

Enrolled
Senate Bill 382

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Construction Law Section)

CHAPTER

AN ACT

Relating to notices required for construction lien claimants; creating new provisions; and amending ORS 87.005, 87.018 and 205.234.

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

SECTION 1. ORS 87.005 is amended to read:

87.005. As used in ORS 87.001 to 87.060 and 87.075 to 87.093:

(1) "Commencement of the improvement" means the first actual preparation or construction upon the site or the first delivery to the site of materials of such substantial character as to notify interested persons that preparation or construction upon the site has begun or is about to begin.

(2) "Construction" [*includes creation*] **means creating** or making [*of*] an improvement[, *and*] **or performing an** alteration, partial construction [*and repairs*] **or repair** [*done*] in and upon an improvement.

(3) "Construction agent" [*includes*] **means** a contractor, architect, builder or other person having charge of construction or preparation.

(4) "Contractor" means a person [*who*] **that** contracts on predetermined terms to be responsible for [*the performance of*] **performing** all or part of a job of preparation or construction in accordance with established specifications or plans, retaining control of **the** means, method and manner of accomplishing the desired result, and [*who*] **that** provides:

- (a) Labor at the site; or
- (b) Materials, supplies and labor at the site.

(5) "Improvement" [*includes any*] **means a** building, wharf, bridge, ditch, flume, reservoir, well, tunnel, fence, street, sidewalk, machinery, aqueduct [*and all*] **or** other [*structures and superstructures, whenever it can be made applicable thereto*] **structure or superstructure.**

[(6) "Mortgagee" means a person who has a valid subsisting mortgage of record or trust deed of record securing a loan upon land or an improvement.]

(6) "Mortgagee" means a person:

(a)(A) Whose name and address appear as mortgagee or beneficiary in a mortgage of record or a trust deed of record that is recorded under ORS 205.234 with the county clerk of the county within which the property or improvement is located; and

(B) That has a valid subsisting mortgage of record or trust deed of record that secures a loan upon land or upon an improvement; or

(b)(A) Whose name and address appear as the assignee of the mortgagee or beneficiary in an assignment of mortgage of record or a trust deed of record that is recorded under ORS 205.234 with the county clerk of the county within which the property or improvement is located; and

(B) That has a valid subsisting mortgage of record or trust deed of record that secures a loan upon land or upon an improvement.

(7) "Original contractor" means a contractor *[who]* **that** has a contractual relationship with the owner.

(8) "Owner" means:

(a) A person *[who]* **that** is or claims to be the owner in fee or a lesser estate of the land on which preparation or construction is performed;

(b) A person *[who has]* **that** entered into a contract *[for the]* **to** purchase *[of]* an interest in the land or improvement *[thereon]* sought to be charged with a lien created under ORS 87.010; or

(c) A person *[to whom]* **that has** a valid *[subsisting]* lease on land or an improvement *[is made,]* and *[who]* **that** possesses an interest in the land or improvement by reason of *[that]* **the** lease.

(9) "Preparation" *[includes]* **means** excavating, surveying, landscaping, *[demolition and detachment of]* **demolishing or detaching** existing structures[,] **or** leveling, filling in[, *and other preparation of]* **or otherwise making** land **ready** for construction.

(10) "Site" means the land on which construction or preparation is performed.

(11) "Subcontractor" means a contractor *[who]* **that** has no direct contractual relationship with the owner.

SECTION 2. ORS 87.018 is amended to read:

87.018. (1) Except as provided in ORS 87.093, all notices required under ORS 87.001 to 87.060 and 87.075 to 87.093 *[shall]* **must** be in writing and **be** delivered in person or *[delivered]* by registered or certified mail.

(2) A notice that must be given under ORS 87.001 to 87.060 or 87.075 to 87.093 to a mortgagee must be delivered to the mortgagee only if the name and address of the mortgagee appear in a mortgage of record or a trust deed of record as required under ORS 205.234 (1)(b) or in the instrument that assigns a mortgage or trust deed as required under ORS 205.234 (1)(g).

SECTION 3. ORS 205.234 is amended to read:

205.234. (1) When *[any]* **an** instrument is presented to a county clerk for recording, the first page of the instrument *[shall]* **must** contain at least:

(a) The names of the transactions as required in ORS 205.236;

(b) The names **and addresses** of the persons described in ORS 205.125 (1)(a) and (b) and 205.160;

(c) *[The person and address (for mailing purposes only) to whom]* **The person to whom and, for mailing purposes only, the address to which** the instrument will be delivered as provided in ORS 205.180;

(d) For instruments *[conveying or contracting]* **that convey or contract** to convey fee title to *[any]* real estate and *[all]* **for** memoranda of *[such]* **the** instruments, the true and actual consideration paid for *[such]* **the** transfer as required by ORS 93.030;

(e) For instruments *[conveying or contracting]* **that convey or contract** to convey fee title to *[any]* real estate, the tax statement information required by ORS 93.260;

(f) For instruments recorded in the County Clerk Lien Record, the information described in ORS 205.125 (1)(c) and (e); and

(g) For instruments *[assigning]* **that assign** a mortgage or trust deed, the name and address of the assignee mortgagee or assignee trust deed beneficiary.

(2) Notwithstanding ORS 205.327, if an instrument presented for recording does not contain the information required by subsection (1) of this section, a cover sheet may be prepared that contains the required information. *[The cover sheet shall be prepared by]* The person *[presenting]* **that presents** the instrument for recording **shall prepare the cover sheet.** The cover sheet may be attached to the instrument and *[shall]* **must** be recorded as a part of the instrument. Any errors in

the cover sheet [*shall*] do not affect the transactions contained in the instrument [*itself*]. The cover sheet need not be separately signed or acknowledged.

SECTION 4. (1) The amendments to ORS 87.005, 87.018 and 205.234 by sections 1, 2 and 3 of this 2011 Act apply to mortgages and trust deeds that are recorded on or after the effective date of this 2011 Act.

(2) The amendments to ORS 87.005 and 87.018 by sections 1 and 2 of this 2011 Act apply to assignments of mortgages and trust deeds that are recorded on or after January 1, 2008.

Passed by Senate May 5, 2011

Received by Governor:

Repassed by Senate June 13, 2011

.....M.,....., 2011

Approved:

.....
Robert Taylor, Secretary of Senate

.....M.,....., 2011

.....
Peter Courtney, President of Senate

.....
John Kitzhaber, Governor

Passed by House June 7, 2011

Filed in Office of Secretary of State:

.....
Bruce Hanna, Speaker of House

.....M.,....., 2011

.....
Arnie Roblan, Speaker of House

.....
Kate Brown, Secretary of State