

House Bill 2655

Sponsored by COMMITTEE ON CONSUMER PROTECTION

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**.

Requires general contractor constructing new residential dwelling unit to provide purchaser with warranty of unit workmanship and materials.

A BILL FOR AN ACT

1 Relating to warranties; creating new provisions; and amending ORS 701.560, 701.600 and 701.605.

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

3 **SECTION 1. Sections 2 to 4 of this 2007 Act are added to and made a part of ORS chapter**
4 **701.**

5 **SECTION 2. As used in this section and section 3 of this 2007 Act:**

6 (1) "Common elements" means the general common elements and limited common ele-
7 ments for a multiunit building and the building property.

8 (2) "Defect" means a deficiency, inadequacy or insufficiency arising out of the con-
9 struction of a dwelling unit:

10 (a) That substantially impairs the ordinary use, market value or safety of the dwelling
11 unit; or

12 (b) That results in a dwelling unit not meeting a specification of the state building code
13 at the time of substantial completion or of a construction contract for the dwelling unit.

14 (3) "General common elements," unless otherwise provided in a condominium declara-
15 tion, means the following portions of the building if not part of a dwelling unit or a limited
16 common element:

17 (a) The land, whether fee simple, leasehold, easement, other interest or combination of
18 interests, together with any rights and appurtenances;

19 (b) The foundations, columns, girders, beams, supports, bearing and shear walls, roofs,
20 halls, corridors, lobbies, stairs, fire escapes, entrances and exits;

21 (c) The basements, yards, gardens, parking areas and outside storage spaces;

22 (d) Installations of central services such as power, light, gas, hot and cold water, heating,
23 refrigeration, air conditioning, waste disposal and incinerating;

24 (e) The elevators, tanks, pumps, motors, fans, compressors, ducts and all apparatus and
25 installations existing for common use;

26 (f) The premises for the lodging of janitors or caretakers of the property; and

27 (g) All other elements of a building and property necessary or convenient to the exist-
28 ence, maintenance and safety of the building or property, or normally in common use.

29 (4) "Limited common elements" means those common elements of a building or property
30 that are reserved for the use of a certain dwelling unit or number of units, to the exclusion
31

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 of the other units.

2 (5) "Multiunit building" means a building having three or more dwelling units.

3 (6) "Rental unit" means any dwelling unit that does not qualify as a residential dwelling
4 unit.

5 (7)(a) "Residential dwelling unit" means:

6 (A) A site-built single-family residence or duplex;

7 (B) A dwelling unit in a multiunit building if, on the earlier of the dates described in
8 section 3 (5) of this 2007 Act, the dwelling unit is subject to a legally recorded bylaw, decla-
9 ration, covenant or similar document restricting or prohibiting the renting out of the dwell-
10 ing unit; and

11 (C) For a multiunit building, except as provided in paragraph (b) of this subsection, the
12 common elements of the building containing a dwelling unit described in subparagraph (B)
13 of this paragraph.

14 (b) "Residential dwelling unit" does not mean:

15 (A) A manufactured structure as defined in ORS 446.003 or floating home as defined in
16 ORS 830.700; or

17 (B) Any limited common elements of a multiunit building that are reserved for use only
18 by rental units.

19 **SECTION 3.** (1) A general contractor who is required to be licensed under this chapter
20 and who constructs a new residential dwelling unit shall warrant to the purchaser of the
21 unit:

22 (a) For a period of one year that the unit is free from any defect in workmanship or
23 materials;

24 (b) For a period of two years that the plumbing, electrical, heating, cooling and venti-
25 lation delivery and distribution systems and building envelope of the unit are free from de-
26 fects in workmanship or materials; and

27 (c) For a period of 10 years that the structural components of the unit are free from
28 defects in workmanship or materials.

29 (2) The warranties described in subsection (1) of this section apply:

30 (a) To workmanship performed and materials installed in the new residential dwelling
31 unit on or before the date described in subsection (5) of this section that started the term
32 of the warranties; and

33 (b) For the remainder of the applicable term described in subsection (1) of this section,
34 to any workmanship performed and materials installed as part of a defect repair authorized
35 by the warrantor.

36 (3) The warranties described in this section shall be recorded in the deed records for the
37 structure property as warranty agreements under ORS 701.605.

38 (4) Any disclaimer, limitation or waiver of the warranties described in this section is
39 void.

40 (5) The term for the warranties described in this section shall start upon the earlier of:

41 (a) The date the dwelling unit is first occupied as a residence;

42 (b) The date title to the dwelling unit is transferred to the consumer purchasing the
43 dwelling unit; or

44 (c) One year after the general contractor completes construction.

45 (6) Notwithstanding subsection (5) of this section, if a residential dwelling unit is con-

1 **tained in a multiunit building, the term of the warranties for the common elements of the**
 2 **building starts on the first date on which any dwelling unit contained in the building becomes**
 3 **covered by a warranty under subsection (5) of this section.**

4 (7) **Notwithstanding subsections (1) and (6) of this section, the warranty for the common**
 5 **elements of a multiunit building expires if the building ceases to have at least one residential**
 6 **dwelling unit.**

7 (8) **Subsection (1) of this section applies only to the general contractor who substantially**
 8 **completes the construction of the residential dwelling unit.**

9 **SECTION 4. (1) The general contractor is directly responsible for ensuring the provision**
 10 **of services under the warranties described in section 3 (1)(a) and (b) of this 2007 Act. The**
 11 **general contractor, or a third-party warranty provider retained by the contractor, is re-**
 12 **sponsible for ensuring the provision of services under the warranty described in section 3**
 13 **(1)(c) of this 2007 Act.**

14 (2) **A warranty claim under section 3 of this 2007 Act must be sent to the warrantor**
 15 **during the term of the warranty. The warranty claim sent to the warrantor must comply**
 16 **with the requirements for giving a notice of defect to a contractor under ORS 701.565. The**
 17 **sending of a notice of defect to a subcontractor or supplier under ORS 701.560 to 701.595 does**
 18 **not satisfy the requirement of sending a warranty claim to the warrantor.**

19 (3) **The warranty obligations of a general contractor under section 3 of this 2007 Act are**
 20 **separate from any liability or obligation of a subcontractor or supplier.**

21 (4) **If a dispute regarding warranty coverage under section 3 of this 2007 Act arises within**
 22 **the time limitations for filing a claim under ORS 701.143, the purchaser of the structure may**
 23 **seek resolution of the dispute by the Construction Contractors Board. In any court action**
 24 **claiming a failure to provide services under a warranty, the court shall award the prevailing**
 25 **party on the warranty claim reasonable attorney fees and costs incurred in regard to the**
 26 **warranty claim, whether at trial or on appeal.**

27 **SECTION 5.** ORS 701.560 is amended to read:

28 701.560. As used in ORS 701.560 to 701.595 [and 701.605]:

29 (1) "Contractor" means a person that performed services for the construction, alteration or re-
 30 pair of a residence.

31 (2) "Defect" means a deficiency, an inadequacy or an insufficiency arising out of or relating to
 32 the construction, alteration or repair of a residence. "Defect" includes a deficiency, an inadequacy
 33 or an insufficiency in a system, component or material incorporated into a residence.

34 (3) "Owner" means a person that possesses an interest in a residence or in land that is a resi-
 35 dential site or has entered into a contract for the purchase of an interest in the residence or land.
 36 "Owner" includes:

37 (a) A homeowners association as defined in ORS 94.550;

38 (b) A managing entity as defined in ORS 94.803;

39 (c) An owners' association as described in ORS 94.858;

40 (d) An association of unit owners as defined in ORS 100.005; and

41 (e) Any other entity that possesses an interest in a residence or represents owners of a resi-
 42 dence.

43 (4) "Remediation" means the repair or replacement of some or all of the defects described in an
 44 owner's notice of defect sent under ORS 701.565.

45 (5) "Residence" means:

1 (a) A residential structure as defined in ORS 701.005;

2 (b) Common property as defined in ORS 94.550; and

3 (c) A common element as defined in ORS 100.005.

4 (6) "Secondary notice" means a copy of an owner's notice of defect that a contractor, subcon-
5 tractor or supplier sends to another contractor, subcontractor or supplier that may be responsible
6 for a defect.

7 (7) "Subcontractor" means any person that performed services for the construction, alteration
8 or repair of a residence at the request or direction of a contractor.

9 (8) "Supplier" means any person that furnished or manufactured the systems, components or
10 materials incorporated into a residence as part of the construction, alteration or repair of the resi-
11 dence.

12 **SECTION 6.** ORS 701.600 is amended to read:

13 701.600. ORS 701.560 to 701.595 [and 701.605] do not apply:

14 (1) To personal injury or death claims.

15 (2) To claims filed pursuant to ORS 671.703 or 701.139.

16 (3) To claims against a person licensed under ORS 671.010 to 671.220.

17 **SECTION 7. ORS 701.605 is added to and made a part of ORS chapter 701.**

18 **SECTION 8.** ORS 701.605 is amended to read:

19 701.605. (1) To facilitate the handling of warranty work or remediation of defects to a new
20 commercial or residential structure, a contractor who builds the structure may present for recording
21 in the deed records of the county in which the new structure is built a written warranty agreement
22 that:

23 (a) Is signed by the contractor and the original owner of the new structure;

24 (b) Sets forth any express warranties furnished by the contractor; and

25 (c) Contains the names of the contractor and the original property owner, the title of the doc-
26 ument, a legal description of the property and acknowledgment of the signatures of the parties in
27 the same manner as the parties to a deed are acknowledged.

28 (2) The warranties set forth in the recorded warranty agreement:

29 (a) Benefit and burden subsequent owners of the structure.

30 (b) **Except as provided in section 3 of this 2007 Act**, cease to affect title to the property 10
31 years after the date the instrument is recorded.

32 **SECTION 9. Sections 2 to 4 of this 2007 Act and the amendments to ORS 701.605 by sec-**
33 **tion 8 of this 2007 Act apply to new residential dwelling units:**

34 (1) **For which a general contractor enters into a written construction contract on or af-**
35 **ter the effective date of this 2007 Act; or**

36 (2) **On which construction work commences on or after the effective date of this 2007**
37 **Act, if no written construction contract exists.**

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