

House Bill 3658

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT ACCOUNTABILITY

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 original owner of unit with warranty of unit workmanship and materials. Makes violation subject to civil penalty, not to exceed \$5,000.

Applies to construction pursuant to written contracts entered into on or after September 1, 2010, and to construction commenced without written contract on or after September 1, 2010.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to warranties; creating new provisions; amending ORS 701.305, 701.330, 701.335, 701.560 and
3 701.600; repealing ORS 701.320; and declaring an emergency.

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

5 **SECTION 1. Sections 2 to 5 of this 2010 Act are added to and made a part of ORS chapter**
6 **701.**

7 **SECTION 2. As used in sections 2 to 5 of this 2010 Act:**

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

10 (2) "Defect":

11 (a) Means a deficiency, inadequacy or insufficiency arising out of the construction of a
12 residential dwelling unit:

13 (A) That substantially impairs the ordinary use, market value or safety of the dwelling
14 unit; or

15 (B) That results in the dwelling unit not meeting a specification of the state building code
16 at the time of substantial completion or not meeting a specification of a construction con-
17 tract for the dwelling unit.

18 (b) Does not mean a condition arising from the failure of a residential dwelling unit
19 owner or occupant to follow a manufacturer's maintenance requirements after the general
20 contractor substantially completes construction.

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

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

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

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

29 (d) Installations of central services such as power, light, gas, hot and cold water, heating,

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 refrigeration, air conditioning, waste disposal and incinerating;

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

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

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

7 (4) "Limited common elements" means those common elements of a multiunit building
8 or property that are reserved for the use of a certain dwelling unit or number of units, to
9 the exclusion of the other units.

10 (5) "Multiunit building" means a building that has three or more residential dwelling
11 units.

12 (6) "Original owner" means a person:

13 (a) Who is the record owner of real property at the time of entering into a contract for
14 the construction of a new residential dwelling unit and is not the general contractor, resi-
15 dential developer or declarant of the dwelling unit or an agent of the contractor, developer
16 or declarant; or

17 (b) Who purchases a residential dwelling unit from the general contractor, residential
18 developer or declarant of the dwelling unit or from an agent of the contractor, developer or
19 declarant.

20 (7) "Preassembled product" means an appliance, furnace, air conditioner, heat pump,
21 electric motor or other manufactured item assembled as a completed unit using closed con-
22 struction prior to the item being sold for installation in a residential dwelling unit.

23 (8) "Rental unit" means any dwelling unit that does not qualify as a residential dwelling
24 unit.

25 (9)(a) "Residential dwelling unit" means:

26 (A) A site-built one or two family dwelling;

27 (B) A zero-lot-line dwelling;

28 (C) A dwelling unit in a multiunit building if the dwelling unit is subject to a legally re-
29 corded bylaw, declaration, covenant or similar document restricting or prohibiting the rent-
30 ing out of the dwelling unit; or

31 (D) For a multiunit building, except as provided in paragraph (b) of this subsection, the
32 common elements of the building containing a dwelling unit described in subparagraph (C)
33 of this paragraph.

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

35 (A) A manufactured structure as defined in ORS 446.003 or floating home as defined in
36 ORS 830.700;

37 (B) Any limited common elements of a multiunit building that are reserved for use only
38 by rental units; or

39 (C) Any part of a mixed-use building that is used or designed for use for commercial
40 purposes.

41 (10) "Substantial completion" has the meaning given that term in ORS 12.135.

42 **SECTION 3. (1) A general contractor who is required to be licensed under this chapter**
43 **and who constructs a new residential dwelling unit shall warrant to the original owner of the**
44 **dwelling unit:**

45 (a) For a period of two years that the dwelling unit is free from any defect in workman-

1 ship or materials; and

2 (b) For a period of five years that the plumbing, electrical, heating, cooling and venti-
 3 lation delivery and distribution systems, building envelope and structural components of the
 4 dwelling unit are free from defects in workmanship or materials.

5 (2)(a) Notwithstanding subsection (1) of this section, if the residential dwelling unit in-
 6 cludes a preassembled product that is covered by a manufacturer's warranty, a general
 7 contractor that complies with this subsection may limit the period for which the general
 8 contractor warrants the preassembled product to coincide with the period of the
 9 manufacturer's warranty. The general contractor may limit the warranty period for the
 10 preassembled product by making a written disclosure that specifically identifies the preas-
 11 sembled product, states the manufacturer warranty period for the preassembled product and
 12 states the period for which the contractor warrants the preassembled product.

13 (b) If the dwelling unit has an original owner at the start of the warranty period, the
 14 general contractor shall provide a copy of the written disclosure to the original owner. The
 15 general contractor shall include the written disclosure when recording the warranty for the
 16 residential dwelling unit as required under section 4 of this 2010 Act.

17 (c) This subsection does not relieve a contractor from responsibility for ensuring the
 18 provision of warranty services for a preassembled product. A general contractor may not
 19 limit the warranty period for defects arising from improper installation of a preassembled
 20 product.

21 (3) The warranties described in this section apply:

22 (a) To workmanship performed and materials installed in the new residential dwelling
 23 unit on or before the start of the warranty period; and

24 (b) For the remainder of the applicable warranty period, to any workmanship performed
 25 and materials installed during the warranty period as part of a defect repair authorized by
 26 the general contractor.

27 (4) Except as provided in subsection (5) of this section, a warranty period described in
 28 this section shall start upon the earlier of:

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

30 (b) The date title to the residential dwelling unit is transferred to the original owner of
 31 the dwelling unit; or

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

33 (5) If a residential dwelling unit is contained in a multiunit building:

34 (a) The warranty period for the general common elements of the building starts on the
 35 first date on which any dwelling unit contained in the building becomes covered by a war-
 36 ranty under this section;

37 (b) The warranty period for a limited common element of the building starts on the first
 38 date on which any dwelling unit having a right to use that element becomes covered by a
 39 warranty under this section; and

40 (c) The owner of any residential dwelling unit having a right to use a common element
 41 that is under warranty may assert the warranty to obtain the repair of defects in the com-
 42 mon element.

43 (6) Notwithstanding subsection (1) of this section, the warranty period for the common
 44 elements of a multiunit building expires if the building ceases to have at least one residential
 45 dwelling unit.

1 **SECTION 4.** (1) The requirement to provide a warranty under section 3 of this 2010 Act
 2 applies only to the general contractor that substantially completed the construction of the
 3 new residential dwelling unit. A general contractor that contracts with a property owner to
 4 substantially complete the construction of a new residential dwelling unit with knowledge
 5 that another general contractor has previously provided workmanship or materials for the
 6 dwelling unit is considered for purposes of subsection (3) of this section to have provided that
 7 workmanship or materials.

8 (2) The general contractor providing the warranty for a residential dwelling unit is di-
 9 rectly responsible for ensuring the provision of services under the warranty. However, if the
 10 contractor providing the warranty ceases to be actively licensed under this chapter, the
 11 Construction Contractors Board may assign responsibility for ensuring the provision of ser-
 12 vices under the remainder of the warranty to any actively licensed general contractor that
 13 has the same owner as the contractor that provided the warranty. As used in this sub-
 14 section, “owner” has the meaning given that term in ORS 701.094.

15 (3) The warranties described in section 3 of this 2010 Act apply only to workmanship or
 16 materials provided by:

17 (a) The general contractor or an officer, employee or agent of the general contractor;

18 (b) A subcontractor or an officer, employee or agent of a subcontractor;

19 (c) A person selected by the contractor to provide labor or materials; or

20 (d) A person for whom the contractor has a right to direct and control the provision of
 21 services or materials at the dwelling unit.

22 (4) This section and section 3 of this 2010 Act do not prohibit a contractor from offering
 23 a warranty that provides greater coverage than the coverage required by this section and
 24 section 3 of this 2010 Act.

25 (5) A warranty required under section 3 of this 2010 Act may not be disclaimed, limited
 26 or waived. A purported disclaimer, limitation or waiver of the required warranty is void.

27 (6) A general contractor who warrants a residential dwelling unit under section 3 of this
 28 2010 Act shall record the warranties for the dwelling unit in the deed records for the struc-
 29 ture property as warranty agreements under ORS 701.605.

30 **SECTION 5.** (1) A warranty claim under section 3 of this 2010 Act must be sent to the
 31 warrantor during the term of the warranty. The warranty claim sent to the warrantor must
 32 comply with the requirements for giving a notice of defect to a contractor under ORS 701.565.
 33 The sending of a notice of defect to a subcontractor or supplier under ORS 701.560 to 701.595
 34 does not satisfy the requirement of sending a warranty claim to the warrantor.

35 (2) The warranty obligations of a general contractor under sections 3 and 4 of this 2010
 36 Act are in addition to any other obligations or liabilities of the contractor or of a subcon-
 37 tractor or supplier.

38 (3) If a dispute regarding warranty coverage under section 3 of this 2010 Act arises within
 39 the time limitations for filing a claim under ORS 701.143, the purchaser of the structure may
 40 seek resolution of the dispute by the Construction Contractors Board. In any court action
 41 claiming a failure to provide services under a warranty, the court shall award the prevailing
 42 party on the warranty claim reasonable attorney fees and costs incurred in regard to the
 43 warranty claim, whether at trial or on appeal.

44 **SECTION 6.** (1) ORS 701.320 is repealed.

45 (2) Notwithstanding the amendments to ORS 701.335 by section 9 of this 2010 Act, the

1 **repeal of ORS 701.320 does not alter the terms of any warranty agreement under a written**
 2 **contract entered into before September 1, 2010.**

3 **SECTION 7.** ORS 701.305 is amended to read:

4 701.305. (1) A contractor may not perform work to construct, improve or repair a residential
 5 structure or zero-lot-line dwelling for a property owner without a written contract if the aggregate
 6 contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the
 7 course of performance the contract exceeds that amount, the contractor shall mail or otherwise
 8 deliver a written contract to the property owner not later than five days after the contractor knows
 9 or should reasonably know that the contract price will exceed \$2,000. Failure to have a written
 10 contract will not void the contract.

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

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

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

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

20 *[(d)]* (c) A list of the notices required under ORS 87.093 or under rules adopted under ORS
 21 701.330 and 701.335 (2) on the contractor's bid proposal; and

22 *[(e)]* (d) An explanation of the property owner's rights under the contract, including, but not
 23 limited to, the ability to file a claim with the board and the existence of any mediation or arbitration
 24 provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

25 **SECTION 8.** ORS 701.330 is amended to read:

26 701.330. (1) The Construction Contractors Board shall adopt by rule a consumer notice form
 27 designed to inform a property owner or original purchaser of the actions the property owner or or-
 28 iginal purchaser should take to protect the property owner in a residential structure or zero-lot-line
 29 dwelling repair, remodel or construction project or to protect the original purchaser in a residential
 30 structure or zero-lot-line dwelling construction project. The form shall briefly describe and identify
 31 additional sources of information regarding:

32 (a) Contractor licensing standards;

33 (b) Contractor bond and insurance requirements;

34 (c) The requirement *[to offer]* **that a general contractor provide** a warranty *[under ORS*
 35 *701.320]* **for new residential construction that is subject to section 3 of this 2010 Act;** and

36 (d) Other information specified by the board.

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

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

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

44 (5) The board may adopt rules that require a contractor to maintain evidence of delivery of the
 45 consumer notice form and notice of procedure form and that specify the retention period for and the

1 form of that evidence.

2 **SECTION 9.** ORS 701.335 is amended to read:

3 701.335. (1) A contractor that enters into a contract to construct a new residential structure or
 4 zero-lot-line dwelling shall provide a recommended maintenance schedule to the property owner or
 5 original purchaser of the proposed structure or dwelling [*at the time that the contractor makes a*
 6 *written offer of warranty under ORS 701.320*] **no later than the date that the term of the war-**
 7 **ranty for the structure or dwelling starts as provided under section 3 of this 2010 Act.**

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

- 11 (a) Definitions and descriptions of moisture intrusion and water damage.
- 12 (b) An explanation of how moisture intrusion and water damage can occur.
- 13 (c) A description and recommended schedule for maintenance to prevent moisture intrusion.
- 14 (d) Advice on how to recognize the signs of water damage.
- 15 (e) Appropriate steps to take when water damage is discovered.

16 **SECTION 10. ORS 701.605 is added to and made a part of ORS chapter 701.**

17 **SECTION 11.** ORS 701.560 is amended to read:

18 701.560. As used in ORS 701.560 to 701.595 [*and 701.605*]:

19 (1) “Contractor” means a person that performed services for the construction, alteration or re-
 20 pair of a residence.

21 (2) “Defect” means a deficiency, an inadequacy or an insufficiency arising out of or relating to
 22 the construction, alteration or repair of a residence. “Defect” includes a deficiency, an inadequacy
 23 or an insufficiency in a system, component or material incorporated into a residence.

24 (3) “Owner” means a person that possesses an interest in a residence or in land that is a resi-
 25 dential site or has entered into a contract for the purchase of an interest in the residence or land.
 26 “Owner” includes:

- 27 (a) A homeowners association as defined in ORS 94.550;
- 28 (b) A managing entity as defined in ORS 94.803;
- 29 (c) An owners’ association as described in ORS 94.858;
- 30 (d) An association of unit owners as defined in ORS 100.005; and
- 31 (e) Any other entity that possesses an interest in a residence or represents owners of a resi-
 32 dence.

33 (4) “Remediation” means the repair or replacement of some or all of the defects described in an
 34 owner’s notice of defect sent under ORS 701.565.

35 (5) “Residence” means:

- 36 (a) A residential structure as defined in ORS 701.005;
- 37 (b) Common property as defined in ORS 94.550; and
- 38 (c) A common element as defined in ORS 100.005.

39 (6) “Secondary notice” means a copy of an owner’s notice of defect that a contractor, subcon-
 40 tractor or supplier sends to another contractor, subcontractor or supplier that may be responsible
 41 for a defect.

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

44 (8) “Supplier” means any person that furnished or manufactured the systems, components or
 45 materials incorporated into a residence as part of the construction, alteration or repair of the resi-

1 dence.

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

3 701.600. ORS 701.560 to 701.595 [*and 701.605*] do not apply:

4 (1) To personal injury or death claims.

5 (2) To claims or complaints filed pursuant to ORS 671.695 or 701.139.

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

7 **SECTION 13.** Sections 2 to 5 of this 2010 Act and the amendments to ORS 701.305, 701.330
8 and 701.335 by sections 7, 8 and 9 of this 2010 Act apply to new residential dwelling units:

9 (1) For which a general contractor enters into a written construction contract on or af-
10 ter September 1, 2010; or

11 (2) On which construction work commences on or after September 1, 2010, if no written
12 construction contract exists.

13 **SECTION 14.** This 2010 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect
15 on its passage.
16
