting as their own contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

(4) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(5) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.

(6) The provisions of this chapter are exclusive and a city, county or other political subdivision may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety

registration of any contractor licensed with the board. This subsection does not affect the authority of a city, county or political subdivision to:

(a) License and levy and collect a general and nondiscriminatory license fee levied upon all businesses or upon business conducted by any firm within the city, county or political subdivision;

(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the services of the contractor; or

(c) Regulate a contractor that is not required to be licensed under this chapter. [2007 c.114 §2; 2007 c.836 §16a]

701.330 Consumer notice form; notice of procedure form; rules. (1) The Construction Contractors Board shall adopt by rule a consumer notice form designed to inform a property owner or original purchaser of the actions the property owner or original purchaser should take to protect the property owner in a residential structure or zero-lot-line dwelling repair, remodel or construction project or to protect the original purchaser in a residential structure or zero-lot-line dwelling construction project. The form shall briefly describe and identify additional sources of information regarding:

(a) Contractor licensing standards;

(b) Contractor bond and insurance requirements;

(c) The requirement to offer a warranty under ORS 701.320; and

(d) Other information specified by the board.

(2) The board shall adopt by rule a notice of procedure form that briefly describes and identifies additional sources of information regarding the procedure described under ORS 701.560 to 701.595 and other information specified by the board.

(3) The consumer notice form and notice of procedure form adopted by the board shall include signature lines for the contractor and for the property owner or original purchaser.

(4) The board shall adopt rules specifying the time and manner for a contractor to deliver a consumer notice form and notice of procedure form.

(5) The board may adopt rules that require a contractor to maintain evidence of delivery of the consumer notice form and notice of procedure form and that specify the retention period for and the form of that evidence. [2007 c.648 §14; 2009 c.409 §4]

701.335 Recommended maintenance schedule; rules. (1) A contractor that enters into a contract to construct a new residential structure or zero-lot-line dwelling shall provide a recommended maintenance schedule to the property owner or original purchaser of the proposed structure or dwelling at the time that the contractor makes a written offer of warranty under ORS 701.320.

(2) The Construction Contractors Board shall adopt rules describing the minimum information that a contractor shall provide to a property owner or original purchaser under subsection (1) of this section. The minimum information shall include, but need not be limited to, the following:

(a) Definitions and descriptions of moisture intrusion and water damage.

(b) An explanation of how moisture intrusion and water damage can occur.

(c) A description and recommended schedule for maintenance to prevent moisture intrusion.

(d) Advice on how to recognize the signs of water damage.

(e) Appropriate steps to take when water damage is discovered. [2007 c.648 §13; 2009 c.409 §5]

701.340 Commercial structure warranty. A commercial general contractor level 1 or level 2 that constructs a new large commercial structure shall provide the owner with a two-year warranty of the building envelope and penetration components against defects in materials and workmanship. The warranty shall provide for the contractor to annually inspect the building envelope and penetration components during the warranty period. The warranty need not cover conditions resulting from improper maintenance by the owner. [2007 c.836 §12]

701.345 Subcontractor list. (1) A contractor shall maintain a list that includes the names, addresses and license numbers for all subcontractors or other contractors performing work on a project for that contractor.

(2) The contractor must deliver the list referred to in subsection (1) of this section to the Construction Contractors Board within 72 hours after a board request made during reasonable working hours. [2007 c.114 §4]

701.348 Sewer contractor requirements. (1) Every person offering to undertake or undertaking construction of building sewer piping shall comply with the requirements of ORS chapter 701.

(2) Every person submitting a bid or a written estimate of the costs to construct building sewer piping shall provide to poten-

tial customers, prior to an agreement to perform, the following:

(a) The person's Construction Contractors Board license number;

(b) The applicable bonding and liability coverage; and

(c) The statement described in ORS 701.325 (1).

(3) Any person licensed under ORS 701.026 may install a building sewer after obtaining a permit for plumbing inspection under ORS 447.095.

(4) As used in this section, "building sewer" means that part of the system of drainage piping that conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates. [Formerly 701.138]

Note: 701.348 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

HOME INSPECTORS

701.350 Home inspectors; certification; rules; fees; exemption. (1) An individual may not undertake, offer to undertake or submit a bid to do work as a home inspector unless the individual is certified as a home inspector under this section by the Construction Contractors Board and is an owner of, or employed by, a business that is licensed by the board.

(2) A business may not undertake, offer to undertake or submit a bid to do work as a home inspector unless the business is licensed by the board under this chapter and has an owner or an employee who is certified as a home inspector under this section. The board may adopt rules for determining whether an inspection and report that is limited to one or more specific systems or components of a residential structure or appurtenance is a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector.

(3) The board shall adopt minimum standards of practice and professional conduct.

(4) The board shall require that an applicant for certification as a home inspector pass a test demonstrating the competency of the applicant to act as a home inspector. The board may adopt rules accepting the results of competency testing by a nationally recognized certification program for home inspectors. The board may adopt rules establishing additional requirements for the issuance or renewal of a home inspector certificate, in-

cluding but not limited to training and continuing education requirements.

(5) The board shall adopt rules establishing procedures for the issuance, renewal and revocation of home inspector certification.

(6) The board may adopt rules establishing fees necessary for the administration of this section. The fees may not exceed the following:

(a) \$50 for application.

(b) \$50 for testing.

(c) \$150 for issuance of an initial two-year certificate.

(d) \$150 for renewal of a two-year certificate.

(7) This section does not apply to a person acting within the scope of a license, certificate or registration issued to the person by the Appraiser Certification and Licensure Board under ORS chapter 674. [1997 c.814 §§3,3a; 1997 c.690 §6; 1999 c.402 §39; 2001 c.196 §10; 2005 c.114 §1; 2005 c.254 §13; 2005 c.432 §15a; 2007 c.222 §1; 2011 c.79 §1]

Note: Section 3b, chapter 814, Oregon Laws 1997, provides:

Sec. 3b. The requirements of section 3 of this Act [701.350 (1) and (2)] shall not apply to a person registered each year as a general contractor under ORS chapter 701 during the period from January 1, 1991, through the effective date of this Act [August 11, 1997]. [1997 c.814 §3b]

701.355 Home inspector undertaking of repair work on inspected structure. A business licensed as a contractor under this chapter and providing home inspector services by a home inspector certified under ORS 701.350 may not undertake, offer to undertake or offer to submit a bid to undertake work to repair a structure inspected by an owner or employee of the business within the 12 months following the inspection. [1997 c.814 §7; 2001 c.196 §11; 2005 c.432 §16]

RETAINAGE

701.410 Definitions. (1) As used in ORS 279C.555, 279C.570, 701.410, 701.420, 701.430, 701.435 and 701.440:

(a) "Construction" means:

(A) Excavating, landscaping, demolishing and detaching existing structures, leveling, filling in and otherwise preparing land for the making and placement of a building, structure or superstructure;

(B) Creating or making a building, structure or superstructure; and

(C) Altering, partially constructing and doing repairs in and upon a building, structure or superstructure.

(b) "Contractor" means a person that contracts with an owner on predetermined terms to be responsible for performing all or

part of a job of construction in accordance with established specifications or plans, and that retains control of the means, method and manner of accomplishing the desired result.

(c) "Owner" means a person that is or claims to be the owner in fee or a lesser estate of the land, building, structure or superstructure on which construction is performed and that enters into an agreement with a contractor for the construction.

(d) "Subcontractor" means a person that contracts with a contractor or another subcontractor on predetermined terms to be responsible for performing all or part of a job of construction in accordance with established specifications or plans.

(2) As used in ORS 701.410, 701.420, 701.430, 701.435 and 701.440, "retainage" means the difference between the amount a contractor or subcontractor earns under a construction contract and the amount the owner pays on the contract to the contractor, the amount the contractor pays on the contract to the subcontractor or the amount the subcontractor pays on the contract to another subcontractor. [1975 c.772 §1; 1987 c.158 §148; 1999 c.59 §209; 2003 c.794 §319; 2005 c.22 §§480,481; 2010 c.77 §7]

Note: 701.410 to 701.440 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.420 Partial payment; retainage; effect; interest; notice of completion; payment by contractor and owner. (1) Partial payment is allowed and may be made on contracts for construction and home improvement. Except as provided in ORS 701.430 (2), an owner, contractor or subcontractor may withhold as retainage an amount equal to not more than five percent of the contract price of the work completed. Partial payment allowed under this subsection is not acceptance or approval of some of the work or a waiver of defects in the work.

(2) The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due the contractor or subcontractor. Except as provided in ORS 701.430 (2), the interest shall commence 30 days after the contractor or subcontractor has completed and the owner has accepted the work under the contract for construction for which the final payment is due. The interest shall run until the date when final payment is tendered to the contractor or subcontractor. When the contractor or subcontractor considers the work that the contractor or subcontractor is contracted to perform to be complete, the contractor or subcontractor shall notify the party to whom the contractor or subcontractor is responsi-

ble for performing the construction work under the contract. The party shall, within 15 days after receiving the notice, either accept the work or notify the contractor or subcontractor of work yet to be performed under the contract. If the party does not accept the work or does not notify the contractor or subcontractor of work yet to be performed within the time allowed, the interest required under this subsection shall commence 30 days after the end of the 15-day period.

(3) When a contractor pays a subcontractor in full, including the amount the contractor withheld as retainage, the owner with whom the contractor has the contract shall pay the contractor, out of the amount that the owner withheld from the contractor as retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor. The contractor shall notify the owner when the contractor pays a subcontractor in full under this section and the owner shall, within 15 days after receiving the notice, pay the contractor the amount due the contractor under this subsection. Interest on the amount due the contractor at the rate of one percent per month shall commence 30 days after the owner receives notice of full payment to the subcontractor. [1975 c.772 §2; 2010 c.77 §8]

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 per-

formance 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 payment 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, securities or other instruments under ORS 279C.560 (4), if the subcontract price exceeds \$50,000 and constitutes more than 10 percent of the cost of the public contract, a subcontractor on the public contract may deposit bonds, securities or other instruments with the contractor or in a bank or trust company for the contractor to hold for the contractor's benefit in lieu of moneys held as retainage. If the contractor accepts the bonds, securities or other instruments deposited as provided in this subsection, the contractor shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest or earnings on the bonds, securities or other instruments shall accrue to the subcontractor.

(2) When a contractor on a public contract elects to have the public contracting agency deposit the accumulated retainage in an interest-bearing account under ORS 279C.560 (5), the contractor, within 30 days following payment of the final amount due

for construction of the public improvement, shall pay to each subcontractor who performed work on the construction the subcontractor's proportional share of the interest earnings that accrued to the contractor as a result of the election. A subcontractor's share of the total amount of interest earnings under this subsection shall be determined by the proportion that the amount of retainage withheld from the subcontractor bears to the amount of retainage withheld from the contractor and the length of time the retainage was withheld from the subcontractor. A share of the interest earnings shall be paid to a subcontractor under this subsection only when:

(a) Retainage is withheld from the subcontractor for more than 60 days after the day on which the first partial payment was due the subcontractor under the terms of the subcontract; and

(b) The amount of interest earnings due the subcontractor exceeds \$100.

(3) If the contractor incurs additional costs as a result of the exercise of an option described in subsection (1) or (2) of this section, the contractor may recover the costs from the subcontractor by reducing the final payment. As work on the subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued additional costs.

(4) Bonds, securities and other instruments deposited or acquired in lieu of retainage, as permitted by this section, must be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or agencies of the United States.

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

(d) Indebtedness of the Federal National Mortgage Association.

(e) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(f) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008. [1977 c.767 §2; 1983 c.690 §16; 2003 c.794 §320; 2009 c.568 §2]

Note: See note under 701.410.

701.440 Applicability to federal projects. ORS 279C.555, 701.410, 701.420 and 701.430 do not apply when the owner is the United States or any agency thereof or when the construction is paid for, in whole or in part, with federal moneys. [1975 c.772 §6; 2003 c.794 §321]

Note: See note under 701.410.

LOCKSMITHS

701.475 Definitions for ORS 701.475 to 701.490. As used in ORS 701.475 to 701.490:

(1) "Key" means a mechanical, electromechanical, electronic, electromagnetic or other device for operating a lock.

(2) "Lock" means a mechanical, electromechanical, electronic, electromagnetic or other device that is designed to control access from one area to another or control the use of a device in a structure or vehicle.

(3) "Locksmith" means a person who services, installs, repairs, rebuilds, rekeys, repins or adjusts locks, hardware peripheral to locks, safes, vaults, safe deposit boxes or mechanical or electronic security systems. [2009 c.781 §2]

701.480 Certification; licensing; holding out as locksmith or locksmithing business. (1) An individual may not undertake, offer to undertake or submit a bid to do work as a locksmith for compensation, or with the expectation to be compensated, unless the individual is certified as a locksmith under ORS 701.485 by the Construction Contractors Board and is an owner of, or employed by, a business that is licensed by the board.

(2) A business may not undertake, offer to undertake or submit a bid to provide locksmith services unless the business is licensed by the board under this chapter and has an owner or an employee who is certified as a locksmith under ORS 701.485.

(3) A person may not use the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the person is a locksmith or provider of locksmith services unless the person is certified as a locksmith by the board or is a business licensed by the board that has an owner or employee who is certified by the board as a locksmith.

(4) A person may not use any sign, card or device that indicates or tends to indicate that the person is a locksmith or provider of locksmith services unless the person is certified as a locksmith by the board or is a business licensed by the board that has an owner or employee who is certified by the board as a locksmith. [2009 c.781 §3]

701.485 Standards of practice and professional conduct; determination of competency; sanctions; rules; fees. (1) The Construction Contractors Board shall adopt rules establishing minimum standards of practice and professional conduct for

locksmiths and businesses that provide locksmith services.

(2) The board shall require that an applicant for certification as a locksmith pass a test demonstrating the competency of the applicant to act as a locksmith.

(3) The board may adopt rules to regulate the practice of locksmithing, including but not limited to rules:

(a) Accepting the results of competency testing by a nationally recognized certification program for locksmiths;

(b) Establishing requirements for the issuance or renewal of a locksmith certificate, including but not limited to training and continuing education requirements;

(c) Establishing standards of professional conduct for certified locksmiths; and

(d) Establishing fees necessary for the administration of ORS 701.475 to 701.490 that do not exceed the following amounts:

(A) \$100 for application.

(B) \$100 for testing.

(C) \$300 for issuance of an initial two-year certificate.

(D) \$300 for renewal of a two-year certificate.

(4) The board shall adopt rules establishing procedures for the issuance, renewal and revocation of a locksmith certificate.

(5) The board may suspend or revoke a locksmith certificate if the locksmith:

(a) Fails to comply with a continuing education requirement established by the board; or

(b) Violates a standard of professional conduct for certified locksmiths established by board rule. [2009 c.781 §4]

701.490 Exemptions from certification, licensure and other requirements. ORS 701.480 and 701.485 do not apply to:

(1) A person offering key duplication services at a fixed location or ancillary to other business activities, if the person does not undertake, offer to undertake or submit a bid to undertake other locksmith services;

(2) An individual performing work within the scope of a license described in ORS 479.905 to 479.945;

(3) A tow truck operator performing work for a towing business certified under ORS 822.205;

(4) A construction contractor licensed under this chapter or an owner, officer or employee of the licensed construction contractor, when acting within the scope of the contractor's license, if the contractor, owner,

officer or employee does not hold out as a provider of locksmith services;

(5) Work performed by a manufacturer on a manufactured structure, modular building or structure or prefabricated structure that is or was produced by the manufacturer;

(6) A property owner or regular employee of the property owner, when performing work on the property;

(7) A property management company or the regular employee of a property management company, when performing work on the managed property;

(8) A real estate property manager as defined in ORS 696.010, or the employee of a property manager, performing work in the course of managing rental real estate;

(9) A landlord or landlord's agent, both as defined in ORS 90.100;

(10) A manufacturer of locks; or

(11) A person performing work as the representative of a manufacturer, wholesaler, distributor or retailer of locks. [2009 c.781 §5]

LEAD POISONING AND HAZARD REDUCTION

701.500 [1995 c.795 §2; 2007 c.71 §227; repealed by 2009 c.757 §12]

701.505 Definitions for ORS 701.505 to 701.515. For the purposes of ORS 701.505 to 701.515:

(1) "Abatement" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 431.917.

(2) "Accredited training program" means a training program that has been accredited by the Oregon Health Authority to provide training for individuals engaged in lead-based paint activities.

(3) "Certified lead-based paint renovation contractor" means a contractor that is licensed by the Construction Contractors Board to conduct lead-based paint renovation under ORS 701.515.

(4) "Inspection" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 431.917.

(5) "Lead-based paint" has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 431.917.

(6) "Lead-based paint activities" has the meaning given that term in 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 431.917.

(7) “Lead-based paint activities contractor” means a contractor that is licensed by the Construction Contractors Board to conduct lead-based paint activities under ORS 701.515.

(8) “Renovation” has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant to the authorities described in ORS 431.917. [1995 c.795 §3; 2009 c.595 §1112; 2009 c.828 §68]

701.510 License required to engage in lead-based paint activity. (1) A contractor may not perform lead-based paint activities in this state unless the contractor is a lead-based paint activities contractor.

(2) A contractor may not perform lead-based paint renovation in this state unless the contractor is a certified lead-based paint renovation contractor.

(3) A lead-based paint activities contractor or certified lead-based paint renovation contractor must comply with the provisions of ORS 431.920 and 701.505 to 701.515 and any rules adopted pursuant thereto.

(4) A construction contractor who successfully completes an accredited training program in lead-based paint activities qualifies to have certification in that activity included in the professional credentials of the contractor as described in ORS 701.120. The provisions of this subsection do not affect the licensing requirements established in ORS 701.515. [1995 c.795 §4; 2001 c.428 §3; 2009 c.757 §8]

701.515 Licensing system; fees; rules.

(1) In accordance with applicable provisions of ORS chapter 183, the Construction Contractors Board by rule shall establish a system to license contractors as lead-based paint activities contractors and certified lead-based paint renovation contractors. The licensing system must include the requirements described in 40 C.F.R. 745.226. The licensing system must include but need not be limited to provisions:

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

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

(c) Requiring an applicant for a certified lead-based paint renovation contractor license to show that an employee of the applicant has completed an accredited training program.

(d) Prescribing the actions or circumstances that constitute failure to achieve or maintain licensing requirements, or that otherwise are contrary to the public interest,

for which the board may refuse to issue or renew or may suspend or revoke a lead-based paint activities contractor or certified lead-based paint renovation contractor license.

(2) The board may establish by rule the requirements for specific types of licenses for lead-based paint activities contractors.

(3) The board may impose the following licensing fees:

(a) Lead abatement contractor, up to \$50 per year;

(b) Lead inspection contractor, up to \$50 per year;

(c) Lead supervisor or lead contractor, up to \$50 per year;

(d) Lead inspector or assessor, up to \$50 per year;

(e) Lead worker, up to \$25 per year; and

(f) Certified lead-based paint renovation contractor, up to \$50 per year. [1995 c.795 §5; 2009 c.757 §9]

701.520 Construction Contractors Board Lead-Based Paint Activities Fund.

The Construction Contractors Board Lead-Based Paint Activities Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Construction Contractors Board Lead-Based Paint Activities Fund shall be credited to the fund. The fund consists of moneys received by the Construction Contractors Board under ORS 701.995. Moneys in the fund are continuously appropriated to the Construction Contractors Board for the purposes of lead poisoning prevention, including consumer and industry outreach, public education and other activities. [2009 c.757 §11]

Note: 701.520 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ACCESSIBILITY FEATURES

701.525 Provision of accessible features list to purchaser; effect. (1) As used in this section and ORS 701.530:

(a) “Developer” means a person who contracts to construct, or arrange for the construction of, new residential housing on behalf of, or for the purpose of selling the residential housing to, a specific individual the person knows is the purchaser of the residential housing.

(b) “Residential housing”:

(A) Means a structure designed for use as a residence and containing dwelling units for three or fewer families.

(B) Means a structure that is a condominium as defined in ORS 100.005.

(C) Does not mean a manufactured structure as defined in ORS 446.003.

(2) A developer who enters into a contract to construct or arrange for the construction of new residential housing may, at the time of providing a purchaser with a written contract, also provide the purchaser with a list of features that may make residential housing more accessible to a person with a disability. The list may include the features identified in the model list of features adopted by the Construction Contractors Board by rule under ORS 701.530.

(3) The inclusion of a feature on the list supplied by the developer under subsection (2) of this section does not obligate the developer to make the feature available to a purchaser. The list supplied by the developer may specify for each feature whether the feature is standard, optional, available on a limited basis or unavailable from the developer. If a listed feature is available from the developer as an option or on a limited basis, the list of features may specify the stage of construction by which the purchaser must submit to the developer any request that the residential housing be constructed with that feature.

(4) This section, or the inclusion of a feature on the model list developed under ORS 701.530, does not affect the requirement that installation of a feature comply with the state building code or be approved under ORS 455.060. [2005 c.734 §4; 2007 c.70 §316]

Note: 701.525 and 701.530 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.530 Model list of accessibility features; rules. The Construction Contractors Board shall adopt by rule a model list of features recommended for inclusion in a list of features that a developer supplies to a purchaser of residential housing under ORS 701.525. In developing the model list of features, the board shall solicit the comments of advocacy groups and other organizations serving persons with disabilities. [2005 c.734 §5]

Note: See note under 701.525.

MERCURY THERMOSTATS

701.550 Notice of Department of Consumer and Business Services rules regarding thermostats containing mercury. The Construction Contractors Board shall provide an annual notice to each contractor licensed under this chapter that informs contractors of the rules developed by the Director of the Department of Consumer and Business Services pursuant to ORS 455.355 prohibiting the installation of thermostats

that contain mercury and requiring proper disposal of thermostats that contain mercury. [2001 c.924 §22]

PROHIBITED MATERIAL INSTALLATION

701.555 Barrier-type exterior insulation and finish systems. (1) As used in this section, “barrier-type exterior insulation and finish system” means a foam insulation board inner layer, a polymer and cement base coat middle layer reinforced with glass fiber mesh and a textured finish coat exterior layer, in which:

(a) The layers are bonded to the outside face of an exterior wall;

(b) The middle or exterior layer, but not the inner layer, provides a water resistant barrier for the exterior of the building envelope;

(c) The layers do not provide a means of drainage for water that accumulates behind the exterior surface; and

(d) The layers insulate the building.

(2) A person licensed or required to be licensed under this chapter may not install a barrier-type exterior insulation and finish system on:

(a) A new building; or

(b) An existing building, except as necessary to repair or replace a previously installed barrier-type exterior insulation and finish system.

(3) Subsection (2) of this section does not apply to the application of a barrier-type exterior insulation and finish system:

(a) As an architectural feature that is not intended to protect an interior space of the building; or

(b) To a concrete wall or a concrete masonry unit block wall. [2007 c.851 §2]

NOTICES OF DEFECT IN RESIDENCE

701.560 Definitions for ORS 701.560 to 701.595 and 701.605. As used in ORS 701.560 to 701.595 and 701.605:

(1) “Contractor” means a person that performed services for the construction, alteration or repair of a residence.

(2) “Defect” means a deficiency, an inadequacy or an insufficiency arising out of or relating to the construction, alteration or repair of a residence. “Defect” includes a deficiency, an inadequacy or an insufficiency in a system, component or material incorporated into a residence.

(3) “Owner” means a person that possesses an interest in a residence or in land that is a residential site or has entered into

a contract for the purchase of an interest in the residence or land. "Owner" includes:

(a) A homeowners association as defined in ORS 94.550;

(b) A managing entity as defined in ORS 94.803;

(c) An owners' association as described in ORS 94.858;

(d) An association of unit owners as defined in ORS 100.005; and

(e) Any other entity that possesses an interest in a residence or represents owners of a residence.

(4) "Remediation" means the repair or replacement of some or all of the defects described in an owner's notice of defect sent under ORS 701.565.

(5) "Residence" means:

(a) A residential structure as defined in ORS 701.005;

(b) Common property as defined in ORS 94.550; and

(c) A common element as defined in ORS 100.005.

(6) "Secondary notice" means a copy of an owner's notice of defect that a contractor, subcontractor or supplier sends to another contractor, subcontractor or supplier that may be responsible for a defect.

(7) "Subcontractor" means any person that performed services for the construction, alteration or repair of a residence at the request or direction of a contractor.

(8) "Supplier" means any person that furnished or manufactured the systems, components or materials incorporated into a residence as part of the construction, alteration or repair of the residence. [2003 c.660 §1]

Note: 701.560 to 701.605 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.565 Notice of defect requirement; contents; mailing. (1) Except as provided in ORS 701.600, an owner may not compel arbitration or commence a court action against a contractor, subcontractor or supplier to assert a claim arising out of or related to any defect in the construction, alteration or repair of a residence or in any system, component or material incorporated into a residence located in this state unless the owner has sent that contractor, subcontractor or supplier a notice of defect as provided in this section and has complied with ORS 701.575.

(2) An owner must send a notice of defect by registered or certified mail, return receipt requested. If a notice of defect is sent to a contractor or subcontractor, the owner must

send the notice to the last known address for the contractor or subcontractor as shown in the records of the Construction Contractors Board. If a notice of defect is sent to a supplier, the owner must send the notice to the Oregon business address of the supplier or, if none, to the registered agent of the supplier.

(3) A notice of defect sent by an owner must include:

(a) The name and mailing address of the owner or the owner's legal representative, if any;

(b) A statement that the owner may seek to compel arbitration or bring a court action against the contractor, subcontractor or supplier;

(c) The address and location of the affected residence;

(d) A description of:

(A) Each defect;

(B) The remediation the owner believes is necessary; and

(C) Any incidental damage not curable by remediation as described in subparagraph (B) of this paragraph; and

(e) Any report or other document evidencing the existence of the defects and any incidental damage. [2003 c.660 §2; 2011 c.268 §1]

Note: See note under 701.560.

701.570 Secondary notice of defect; inspection of residence; response to notice or secondary notice. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary notice to any other known contractor, subcontractor or supplier that may be responsible for some or all of the defects described in the notice of defect. The contractor, subcontractor or supplier must send the secondary notice by registered or certified mail, return receipt requested, to an address described in ORS 701.565 (2). The secondary notice must be accompanied by a statement describing the basis for contending that the other contractor, subcontractor or supplier may be responsible for some or all of the defects.

(2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice may send the owner a written request to conduct a visual examination of the residence. The written request must be sent not later than 14 days after the requesting contractor, subcontractor or supplier receives a notice of defect or secondary notice. The written request to conduct a visual examination of the residence must state the estimated time required for the visual examination.

(3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice may send the owner a written request to inspect the residence. The written request must be sent not later than 14 days after the requesting contractor, subcontractor or supplier conducted a visual examination of the residence. The written request to inspect the residence must state the nature and scope of the inspection, whether any testing is to be performed and the estimated time required for the inspection. The recipient of a secondary notice that requests to inspect the residence shall send a copy of the request to the sender of the secondary notice.

(4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold the recipient of the secondary notice liable for a defect described in a notice of defect shall coordinate the scheduling of any inspection with the owner and all recipients of a secondary notice from the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a copy of any written request to inspect the residence to each recipient of the secondary notice in time to provide the recipient with an opportunity to attend the requested inspection and to participate in any remediation. The sender of a secondary notice shall give reasonable advance notice to the owner or the owner's legal representative, if any, of the identity of any contractor, subcontractor or supplier who will attend the inspection.

(5) Unless otherwise agreed to by the owner, a contractor, subcontractor or supplier that receives a notice of defect or secondary notice shall send a written response to the owner not later than 90 days after the contractor, subcontractor or supplier receives a notice of defect or secondary notice. A contractor, subcontractor or supplier that receives a secondary notice also shall send a copy of the written response to the sender of the secondary notice. The written response must be sent by registered or certified mail, return receipt requested. The written response must include:

(a) One or more of the following for each defect described in the notice of defect or secondary notice or discovered during the course of any visual examination or inspection:

(A) An acknowledgment of the existence, nature and extent of the defect without regard to responsibility for the defect.

(B) A statement describing the existence of a defect different in nature or extent from the defect described in the notice of defect or secondary notice, without regard to responsibility for the defect.

(C) A denial of the existence of the defect.

(b) A copy of the documents described in ORS 701.575 (4).

(c) One or more of the following:

(A) An offer to perform some or all of the remediation. The offer must specify the date by which the offered remediation will be completed.

(B) An offer to pay a stated amount of monetary compensation to the owner for some or all of the acknowledged defects and any incidental damage. The offer must specify the date by which payment will be made.

(C) A denial of responsibility for some or all of the acknowledged defects or incidental damage. [2003 c.660 §3; 2011 c.268 §2]

Note: See note under 701.560.

701.575 Availability of residence; scope of inspection; report of inspection results.

(1) An owner sending a notice of defect under ORS 701.565 shall make the residence available for visual examination pursuant to any written request sent under ORS 701.570. The owner shall make the residence available for visual examination, during normal business hours or as otherwise agreed, not later than 20 days after receiving the written request for visual examination.

(2) An owner sending a notice of defect under ORS 701.565 shall make the residence available for an inspection pursuant to any written request sent under ORS 701.570. The owner shall make the residence available for inspection during normal business hours or at a time that is mutually agreeable to the owner and the requester.

(3) An inspection by a contractor, subcontractor or supplier may include any reasonable measures, including testing, for determining the nature, cause and extent of the defects described in the notice of defect or incidental damage and the nature and extent of the necessary remediation. Unless the contractor, subcontractor or supplier conducting the inspection and the owner agree otherwise, the contractor, subcontractor or supplier conducting the inspection shall repair any damage caused by the inspection. Any damage caused by the inspection that is not repaired may be sought as incidental damage in any subsequent arbitration or court action by an owner against the contractor, subcontractor or supplier conducting the inspection.

(4) A contractor, subcontractor or supplier that requests to inspect a residence must include as part of the written response of the contractor, subcontractor or supplier under ORS 701.570, a written report or other document evidencing the result of the in-

spection and the existence or nonexistence of the defects described in the notice of defect or discovered during the inspection. [2003 c.660 §4]

Note: See note under 701.560.

701.580 Offer by contractor, subcontractor or supplier; effect of accepting offer; nonperformance; compelling arbitration or commencing court action; admissibility of response or reply. (1) An owner may accept an offer contained in a written response under ORS 701.570 by delivering a written acceptance to the offering contractor, subcontractor or supplier within 30 days after receiving the offer. If an owner fails to accept an offer within 30 days after receipt, the offer is deemed rejected.

(2) If the owner accepts a contractor, subcontractor or supplier's offer to perform remediation or to pay monetary compensation, completion of the remediation or payment satisfies the claims by the owner for those defects included in the offer for which remediation was performed or compensation paid, but not for any other defect. Except as provided in subsection (3) of this section, if the owner accepts an offer by a contractor, subcontractor or supplier that received a secondary notice, completion of the remediation or payment satisfies claims for those defects included in the offer for which remediation was performed or compensation paid, including claims by the owner and claims for contribution or indemnity against the contractor, subcontractor or supplier by the sender of the secondary notice, but not for any other defect.

(3) If the owner accepts an offer by a contractor, subcontractor or supplier that received a secondary notice to perform remediation or to pay monetary compensation and the contractor, subcontractor or supplier fails to perform in accordance with the accepted offer, then the sender of the secondary notice may perform the remediation or pay the monetary compensation offered by the nonperforming contractor, subcontractor or supplier.

(4) An owner that sends a notice of defect under ORS 701.565 may compel arbitration or commence a court action against a contractor, subcontractor or supplier if:

(a) The contractor, subcontractor or supplier that receives the notice of defect sent under ORS 701.565 does not send a timely written response under ORS 701.570;

(b) The written response of the contractor, subcontractor or supplier that received the notice of defect or a secondary notice does not offer remediation or monetary compensation;

(c) The owner rejects a written offer, or any part thereof, made by the contractor, subcontractor or supplier; or

(d) The contractor, subcontractor or supplier fails to perform in accordance with an accepted offer.

(5) A notice of defect and the documents described in ORS 701.575 (4) are admissible in any arbitration or court action between or among an owner, contractor, subcontractor or supplier arising out of or related to the construction, alteration or repair of the residence.

(6) Except as provided in this subsection, a written response containing an offer to perform remediation or pay monetary compensation made under ORS 701.570 (5) that is not accepted by the owner, and any reply by an owner, unless the reply contains a counteroffer accepted by a contractor, subcontractor or supplier, are not admissible during any subsequent arbitration or court action. A response or reply described in this subsection is admissible solely for the purpose of proving that an owner is qualified to compel arbitration or commence a court action under subsection (4)(c) of this section or determining the timeliness of an action under ORS 701.585. [2003 c.660 §5]

Note: See note under 701.560.

701.585 Effect of notice of defect on time for commencing court action. (1) If an owner sends a contractor, subcontractor or supplier a notice of defect within the time allowed for the owner to commence a court action against that contractor, subcontractor or supplier for a claim described in ORS 701.565, the time for the owner to commence the action shall be extended, notwithstanding any statute of limitation or statute of ultimate repose, until the later of:

(a) One hundred and twenty days after the owner receives a written response from the contractor, subcontractor or supplier that received the notice of defect if the written response does not contain a written offer to perform remediation or pay monetary compensation for one or more of the defects or incidental damage described in the notice of defect;

(b) One hundred and twenty days after the owner rejects a written offer by any contractor, subcontractor or supplier to perform remediation or pay monetary compensation for one or more of the defects or incidental damage described in the notice of defect; or

(c) Thirty days after the date specified in an accepted written offer by which the offering contractor, subcontractor or supplier is to complete the remediation or complete payment of monetary compensation for one

or more of the defects and any incidental damage described in the notice of defect.

(2) Subsection (1) of this section does not shorten or terminate the time for bringing a claim in accordance with applicable statutes of ultimate repose and statutes of limitation.

(3) Delivery of a secondary notice sent by a contractor, subcontractor or supplier under ORS 701.570 does not act to toll the expiration of any right of the owner to commence a court action against the recipient of the secondary notice.

(4) Any remediation performed pursuant to an accepted offer made under ORS 701.570 does not constitute a new performance and, for purposes of ORS 12.135, relates back to the earliest date of substantial completion or abandonment of the construction, alteration or repair of the improvement to real property. [2003 c.660 §6]

Note: See note under 701.560.

701.590 [2003 c.660 §7; 2007 c.114 §12; repealed by 2007 c.648 §18]

701.595 Failure to follow notice of defect procedure. If an owner compels arbitration or commences a court action against any contractor, subcontractor or supplier to assert a claim arising out of or related to the construction, alteration or repair of a residence located in this state and the owner has not followed the procedure set forth in ORS 701.565 and 701.575, the arbitrator or court must dismiss the arbitration or action without prejudice. The owner may not commence a new arbitration or action unless the owner follows the procedure set forth in ORS 701.565 and 701.575. [2003 c.660 §8]

Note: See note under 701.560.

701.600 Nonapplicability of ORS 701.560 to 701.595 and 701.605. ORS 701.560 to 701.595 and 701.605 do not apply:

(1) To personal injury or death claims.

(2) To claims or complaints filed pursuant to ORS 671.695 or 701.139.

(3) To claims against a person licensed under ORS 671.010 to 671.220.

(4) To complaints filed in a small claims department established in a justice court or circuit court as described in ORS 55.011.

(5) To counterclaims or other responses to a contractor, subcontractor or supplier claim, arbitration demand or complaint that arises out of, or is related to, a contract for the construction, alteration or repair of a residence or a system, component or material incorporated into a residence. [2003 c.660 §9; 2007 c.149 §10; 2007 c.793 §25; 2011 c.268 §3]

Note: See note under 701.560.

WARRANTIES

701.605 Recording of written warranty agreement. (1) To facilitate the handling of warranty work or remediation of defects to a new commercial or residential structure or a zero-lot-line dwelling, a contractor who builds the structure may present for recording in the deed records of the county in which the new structure is built a written warranty agreement that:

(a) Is signed by the contractor and the original owner of the new structure;

(b) Sets forth any express warranties furnished by the contractor; and

(c) Contains the names of the contractor and the original property owner, the title of the document, a legal description of the property and acknowledgment of the signatures of the parties in the same manner as the parties to a deed are acknowledged.

(2) The warranties set forth in the recorded warranty agreement:

(a) Benefit and burden subsequent owners of the structure.

(b) Cease to affect title to the property 10 years after the date the instrument is recorded. [2005 c.169 §2; 2007 c.648 §29]

Note: See note under 701.560.

CONSTRUCTION CONTRACT PAYMENTS

701.620 Definitions for ORS 701.620 to 701.640. As used in ORS 701.620 to 701.640:

(1) "Construction contract" means a written or oral construction agreement, including all drawings, specifications and addenda relating to:

(a) Excavating, landscaping, demolishing and detaching existing structures, leveling, filling in and other preparation of land for the making and placement of a building, structure or superstructure;

(b) Creation or making of a building, structure or superstructure; and

(c) Alteration, partial construction and repairs done in and upon a building, structure or superstructure.

(2) "Contractor" has the meaning given that term in ORS 87.005.

(3) "Days" means calendar days.

(4) "Material supplier" means any person providing materials or products under a construction contract by oral authorization, written contract, purchase order, price agreement, rental agreement or other contractual means.

(5) "Original contractor" has the meaning given that term in ORS 87.005.

(6) "Owner" has the meaning given that term in ORS 701.410.

(7) "Subcontractor" has the meaning given that term in ORS 87.005. [2003 c.675 §54; 2011 c.553 §1]

Note: 701.620 to 701.645 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.625 Progress payments; notice requirements; nonapproval of billing or estimate; withholding; final payment. (1) If a construction contract is for construction work that is expected to take 60 or more days to complete, an owner shall make progress payments to the original contractor. By mutual agreement with an original contractor, an owner may make progress payments to the original contractor under a construction contract for which the construction work is expected to take less than 60 days to complete.

(2) The owner shall make progress payments on the basis of a certified billing or estimate for work performed, and for materials or products supplied, during the preceding monthly billing cycle or during an alternative billing cycle identified in the construction contract. If a construction contract identifies an alternative billing cycle, the construction contract must expressly state in a clear and conspicuous manner that there is an alternative billing cycle and the owner must provide on each page of drawings and specifications in the construction contract a statement substantially similar to the following:

Notice of Alternative Billing Cycle

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

(3)(a) Except as provided in this subsection, the owner shall:

(A) Make progress payments no later than 14 days after the date the billing is received; and

(B) Make final payment of all remaining amounts no later than seven days after the date that the owner approves the work.

(b) An owner may make progress payments or final payment later than the time allowed under paragraph (a) of this subsection if:

(A) The owner provides drawings and specifications that expressly state in a clear and conspicuous manner that an extended payment period is allowed and identify the extended payment period as a specific number of days after the date that the billing or estimate is received or the date that the owner approves all work; and

(B) The owner provides on each page of drawings and specifications a statement substantially similar to the following:

Notice of Extended Payment Provision

The construction contract will allow the owner to make:

(1) Progress payments no later than _____ days after the date a billing or estimate is received.

(2) Final payment of all remaining amounts no later than _____ days after the date the owner approves all work.

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

(5) The owner is deemed to have received the billing or estimate when the billing or estimate is received by any person designated by the owner for the receipt, review or approval of the billing or estimate. A billing or estimate is deemed to be certified 10 days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent prepares and issues a written statement detailing those items in the billing or estimate that are not approved. An owner may decline to approve a billing or estimate or portion of a billing or estimate because of:

(a) Unsatisfactory work progress;

(b) Defective construction work, materials or products not remedied;

(c) Disputed work, materials or products, except that the declined amount may not exceed 150 percent of the amount in dispute;

(d) Failure to comply with other material provisions of the construction contract;

(e) A third party claim being filed or reasonable evidence that a third party claim will be filed;

(f) Failure of the original contractor or a subcontractor to make timely payments to subcontractors and material suppliers for labor, equipment, materials and products;

(g) Damage to the owner;

(h) Reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum; or

(i) Other items as allowed under the construction contract terms and conditions.

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

(a) The owner provides drawings and specifications that expressly allow in a clear and conspicuous manner an extended period within which a billing or estimate may be certified; and

(b) The owner provides for each page of drawings and specifications, including bid drawings and specifications and construction drawings and specifications, a statement substantially similar to the following statement:

Notice of
Extended Certification Period Provision

The construction contract will allow the owner to certify billings and estimates no later than _____ days after the billings and estimates are received from the original contractor.

(7) Any requirement under this section that a statement be provided on a page of drawings or specifications may be satisfied by placing the required statement on either side of the page.

(8) After a subcontractor or material supplier submits a bid or proposal or other written pricing information to an original contractor, an owner and the original contractor may agree in writing to change the specified number of days after certification during which the owner may make payment to the original contractor or within which the owner must certify a billing or estimate. The billings by any subcontractor or material supplier that does not provide written consent to the change remain subject to the certification period indicated in the drawings and specifications. A construction contract may not be changed in a manner that alters the right of any subcontractor or material

supplier to receive prompt and timely progress payments as provided under ORS 701.630.

(9) An owner may withhold from a progress payment an amount that is sufficient to pay the direct expenses the owner reasonably expects to incur to correct any items detailed in a written statement under subsection (5) of this section. The owner may also withhold a reasonable amount as retainage. As used in this subsection, "retainage" has the meaning given that term in ORS 701.410.

(10) When an original contractor completes and an owner approves all work under a construction contract, the owner shall make payment in full of all remaining amounts due on the construction contract as described in subsection (3) of this section. When an original contractor completes and an owner approves all work under a portion of a construction contract for which the construction contract states a separate price, the owner shall make payment in full of all remaining amounts due on that portion of the construction contract, subject to the satisfaction of any items detailed under subsection (5) of this section or ORS 701.630 (4).

(11) If an owner or a person designated by the owner as responsible for making progress payments on a construction contract does not make a timely payment under this section, the owner shall pay the original contractor interest on the unpaid balance at the rate of one and one-half percent a month or fraction of a month, or at a higher rate as the parties to the construction contract may agree.

(12) On the written request of a subcontractor, the owner shall notify the subcontractor no later than five days after the issuance of a progress payment to the original contractor. On the written request of a subcontractor, the owner shall notify the subcontractor no later than five days after the owner makes the final payment to the original contractor on the construction contract.

(13) If the owner and original contractor are a single entity, that entity shall make progress and final payments to subcontractors and material suppliers as described in subsection (3) or (6) of this section.

(14) In any action, claim or arbitration brought to collect interest pursuant to this section, the prevailing party shall be awarded costs and reasonable attorney fees. [2003 c.675 §55; 2011 c.553 §2]

Note: See note under 701.620.

701.630 Payments to subcontractors and material suppliers; failure to pay; omission of payment. (1) An original contractor, subcontractor or material supplier

that performs in accordance with a construction contract is entitled to payment from the party with whom the original contractor, subcontractor or material supplier contracts.

(2)(a) If a subcontractor has performed in accordance with a construction contract, and the original contractor receives payment from the owner for work performed by the subcontractor, the original contractor shall pay the subcontractor for that work no later than seven days after the original contractor receives the payment. If a material supplier has performed in accordance with a construction contract, and the original contractor receives payment from the owner for materials or products provided by the material supplier, the original contractor shall pay the material supplier for those materials and products no later than seven days after the original contractor receives the payment. An original subcontractor that receives payment under this subsection for work provided to the original subcontractor by another subcontractor, or for materials or products provided to the original subcontractor, shall pay the other subcontractor or material supplier for the work, materials or products no later than seven days after the original subcontractor receives the payment.

(b) Payment is not required under this subsection unless a subcontractor or material supplier provides to the original contractor or subcontractor a billing or invoice for the work performed or materials or products supplied in compliance with the terms of the contract between the parties. Each subcontractor or material supplier must provide an appropriate waiver of any lien for labor, equipment, services, materials or products in accordance with subcontract or purchase order terms and conditions. The original contractor or subcontractor may require that such waivers of lien be notarized.

(3) Any failure to reasonably account for the application or use of payments, as proven in a legal proceeding authorized under the terms of the construction contract, may constitute grounds for disciplinary action by the Construction Contractors Board under ORS 701.098.

(4) An original contractor that submits a billing or estimate to an owner, or an original subcontractor that submits a billing or estimate to the original contractor, may omit from the billing or estimate amounts to be withheld from payment to a subcontractor or material supplier because of:

(a) Unsatisfactory work progress;

(b) Defective construction work, materials or products not remedied;

(c) Disputed work, materials or products, except that the withheld amount may not exceed 150 percent of the amount in dispute;

(d) Failure to comply with other material provisions of the construction contract;

(e) A third party claim being filed or reasonable evidence that a third party claim will be filed;

(f) Failure of the subcontractor to make timely payments to subcontractors and material suppliers for labor, equipment, materials and products;

(g) Damage to an original contractor, subcontractor or material supplier;

(h) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or

(i) Other items as allowed under the subcontract or purchase order terms and conditions.

(5) An original contractor or original subcontractor may also omit from a billing or estimate a reasonable amount for retainage, except that the amount omitted may not exceed the actual percentage allowed by the construction contract, subcontract or purchase order. As used in this subsection, "retainage" has the meaning given that term in ORS 701.410.

(6) If a progress or final payment to a subcontractor or material supplier is delayed by more than seven days after receipt of a progress or final payment by an original contractor or subcontractor, the original contractor or subcontractor shall pay its subcontractor or material supplier interest beginning on the eighth day, except during periods of time during which payment is withheld pursuant to subsection (4) or (5) of this section, at the rate of one and one-half percent a month or a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

(7) In any action, claim or arbitration brought to collect interest under this section, the prevailing party shall be awarded costs and reasonable attorney fees. [2003 c.675 §56; 2011 c.553 §3]

Note: See note under 701.620.

701.635 Suspension of performance. (1)

An original contractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner fails to make timely payment of the amount certified under ORS 701.625. An original contractor shall provide written notice to an owner at least seven days before the original contractor suspends performance or terminates the construction contract, unless a shorter notice period is

prescribed in the construction contract. An original contractor may not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(2) A subcontractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner fails to make timely payment of amounts certified under ORS 701.625 or the subcontractor does not receive payment for the certified work under ORS 701.630 (2). A subcontractor shall provide written notice to the original contractor and owner at least three days before the subcontractor suspends performance or terminates the construction contract, unless a shorter notice period is prescribed in the construction contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(3) A subcontractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner makes timely payment of amounts certified under ORS 701.625 for the subcontractor's work but the original contractor fails to pay the subcontractor for the certified work. A subcontractor shall provide written notice to the original contractor and owner at least seven days before the subcontractor suspends performance or terminates the construction contract, unless a shorter notice period is prescribed in the construction contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(4) A subcontractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner declines or fails to approve portions of the contractor's billing or estimate under ORS 701.625 for that subcontractor's work and the reasons for nonapproval are not the fault of or directly related to the subcontractor's work. A subcontractor shall provide written notice to the original contractor and the owner at least seven days before the subcontractor suspends performance or terminates the construction

contract, unless a shorter notice period is prescribed in the construction contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(5) A contractor or subcontractor may not submit a notice of suspension under this section until the lawful period for payment to the contractor or subcontractor has expired.

(6) An original contractor or subcontractor that suspends performance as provided in this section may condition the supplying of further labor, equipment, services, materials or products upon the owner or original contractor paying, in addition to any amounts certified under ORS 701.625, any documented, substantial and reasonably incurred costs for mobilization resulting from the shutdown or start-up of a project.

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

(8) Written notice required under this section is deemed to have been provided if the notice:

(a) Is delivered in person to the owner, original contractor, subcontractor or a person designated by the owner, original contractor or subcontractor to receive notice; or

(b) Is delivered by certified mail, return receipt requested, or other means that provides written, third party verification of delivery to the last business address of the owner, original contractor or subcontractor known to the party giving notice. [2003 c.675 §57; 2011 c.553 §4]

Note: See note under 701.620.

701.640 Prohibition against contrary provisions, covenants or clauses. (1) A construction contract may not include any provision, covenant or clause that:

(a) Makes the construction contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the construction contract to be conducted in another state; or

(b) States that a party to the construction contract cannot suspend performance under the construction contract or terminate the construction contract if another party to the construction contract fails to make prompt payments under the construction contract pursuant to ORS 701.620 to 701.640.

(2) Any provision, covenant or clause described in subsection (1) of this section is

void and unenforceable. [2003 c.675 §58; 2011 c.553 §5]

Note: See note under 701.620.

701.645 Contracts and housing not subject to ORS 701.620 to 701.640. ORS 701.620 to 701.640 do not apply to:

(1) A contract for the construction, alteration, repair, maintenance, moving or demolition of a building that is subject to the Low-Rise Residential Dwelling Code;

(2) A public contract under ORS 279.835 to 279.855 or ORS chapter 279A, 279B or 279C; or

(3) Housing in which all or part of the dwelling units are reserved for rental to persons having an income equal to or less than 80 percent of the median household income for the area as determined by the Housing and Community Services Department. [2003 c.675 §59; 2003 c.794 §331d]

Note: See note under 701.620.

701.900 [1989 c.928 §31; 1999 c.402 §40; renumbered 701.002 in 2001]

PENALTIES

701.990 Criminal penalties. (1) Violation of ORS 701.021 is a Class A misdemeanor.

(2) The intentional use of a contractor's license number without the authorization of the licensed contractor is a Class A misdemeanor.

(3) Use of a contractor's license number, with or without the authorization of the licensed contractor, with the intent to deceive the public is a Class A misdemeanor. [1971 c.740 §22; 1999 c.344 §7; 2001 c.104 §282; 2001 c.850 §7; 2007 c.836 §37]

701.992 Civil penalties and other sanctions; enforcement. (1) Except as provided in subsections (4) and (5) of this section, any person who violates any provision of this chapter or any rule adopted by the Construction Contractors Board shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than \$5,000 for each offense.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The board shall impose sanctions for violation of ORS 701.098 (1)(h) on both the person to whom the contract is awarded and the person who awards the contract as follows:

(a) A penalty not less than \$500 nor more than \$1,000 for the first offense;

(b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;

(c) Suspension of the person's license for six months for a third offense;

(d) Suspension of the person's license for three years for a fourth offense; and

(e) Revocation of the person's license for a fifth offense.

(5) The board may impose a civil penalty not to exceed \$100 for each violation of ORS 87.007 (3). [1971 c.740 §21; 1979 c.874 §5; 1981 c.618 §14; 1983 c.616 §16; 1983 c.696 §27; 1991 c.734 §90; 1995 c.216 §4; 1995 c.771 §6; 1999 c.402 §41; 2003 c.14 §441; 2003 c.778 §7; 2005 c.432 §17; 2007 c.836 §38]

701.995 Civil penalties for violations related to lead-based paint activities; reporting of penalties and sanctions. (1) A person who violates any provision of, or any rule adopted under, ORS 701.505 to 701.515 shall pay to the Construction Contractors Board Lead-Based Paint Activities Fund established under ORS 701.520 a civil penalty of not more than \$5,000 for each violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) A civil penalty imposed under this section is in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The board shall report all civil penalties or sanctions imposed under this section to each of the following state agencies:

(a) The Oregon Health Authority;

(b) The Occupational Safety and Health Division of the Department of Consumer and Business Services; and

(c) The Department of Environmental Quality. [2009 c.757 §10; 2009 c.828 §69]

Note: 701.995 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.