

A-Engrossed House Bill 2366

Ordered by the House April 28
Including House Amendments dated April 28

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim 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.

[Establishes Residential Structure Lien Assistance Fund. Provides for Construction Contractors Board to administer fund. Continuously appropriates fund moneys to board. Requires board to replenish fund as necessary by imposing surcharge on application for issuance or renewal of residential construction contractor endorsement. Limits surcharge amount.]

[Allows capped payouts from fund to certain lien claimants if residential structure owner has paid residential construction contractor, but contractor has failed to pay lien claimant. Requires lien claimant accepting payment from fund to file satisfaction of judgment or satisfaction of lien.]

[Appropriates moneys from General Fund to Residential Structure Lien Assistance Fund for 2009-2011 biennium. Requires repayment from Residential Structure Lien Assistance Fund to General Fund no later than June 30, 2011. Provides for assessment of special surcharge on application for issuance or renewal of residential construction contractor endorsement during 2009-2011 biennium. Provides for first payment from fund to occur during calendar year 2010.]

[Declares emergency, effective July 1, 2009.]

Modifies information to be included in notice of right to construction lien and waiver of right to construction lien.

Specifies when court is required to disallow lien. Specifies disallowance procedures.

A BILL FOR AN ACT

Relating to liabilities arising from residential contractor activity; creating new provisions; and amending ORS 87.023, 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]* **must** include, but **need** not be limited to, the following information and *[shall]* **must** 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

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.

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Owner's address

This is to inform you that _____ has begun to provide _____
(description of materials, equipment, labor or services) ordered by _____ for im-
provements 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-
dered these materials, **equipment, labor** or services, [*your property may still be subject to a lien
unless the supplier providing this notice is paid.*] **if the contractor does not pay the supplier that
provides this notice, you may have to appear in court and prove that you made the payment
to the contractor to avoid enforcement of a lien against your property.**

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

This notice has been sent to you by:

NAME: _____

ADDRESS: _____

TELEPHONE: _____

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, FEEL FREE TO CALL US.
IMPORTANT INFORMATION ON
REVERSE SIDE

IMPORTANT INFORMATION
FOR YOUR PROTECTION

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

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

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

WAYS TO PROTECT
YOURSELF ARE:

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

1 to a lien [*have been paid*].

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

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

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

9 - OR use one of the methods suggested by the “Information Notice to Owners.” If you have not
10 received such a notice, contact the Construction Contractors Board.

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

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

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16 **SECTION 2.** ORS 87.058 is amended to read:

17 87.058. (1) As used in this section:

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

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

20 (2) If a person files a suit to enforce a lien perfected under ORS 87.035 and the owner of the
21 structure subject to [*that*] **the** lien files a complaint that [*is being processed by*] the board under ORS
22 701.145 **is processing** against a contractor who performed work on the structure, the owner may
23 obtain a stay of proceedings on the suit to enforce the lien if:

24 (a) The owner already [*has*] paid the contractor for [*that contractor’s*] work **on the structure**
25 that **the contractor performed that** is subject to this chapter [*on the structure*];

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

27 (A) Performed work **on the structure for a contractor that the owner paid, provided that**
28 **the work** [*that*] is subject to ORS chapter 701 [*on the structure for the contractor who has been paid*
29 *by the owner*];

30 (B) Furnished labor, services or materials or rented or supplied equipment used on the structure
31 to the contractor [*who has been paid by*] **that** the owner **paid**; or

32 (C) [*Otherwise*] Acquired the lien as a result of [*a*] **another** contribution toward completion of
33 the structure for which the **owner paid the** contractor [*has been paid by the owner*]; and

34 (c) The [*continued existence of the*] lien on which the suit is pending [*is attributable to the failure*
35 *of*] **continues to exist because** the contractor [*who has been paid by*] **that** the owner **paid failed**
36 to pay the person suing for [*that*] **the** person’s contribution toward completion of the structure.

37 (3) The owner may petition [*for the stay of*] **to stay the** proceedings described in subsection (2)
38 of this section by filing the following papers in the circuit court in which the suit on the lien is
39 pending:

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

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

42 (A) A description of the structure;

43 (B) The street address of the structure;

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

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

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

4 (5) After the [board] **board's** order on the complaint becomes final and the board issues [any
5 required] a notice **required** for payment against the contractor's bond or deposit, the circuit court
6 shall dissolve the stay ordered under subsection (4) of this section.

7 **(6) A court's stay or dissolution of a stay of proceedings under this section does not af-**
8 **fect the owner's right to seek and obtain a disallowance of the lien under ORS 87.060 (3).**

9 **SECTION 3.** ORS 87.060 is amended to read:

10 87.060. (1) A suit to enforce a lien perfected under ORS 87.035 shall be brought in circuit
11 court[, and the pleadings, process, practice and other proceedings shall be the same as in other
12 cases].

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

17 (3) In a suit to enforce a lien perfected under ORS 87.035, the court shall allow or disallow the
18 lien. If the **court allows the** lien [is allowed], the court shall proceed [with the foreclosure of] **to**
19 **enforce** the lien and resolve all other pleaded issues. **The court shall disallow the lien if the**
20 **owner proves that the owner paid the contractor for the materials, equipment, labor or**
21 **services that are the basis for the lien. This subsection does not prohibit a court from**
22 **staying proceedings on the suit at an owner's request if the owner complies with ORS 87.058.**
23 **If an owner seeks a disallowance of a lien for which a court issued a stay of proceedings**
24 **under ORS 87.058, the court shall consider evidence the owner submitted to obtain the stay**
25 **of proceedings when determining whether to disallow the lien.** [If the lien is disallowed, and a
26 party has made a demand for a jury trial as provided for in subsection (4) of this section, the court
27 shall impanel a jury to decide any issues triable of right by a jury. All other issues in the suit shall
28 be tried by the court.]

29 (4) **If the court disallows the lien under subsection (3) of this section, a party, after the**
30 **disallowance, may demand a trial by jury of any issue that is triable of right by a jury. The**
31 **court shall impanel a jury to decide issues triable of right by a jury, but the court shall try**
32 **all other issues in the suit. A party seeking a trial by jury shall file a demand in writing with**
33 **the court and shall serve the demand in writing upon the other parties at any time before**
34 **the trial on the issues begins. A party that fails to serve a demand as provided in this sub-**
35 **section waives the party's right to a trial by jury.** [A party may demand a trial by jury of any
36 issue triable of right by a jury after the lien is disallowed, if that party serves a demand therefor in
37 writing upon the other parties at any time prior to commencement of the trial to foreclose the lien. The
38 demand shall be filed with the court. The failure of a party to serve a demand as required by this
39 subsection shall constitute a waiver by the party of trial by jury.] A demand for a trial by jury made
40 as provided in this subsection may not be withdrawn without the consent of the parties.

41 (5) When notice of intent to [foreclose] **enforce** the lien has been given, pleaded and proven as
42 provided for in ORS 87.057, the court, upon entering judgment for the lien claimant, shall allow as
43 part of the costs all moneys paid [for the filing or recording of] **to file and record** the lien and all
44 moneys paid for title reports required for preparing and [foreclosing] **enforcing** the lien. In a suit
45 to enforce a lien perfected under ORS 87.035 the court shall allow a reasonable amount as attorney

1 fees at trial and on appeal to the party who prevails on the issues of the validity and [foreclosure]
2 **enforcement** of the lien.

3 (6) [In case] **If** the proceeds [of any] **from** a sale under ORS 87.001 to 87.060 [and] **or** 87.075 to
4 87.093 are insufficient to pay all lienholders [claiming under such statutes], the liens [of all persons
5 shall] **must** be paid pro rata. Each claimant is entitled to execution for any balance due the claim-
6 ant after the distribution of the proceeds, and [that] **the clerk of the court shall issue the** exe-
7 cution [shall be issued by the clerk of the court,] upon demand[,] after the return of the sheriff or
8 other officer making the sale showing the balance due.

9 (7) [All suits] **A suit** to enforce [any] a lien perfected under ORS 87.035 [shall have preference
10 on the calendar of the court over every civil suit] **has priority over other civil suits on the court's**
11 **calendar**, except suits to which the state is a party, and shall be tried by the court without un-
12 necessary delay. [In such a suit, all persons personally liable, and all lienholders whose claims have
13 been filed for record pursuant to ORS 87.035, shall, and all other persons interested in the matter in
14 controversy, or in the property sought to be charged with the lien, may be made parties; but persons
15 not made parties are not bound by the proceedings. The] **In a suit to enforce a lien perfected under**
16 **ORS 87.035, a person that is personally liable for the lien and a lienholder that has filed a**
17 **claim under ORS 87.035 are parties. Other persons interested in the matter in controversy**
18 **or in the property sought to be charged with the lien may be made parties to the suit. Per-**
19 **sons that are not parties to the suit are not bound by the proceedings. Enforcement** pro-
20 ceedings [upon the foreclosure of the] **for** liens perfected under ORS 87.035 shall, as nearly as
21 possible, conform to the proceedings [of a foreclosure of] **for foreclosing** a mortgage lien upon real
22 property.

23 **SECTION 4.** ORS 87.091 is amended to read:

24 87.091. (1) A written waiver described in ORS 87.007 (2) and signed by the purchaser of resi-
25 dential real property [shall] **must** include the information described in subsection (2) of this section.
26 The waiver [shall] **must** be printed as a separate document and in at least 12-point boldfaced type.

27 (2) The waiver described in subsection (1) of this section [shall] **must** include, but **need** not be
28 limited to, the following information and shall be in substantially the following form:

29 _____
30
31 WAIVER OF PROTECTIONS
32 FROM SUBCONTRACTORS' LIENS.
33 WARNING: READ THIS NOTICE.
34 [PROTECT YOURSELF FROM]
35 [PAYING ANY CONTRACTOR]
36 [OR SUPPLIER TWICE]
37 [FOR THE SAME SERVICE.]
38 **AVOID CLAIMS FOR PAYMENTS**
39 **YOU HAVE ALREADY MADE.**
40

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

44 Under Oregon law, those who work on your property or provide materials, equipment, labor or
45 services and are not paid have a right to enforce their claim for payment against the property. This

1 claim is known as a construction lien.

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

6
7 OREGON LAW PROVIDES
8 THE FOLLOWING PROTECTIONS:
9

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

- 12 - PURCHASE or PROVIDE title insurance to help cover any construction liens that are re-
13 corded after you complete the purchase of the residential real property.
- 14 - RETAIN money in escrow until the status of all construction liens is resolved after the pur-
15 chase of the residential real property is complete.
- 16 - MAINTAIN a bond or letter of credit until the status of all construction liens is resolved after
17 the purchase of the residential real property is complete.
- 18 - GET waivers from every person claiming a right to a lien against the property in an aggregate
19 amount of \$5,000 or more.
- 20 - WAIT to close the purchase of the residential real property until 75 days after the completion
21 of construction.

22
23 WAIVER OF RIGHTS
24

25 Under Oregon law, you may waive the requirements that apply to the seller of the residential
26 real property. By signing this document, you agree to waive these protections and accept the risk
27 that the property you are purchasing may be subject to a lien that is recorded after the date of sale.
28 [*By waiving your rights, you may become liable for payment of the lien even if the contractor has been*
29 *paid in full.*] **If you waive your rights and the contractor does not make a required payment,**
30 **you may have to appear in court and prove that you have paid the money owed to the con-**
31 **tractor to avoid enforcement of the lien against your property.** Before signing this waiver, you
32 may wish to consult an attorney.

33 _____

34
35 I have read this statement and understand the risks it describes. I hereby choose to assume
36 those risks and waive the protections provided under ORS 87.007 by signing this form.

37
38 _____
39 (Signature of purchaser)
40 _____, 2_____
41 _____

42
43 **SECTION 5.** ORS 87.093 is amended to read:

44 87.093. (1) The Construction Contractors Board shall adopt by rule a form entitled "Information
45 Notice to Owner" which [*shall*] **must** describe, in nontechnical language and in a clear and coherent

1 manner using **common and everyday meanings for the language used**, [*words in their common*
 2 *and everyday meanings*,] the pertinent provisions of the Construction Lien Law of this state and the
 3 rights and responsibilities of an owner of property and an original contractor under [*that*] **the** law.
 4 The “Information Notice to Owner” [*shall*] **must** include signature lines for the contractor and the
 5 property owner. The **form must also describe at least the following** rights [*and responsibilities*
 6 *described in the form shall include, but not be limited to*] **that the owner has and methods by**
 7 **which the owner may avoid having to defend lien claims for materials, equipment, labor and**
 8 **services:**

9 [*(a) Methods by which an owner may avoid multiple payments for the same materials and labor;*]

10 [(b)] (a) The right to file a complaint against a licensed contractor with the board and, if ap-
 11 propriate, to be reimbursed from the contractor’s bond filed under ORS chapter 701; and

12 [(c)] (b) The right to receive, upon written request therefor, a statement of the reasonable value
 13 of materials, equipment, **labor or** services [*or labor*] provided from the persons [*providing*] **that**
 14 **provided** the materials, equipment, **labor or** services [*or labor at the request of*] **at** an original
 15 [*contractor*] **contractor’s request** and [*who have*] **that** also provided notices of right to a lien.

16 (2)(a) [*Each*] **An** original contractor shall deliver a copy of the “Information Notice to Owner”
 17 adopted by the board under this section to:

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

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

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

25 (3) The contractor shall deliver the “Information Notice to Owner” personally, by registered or
 26 certified mail or by first class mail with certificate of mailing.

27 (4) This section applies only to a residential construction or improvement contract for which the
 28 aggregate contract price exceeds \$1,000. If the price of a residential **construction or** improvement
 29 contract was initially less than \$1,000, but during the course of the performance of the contract
 30 exceeds that amount, the original contractor shall mail or otherwise deliver the “Information Notice
 31 to Owner” not later than five days after the contractor knows or should reasonably know that the
 32 contract price will exceed \$1,000.

33 (5) Notwithstanding subsections (2) and (4) of this section, the original contractor need not send
 34 the owner an “Information Notice to Owner” if the owner is a contractor licensed with the board
 35 under ORS chapter 701.

36 (6) Notwithstanding ORS 87.010 and 87.030, if an original contractor does not deliver an owner
 37 or agent with an “Information Notice to Owner” as required under subsections (2) to (4) of this
 38 section, the original contractor may not claim [*any*] **a** lien created under ORS 87.010 upon [*any*] **an**
 39 improvement, lot or parcel of land of the owner for **materials, equipment, labor[,] or** services [*or*
 40 *materials*] supplied under the residential construction or improvement contract for which the ori-
 41 ginal contractor failed to deliver the required “Information Notice to Owner”.

42 (7) If an original contractor does not deliver an “Information Notice to Owner” to an owner or
 43 agent as required under subsection (2) of this section, the board may suspend the license of the or-
 44 iginal contractor for any period of time that the board considers appropriate or impose a civil pen-
 45 alty of not more than \$5,000 upon the original contractor as provided in ORS 701.992.

1 (8) As used in this section[.],

2 [(a) “Residential construction or improvement” means the original construction of residential
3 property and constructing, repairing, remodeling or altering residential property and includes, but is
4 not limited to, the construction, repair, replacement or improvement of driveways, swimming pools,
5 terraces, patios, fences, porches, garages, basements and other structures or land adjacent to a resi-
6 dential dwelling.]

7 [(b)] “residential construction or improvement contract” means an agreement, oral or written,
8 between an original contractor and an owner for [the performance of a home improvement and in-
9 cludes all labor, services and materials furnished and performed thereunder.]:

10 (a) **Constructing original residential property;**

11 (b) **Constructing, repairing, remodeling, replacing, improving or otherwise altering resi-**
12 **dential property or structures or land adjacent to residential property such as driveways,**
13 **swimming pools, terraces, patios, fences, porches, garages or basements; or**

14 (c) **Supplying or furnishing materials, equipment, labor or services.**

15 **SECTION 6. (1) The amendments to ORS 87.023 by section 1 of this 2009 Act apply to**
16 **notices of lien for supplying materials, equipment, labor or services on or after the effective**
17 **date of this 2009 Act. If a person that supplied materials, equipment, labor or services sent**
18 **an owner a previous notice of lien under ORS 87.023 as ORS 87.023 was set forth in the 2007**
19 **Edition of Oregon Revised Statutes, the notice previously sent is not effective as a notice**
20 **of lien with respect to materials, equipment, labor or services supplied on or after the ef-**
21 **fective date of this 2009 Act.**

22 (2) **The amendments to ORS 87.058 and 87.060 by sections 2 and 3 of this 2009 Act apply**
23 **to liens for supplying materials, equipment, labor or services on or after the effective date**
24 **of this 2009 Act.**

25 (3) **The amendments to ORS 87.091 by section 4 of this 2009 Act apply to residential**
26 **property purchases that close on or after the later of:**

27 (a) **The effective date of this 2009 Act; or**

28 (b) **Seventy-five days after the date construction was completed, if construction was**
29 **completed before the effective date of this 2009 Act.**

30