

Chapter 701

1973 REPLACEMENT PART

Builders

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GENERAL PROVISIONS

701.005 Definitions. As used in ORS 184.520 and this chapter:

- (1) "Board" means the Builders Board.
- (2) "Builder" means a person who, in the pursuit of an independent business, undertakes or offers to undertake or submits a bid, to construct, alter, repair, improve, move or demolish a structure or to perform any work in connection with the construction, alteration, repair, improvement, moving or demolition of a structure.
- (3) "Home builder" means a builder whose business operations require the use of three or more building trades or crafts during his normal course of business activity.
- (4) "Specialty builder" means a person, not a home builder, who is:
 - (a) Authorized to perform work in a trade or craft; and
 - (b) Independently responsible for any work on the structure.
- (5) "Structure" means a residence, duplex or multiunit residential building, which multiunit residential building:
 - (a) Is less than three stories high; and
 - (b) Covers a floor area of less than 4,000 square feet.

[1971 c.740 §1]

701.010 Application. This chapter does not apply to:

- (1) Construction, alteration, improvement or repair of personal property.
- (2) Construction, alteration, improvement or repair carried on within the boundaries of any site or reservation under the jurisdiction of the Federal Government.
- (3) A person who furnishes materials, supplies, equipment or finished product and does not fabricate them into, or consume them, in the performance of the work of a builder.
- (4) Work or operation on one structure or project, under one or more contracts, when the aggregate price of all contracts for labor, materials and all other items is less than \$500 and such work or operation is of a casual, minor or inconsequential nature. This subsection does not apply to a person who advertises or puts out any sign or card or other device which might indicate to the public that he is a builder, or that he is qualified to engage in the business of a builder.
- (5) An owner who contracts for work to be performed by a registered builder.
- (6) A person performing work on a prop-

erty he owns, whether occupied by him or not, or a person performing work on his residence, whether or not he owns the residence.

(7) An architect or a registered professional engineer, registered under the laws of this state, when acting in his professional capacity. This subsection is applicable only when the licensee is operating within the scope of his license.

(8) A person who performs work subject to this chapter for wages only, as an employe of a builder, contractor or of another person.

[1971 c.740 §20]

REGISTRATION

701.055 Registration required of builder; issuance of building permits to unregistered builders prohibited; evidence of activity as builder. (1) A person shall not do work or submit a bid to do work as a builder unless he has a certificate of registration issued by the board. A partnership or joint venture may do work or submit a bid to do work if any one of the general partners or venturers, whose name appears in the name under which the partnership or joint venture does business, is registered.

(2) A city or county shall not issue a building permit to anyone required to be registered under this chapter who does not have a certificate of registration.

(3) It shall be prima facie evidence of doing business as a builder when a person for his own use performs, or employs others to perform, any work described in subsection (2) of ORS 701.005 if within any one 12-month period he offers for sale two or more structures on which he performed such work.

(4) Registration under this chapter is prima facie evidence that the registrant conducts a separate, independent business.

[1971 c.740 §7]

701.065 Unregistered builder may not maintain court suit or action for performance of work or file a lien. A builder may not file a lien or bring or maintain in any court of this state a suit or action for compensation for the performance of any work or for the breach of any contract which is subject to this chapter, unless he was registered under this chapter at the time he bid or entered into a contract for the performance of such work.

[1971 c.740 §8; 1973 c.832 §55]

701.075 Registration application. A person who wishes to register as a builder shall submit an application, under oath, upon a form prescribed by the board. The application shall include the following information regarding the applicant:

- (1) Social security number.
 - (2) Workmen's compensation insurance account number if help is hired or traded.
 - (3) Unemployment insurance account number if help is hired.
 - (4) State withholding tax account number if help is hired.
 - (5) Federal employer identification number, if help is hired or if self-employed and participating in a retirement plan.
 - (6) Whether a home builder or a specialty builder and, if the latter, the type of specialty.
 - (7) The name and address of:
 - (a) Each partner or venturer, if the applicant is a partnership or joint venture.
 - (b) The owner, if the applicant is an individual proprietorship.
 - (c) The corporate officers, if the applicant is a corporation.
- [1971 c.740 §9; 1973 c.832 §56]

701.085 Surety bond required of builders; conditions of bond. A person applying for a certificate of registration shall file with the board a surety bond with one or more corporate sureties authorized to do business in this state in the amount of \$3,000 if the applicant is a home builder, or in the amount of \$1,000 if the applicant is a specialty builder, conditioned that the applicant will, with regard to work subject to this chapter, pay:

- (1) All taxes and contributions due to the State of Oregon;
 - (2) All persons furnishing labor or material, or renting or supplying equipment to the builder; and
 - (3) All amounts that may be adjudged against the builder by reason of negligent or improper work or breach of contract in performing any work subject to this chapter.
- [1971 c.740 §10]

701.095 Deposit in lieu of bond. In lieu of the surety bond required by ORS 701.085, the builder may file with the board, under the same terms and conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the board.

[1971 c.740 §11]

701.105 Insurance required of builders; notice of cancellation. (1) At the time of

registration the applicant shall furnish the board satisfactory evidence that the applicant has procured and has in effect public liability and property damage insurance covering the work of the applicant which is subject to this chapter in the sum of not less than:

- (a) \$25,000 injury or damage to property;
- (b) \$50,000 for injury or damage including death to any one person; and
- (c) \$100,000 for injury or damage including death to more than one person.

(2) The insurer shall notify the board of the cancellation of any insurance required by this section not later than 10 days before the effective date of such cancellation.

[1971 c.740 §12]

701.115 Term of registration; renewal; registration identification card. A certificate of registration is valid for one year from the date of issuance. It may be renewed by the same procedure as for an original registration upon application and the furnishing of such additional supplemental information as the board may require by rule. The board shall issue a pocket-card certificate of registration to a builder registered under this chapter. The board may vary the dates of registration renewal by giving to the applicant written notice of the renewal date being assigned and by making appropriate adjustments in the renewal fee.

[1971 c.740 §13]

701.125 Registration fee. Each applicant shall pay to the board a fee of:

- (1) \$20 for original registration or renewal of registration for a home builder.
- (2) \$10 for original registration or renewal of registration for a specialty builder.
- (3) Up to \$10 for all changes in the registration, as prescribed by the board, other than those due to clerical errors.

[1971 c.740 §14; 1973 c.832 §57]

701.135 Grounds for revocation, suspension, denial of registration. The board may revoke, suspend or refuse to issue or reissue a certificate of registration if the board determines after notice and hearing:

(1) That the registrant or applicant has violated ORS 701.055.

(2) That the registrant or applicant has failed to pay in full any final judgment on claims adjudged by a court of competent jurisdiction referred to in ORS 701.085.

(3) That the insurance required by ORS 701.105 is not currently in effect.

(4) That the surety bond or deposit required by ORS 701.085 and 701.095 are not currently in effect.

(5) That the registrant or applicant has engaged in conduct as a builder that is dishonest or fraudulent that the board finds injurious to the welfare of the public.

(6) That the registrant has violated a rule or order of the board.

[1971 c.740 §15]

CLAIMS

701.145 Procedure for making claims against builder; investigation by board; disciplinary action. Any person having a claim against a builder of the type referred to in ORS 701.085, may file with the board a statement of the claim in such form as the board prescribes. Upon receipt of the statement of claim, the board shall give notice to the builder against whom the claim is made and shall initiate proceedings to determine the validity of the claim. If, after investigation, the board determines that a violation of this chapter or of any rule promulgated thereunder has occurred, the board shall recommend to the registrant such action as the board considers appropriate to compensate the claimant for any damages incurred as the result of the violation. If the builder performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.

[1971 c.740 §16]

701.150 Priority of satisfying claims from bond or deposit. Claims shall be satisfied from the bond or deposit in the following priority:

(1) If the total claims filed with the board against a builder within 90 days after the board has received notice of the first claim against the builder exceed the amount of his bond or deposit:

(a) Labor to one-half of the bond prorated among all labor claimants who file within the 90-day period.

(b) Claims for breach of contract by the owner of the structure.

(c) Claims for breach of contract by a contractor.

(d) Material and equipment.

(e) Taxes and contributions due the State of Oregon.

(2) If the total claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond or deposit, all claims filed within the 90-day

period shall have priority over all claims subsequently filed, and the priorities specified in subsection (1) of this section shall apply to subsequent claims until the amount of the bond or deposit is exhausted but not later than one year following the date of expiration of the certificate of registration in force at the time the work was completed.

[1971 c.740 §17; 1973 c.832 §60]

701.155 Notice of claim to board required. A person having a claim against a builder shall give the board notice of the claim by registered or certified mail 90 days before any action on the bond or deposit is commenced.

[1973 c.832 §59]

BUILDERS BOARD

701.205 Builders Board; members; terms; vacancies; qualifications. (1) There is established within the Department of Commerce the Builders Board, consisting of five members appointed by the Director of the Department of Commerce. Three of the members shall be builders and two shall be public members.

(2) The term of office of each member is four years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment immediately effective for the unexpired term.

(3) Of the members appointed to the board, at least three shall be builders registered under this chapter who maintain their registration in good order during their term of office.

[Subsections (1) and (2) enacted as 1971 c.740 §3; subsection (3) enacted as 1971 c.740 §5]

701.215 Officers; quorum; compensation and expenses. (1) The board shall select from among its members a chairman, a vice chairman and such other officers for such terms and with such duties and powers necessary for the performance of their duties as the board determines.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

[1971 c.740 §6]

701.225 Investigatory powers of board; conduct of hearings. (1) The board may investigate the activities of any person engaged in the building and construction industry to determine compliance with this chapter.

(2) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter.

(3) If any person fails to comply with a subpoena issued under subsection (2) of this section or refuses to testify on matters on which he may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.
[1971 c.740 §18]

701.235 Rulemaking authority. The board shall promulgate rules to carry out this chapter.
[1971 c.740 §19]

701.245 Disposition of moneys received by board. All moneys received by the Build-

ers Board shall be paid to the State Treasurer at the end of every calendar month, or oftener in the discretion of the Department of Commerce, for deposit in the General Fund to become available for general governmental expenses.
[1971 c.740 §23]

PENALTIES

701.990 Penalty. Violation of subsection (1) of ORS 701.055 is a misdemeanor.
[1971 c.740 §22]

701.992 Civil penalty; enforcement. (1) Any person who violates any provision of this chapter or any rule promulgated thereunder shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than \$1,000 for each offense.

(2) Such civil penalty may be recovered by the Attorney General in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.
[1971 c.740 §21]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on November 1, 1973.

Thomas G. Clifford
Legislative Counsel

