



Oregon

John A. Kitzhaber, MD, Governor

Construction Contractors Board

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Construction Contractors Board (CCB)

Testimony SB 205

Before the 77th Oregon Legislative Assembly
Senate Business and Transportation Committee

February 4, 2013 at 3:00 p.m.

Hearing Room B

Committee Members:

Senator Lee Beyer, Chair

Senator Bruce Starr, Vice-Chair

Senator Chris Edwards

Senator Fred Girod

Senator Rod Monroe

Senator Chuck Thomsen

Committee Administrator

Patrick Brennan

(503) 986-1674

I. INTRODUCTION:

Appearing Before Committee

- Craig P. Smith, Administrator, CCB

II. PURPOSE OF THE BILL:

The bill maintains legislative mandates for written contract (residential only) over \$2,000 but:

- a. Removes legislative mandates on what needs to be included in these written contracts.
- b. Maintains CCB's authority to define mandatory provisions for residential written contracts.

III. PROBLEM

- A. In 2007, the Legislature passed HB 2654 (2007). Section 7 required residential construction contracts to contain certain terms. These included:
 - (1) A statement the contractor is licensed by the board.
 - (2) The name, license number, address, and phone number of the contractor.
 - (3) An acknowledgment of a written offer of warranty, if the offer is required, and whether the warranty was accepted or rejected.
 - (4) A summary of notices required by HB 2654 (2007).
 - (5) An acknowledgment of maintenance information required by HB 2654 (2007).
 - (6) An explanation of the property owner's contract rights including: (a) the ability to file a claim with CCB; and (b) whether there was a mediation or arbitration provision in the contract.
- B. The notice summary requirement was redundant. Contractors were providing complete notices. As a practical matter, maintenance information is usually given when a job is complete, not when the contract is signed. CCB sought legislative changes.
- C. The 2009 Legislature passed SB 203 (2009). Section 8 removed the requirement that the contract contain a summary of notices and replaced it with a requirement that the contract simply list the notices. The Legislature also passed SB 205. Section 1 removed the requirement that the contract contain an acknowledgement of maintenance information.



IV. PROPOSED SOLUTION:

CCB is well-positioned to observe difficulties encountered by contractors trying to comply with the laws requiring mandatory terms in contracts. CCB can also identify items that should be included in contracts but are not required by statute. It is more efficient for CCB to amend its rules rather than repeatedly seek legislative changes. CCB designs its rules to strike a balance between maintaining consumer protection and providing business-friendly regulation.

CCB's current rule, OAR 812-012-0110, provides all the protections required by the current law (ORS 701.305). CCB intends to maintain these protections.

V. ATTACHMENTS:

OAR 812-012-0110
Required Residential Consumer Notices
HB 2654 (2007)
SB 203 (2009)
SB 205 (2009)
Agency Program Summary

VI. The agency asks the committee to support SB 205 by voting to move it to the floor of the Senate with a do-pass recommendation.

Senate Bill 205

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 Governor John A. Kitzhaber, M.D., for Construction Contractors Board)

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.

Eliminates requirement that Construction Contractors Board rules require certain contract terms as mandatory contract contents.

A BILL FOR AN ACT

1 Relating to residential construction contract terms; amending ORS 701.305.

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

3 **SECTION 1.** 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[,] and 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 board
17 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) A list of the notices required under ORS 87.098 or under rules adopted under ORS 701.330
21 and 701.335 (2) on the contractor's bid proposal; and]

22 [(e) An explanation of the property owner's rights under the contract including, but not limited to,
23 the ability to file a claim with the board and the existence of any mediation or arbitration provision
24 in the contract, set forth in a conspicuous manner as defined by the board by rule.]
25
26

Already seen
Notice
Already
to given
the
Notice

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.

Current CCB Rule on Residential Contracts

812-012-0110

Terms of Written Contract

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

~~*(a) A statement that the contractor is licensed by the Construction Contractors Board.~~

(b) The contractor's name, address, phone number and license number issued by the board as shown on board records.

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

~~*(d) A list of the notices required under ORS 87.093 or under rules adopted under ORS 701.330 and 701.335(2).~~

(e) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule;

(f) Customer's name and address;

(g) Address where the work is to be performed;

(h) A description of the work to be performed; and

(i) Price and payment terms.

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, 701.305, 701.315, 701.320, 701.330 & 701.335

Stats. Implemented: ORS 701.305, 701.330 & 701.335

(12/07, 6/08, 12/09 (eff. 1/1/2010), 4/10)

~~* If the bill passes, these items would be removed.~~

Required Notices for Residential Construction Projects

Below is a summary of the three consumer notices that contractors working on residential construction projects must provide to the property owner. These are only required from the contractor that has a contract with the property owner. These are not required from subcontractors.

Consumer Protection Notice	When is it given?	Proof of delivery	Purpose of the notice	Consequences for not giving notice	Authority
<p>Consumer Protection Notice</p>	<p>On or before the date the contractor is entered into when the contract exceeds \$2000.</p> <p>Written contracts are required if the contract price is more than \$2000. If the contract is less than \$2000, but goes over, a written contract and notice must be given.</p>	<p>Contractors must maintain proof of delivery for two years after the contract was entered into.</p> <p>Proof shall include but isn't limited to:</p> <ul style="list-style-type: none"> • Signed copy of notice; • Phrase in the contract, acknowledging receipt and initiated by the owner; or • Copies of the contract if notice is fully contained in the contract. 	<ul style="list-style-type: none"> • Explains contractor licensing standards; • Bond and insurance requirements; • Steps consumers can take for a successful construction project; and • What to do if problems occur. 	<p>Civil penalty of up to \$5,000 for several violations.</p>	<p>ORS 701.330 (2007) OAR 812-001-0200 OAR 812-012-0130 ORS 701.992(1)</p>
<p>Notice of Procedure</p>	<p>On or before the date the contractor is entered into when the contract exceeds \$2000.</p> <p>Written contracts are required if the contract price is more than \$2000. If the contract is less than \$2000, but goes over, a written contract and notice must be given.</p>	<p>Contractors must maintain proof of delivery for two years after the contract was entered into. Proof shall include but isn't limited to:</p> <ul style="list-style-type: none"> • Signed copy of notice; • Phrase in the contract, acknowledging receipt and initiated by the owner; or • Copies of the contract if notice is fully contained in the contract. 	<p>Explains what a homeowner must do before beginning an arbitration or court action against a contractor.</p>	<p>Civil penalty of up to \$5,000 for several violations.</p>	<p>ORS 701.330 (2007) OAR 812-001-0200 OAR 812-012-0130</p>
<p>Information Notice to Owner about Construction Liens</p>	<p>On or before the date the contractor is entered into when the contract exceeds \$2000.</p> <p>Written contracts are required if the contract price is more than \$2000. If the contract is less than \$2000, but goes over, a written contract and notice must be given.</p> <ul style="list-style-type: none"> • Mail or deliver no later than five working days after knowing the price exceeded \$2,000. • May deliver in person, by registered or certified mail, or first class with a certificate of mailing. 	<p>Contractors must maintain proof of delivery for two years after the contract was entered into. Proof shall include but isn't limited to:</p> <ul style="list-style-type: none"> • Signed copy of notice; • Phrase in the contract, acknowledging receipt and initiated by the owner; or • Copies of the contract if notice is fully contained in the contract. 	<ul style="list-style-type: none"> • Explains the construction lien law. • Includes steps homeowners can take to protect their property from a construction lien and "pay twice" situations. • Protect contractor's lien rights. 	<ul style="list-style-type: none"> • Civil penalty of up to \$5,000. • Contractor can lose lien rights. • License may be suspended. 	<p>ORS 701.992(1) ORS 87.093 OAR 812-001-0200 OAR 812-012-0130 ORS 701.992(1)</p>



Consumer Protection Notice

Actions to help make your project successful

(ORS 701.330 (1))

Oregon law requires contractors to provide the homeowner with this notice at the time of written contract, for work on a residential structure. This notice explains licensing, bond and insurance requirements, and steps that consumers can take to help protect their interests.

START OUT YOUR PROJECT RIGHT

- 1. Make sure your contractor is properly licensed** before you sign a contract. Visit www.oregon.gov/ccb, and click on the link, **Check on a Contractor's License**, or call our offices at 503-378-4621. To be licensed in Oregon, contractors must take training and pass a test on business practices and law. Licensing is not a guarantee of the contractor's work.
 - **A license requires the contractor to maintain a surety bond and liability insurance** - The CCB surety bond provides a limited amount of financial security if the contractor is ordered to pay damages in contract disputes. It is not intended to be a safety net for consumer damages. Consumers with large projects may wish to look into performance bonds. Liability insurance coverage provides for property damage and bodily injury caused by the contractor. It does not cover contract disputes, including poor workmanship.
 - **If your contractor is not licensed** - the CCB bond and dispute resolution services will not be available to you.
- 2. What you should know about bids, contracts, and change orders:**
 - **Bids** - *Do not automatically accept the lowest bid* - A low bid may make it necessary for the contractor to use lower quality materials and to cut corners in workmanship.
 - **Contracts and Change Orders** - *Always get it in writing*. Your contractor is required to provide a written contract if the contract price is more than \$2000. The CCB recommends that all contracts be in writing.
 - **Contracts should be as detailed as possible** - Some items to include are materials and costs, permits, estimated start and completion dates, debris removal, and arbitration clauses. Make sure the contractor's name, CCB number, and contact information is included in the contract.
 - **Read and understand your contract before signing it** - Don't be pressured into signing your contract without taking the time needed to go through it. Make sure it includes enough details to avoid misunderstandings and to protect you and your property.
- 3. Additional contract information you should know:**
 - **A Payment Schedule** - should be included in the contract. Stick to the schedule and never pay in full for a project before the work is complete.
 - **Special Note on Liens** - Subcontractors and material suppliers that work on your project are often paid by the general contractor. If a general contractor fails to pay, the subcontractor may file a lien on your property. For information on construction liens, visit the CCB's Consumer Help Page at www.oregon.gov/ccb, or contact an attorney.
 - **Warranty on new residential construction** - Contractors must make an offer of a warranty when constructing a new residential structure. Consumers may accept or refuse the warranty.
- 4. If you should have a problem with your contractor** - You can file a complaint with the CCB against a **licensed** contractor within one year of the substantial completion of work on your project. Contact the CCB office at 503-378-4621 for help.

Visit the CCB website at for more information on having a successful project.
www.oregon.gov/ccb

CONTRACTOR: CCB#: _____

PROPERTY OWNER: _____

Signature

Date

Signature

Date



Information Notice To Owner About Construction Liens

(ORS 87.093)

This is not a lien. Your contractor is required by law to provide this notice to inform you about construction lien laws. This notice explains the construction lien law, and gives steps you can take to protect your property from a valid lien. As an owner, you should read this information notice carefully. This information notice is required to be given if you contract for residential construction or remodeling, if you are buying a new home, or at any time the contract price exceeds \$2,000.

- Under Oregon law, your contractor and others who provide labor, materials, equipment, or services to your project may be able to claim payment from your property if they have not been paid. That claim is called a Construction Lien.
- If your contractor does not pay subcontractors, employees, rental equipment dealers, materials suppliers, or does not make other legally required payments, those who are owed money may place a lien against your property for payment. **It is in your best interest to verify that all bills related to your contract are paid, even if you have paid your contractor in full.**
- If you occupy or will occupy your home, persons who supply materials, labor, equipment, or services ordered by your contractor are permitted by law to file a lien against your property only if they have sent you a timely Notice of Right to Lien (which is different from this Information Notice), before or during construction. If you enter into a contract to buy a newly-built, partially-built, or newly-remodeled home, a lien may be claimed even though you have not received a Notice of Right to a Lien. If you do not occupy the building, a Notice of Right to Lien is not required prior to filing a lien.

This notice is not intended to be a complete analysis of the law. You should consult an attorney for more information.

Common Questions and Answers About Construction Liens

Can someone record a construction lien even if I pay my contractor? Yes. Anyone who has not been paid for labor, material, equipment, or services on your project and has provided you with a valid Notice of Right to Lien has the right to record a construction lien.

What is a Notice of Right to Lien? A Notice of a Right to Lien is sent to you by persons who have provided labor, materials, or equipment to your construction project. It protects their construction lien rights against your property.

What should I do when I receive a Notice of Right to Lien? Don't ignore it. Find out what arrangements your contractor has made to pay the sender of the Notice of Right to Lien.

When do construction liens need to be recorded? In Oregon, construction liens generally need to be recorded within 75 days from the date the project was substantially completed, or 75 days from the date that the lien claimant stopped providing labor, material, equipment, or services, whichever happened first. To enforce a lien, the lien holder must file a lawsuit in a proper court within 120 days of the date the lien was filed.

Note to Contractor: This notice must be delivered personally, or mailed by registered mail, certified mail, or by first-class mail with a certificate of mailing. Ask the signing parties to provide you with an original or copy to retain in your files. You should retain proof of delivery of this notice for at least two years.

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(over)

Steps That Consumers Can Take to Protect Themselves

- **Contact the Construction Contractors Board (CCB) and confirm that your contractor is licensed.** The law requires all construction contractors to be licensed with the CCB. Check a contractor's license online at the CCB consumer website: www.oregon.gov/ccb, or you can call 503-378-4621.
- **Review the Consumer Protection Notice (ORS 701.330(1)),** which your contractor must provide to you at the time of contract on a residential structure.
- **Consider using the services of an escrow agent** to protect your interests. Consult your attorney to find out whether your escrow agent will protect you against liens when making payments.
- **Contact a title company about obtaining a title policy** that will protect you from construction lien claims.
- **Find out what precautions, if any, will be taken** by your contractor, lending institution, and architect to protect your project from construction liens.
- **Ask the contractor to get lien waivers or lien releases** from every subcontractor, materials provider, equipment provider, and anyone else the contractor is responsible for paying. Do this before you give your contractor a progress payment.
- **Have a written contract with your contractor.** A written contract is **required** for projects greater than \$2,000. An original contractor that fails to provide a written contract as required by law, may not place a construction lien against the owner's property.
- **If you receive a Notice of Right to Lien, ask for a statement of the reasonable value of the materials, labor, equipment, or services** provided to your project from everyone who sends you a Notice of Right to Lien. If the information is not provided in a timely manner, the sender of the Notice of Right to Lien may still be able to file a construction lien, but will not be entitled to attorney fees.
- **When you pay your contractor, write checks made jointly payable to the contractor, subcontractors, materials, equipment, or services providers.** The checks name both the contractor and the subcontractor, materials or equipment provider. The checks can only be cashed if **both** the contractor and the subcontractor, materials or equipment provider endorses it. This ensures that the subcontractor and other providers will be paid by your contractor, and can eliminate the risk of a lien on your property.
- **Should you have a dispute with your contractor,** you may be able to file a complaint with the CCB and be reimbursed in whole or in part from the contractor's bond. For more details about help available through the agency, write to the CCB at PO Box 14140, Salem, OR 97309-5052 or call 503-378-4621.
- **Consult an attorney.** If you do not have an attorney, consider contacting the Oregon State Bar Referral Service at 503-684-3763 or 1-800-452-7636.

Signing this Information Notice verifies only that you have received it. Your signature does not give your contractor or those who provide material, labor, equipment, or services, any additional rights to place a lien on your property.

Job Site Address: _____

CONTRACTOR: CCB#: _____

PROPERTY OWNER: _____

Print Name (as it appears on contract)

Print Name (as it appears on contract)

Signature

Date

Signature

Date



Notice of Procedure

Regarding Residential Construction Arbitrations and Lawsuits

(ORS 701.330)

Oregon law contains important requirements that homeowners must follow before starting an arbitration or court action against any contractor, subcontractor, or supplier (materials or equipment) for construction defects.

Before you start an arbitration or court action, you must do the following:

1. Deliver a written notice of any conditions that you believe are defective to the contractor, subcontractor, or supplier that you believe is responsible for the alleged defect.
2. Allow the contractor, subcontractor, supplier, or its agent, to visually inspect the possible defects and also allow the contractor, subcontractor, or supplier to do reasonable testing.
3. Provide the contractor, subcontractor, supplier, or its agent, the opportunity to make an offer to repair or pay for the defects. You are not obligated to accept any offer made.

There are strict procedures and deadlines that must be followed under Oregon law. Failure to follow those procedures or meet those deadlines will affect your right to start an arbitration or court action.

You should contact an attorney for information on the procedures and deadlines required under Oregon law.

Your contractor is supplying this notice to you as required by Oregon law.

CONTRACTOR: CCB#: _____

HOMEOWNER: _____

Print Contractor Name (as it appears on contract)

Print Homeowner Name (as it appears on contract)

Signature of Authorized Representative Date

Signature Date

Disclaimer: *The only purpose of this sample contract is to serve as an educational example of the contract terms that are required by ORS 701.305. It does not constitute legal advice, nor does it substitute for legal advice. You should not rely on this sample contract when determining whether your contract is valid, complete, sufficient or enforceable*

Contract for Construction Work

This is a contract for construction work to be performed by **ABC Construction, LLC** ("ABC") for _____ ("HOMEOWNER") made this _____ day of _____.

Information

1. ABC is a construction company licensed by the Construction Contractors Board under license No. 999900.
2. ABC is located at 1234 SE Milken St., Portland, Oregon 97999. ABC's phone is (503) 123-9999.
3. HOMEOWNER's name and address are:

[Insert name, address and phone number.]

4. The work site is located at:

[Insert address or location of job site.]

Scope of Work

ABC shall perform the following work for HOMEOWNER:

[Insert description of the work to be performed, who is paying for materials, material specifications if any, who is responsible to obtain permits, a reference to contract drawings if any and any other terms that define the scope of work.]

Payment Terms

HOMEOWNER shall pay for the work on the following schedule:

[Insert the payment schedule.]

List of Required Consumer Notices

Oregon law requires construction contractors to give homeowners certain notices before and during a construction project. The following is a list of the required notices. It is important to read and understand these forms.

1. **Consumer Protection Notice**
2. **Information Notice to Owner About Construction Liens**
3. **Notice of Procedure**

Disclaimer: The only purpose of this sample contract is to serve as an educational example of the contract terms that are required by ORS 701.305. It does not constitute legal advice, nor does it substitute for legal advice. You should not rely on this sample contract when determining whether your contract is valid, complete, sufficient or enforceable

These forms are attached to and made a part of this contract.

Explanation of HOMEOWNERS's Rights

1. Consumers have the right to receive the products and services agreed to in the contract.
2. Consumers have the right to resolve disputes through means outlined in the contract.
3. Consumers have the right to file a complaint with the CCB. Any arbitration or mediation clauses in the contract may need to be complied with during the resolution of the CCB complaint.

Explanation of Mediation or Arbitration Clause

An "arbitration or mediation clause" is a written portion of a contract designed to settle how the parties will solve disputes that may arise during, or after the construction project. Arbitration clauses are very important. They may limit a consumer's ability to have their dispute resolved by the Oregon court system or the Oregon Construction Contractors Board.

- This contract contains an arbitration or mediation clause.
- This contract DOES NOT contain an arbitration or mediation clause.

The Oregon Construction Contractors Board urges consumers to read and understand the entire contract – including any arbitration clause before signing a construction contract. Consumers are not obligated to accept contract terms proposed by the contractor, including arbitration provisions. These may be negotiated to the satisfaction of both parties.

Homeowner

Date

John Smith, Manager
ABC Construction, LLC

Date

**CCB Recommended Contract Addendum to Satisfy
Contract Terms Requirement
OAR 812-012-0110**

1. List of Required Construction Contractor Board (CCB) Consumer Notices

Oregon law requires construction contractors to give homeowners certain notices before and during a construction project. The following is a list of the forms. It is important to read and understand these forms.

- a. **Consumer Protection Notice.**
- b. **Information Notice to Owner About Construction Liens**
- c. **Notice of Procedure**

2. Explanation of Property Owner's Rights

- a. Consumers have the right to receive the products and services agreed to in the contract.
- b. Consumers have the right to resolve disputes through means outlined in the contract.
- c. Consumers have the right to file a complaint with the CCB. Any arbitration or mediation clauses in the contract may prevent the CCB from processing.

3. Arbitration/Mediation Clause

- a. An "arbitration or mediation clause" is a written portion of a contract designed to settle how the parties will solve disputes that may arise during, or after the construction project. Arbitration clauses are very important. They may limit a consumer's ability to have their dispute resolved by the Oregon court system or the Oregon Construction Contractors Board.
- b. The following box should be checked by the contractor:
 - This contract contains an arbitration or mediation clause.
 - This contract DOES NOT contain an arbitration or mediation clause.
- c. The Oregon Construction Contractors Board urges consumers to read and understand the entire contract – including any arbitration clause before signing a construction contract. Consumers are not obligated to accept contract terms proposed by the contractor, including arbitration provisions. These may be negotiated to the satisfaction of both parties.

4. Offer of Written Warranty (New Residential Structure Only)

Purchaser acknowledges the contractor has offered warranty against defects in materials and workmanship to the purchaser. Purchaser has accepted or rejected the offer of a warranty (see appendix ___ in contract.)
_____ purchaser _____ date

Signature

Consumer Signature

Date

Contractor Signature

Date