

# House Bill 3689

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**.

Removes ability of purchaser of residential property to waive protection against claim of lien.

Provides that unlicensed contractor may not file or perfect claim of lien against owner's property.

Provides that person that provides materials, equipment or supplies may not file or perfect lien against owner's property if person provided materials, equipment or supplies to unlicensed contractor. Authorizes Construction Contractors Board to notify person of contractor's license status and to charge for cost of notification.

Specifies form by which contractors, subcontractors or person that provides materials, equipment or supplies may waive right to claim of lien.

Prohibits contractor, as condition of commencing or performing home improvement, from charging owner deposit or other sum larger than amount specified in statute.

Becomes operative January 1, 2011.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to construction in connection with residential property; creating new provisions; amending  
3 ORS 87.007, 701.005, 701.410 and 701.420; repealing ORS 87.091; and declaring an emergency.

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

5 **SECTION 1.** ORS 87.007 is amended to read:

6 87.007. (1) This section applies to a sale of the following residential property:

7 (a) A new single family residence or a single family residence where the sales price **is \$50,000**  
8 **or more** for original construction or **the** contract price **is \$50,000 or more** for improvements to the  
9 residence completed within three months [*prior to*] **before** the date [*of the sale of*] the property [*is*  
10 *\$50,000 or more*] **is sold**.

11 (b) A new condominium unit or a condominium unit where the sales price **is \$50,000 or more**  
12 for original construction or **the** contract price **is \$50,000 or more** for improvements to the condo-  
13 minium unit completed within three months [*prior to*] **before** the date [*of the sale of*] the property  
14 [*is \$50,000 or more*] **is sold**. As used in this paragraph, "condominium unit" has the meaning given  
15 that term in ORS 100.005.

16 (c) A new residential building or a residential building where the sales price **is \$50,000 or more**  
17 for original construction or **the** contract price **is \$50,000 or more** for improvements to the resi-  
18 dential building completed within three months [*prior to*] **before** the date [*of the sale of*] the property  
19 [*is \$50,000 or more*] **is sold**. As used in this paragraph, "residential building" means a building or  
20 structure [*containing*] **that contains** not more than four dwelling units capable of [*being used*] **use**  
21 as residences or homes.

22 (2) [*For purposes of protecting purchasers of residential property with respect to claims of lien that*  
23 *arise before the date the sale of the residential property is completed but may be perfected under ORS*  
24 *87.035 after the date the sale of the property is completed, when*] An owner of record **at the time the**  
25 **owner of record** sells residential property to a purchaser[, *the owner*] shall [*provide such*

**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 *protection*] **protect the purchaser from claims of lien that arise before the date on which the**  
 2 **sale is complete but that may become perfected under ORS 87.035 after the date on which**  
 3 **the sale is complete** by one of the following methods:

4 (a) Purchase or otherwise provide title insurance on **the purchaser's** behalf [*of the purchaser*]  
 5 by **means of** a policy issued:

6 (A) Without exception for filed and unfiled claims of construction lien [*existing*] **that exist** at  
 7 the **closing** date [*of closing*] of the purchase; and

8 (B) On forms and at rates filed with, but not disapproved by, the Director of the Department  
 9 of Consumer and Business Services.

10 (b) Retain in escrow, as defined in ORS 696.505, an amount of funds that is not less than 25  
 11 percent of the sale price of the residential property. The funds [*shall*] **must** be maintained in or  
 12 released from escrow [*pursuant to*] **in accordance with** written instructions to the escrow agent  
 13 from the **purchaser and the** owner that sold the property [*and the purchaser*]. The written in-  
 14 structions shall [*provide that any claims*] **require the escrow agent to pay upon the purchaser's**  
 15 **demand a claim** of lien that [*are*] **is** perfected after the date of the sale of the property and that  
 16 [*are not paid by*] the owner that sold the property [*shall be paid upon demand by the purchaser from*  
 17 *the amount maintained in escrow*] **has not paid. The escrow agent shall make the payment from**  
 18 **the amount maintained in escrow.** The escrow agent shall release the unused funds from escrow  
 19 to the owner that sold the property if the escrow agent receives a request from the owner that sold  
 20 the property and the owner **that sold the property** provides documentation from a title company  
 21 that:

22 (A) [*Claims of lien have*] **A claim of lien has** not been perfected against the property and 90  
 23 days have passed since the date that construction was completed; or

24 (B) [*One or more claims*] **A claim** of lien [*have*] **has** been perfected against the property, that  
 25 135 days have passed since the date that each such claim of lien was filed and that all [*such*] per-  
 26 fected claims of lien have been released or waived.

27 (c) Maintain a bond or letter of credit in an amount that is not less than 25 percent of the sale  
 28 price of the property. The Construction Contractors Board shall prescribe by rule the amount, terms  
 29 and conditions of the bond or letter of credit to be maintained under this paragraph.

30 (d) Obtain written waivers from every person [*claiming*] **that claims or perfects** a lien or liens  
 31 **under ORS 87.010 or 87.035 that**, in an aggregate amount [*that exceeds*], **exceed** \$5,000 with respect  
 32 to the property [*under ORS 87.010, 87.021 or 87.035,*] and provide copies of the waivers to the pur-  
 33 chaser not later than the date the sale of the property is completed.

34 (e) Complete the sale of the residential property after the deadline for perfecting [*all claims of*  
 35 *liens*] **a claim of lien** under ORS 87.035 with respect to the property.

36 [*Obtain a signed written waiver from the purchaser of the residential property. The waiver shall*  
 37 *be in a form described in ORS 87.091 and shall specify that the provisions of paragraphs (a) to (e) of*  
 38 *this subsection do not apply to the sale of the residential property. The waiver must be printed on a*  
 39 *form that is separate from any residential property sales contract or agreement and may be signed by*  
 40 *the purchaser at any time after the purchaser enters into the sales contract or agreement with respect*  
 41 *to the residential property and before closing of the transaction.*]

42 (3) Not later than the date **on which** the sale of the residential property is completed, the owner  
 43 who sold the property shall complete, sign and deliver to the purchaser a form [*specifying*] **that**  
 44 **specifies** the method that the owner has selected to comply with the requirements of subsection (2)  
 45 of this section or that **states that** subsection (2) of this section does not apply to the sale of the

1 property. The notice *[shall]* **must** be in a form *[designated by]* the Construction Contractors Board  
 2 **designates** by rule under ORS 701.235.

3 (4) A real estate licensee, as defined in ORS 696.010, acting in the professional capacity of a  
 4 licensee *[may not be]* **is not** liable in *[any]* a criminal, civil or administrative proceeding *[arising]*  
 5 **that arises** out of the failure of an owner of record to comply with subsection (2) or (3) of this  
 6 section.

7 (5) Violation of subsection (3) of this section is a Class A violation.

8 (6) In addition to any other remedy or penalty provided by law, a purchaser may bring an action  
 9 to recover up to twice the amount of actual damages caused by a violation of subsection (2) of this  
 10 section. The court may award to the prevailing party, in addition to costs and disbursements, rea-  
 11 sonable attorney fees. Any action brought under this subsection must be commenced not later than  
 12 two years after the date **on which** the sale of the property is completed.

13 (7) For purposes of subsections (5) and (6) of this section and ORS 646.608:

14 (a) It is a defense to a violation of subsection (2) or (3) of this section that *[there is]* no  
 15 enforcement or *[attempted enforcement of any]* **attempt to enforce a** claim of lien against the prop-  
 16 erty that is the subject of the sale *[arising]* **occurred** before the date the sale of the property *[is]*  
 17 **was** completed; and

18 (b) As to *[any]* a claim of lien, it is a defense to a violation of subsection (2) or (3) of this section  
 19 if the owner that sold the property:

20 (A) Proves that the claim of lien against the property that is the subject of the sale is invalid;

21 or

22 (B) Satisfies the claim of lien or obtains a release from the claim of lien on the property that  
 23 is the subject of the sale.

24 (8) A violation of subsection (2) or (3) of this section *[is not considered to have occurred]* **does**  
 25 **not occur** with respect to a lien described in ORS 87.010 during the period that the validity of the  
 26 lien is disputed in a judicial proceeding or a proceeding described in ORS chapter 701.

27 (9) Nothing in this section requires the payment of a lien that is not otherwise valid. This sec-  
 28 tion does not apply to claims of lien perfected by persons *[furnishing any]* **that furnish** materials,  
 29 equipment, services or labor at the request of the purchaser of the residential property.

30 **SECTION 2. Sections 3 and 4 of this 2010 Act are added to and made a part of the Con-**  
 31 **struction Lien Law.**

32 **SECTION 3. (1) A subcontractor that provides services or a person that provides mate-**  
 33 **rials, equipment or supplies for renovating, remodeling, repairing or otherwise altering an**  
 34 **existing owner-occupied single-family residence may not perfect a claim of lien against an**  
 35 **owner's property under ORS 87.035 if the subcontractor or person contracted to provide or**  
 36 **provided services, materials, equipment or supplies to a contractor that was unlicensed:**

37 (a) **At the time the subcontractor or person first contracted with the contractor for a**  
 38 **particular project; or**

39 (b) **At the time the person first delivered materials, equipment or supplies to a particular**  
 40 **project.**

41 (2) **Subsection (1) of this section does not apply if the services, materials, equipment or**  
 42 **supplies are purchased with cash or consumer credit.**

43 (3) **The Construction Contractors Board may notify a person at the person's request of**  
 44 **the status of a contractor's license using any means the board uses to notify a contractor**  
 45 **of the contractor's license status. The board may charge the person a fee in an amount the**

board specifies by rule for the cost of providing the notice to the person.

**SECTION 4.** (1) A contractor or subcontractor or a person that provides materials, equipment or supplies shall use one of the forms set forth in this section to waive construction lien rights that the contractor, subcontractor or person may have.

(2) If the contractor, subcontractor or person is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment, and the contractor, subcontractor or person is not, in fact, paid in exchange for the waiver and release, or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver must be in substantially the following form:

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**CONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT**

To: Project: \_\_\_\_\_ Job No.: \_\_\_\_\_ Date of mailing: \_\_\_\_\_ Owner: \_\_\_\_\_  
Owner's address: \_\_\_\_\_

Upon receipt by the undersigned of a check from \_\_\_\_\_ (Maker of Check) in the sum of \$\_\_\_\_\_ (Amount of Check) payable to \_\_\_\_\_ (Payee or Payees) and when the check has been properly indorsed and has been paid by the bank upon which the check is drawn, this document shall become effective to release any construction lien, bond right or other payment claim the undersigned has against Owner on the job of \_\_\_\_\_ (Owner) located at \_\_\_\_\_ (Job Description) to the following extent:

This release covers a progress payment for labor, services, equipment or material furnished to the job site or to \_\_\_\_\_ (Your Customer) through \_\_\_\_\_ (Date) only and does not cover any moneys retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order that has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release.

This release of any mechanic's lien or bond right does not otherwise affect any rights between parties to a contract based upon a rescission, abandonment or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment. Before any recipient of this document relies on it, the recipient should verify evidence of payment to the undersigned.

Dated: \_\_\_\_\_  
Company name: \_\_\_\_\_  
By: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_

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(3) If the contractor, subcontractor or person is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment, and the contractor, subcontractor or person asserts in the waiver that the progress payment has, in fact, been paid, the waiver and release must be in substantially the following form:

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**UNCONDITIONAL WAIVER AND RELEASE  
UPON PROGRESS PAYMENT**

To: Project: \_\_\_\_\_ Job No.: \_\_\_\_\_ Date of mailing: \_\_\_\_\_ Owner:  
\_\_\_\_\_ Owner's address: \_\_\_\_\_

The undersigned has been paid and has received a progress payment in the sum of \$\_\_\_\_\_ (Amount of Check) for labor, services, equipment or material furnished to \_\_\_\_\_ (Your Customer) on the job of \_\_\_\_\_ (Owner) located at \_\_\_\_\_ (Job Description) and does hereby release any construction lien, bond right or other payment claim against Owner that the undersigned has on the above referenced job to the following extent:

This release covers a progress payment for labor, services, equipment or materials furnished to \_\_\_\_\_ (Your Customer) through \_\_\_\_\_ (Date) only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; or extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order that has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release.

This release of any mechanic's lien or bond right does not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment or material covered by this release if that furnished labor, services, equipment or material was not compensated by the progress payment.

Dated: \_\_\_\_\_  
Company name: \_\_\_\_\_  
By: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.**

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(4) If the contractor, subcontractor or person is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment, and the contractor, subcontractor or person is not, in fact, paid in exchange for the waiver and release, or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver must be in substantially the following form:

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**CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

To: Project: \_\_\_\_\_ Job No.: \_\_\_\_\_ Date of mailing: \_\_\_\_\_ Owner:  
\_\_\_\_\_ Owner's address: \_\_\_\_\_

1 Upon receipt by the undersigned of a check from \_\_\_\_\_ (Maker of Check) in the  
2 sum of \$\_\_\_\_\_ (Amount of Check) payable to \_\_\_\_\_ (Payee or Payees) and  
3 when the check has been properly indorsed and has been paid by the bank upon which the  
4 check is drawn, this document shall become effective to release any construction lien, bond  
5 right or other payment claim that the undersigned has against Owner on the job of  
6 \_\_\_\_\_ (Owner) located at \_\_\_\_\_ (Job Description).

7 This release covers the final payment to the undersigned for all labor, services, equip-  
8 ment or material furnished on the job, except for disputed claims for additional work in the  
9 amount of \$\_\_\_\_\_. Before any recipient of this document relies on it, the recipient  
10 should verify evidence of payment to the undersigned.

11 Dated: \_\_\_\_\_  
12 Company name: \_\_\_\_\_  
13 By: \_\_\_\_\_  
14 Signature: \_\_\_\_\_  
15 Title: \_\_\_\_\_  
16 \_\_\_\_\_

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18 (5) If the contractor, subcontractor or person is required to execute a waiver and release  
19 in exchange for, or in order to induce payment of, a final payment, and the contractor,  
20 subcontractor or person asserts in the waiver that the final payment has, in fact, been paid,  
21 the waiver and release shall follow substantially the following form:  
22 \_\_\_\_\_

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24 UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

25 To: Project: \_\_\_\_\_ Job No.: \_\_\_\_\_ Date of mailing: \_\_\_\_\_ Owner:  
26 \_\_\_\_\_ Owner's address: \_\_\_\_\_

27 The undersigned has been paid in full for all labor, services, equipment or material fur-  
28 nished to \_\_\_\_\_ (Your Customer) on the job of \_\_\_\_\_ (Owner) located at  
29 \_\_\_\_\_ (Job Description) and does hereby waive and release any right to a construction  
30 lien, bond right or other payment claim against Owner, except for disputed claims for extra  
31 work in the amount of \$\_\_\_\_\_.

32 Dated: \_\_\_\_\_  
33 Company name: \_\_\_\_\_  
34 By: \_\_\_\_\_  
35 Signature: \_\_\_\_\_  
36 Title: \_\_\_\_\_

37 NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES  
38 THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS  
39 ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.  
40 IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.  
41 \_\_\_\_\_

42  
43 **SECTION 5.** ORS 701.005 is amended to read:

44 701.005. As used in this chapter:

45 (1) "Board" means the Construction Contractors Board.

- 1 (2) “Commercial contractor” means a licensed contractor that holds an endorsement as a:
- 2 (a) Commercial general contractor level 1;
- 3 (b) Commercial specialty contractor level 1;
- 4 (c) Commercial general contractor level 2;
- 5 (d) Commercial specialty contractor level 2; or
- 6 (e) Commercial developer.
- 7 (3) “Commercial developer” means a developer of property that is zoned for or intended for use
- 8 compatible with a small commercial or large commercial structure.
- 9 (4) “Construction debt” means an amount owed under:
- 10 (a) An order or arbitration award issued by the board that has become final by operation of law;
- 11 (b) A judgment or civil penalty that has become final by operation of law arising from con-
- 12 struction activities within the United States; or
- 13 (c) A judgment or civil penalty that has become final by operation of law arising from a failure
- 14 to comply with ORS 656.017.
- 15 (5) “Contractor” means any of the following:
- 16 (a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers
- 17 to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect,
- 18 move, wreck or demolish, for another, [*any*] a building, highway, road, railroad, excavation or other
- 19 structure, project, development or improvement attached to real estate, or to do any part thereof.
- 20 (b) A person that purchases or owns property and constructs or for compensation arranges for
- 21 the construction of one or more residential structures or small commercial structures with the in-
- 22 tent of selling the structures.
- 23 (c) A school district, as defined in ORS 332.002, that permits students to construct a residential
- 24 structure or small commercial structure as an educational experience to learn building techniques
- 25 and sells the completed structure.
- 26 (d) A community college district, as defined in ORS 341.005, that permits students to construct
- 27 a residential structure or small commercial structure as an educational experience to learn building
- 28 techniques and sells the completed structure.
- 29 (e) [*Any*] A person except a landscape contracting business, nurseryman, gardener or person
- 30 engaged in the commercial harvest of forest products, that is engaged as an independent contractor
- 31 to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.
- 32 (f) A business that supplies the services of a home inspector certified under ORS 701.350 or a
- 33 cross-connection inspector and backflow assembly tester certified under ORS 448.279.
- 34 (g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid
- 35 to clean or service chimneys.
- 36 (6) “Developer” means a contractor that owns property or an interest in property and engages
- 37 in the business of arranging for construction work or performing other activities associated with the
- 38 improvement of real property, with the intent to sell the property.
- 39 (7)(a) “General contractor”[:]
- 40 [*a*] means a contractor whose business operations require the use of more than two unrelated
- 41 building trades or crafts that the contractor supervises or performs in whole or part, whenever the
- 42 sum of all contracts on any single property, including materials and labor, exceeds an amount es-
- 43 tablished by rule by the board.
- 44 (b) “**General contractor**” does not mean a specialty contractor or a residential limited con-
- 45 tractor.

1       **(8)(a) “Home improvement” means a renovation, remodel, repair or alteration by a resi-**  
 2       **dential contractor to an existing owner-occupied residential structure.**

3       **(b) “Home improvement” does not include a renovation, remodel, repair or alteration by**  
 4       **a residential contractor in the course of constructing a new residential unit.**

5       [(8)] **(9)(a) “Home inspector” means a person who, for a fee, inspects and provides written re-**  
 6       **ports on the overall physical condition of a residential structure and the appurtenances [thereto.]**  
 7       **of the residential structure.**

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

10       [(9)] **(10) “Key employee” means an employee or owner of a contractor who is a corporate offi-**  
 11       **cer, manager, superintendent, foreperson or lead person or any other employee [identified by] the**  
 12       **board identifies by rule.**

13       [(10)] **(11) “Large commercial structure” means a structure that is not a residential structure**  
 14       **or small commercial structure.**

15       [(11)] **(12) “Officer” means any of the following persons:**

- 16       (a) A president, vice president, secretary, treasurer or director of a corporation.
- 17       (b) A general partner in a limited partnership.
- 18       (c) A manager in a manager-managed limited liability company.
- 19       (d) A member of a member-managed limited liability company.
- 20       (e) A trustee.

21       (f) A person [defined] **the board defines by rule** as an officer [under board rules]. The definition  
 22       of officer adopted by board rule may include persons not listed in this subsection who may exercise  
 23       substantial control over a business.

24       [(12)] **(13) “Residential contractor” means a licensed contractor that holds an endorsement as**  
 25       **a:**

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

30       [(13)] **(14) “Residential developer” means a developer of property that is zoned for or intended**  
 31       **for use compatible with a residential or small commercial structure.**

32       [(14)] **(15)(a) “Residential structure”[:]**

33       **[(a)] means:**

- 34       (A) A residence that is a site-built home;
- 35       (B) A structure that contains one or more dwelling units and is four stories or less above grade;
- 36       (C) A condominium, rental residential unit or other residential dwelling unit that is part of a  
 37       larger structure, if the property interest in the unit is separate from the property interest in the  
 38       larger structure;
- 39       (D) A modular home constructed off-site;
- 40       (E) A manufactured dwelling; or
- 41       (F) A floating home as defined in ORS 830.700.

42       **(b) “Residential structure” does not mean:**

- 43       (A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and  
 44       nonresidential units;
- 45       (B) Transient lodging;



1 (C) A residential school or residence hall;

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

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

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

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

8 (H) A nursing home;

9 (I) A hospital; or

10 (J) A place constructed primarily for recreational activities.

11 [(15)] (16) "Responsible managing individual" means an individual who:

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

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

15 (c)(A) [Has] Successfully completed the training and testing required for licensing under ORS  
16 701.122 within a period [identified by] the board **identifies** by rule;

17 (B) [Has] Demonstrated experience [required by] the board **requires** by rule; or

18 (C) [Has] Complied with the licensing requirements of ORS 446.395.

19 [(16)] (17) "Small commercial structure" means:

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

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

27 (c) A nonresidential structure of any size for which the contract price of all construction con-  
28 tractor work to be performed on the structure as part of a construction project does not total more  
29 than \$250,000.

30 [(17)] (18) "Specialty contractor" means a contractor who performs work on a structure, project,  
31 development or improvement and whose operations as such do not fall within the definition of  
32 "general contractor." "Specialty contractor" includes a person who performs work regulated under  
33 ORS 446.395.

34 [(18)] (19) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of  
35 attached units in which:

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

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

38 **SECTION 6. Section 7 of this 2010 Act is added to and made a part of ORS chapter 701.**

39 **SECTION 7. (1) A contractor may not require an owner, as a condition of commencing**  
40 **or performing a home improvement, to pay a deposit or other sum to the contractor, a**  
41 **subcontractor or another person that is more than the following maximum amounts:**

42 (a) **For contracts for which the total contract price is less than or equal to \$100,000, the**  
43 **maximum deposit is 50 percent of the total contract price.**

44 (b) **For contracts for which the total contract price is more than \$100,000, the maximum**  
45 **deposit is 25 percent of the total contract price or \$50,000, whichever is greater.**

1           **(2) If the contractor can demonstrate that the contractor needs additional funds in order**  
 2 **to purchase materials necessary for the project, the deposit amounts set forth in subsection**  
 3 **(1) of this section may be increased to the amount the contractor demonstrates is necessary**  
 4 **to purchase the materials.**

5           **SECTION 8.** ORS 701.410 is amended to read:

6           701.410. (1) As used in ORS 279C.555, 279C.570, 701.410, 701.420, 701.430, 701.435 and 701.440,  
 7 *unless the context otherwise requires*]:

8           (a) “Construction” *[includes]* **means**:

9           (A) Excavating, landscaping, demolishing and detaching existing structures, leveling, filling in  
 10 and *[doing other preparation of]* **otherwise preparing** land for the making and placement of a  
 11 building, structure or superstructure;

12           (B) Creating or making a building, structure or superstructure; and

13           (C) Altering, partially constructing and doing repairs in and upon a building, structure or  
 14 superstructure.

15           (b) “Contractor” *[includes a person who]* **means a person that** contracts with an owner on  
 16 predetermined terms to be responsible for *[the performance of]* **performing** all or part of a job of  
 17 construction in accordance with established specifications or plans, *[retaining]* **and that retains**  
 18 control of **the** means, method and manner of accomplishing the desired result.

19           (c) “Owner” *[includes a person who]* **means a person that** is or claims to be the owner in fee  
 20 or a lesser estate of the land, building, structure or superstructure on which construction is per-  
 21 formed and *[who]* **that** enters into an agreement with a contractor for the construction.

22           (d) “Subcontractor” *[includes a person who]* **means a person that** contracts with a contractor  
 23 or another subcontractor on predetermined terms to be responsible for *[the performance of]* **per-**  
 24 **forming** all or part of a job of construction in accordance with established specifications or plans.

25           (2) As used in ORS 701.410, 701.420, 701.430, 701.435 and 701.440, “retainage” means the differ-  
 26 ence between the amount *[earned by]* a contractor or subcontractor **earns** under a construction  
 27 contract and the amount *[paid on the contract by the owner or, in the case of a subcontractor, by a*  
 28 *contractor or another subcontractor]* **the owner pays on the contract to the contractor, the**  
 29 **amount the contractor pays on the contract to the subcontractor or the amount the sub-**  
 30 **contractor pays on the contract to another subcontractor.**

31           **SECTION 9.** ORS 701.420 is amended to read:

32           701.420. (1) Partial payment *[shall be]* **is** allowed and **may be** made on contracts for construction  
 33 **and home improvement.** Except as provided in ORS 701.430 (2), **an owner, contractor or sub-**  
 34 **contractor may withhold as retainage** an amount equal to not more than five percent of the  
 35 contract price of the work completed *[may be withheld by an owner, contractor or subcontractor as*  
 36 *retainage]*. Partial payment allowed under this subsection *[shall not be construed as]* **is not** accept-  
 37 ance or approval of some of the work or *[as]* a waiver of *[any]* defects *[therein]* **in the work.**

38           (2) The owner, contractor or subcontractor shall pay interest at the rate of one percent per  
 39 month on the final payment due the contractor or subcontractor. Except as provided in ORS 701.430  
 40 (2), the interest shall commence 30 days after the **contractor or subcontractor has completed**  
 41 **and the owner has accepted the** work under the contract for construction for which the final  
 42 payment is due *[has been completed and accepted and]*. **The interest** shall run until the date when  
 43 final payment is tendered to the contractor or subcontractor. **When** the contractor or subcontractor  
 44 **considers the work that the contractor or subcontractor is contracted to perform to be**  
 45 **complete, the contractor or subcontractor** shall notify the party to whom the contractor or

1 subcontractor is responsible for [*the performance of*] **performing the** construction work under the  
 2 contract [*when the contractor or subcontractor considers the work that the contractor or subcontractor*  
 3 *contracted to perform to be complete and that*]. **The** party shall, within 15 days after receiving the  
 4 notice, either accept the work or notify the contractor or subcontractor of work yet to be performed  
 5 [on] **under** the contract. If the party [*to whom the contractor or subcontractor is responsible for the*  
 6 *performance of construction work under the contract*] does not **accept the work or does not** notify  
 7 the contractor or subcontractor of work yet to be performed within the time allowed, the interest  
 8 required under this subsection shall commence 30 days after the end of the 15-day period.

9 (3) When a contractor pays a subcontractor in full, including the amount **the contractor** with-  
 10 held as retainage, the owner with whom [*that*] **the** contractor has the contract shall pay the con-  
 11 tractor, out of the amount that [*is withheld by*] the owner **withheld** from [*that*] **the** contractor as  
 12 retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor. The  
 13 contractor shall notify the owner when the contractor pays a subcontractor in full under this sec-  
 14 tion and the owner shall, within 15 days after receiving the notice, pay the contractor the amount  
 15 due the contractor under this subsection. Interest on the amount due the contractor at the rate of  
 16 one percent per month shall commence 30 days after the owner receives notice of full payment to  
 17 the subcontractor.

18 **SECTION 10. ORS 87.091 is repealed.**

19 **SECTION 11. (1) Sections 3, 4 and 7 of this 2010 Act, the amendments to ORS 87.007,**  
 20 **701.005, 701.410 and 701.420 by sections 1, 5, 8 and 9 of this 2010 Act and the repeal of ORS**  
 21 **87.091 by section 10 of this 2010 Act become operative on January 1, 2011.**

22 (2) Sections 3, 4 and 7 of this 2010 Act, the amendments to ORS 87.007, 701.005, 701.410  
 23 and 701.420 by sections 1, 5, 8 and 9 of this 2010 Act and the repeal of ORS 87.091 by section  
 24 **10 of this 2010 Act apply to sales of residential property and home improvements that occur**  
 25 **and claims of lien that are filed, perfected or waived on or after the operative date specified**  
 26 **in subsection (1) of this section.**

27 (3) **The Construction Contractors Board, before the operative date specified in subsection**  
 28 **(1) of this section, may adopt rules or take any action that is necessary to enable the board**  
 29 **to exercise, on or after the operative date specified in subsection (1) of this section, all the**  
 30 **duties, functions and powers conferred on the board by sections 3, 4 and 7 of this 2010 Act**  
 31 **and the amendments to ORS 87.007, 701.005, 701.410 and 701.420 by sections 1, 5, 8 and 9 of**  
 32 **this 2010 Act.**

33 **SECTION 12. This 2010 Act being necessary for the immediate preservation of the public**  
 34 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**  
 35 **on its passage.**

36