

House Bill 2113

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor Theodore R. Kulongoski for Construction Contractors Board)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows property owner to obtain disallowance of supplier liens for materials, equipment, labor or services if owner has already paid original contractor for materials, equipment, labor or services that are basis of lien.

A BILL FOR AN ACT

Relating to construction liens; creating new provisions; and amending ORS 87.023, 87.025, 87.058, 87.060, 87.091 and 87.093.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 87.023 is amended to read:

87.023. The notice of right to a lien required under ORS 87.021 shall include, but not be limited to, the following information and shall be substantially in the following form:

NOTICE OF RIGHT TO A LIEN.
WARNING: READ THIS NOTICE.
*[PROTECT YOURSELF FROM
PAYING ANY CONTRACTOR
OR SUPPLIER TWICE
FOR THE SAME SERVICE.]*

**AVOID CLAIMS FOR PAYMENTS
YOU HAVE ALREADY MADE.**

To: _____ Date of mailing: _____

Owner

Owner's address

This is to inform you that _____ has begun to provide _____ (description of materials, equipment, labor or services) ordered by _____ for improvements to property you own. The property is located at _____.

A lien may be claimed for all materials, equipment, labor and services furnished after a date that is eight days, not including Saturdays, Sundays and other holidays, as defined in ORS 187.010, before this notice was mailed to you.

Even if you or your mortgage lender *[have]* **has** made full payment to the contractor who or-

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 dered these materials, **equipment, labor** or services, [*your property may still be subject to a lien*
2 *unless the supplier providing this notice is paid.*] **if the contractor does not pay the supplier**
3 **providing this notice, you may have to appear in court and prove payment to the contractor**
4 **to avoid enforcement of a lien against your property.**

5 THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the
6 construction lien laws of the State of Oregon.

7 This notice has been sent to you by:

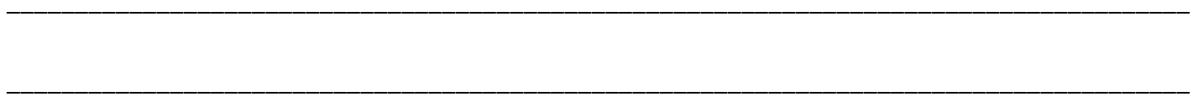
8
9 NAME: _____

10
11 ADDRESS: _____

12
13 TELEPHONE: _____

14 IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, FEEL FREE TO CALL US.

15 IMPORTANT INFORMATION ON
16 REVERSE SIDE



17
18
19
20
21 IMPORTANT INFORMATION
22 FOR YOUR PROTECTION

23 Under Oregon’s laws, those who work on your property or provide [*labor,*] **materials,** equip-
24 **ment, labor or** services [*or materials*] and are not paid have a right to enforce their claim for pay-
25 ment against your property. This claim is known as a construction lien.

26 If your contractor fails to pay subcontractors, material suppliers, rental equipment suppliers,
27 **laborers or** service providers [*or laborers*] or neglects to make other legally required payments, the
28 people who are owed [*money*] **moneys** can look to your property for payment[, *even if you have paid*
29 *your contractor in full.*] **unless you prove in court that those moneys have already been paid**
30 **to the contractor.**

31 The law states that all people hired by a contractor to provide you with materials, equipment,
32 labor or services must give you a notice of right to a lien to let you know what they have provided.

33 WAYS TO PROTECT
34 YOURSELF ARE:

35 - RECOGNIZE that this notice of right to a lien may result in [*a*] **an action to enforce a** lien
36 against your property [*unless*] **if the contractor fails to pay** all those supplying a notice of right
37 to a lien [*have been paid*].

38 - LEARN more about the lien laws and the meaning of this notice by contacting the Con-
39 struction Contractors Board, an attorney or the firm sending this notice.

40 - ASK for a statement of the [*labor,*] **materials,** equipment, **labor or** services [*or materials*]
41 provided to your property from each party that sends you a notice of right to a lien.

42 - WHEN PAYING your contractor for materials, equipment, labor or services, you may make
43 checks payable jointly to the contractor and the firm furnishing materials, equipment, labor or ser-
44 vices for which you have received a notice of right to a lien.

45 - OR use one of the methods suggested by the “Information Notice to Owners.” If you have not

1 received such a notice, contact the Construction Contractors Board.

2 - GET EVIDENCE that all firms from whom you have received a notice of right to a lien have
3 been paid or have waived the right to claim a lien against your property.

4 - CONSULT an attorney, a professional escrow company or your mortgage lender.
5

6
7 **SECTION 2.** ORS 87.025 is amended to read:

8 87.025. (1) A lien created under ORS 87.010 (2) or (6) and perfected under ORS 87.035 upon any
9 lot or parcel of land shall be preferred to any lien, mortgage or other encumbrance which attached
10 to the land after or was unrecorded at the time of commencement of the improvement.

11 (2) Except as provided in subsections (3) and (6) of this section, a lien created under ORS 87.010
12 (1), (4) or (5) and perfected under ORS 87.035 upon any improvement shall be preferred to all prior
13 liens, mortgages or other encumbrances upon the land upon which the improvement was con-
14 structed. To enforce such lien the improvement may be sold separately from the land; and the pur-
15 chaser may remove the improvement within a reasonable time thereafter, not to exceed 30 days,
16 upon the payment to the owner of the land of a reasonable rent for its use from the date of its
17 purchase to the time of removal. If such removal is prevented by legal proceedings, the 30 days shall
18 not begin to run until the final determination of such proceedings in the court of first resort or the
19 appellate court if appeal is taken.

20 (3) No lien for materials or supplies shall have priority over any recorded mortgage or trust
21 deed on either the land or improvement unless the person furnishing the material or supplies, not
22 later than eight days, not including Saturdays, Sundays and other holidays as defined in ORS
23 187.010, after the date of delivery of material or supplies for which a lien may be claimed delivers
24 to the mortgagee either a copy of the notice given to the owner under ORS 87.021 to protect the
25 right to claim a lien on the material or supplies or a notice in any form that provides substantially
26 the same information as the form set forth in ORS 87.023.

27 (4) A mortgagee who has received notice of delivery of materials or supplies in accordance with
28 the provisions of subsection (3) of this section, may demand a list of those materials or supplies in-
29 cluding a statement of the amount due by reason of delivery thereof. The list of materials or supplies
30 shall be delivered to the mortgagee within 15 days, not including Saturdays, Sundays and other
31 holidays as defined in ORS 187.010, of receipt of demand, as evidenced by a receipt or a receipt of
32 delivery of a registered or certified letter containing the demand. Failure to furnish the list or the
33 amount due by the person giving notice of delivery of the materials or supplies shall constitute a
34 waiver of the preference provided in subsections (1) and (2) of this section.

35 (5) Upon payment and acceptance of the amount due to the supplier of materials or supplies, and
36 upon demand of the person making payment, the supplier shall execute a waiver of all lien rights
37 as to materials or supplies for which payment has been made.

38 (6) Unless the mortgage or trust deed is given to secure a loan made to finance the alteration
39 or repair, a lien created under ORS 87.010 and perfected under ORS 87.035 for the alteration and
40 repair of an improvement commenced and made subsequent to the date of record of a duly executed
41 and recorded mortgage or trust deed on that improvement or on the site shall not take precedence
42 over the mortgage or trust deed.

43 (7) The perfection of a lien under ORS 87.035 relates to the date of commencement of the im-
44 provement as defined in ORS 87.005. Except as provided in subsection (3) of this section, the date
45 of creation of the lien under ORS 87.010 and the date of perfection of the lien under ORS 87.035 do

1 not affect the priorities under this section, the equal priority of perfected lien claimants, or the
2 distribution of proceeds to perfected lien claimants under ORS 87.060 [(6)] (7).

3 **SECTION 3.** ORS 87.058 is amended to read:

4 87.058. (1) As used in this section:

5 (a) **Notwithstanding ORS 87.005**, “contractor” has the meaning given that term in ORS 701.005.

6 (b) “Board” means the Construction Contractors Board established in ORS 701.205.

7 (2) When a suit to enforce a lien perfected under ORS 87.035 is filed and the owner of the
8 structure subject to that lien files a claim that is being processed by the board under ORS 701.145
9 against a contractor who performed work on the structure, the owner may obtain a stay of pro-
10 ceedings on the suit to enforce the lien if:

11 (a) The owner already has paid the contractor for that contractor’s work that is subject to this
12 chapter on the structure;

13 (b) The person suing to enforce the lien perfected under ORS 87.035:

14 (A) Performed work that is subject to ORS chapter 701 on the structure for the contractor who
15 has been paid by the owner;

16 (B) Furnished labor, services or materials or rented or supplied equipment used on the structure
17 to the contractor who has been paid by the owner; or

18 (C) Otherwise acquired the lien as a result of a contribution toward completion of the structure
19 for which the contractor has been paid by the owner; and

20 (c) The continued existence of the lien on which the suit is pending is attributable to the failure
21 of the contractor who has been paid by the owner to pay the person suing for that person’s contri-
22 bution toward completion of the structure.

23 (3) The owner may petition for the stay of proceedings described in subsection (2) of this section
24 by filing the following papers in the circuit court in which the suit on the lien is pending:

25 (a) A certified copy of the claim filed for processing by the board under ORS 701.145; and

26 (b) An affidavit signed by the owner that contains:

27 (A) A description of the structure;

28 (B) The street address of the structure;

29 (C) A statement that the structure is the structure upon which the suit to enforce the lien is
30 pending; and

31 (D) A statement that the petitioner is the owner of the structure.

32 (4) Upon receipt of a complete petition described in subsection (3) of this section, the circuit
33 court shall stay proceedings on the suit to enforce the lien.

34 (5) After the board order on the claim becomes final and the board issues any required notice
35 for payment against the contractor’s bond or deposit, the circuit court shall dissolve the stay or-
36 dered under subsection (4) of this section.

37 **(6) The issuance or dissolution of a stay of proceedings under this section does not waive**
38 **the right of the owner to subsequently seek and obtain disallowance of the lien under ORS**
39 **87.060 (3).**

40 **SECTION 4.** ORS 87.060 is amended to read:

41 87.060. (1) A suit to enforce a lien perfected under ORS 87.035 shall be brought in circuit court,
42 and the pleadings, process, practice and other proceedings shall be the same as in other cases.

43 (2) In a suit to enforce a lien perfected under ORS 87.035, evidence of the actual costs of the
44 [labor,] **materials**, equipment, **labor or** services [and material] provided by the lien claimant estab-
45 lishes a rebuttable presumption that those costs are the reasonable value of [that labor,] **the ma-**

1 **terials, equipment, labor or services** [*and material*].

2 **(3) In a suit to enforce a lien perfected under ORS 87.035, the court shall disallow the lien**
 3 **if the owner proves that the owner paid the original contractor for the materials, equipment,**
 4 **labor or services that are the basis of the lien. This subsection does not prohibit a court from**
 5 **issuing a stay of proceedings on the suit upon request of an owner who complies with ORS**
 6 **87.058. If an owner seeks disallowance of a lien for which a stay of proceedings was issued**
 7 **under ORS 87.058, in determining whether the owner is entitled to disallowance of the lien,**
 8 **the court shall consider any proof that was submitted by the owner for purposes of obtaining**
 9 **the stay of proceedings.**

10 [(3)] (4) In a suit to enforce a lien perfected under ORS 87.035, the court shall allow or disallow
 11 the lien. If the lien is allowed, the court shall proceed with the foreclosure of the lien and resolve
 12 all other pleaded issues. If the lien is disallowed, and a party has made a demand for a jury trial
 13 as provided for in subsection [(4)] (5) of this section, the court shall impanel a jury to decide any
 14 issues triable of right by a jury. All other issues in the suit shall be tried by the court.

15 [(4)] (5) A party may demand a trial by jury of any issue triable of right by a jury after the lien
 16 is disallowed, if that party serves a demand therefor in writing upon the other parties at any time
 17 prior to commencement of the trial to foreclose the lien. The demand shall be filed with the court.
 18 The failure of a party to serve a demand as required by this subsection shall constitute a waiver
 19 by the party of trial by jury. A demand for trial by jury made as provided in this subsection may
 20 not be withdrawn without the consent of the parties.

21 [(5)] (6) When notice of intent to foreclose the lien has been given, pleaded and proven as pro-
 22 vided for in ORS 87.057, the court, upon entering judgment for the lien claimant, shall allow as part
 23 of the costs all moneys paid for the filing or recording of the lien and all moneys paid for title re-
 24 ports required for preparing and foreclosing the lien. In a suit to enforce a lien perfected under ORS
 25 87.035 the court shall allow a reasonable amount as attorney fees at trial and on appeal to the party
 26 who prevails on the issues of the validity and foreclosure of the lien.

27 [(6)] (7) [*In case*] **If** the proceeds of any sale under ORS 87.001 to 87.060 and 87.075 to 87.093
 28 are insufficient to pay all lienholders claiming under such statutes, the liens of all persons shall be
 29 paid pro rata. Each claimant is entitled to execution for any balance due the claimant after the
 30 distribution of the proceeds, and that execution shall be issued by the clerk of the court, upon de-
 31 mand, after the return of the sheriff or other officer making the sale showing the balance due.

32 [(7)] (8) All suits to enforce any lien perfected under ORS 87.035 shall have preference on the
 33 calendar of the court over every civil suit, except suits to which the state is a party, and shall be
 34 tried by the court without unnecessary delay. [*In such a suit, all persons personally liable, and all*
 35 *lienholders whose claims have been filed for record pursuant to ORS 87.035, shall, and all other per-*
 36 *sons interested in the matter in controversy, or in the property sought to be charged with the lien, may*
 37 *be made parties; but persons not made parties are not bound by the proceedings.*] **In a suit to enforce**
 38 **a lien perfected under ORS 87.035, all persons personally liable for the lien and all lienholders**
 39 **whose claims have been filed for record under ORS 87.035 shall be parties. All other persons**
 40 **interested in the matter in controversy or interested in the property sought to be charged**
 41 **with the lien may be made parties to the suit. Persons who are not parties to the suit are**
 42 **not bound by the proceedings.** The proceedings upon the foreclosure of the liens perfected under
 43 ORS 87.035 shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage
 44 lien upon real property.

45 **SECTION 5.** ORS 87.091 is amended to read:

1 87.091. (1) A written waiver described in ORS 87.007 (2) and signed by the purchaser of resi-
2 dential real property shall include the information described in subsection (2) of this section. The
3 waiver shall be printed as a separate document and in at least 12-point boldfaced type.

4 (2) The waiver described in subsection (1) of this section shall include, but not be limited to, the
5 following information and shall be in substantially the following form:

6 _____
7
8 WAIVER OF PROTECTIONS
9 FROM SUBCONTRACTORS' LIENS.
10 WARNING: READ THIS NOTICE.
11 [*PROTECT YOURSELF FROM*
12 *PAYING ANY CONTRACTOR*
13 *OR SUPPLIER TWICE*
14 *FOR THE SAME SERVICE.*]
15 **AVOID CLAIMS FOR PAYMENTS**
16 **YOU HAVE ALREADY MADE.**
17

18 This is to inform you that if you are purchasing residential real property within 75 days after
19 completion of construction, the property you are purchasing may be subject to construction liens
20 that are not yet recorded on the date of sale. The property is located at _____.

21 Under Oregon law, those who work on your property or provide materials, equipment, labor or
22 services and are not paid have a right to enforce their claim for payment against the property. This
23 claim is known as a construction lien.

24 If a contractor fails to pay subcontractors, material suppliers, rental equipment suppliers, la-
25 borers or service providers or neglects to make other legally required payments, any person who is
26 owed [*money*] **moneys** can look to the property for payment[, *even if the contractor has been paid in*
27 *full.*] **unless you prove in court that those moneys have already been paid to the contractor.**

28
29 OREGON LAW PROVIDES
30 THE FOLLOWING PROTECTIONS:
31

32 Under Oregon Law, the seller of residential real property is required to take one of the follow-
33 ing actions to protect you from construction liens that are not yet recorded on the date of sale:

- 34 - PURCHASE or PROVIDE title insurance to help cover any construction liens that are re-
35 corded after you complete the purchase of the residential real property.
- 36 - RETAIN [*money*] **moneys** in escrow until the status of all construction liens is resolved after
37 the purchase of the residential real property is complete.
- 38 - MAINTAIN a bond or letter of credit until the status of all construction liens is resolved after
39 the purchase of the residential real property is complete.
- 40 - GET waivers from every person claiming a right to a lien against the property in an aggregate
41 amount of \$5,000 or more.
- 42 - WAIT to close the purchase of the residential real property until 75 days after the completion
43 of construction.

44
45 WAIVER OF RIGHTS

1 Under Oregon law, you may waive the requirements that apply to the seller of the residential
2 real property. By signing this document, you agree to waive these protections and accept the risk
3 that the property you are purchasing may be subject to a lien that is recorded after the date of sale.
4 [By waiving your rights, you may become liable for payment of the lien even if the contractor has been
5 paid in full.] **If you waive your rights and the contractor does not pay the lien, you may have**
6 **to appear in court and prove payment to the contractor to avoid enforcement of the lien**
7 **against your property.** Before signing this waiver, you may wish to consult an attorney.

8 _____
9
10 I have read this statement and understand the risks it describes. I hereby choose to assume
11 those risks and waive the protections provided under ORS 87.007 by signing this form.

12
13 _____
14 (Signature of purchaser)

15 _____, 2_____
16 _____
17

18 **SECTION 6.** ORS 87.093 is amended to read:

19 87.093. (1) The Construction Contractors Board shall adopt by rule a form entitled “Information
20 Notice to Owner” which shall describe, in nontechnical language and in a clear and coherent man-
21 ner using words in their common and everyday meanings, the pertinent provisions of the Con-
22 struction Lien Law of this state and the rights and responsibilities of an owner of property and an
23 original contractor under that law. The rights and responsibilities described in the form shall in-
24 clude, but not be limited to:

25 (a) Methods by which an owner may avoid [*multiple payments for the same*] **having to defend**
26 **lien claims for materials, equipment, labor** and [*labor*] **services;**

27 (b) The right to file a claim against a licensed contractor with the Construction Contractors
28 Board and, when appropriate, to be reimbursed from the contractor’s bond filed under ORS chapter
29 701; and

30 (c) The right to receive, upon written request [*therefor*], a statement of the reasonable value of
31 materials, equipment, **labor or** services [*or labor*] provided from the persons providing the materials,
32 equipment, **labor or** services [*or labor*] at the request of an original contractor and who have also
33 provided notices of right to a lien.

34 (2)(a) Each original contractor shall provide a copy of the “Information Notice to Owner”
35 adopted by the Construction Contractors Board under this section to:

36 (A) The first purchaser of residential property constructed by the contractor and sold before or
37 within the 75-day period immediately following the completion of construction; and

38 (B) The owner or an agent of the owner, other than an original contractor, at the time of signing
39 a written residential construction or improvement contract with the owner.

40 (b) When the residential construction or improvement contract is an oral contract, the original
41 contractor shall mail or otherwise deliver the “Information Notice to Owner” not later than five
42 days after the contract is made.

43 (3) This section applies only to a residential construction or improvement contract for which the
44 aggregate contract price exceeds \$1,000. If the price of a home improvement contract was initially
45 less than \$1,000, but during the course of the performance of the contract exceeds that amount, the

1 original contractor shall mail or otherwise deliver the “Information Notice to Owner” not later than
 2 five days after the contractor knows or should reasonably know that the contract price will exceed
 3 \$1,000.

4 (4) An “Information Notice to Owner” need not be sent when the owner is a contractor licensed
 5 with the Construction Contractors Board under ORS chapter 701.

6 (5) Notwithstanding ORS 87.010, if an original contractor does not provide an owner or agent
 7 with an “Information Notice to Owner” as required under subsections (2) and (3) of this section, the
 8 original contractor may not claim any lien created under ORS 87.010 upon any improvement, lot or
 9 parcel of land of the owner for **materials, equipment, labor[,] or services [or materials]** supplied
 10 under the residential construction or improvement contract for which the “Information Notice to
 11 Owner” was not provided.

12 (6) If an original contractor does not provide an owner or agent with an “Information Notice
 13 to Owner” as required under subsection (2) of this section, the Construction Contractors Board may
 14 suspend the license of the original contractor for any period of time that the board considers ap-
 15 propriate or impose a civil penalty of not more than \$5,000 upon the original contractor as provided
 16 in ORS 701.992.

17 (7) As used in this section:

18 (a) “Residential construction or improvement” means the original construction of residential
 19 property and constructing, repairing, remodeling or altering residential property and includes, but
 20 is not limited to, the construction, repair, replacement or improvement of driveways, swimming
 21 pools, terraces, patios, fences, porches, garages, basements and other structures or land adjacent to
 22 a residential dwelling.

23 (b) “Residential construction or improvement contract” means an agreement, oral or written,
 24 between an original contractor and an owner for the performance of a home improvement and in-
 25 cludes all **materials, equipment, labor[,] and services [and materials]** furnished and performed
 26 *[thereunder]* **under the agreement.**

27 **SECTION 7. (1) The amendments to ORS 87.023 by section 1 of this 2007 Act apply to**
 28 **notices of lien for the supplying of materials, equipment, labor or services on or after the**
 29 **effective date of this 2007 Act. If a supplier has previously sent the owner a notice of lien**
 30 **under ORS 87.023 as set forth in the 2005 Edition of Oregon Revised Statutes, that previously**
 31 **sent notice is not effective as a notice of lien with regard to materials, equipment, labor or**
 32 **services supplied on or after the effective date of this 2007 Act.**

33 **(2) The amendments to ORS 87.058 and 87.060 by sections 3 and 4 of this 2007 Act apply**
 34 **to liens for the supplying of materials, equipment, labor or services supplied on or after the**
 35 **effective date of this 2007 Act.**

36 **(3) The amendments to ORS 87.091 by section 5 of this 2007 Act apply for residential**
 37 **property purchases that close on or after the later of:**

38 **(a) The effective date of this 2007 Act; or**

39 **(b) Seventy-five days after the date construction was completed, if construction was**
 40 **completed before the effective date of this 2007 Act.**