Chapter 701

1975 REPLACEMENT PART

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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, and the appurtenaces thereto.

(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.

[1971 c.740 s.1; 1975 c.721 s.1]

Note: The amendments to 701 005 by section 1, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

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 property 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 s.20]

REGISTRATION

701.055 Registration required of builder; issuance of building permits to unregistered builders prohibited; evidence of activity as builder; cities and counties to require registration. (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 such work or submit a bid to do such 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. Each county or city which requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition or repair of any building or structure shall also require that each applicant for such permit file as a condition to issuing the permit a written statement, subscribed by the applicant, that the applicant is registered under the provisions of this chapter, giving the number of the registration and stating that the registration is in full force and effect, or, if the applicant is exempt from the provisions of this chapter, listing the basis for the exemption.

(3) Every city and county which requires the issuance of a business license as a condition precedent to engaging, within the city or city and county, in a business which is subject to regulation under this chapter, shall require that each licensee and each applicant for issuance or renewal of such license file, or have on file, with such city or

city and county, a signed statement that such licensee or applicant is registered under the provisions of this chapter and stating that the registration is in full force and effect.

(4) 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.

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

(6) The provisions of this chapter shall be exclusive and no city, county or other political subdivision shall require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any builder or specialty builder registered with the board. However, nothing in this subsection shall limit or abridge the authority of any city or county to license and levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon business conducted by any firm within said jurisdiction, or to limit the authority of any city or county with respect to builders not required to be registered under this chapter.

(7) Every builder shall maintain a list of the names and registration numbers of all other builders performing work for him covered by this chapter, and shall deliver the list to the board, any of its members, or authorized representatives within 24 hours after a request made during reasonable working hours. A summary of this chapter, prepared by the department and provided at cost to all registered builders, shall be delivered by the builder to the owner when work is started.

[1971 c.740 s.7; 1975 c.721 s.2]

Note: The amendments to 701.055 by section 2, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

701.065 Registration required to maintain court suit or action for performance of work or file a lien. (1) 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 filed the lien or commenced the suit or action.

(2) If a builder who was not registered with the Builders Board at the time he bid or entered into a contract for the performance of work as a builder registers prior to filing a lien or commencing a suit or action based on such work, and if the builder is awarded a judgment for a sum of money in the lien foreclosure proceeding, suit or action, the builder shall pay 25 percent of any recovery under the judgment to the Builders Board.

[1971 c.740 s.8; 1973 c.832 s.55; 1975 c.654 s.1]

701.070 Registration prior to moving structure over highway; exceptions. (1) A builder shall not move, submit a bid to move or advertise to move a structure over public highways, roads or streets unless he is registered under this chapter.

(2) Subsection (1) of this section does not apply to the movement of:

(a) Modular buildings or structures other than mobile homes not in excess of 14 feet in width.

(b) Structures not in excess of 16 feet in width when they are being moved by their owner if such owner is not a builder required to be licensed under this chapter.

[1975 c.383 ss.2, 3]

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 s.9; 1973 c.832 s.56]

701.085 Surety bond required of builders; conditions of bond. (1) 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 $5,000 if the applicant is going to move structures, and otherwise in the amount of $3,000, conditioned that the applicant will, with regard to work subject to this chapter, pay:

(a) All taxes and contributions due to the State of Oregon;

(b) All persons furnishing labor or material, or renting or supplying equipment to the builder; and

(c) All amounts that may be adjudged by the board against the builder by reason of negligent or improper work or breach of contract in performing any work subject to this chapter.

(2) The board may reduce the amount of the surety bond required by subsection (1) of this section to an amount not less than $1,000 for an individual upon a showing that the applicant did not perform work on superstructures exceeding $30,000 in gross volume during the 12-month period immediately preceding the application.
[1971 c.740 s.10; 1975 c.383 s.4; 1975 c.721 s.3]

Note: The amendments to 701.085 by section 3, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

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 of a character approved by the State Treasurer. Negotiable securities may be deposited in a bank or trust company in a manner authorized by the State Treasurer.
[1971 c.740 s.11; 1975 c.721 s.4]

Note: The amendments to 701.095 by section 4, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

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; $50,000 if the applicant is engaged in the movement of structures;

(b) $50,000 for injury or damage including death to any one person; $100,000 if the applicant is engaged in the movement of structures; and

(c) $100,000 for injury or damage including death to more than one person; $300,000 if the applicant is engaged in the movement of structures.

(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 s.12; 1975 c.383 s 5]

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 provided for an original registration upon application and furnishing of any 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 assigned and by making appropriate adjustments in the renewal fee.
[1971 c.740 s.13; 1975 c.721 s.5]

Note: The amendments to 701.115 by section 5, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

701.125 Registration fee. (1) Each applicant shall pay to the board a fee of:

(a) Not more than $50 for original registration or renewal of registration.

(b) Up to $10 for all changes in the registration, as prescribed by the board, other than those due to clerical errors.

(2) The board shall set the fees referred to in subsection (1) of this section so that the moneys received are adequate to administer the provisions of this chapter.
[1971 c.740 s.14; 1973 c 832 s.57, 1975 c.721 s.6]

Note: The amendments to 701.125 by section 6, chapter 721, Oregon laws 1975, take effect July 1, 1976.

701.135 Grounds for revocation, suspension, denial of registration; injunctions. (1) The board may revoke, suspend or refuse to issue or reissue a certificate of registration if the board determines after notice and hearing:

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

(b) 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.

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

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

(e) 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.

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

(2) In addition to all other remedies, when it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction which violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction shall not issue for failure to maintain the list provided for in subsection (7) of ORS 701.055 unless the court determines that the failure is intentional.

[1971 c.740 s.15; 1975 c.721 s.7]

Note: The amendments to 701.135 by section 7, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

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 s.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 s.17; 1973 c.832 s.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 s.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, one of whom is a specialty builder, who maintain their registration in good order during their term of office.

[Subsection (1) and (2) enacted as 1971 c.740 s.3; subsection (3) enacted as 1971 c.740 s.5; 1975 c.721 s.8]

Note: The amendments to 701.205 by section 8, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

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 s.6]

701.225 Investigatory powers of board; use of city or county inspectors; 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) With the approval of the city or county, the board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the department for the costs of such investigations.

(3) The board has the power to administer oaths, issue notices and subpenas 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.

(4) If any person fails to comply with a subpena issued under subsection (3) 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 s.18; 1975 c.721 s.9]

Note: The amendments to 701.225 by section 9, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

701.235 Rulemaking authority. The board shall promulgate rules to carry out this chapter.

[1971 c.740 s.19]

701.245 Disposition of moneys received by board. All moneys received by the Builders Board shall be deposited by the director in the State Treasury for credit to the Building Code Account created by ORS 456.890, to be used solely for the administration and enforcement of this chapter.

[1971 c.740 s.23; 1975 c.721 s.10]

Note: The amendments to 701.245 by section 10, chapter 721, Oregon Laws 1975, take effect July 1, 1976.

RETAINAGE

Note: 701.410 to 701.440 were not added to and made a part of ORS chapter 701 by legislative action.

701.410 Definitions for ORS 701.410 to 701.440. As used in ORS 279.358, 279.575 and 701.410 to 701.440, unless the context otherwise requires:

(1) "Construction" includes:

(a) Excavating, landscaping, demolition and detachment of existing structures, leveling, filling in and other preparation of land for the making and placement of building, structure or superstructure;

(b) Creation or making of a building, structure or superstructure; and

(c) Alteration, partial construction and repairs done in and upon a building, structure or superstructure.

(2) "Contractor" includes a person who contracts with an owner on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans, retaining in himself control of means, method and manner of accomplishing the desired result.

(3) "Owner" includes a person who is or claims to be the owner in fee or a lesser estate of the land, building, structure or superstructure on which construction is performed and who enters into an agreement with a contractor for the construction.

(4) "Retainage" means the difference between the amount earned by a contractor or subcontractor under a construction contract and the amount paid on the contract by the owner or, in the case of a subcontractor, by a contractor or another subcontractor.

(5) "Subcontractor" includes a person who contracts with a contractor or another subcontractor on predetermined terms to be responsible for the performance of all or part

of a job of construction in accordance with established specifications or plans.
[1975 c.772 s.1]

701.420 Partial payment; retainage; effect; interest; notice of completion; payment by contractor and owner. (1) Partial payment shall be allowed and made on contracts for construction. Except as provided in subsection (2) of ORS 701.430, an amount equal to not more than five percent of the contract price of the work completed may be withheld by an owner, contractor or subcontractor as retainage. Partial payment allowed under this subsection shall not be construed as acceptance or approval of some of the work or as a waiver of any defects therein.

(2) The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due the contractor or subcontractor. Except as provided in subsection (2) of ORS 701.430, the interest shall commence 30 days after the work under the contract for construction for which the final payment is due has been completed and accepted and shall run until the date when final payment is tendered to the contractor or subcontractor. The contractor or subcontractor shall notify the party to whom he is responsible for the performance of construction work under his contract when he considers the work that he contracted to perform to be complete and that party shall, within 15 days after receiving the notice, either accept the work or notify the contractor or subconstractor of work yet to be performed on the contract. If the party to whom he is responsible for the performance of construction work under his contract does not notify the contractor or subcontractor of work yet to be performed within the time allowed, the interest required under this subsection shall commence 30 days after the end of the 15-day period.

(3) When a contractor pays a subcontractor in full, including the amount withheld as retainage, the owner with whom that contractor has his contract shall pay the contractor, out of the amount that is withheld by the owner from that contractor as retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor. The contractor shall notify the owner when he pays a subcontractor in full under this section and the owner shall, within 15 days after receiving the notice, pay the contractor the amount due him under this subsection. Interest on the amount due the contractor at the rate of one percent per month shall commence 30 days after the owner receives notice of full payment to the subcontractor.
[1975 c.772 s 2]

701.430 Performance bond; terms; effect of not obtaining bond. (1) Except as provided in subsection (2) of this section, a contractor or subcontractor may execute and deliver to the owner, contractor or subcontractor before the commencement of construction for which the contractor or subcontractor will be responsible for performing a good and sufficient bond in a sum equal to the contract price for the faithful performance of the contract. The term of the bond required under this subsection shall extend to include the period during which claims of lien or notices of other encumbrances based on the construction performed under the contract may be filed under applicable law. The bond must be approved by the owner, contractor or subcontractor entitled to withhold retainage. A faithful performance bond delivered under this section shall include, but not be limited to, provisions to the effect that:

(a) The obligations of the contract shall be faithfully performed;

(b) Payment shall promptly be made to all persons supplying labor or materials to the contractor or subcontractor for prosecution of the work provided in the contract;

(c) All contributions due the Industrial Accident Fund and the State Unemployment Compensation Fund from the contractor or subcontractor in connection with the performance of the contract shall promptly be made; and

(d) All sums required to be deducted and retained from the wages of employes of the contractor or subcontractor pursuant to the Personal Income Tax Act of 1969, shall be paid over to the Department of Revenue.

(2) When a contractor or subcontractor does not obtain the bond required under subsection (1) of this section, the owner, contractor or subcontractor may withhold that percentage of the contract price of the work completed as retainage that is agreed to by the parties to the contract. The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due a contractor or subcontractor who was unable to obtain the bond required under subsection (1) of this section. The interest shall commence 10 days after the date on which claims of lien or notices of other encumbrances based on the construction performed under the contract must be properly filed under applicable law. For

purposes of this subsection, "final payment due a contractor or subcontractor" means the amount withheld as retainage minus the total dollar amount of liens and other encumbrances resulting from his failure to faithfully perform the obligations of his contract and properly filed within the time allowed under applicable law.

[1975 c.772 s.3]

701.440 Applicability. ORS 279.358 and 701.410 to 701.430 do not apply when the owner is the United States or any agency thereof or when the construction is paid for, in whole or in part, with federal moneys.

[1975 c.772 s.6]

PENALTIES

701.990 Penalties. Violation of subsection (1) of ORS 701.055 is a misdemeanor.

[1971 c.740 s.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 s 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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel