

Chapter 701

1983 REPLACEMENT PART

Builders

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GENERAL PROVISIONS

701.005 Definitions. As used in 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, or for compensation and with the intent to sell the structure arranges to construct, alter, repair, improve, move over public highways, roads or streets or demolish a structure or to perform any work in connection with the construction, alteration, repair, improvement, moving over public highways, roads or streets or demolition of a structure, and the appurtenances thereto. "Builder" includes, but is not limited to:

(a) A person who purchases or owns property and constructs or for compensation arranges for the construction of one or more structures with the intent of selling the structure or structures;

(b) A school district, as defined in ORS 332.002, that permits students to construct a structure as an educational experience to learn building techniques and, upon completion of the structure, the district sells the completed structure; or

(c) A community college district, as defined in ORS 341.005, that permits students to construct a structure as an educational experience to learn building techniques and upon completion of the structure, the district sells the completed structure.

(3) If a builder is registered for residential work only, "structure" means a residence, including a site-built home, a modular home constructed off-site, a condominium and a mobile home, a duplex or multiunit residential building consisting of four units or less. If a builder has extended registration to include work performed on buildings of all types as provided in ORS 701.060, "structure" means all types of buildings, regardless of use. [1971 c.740 §1; 1975 c.721 §1; 1977 c.537 §2; 1981 c.618 §8; 1983 c.616 §4]

701.010 Application. The following persons are exempt from registration under this chapter:

(1) A person who is constructing, altering, improving or repairing personal property.

(2) A person who is constructing, altering, improving or repairing a structure located 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) A person working on one structure or project, under one or more contracts, when the aggregate price of all of that person's contracts for labor, materials and all other items is less than \$500 and such work 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 that person is a builder.

(5) An owner who contracts for work to be performed by a registered builder. This subsection does not apply to a person who constructs or for compensation and with the intent to sell the structure, arranges to have constructed a structure with the intent of offering the structure for sale before, upon or after completion. It shall be prima facie evidence that there was an intent of offering the structure for sale if the person who constructed the structure or arranged to have the structure constructed does not occupy the structure after its completion.

(6) A person performing work on a property that person owns, whether occupied by that person or not, or a person performing work on that person's residence, whether or not that person owns the residence. This subsection does not apply to a person performing work on a structure owned by that person if such work is performed, in the pursuit of an independent business, with the intent of offering the structure for sale before, upon or after completion.

(7) A person licensed in one of the following trades or professions when operating within the scope of that license:

(a) An architect licensed by the State Board of Architect Examiners.

(b) A registered professional engineer licensed by the State Board of Engineering Examiners.

(c) A water well contractor licensed by the Water Resources Department.

(d) A sewage disposal system installer licensed by the Department of Environmental Quality.

(e) A landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks, walkways or retaining walls only when done in conjunction with landscaping work.

(8) A person who performs work subject to this chapter as an employe of a builder.

(9) A manufacturer of a mobile home constructed under standards established by the Federal Government.

(10) A person involved in 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 registered under this chapter.

(11) A commercial lending institution that arranges for the completion, repair or remodeling of a structure. As used in this subsection, "commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association, insurance company or federal credit union maintaining an office in this state. [1971 c.740 §20; 1979 c.312 §1; 1981 c.618 §9; 1983 c.616 §5a]

REGISTRATION

701.055 Registration for residential work required of builder; issuance of building permits to unregistered builders prohibited; evidence of activity as builder; duties of builder. (1) A person shall not undertake, offer to undertake or submit a bid to do work as a builder on a residential structure unless that person has a current, valid certificate of registration for residential work issued by the board. A partnership, corporation or joint venture may do such work, offer to undertake such work or submit a bid to do such work only if that partnership, corporation or joint venture is registered for residential work.

(2) A registered partnership or corporation shall notify the board immediately upon any change in partners or corporate officers. Upon a change in partners, a registered partnership immediately shall register again and pay to the board the fee required by ORS 701.125 for an original registration.

(3) A city, county or the State of Oregon shall not issue a building permit to anyone required to be registered under this chapter who does not have a current, valid certificate of registration. Each county, city or the State of Oregon which requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenances to the 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. The city, county or the State of Oregon shall list the builder's registration number on the permit obtained by that builder.

(4) 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.

(5) It shall be prima facie evidence of doing business as a builder when a person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure, arranges to have performed any work described in ORS 701.005 (2) if within any one 12-month period that person offers for sale two or more structures on which that work was performed.

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

(7) 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 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.

(8)(a) Every builder shall maintain a list which includes the following information about all subcontractors or other builders performing work on a residential structure for that builder:

(A) Names and addresses.

(B) Registration numbers.

(b) The list referred to in paragraph (a) of this subsection shall be delivered to the board within 24 hours after a request made during reasonable working hours.

(9) A builder, including but not limited to a general contractor, shall not hire any subcon-

tractor or other builder to work on a residential structure unless the subcontractor or builder is registered under this chapter or exempt from registration under the provisions of ORS 701.010.

(10) A summary of this chapter, prepared by the board and provided at cost to all registered builders, shall be delivered by the builder to the owner when the builder begins work on a structure. [1971 c.740 §7; 1975 c.721 §2; 1981 c.618 §10; 1983 c.616 §6]

701.060 Registration may apply to nonresidential buildings. (1) Any builder registered under this chapter may at the time of registration or renewal and at no additional fee include registration for activities performed by the builder in the construction, alteration, improvement, moving over public highways, roads or streets, demolition and repair of buildings of all types.

(2) If a builder makes application for registration pursuant to subsection (1) of this section all construction, alteration, improvement, moving over public highways, roads or streets, demolition or repair performed by that builder on buildings of all types shall be subject to the provisions of this chapter and to regulation by the board. Such registration shall be exclusive as provided in ORS 701.055 (7). [1977 c.426 §2; 1981 c.618 §11; 1983 c.616 §7]

701.065 Registration required to obtain judicial or administrative remedy; exception. (1) A builder may not file a lien, file a claim with the Builders Board or bring or maintain in any court of this state a suit or action for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure which is subject to this chapter, unless the builder was:

(a) Registered under this chapter at the time the builder bid or entered into the contract for performance of the work; and

(b) Registered continuously while performing the work for which compensation is sought.

(2) A court may choose not to apply this section if the court finds that to do so would result in a substantial injustice to the unregistered builder. [1971 c.740 §8; 1973 c.832 §55; 1975 c.654 §1; 1979 c.874 §1; 1983 c.616 §8]

701.070 [1975 c.383 §§2, 3; repealed by 1983 c.616 §17]

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) Workers' 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) 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; 1979 c.312 §2; 1981 c.618 §12]

701.080 Builder to notify board of address change; effect of mail to last-known address. It shall be the duty of a builder to notify the board of any change of address while registered and for one year following the date the builder's registration expires or otherwise becomes inactive. The builder shall so notify the board within 10 days of the date upon which the change of address occurs. Any proposed or final order or notice of hearing directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail. [1979 c.312 §5; 1983 c.616 §9]

701.085 Surety bond required of builders; conditions of bond; suspension or denial of certificate when bond liability exceeded. (1) A person who wishes to register as a builder or renew 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, conditioned that the applicant, with regard to work subject to this chapter, will pay claims ordered paid by the board under ORS 701.140. Bonds filed under this subsection shall become effective on the date the builder meets all requirements for registration or renewal and shall remain in effect for one year from that date or until depleted by claims paid under ORS

701.140, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. The aggregate liability of the surety under the bond for claims against the bond shall not exceed the penal sum of the bond. No extension by continuation certificate, reinstatement, reissue or renewal of the bond shall increase the liability of the surety.

(2) The board may reduce the amount of the surety bond required by this section to \$2,000 for a registrant upon a showing that the registrant did not perform work on structures exceeding \$30,000 in gross volume during the previous 12-month period in which the registrant was registered.

(3) If the amount the registrant must pay against the bond under this section exceeds the amount of the bond, the board shall suspend the certificate of the registrant until the amount owed is paid. The board, as a condition of ending the suspension, may require the registrant to file a bond of an amount three times as much as the amount required ordinarily of a registrant under this section.

(4) An applicant for registration or renewal, who has an outstanding final judgment by a court against the applicant that a bond under this section would have been subject to, shall not be permitted to register or renew a registration until the judgment is satisfied. The board, as a condition of registering the applicant, may require the applicant to file a bond of an amount three times as much as the amount required ordinarily of an applicant under this section.

(5) The bond required under this section is for the exclusive purpose of payment of final orders of the board in accordance with this chapter.

(6) Upon determination of a claim under ORS 701.140 against a builder who holds a bond required under this section, the board shall notify the surety on the bond of the final order in a manner determined by the board by rule. The notification shall include a list of all claims upon which a final order has been issued.

(7) No suit or action may be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.140 that payment is due on the claim.

(8) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a claim or on the denial of a claim by the surety, the court may award:

(a) Costs;

(b) Reasonable attorney fees to the prevailing party as part of the costs; and

(c) If the surety is ordered to pay a claim on the bond that the surety arbitrarily and capriciously refused to pay upon order of the board, twice the amount of damages against the surety as ordered by the board. [1971 c.740 §10; 1975 c.383 §4; 1975 c.721 §3; 1979 c.874 §2; 1981 c.618 §1; 1983 c.616 §10]

701.095 Deposit in lieu of bond. (1) 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.

(2) Any securities of the Federal Government that have an immediate market value in excess of the bond amount are an acceptable deposit under this section. The bank or trust company may substitute other securities that meet the requirements of this section for the securities of the Federal Government initially deposited. [1971 c.740 §11; 1975 c.721 §4; 1981 c.618 §5]

701.105 Insurance required of builders. (1) Throughout the period of registration, the builder shall have in effect public liability and property damage insurance covering the work of that builder which is subject to this chapter in not less than the following amounts:

(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 builder shall provide satisfactory evidence to the board at the time of registration and renewal that the insurance required by subsection (1) of this section has been procured and is in effect. [1971 c.740 §12; 1975 c.383 §5; 1979 c.312 §3; 1983 c.616 §11]

701.115 Term of registration; renewal; registration identification card. (1) A certificate of registration is valid for one year from the date of issuance unless the registration is revoked or suspended as set forth in ORS 701.135. 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.

(2) The board shall issue a pocket-card certificate of registration to a builder registered under this chapter.

(3) The board may vary the dates of registration renewal by giving to the registrant written notice of the renewal date assigned and by making appropriate adjustments in the renewal fee.

[1971 c.740 §13; 1975 c.721 §5; 1983 c.616 §12]

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

(a) For original registration or renewal of registration, a fee as determined by the board under ORS 701.130.

(b) A fee 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 pursuant to ORS 701.130.

[1971 c.740 §14; 1973 c.832 §57; 1975 c.721 §6; 1983 c.180 §3]

701.130 How registration fee determined. (1) On or after June 1 of each year, but before July 1, the board shall determine the amount of the fee an applicant must pay for original builder registration or renewal of builder registration under ORS 701.125. The fees shall be subject to the review of the Executive Department and the prior approval of the appropriate legislative review agency. The fees and charges established under this section shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly for the board's budget, as modified by the Emergency Board or future sessions of the Legislative Assembly.

(2) The amount of the fee determined by the board under subsection (1) of this section shall be effective for a 12-month period beginning on July 1 of each year. [1983 c.180 §2]

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

(g) That the registrant has knowingly assisted an unregistered person to act in violation of this chapter.

(h) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because the registrant or applicant wrongfully failed to perform a contractual duty to pay money to the person claiming the lien.

(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 ORS 701.055 (8) unless the court determines that the failure is intentional. [1971 c.740 §15; 1975 c.721 §7; 1979 c.874 §3; 1981 c.618 §6]

CLAIMS

701.140 Types of allowable claims. The board shall only accept and make determinations of the following types of claims for damages against builders registered under this chapter. If upon final determination and order by the board a builder fails to pay a claim determined against the builder by the board, the board shall notify the surety that payment is due from the bond required under ORS 701.085. This section applies to the following types of claims:

(1) Claims against a builder by the owner of a structure for the following in performing any work subject to this chapter:

(a) Negligent work.

(b) Improper work.

(c) Breach of contract.

(2) Claims against a builder by the owner of a structure to discharge or to recoup funds expended in discharging a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. The board may reduce any amount adjudged by

the board under this section by any amount the claimant owes the builder. The board shall only determine claims under this subsection if:

(a) The owner has paid the builder for that builder's work subject to this chapter; and

(b) A lien is filed against the structure of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the builder failed to pay the person claiming the lien for that person's contribution toward completion of the structure.

(3) Claims against a registered builder subcontractor by a registered contractor for the following in performing any work subject to this chapter:

(a) Negligent work;

(b) Improper work; or

(c) Breach of contract.

(4) Claims by persons furnishing labor or material or renting or supplying equipment to a builder.

(5) Claims against a builder by anyone who is injured as a result of the builder's failure to comply with the requirements of ORS 454.605 to 454.745 or rules adopted by the Environmental Quality Commission under ORS 454.625. [1981 c.618 §4; 1983 c.616 §13]

701.145 Procedure for making claims against builder; investigation by board; disciplinary action. (1) Any person having a claim against a builder of the type referred to in ORS 701.140, may file with the board a statement of the claim in such form as the board prescribes.

(2) The board may refuse to accept, or refuse at any time to continue processing, a claim if:

(a) The same facts and issues involved in the claim have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution and settlement;

(b) The claimant does not permit the builder against whom the claim is filed to be present at any inspection made by the board;

(c) The board determines that the builder against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the builder to comply with the recommendations. However, the board may refuse to accept or further process a claim under this paragraph only if the builder was registered at the time the work was first performed and is registered at the time the board makes its recommendations; or

(d) The board determines that the nature or complexity of the claim is such that a court is the appropriate forum for the adjudication of the claim.

(3) The board shall not process a claim unless it is filed in a timely manner as follows:

(a) If the owner of a new structure files the claim, the board must receive the claim not later than one year after the date the structure was first occupied or two years after completion, whichever comes first.

(b) If the owner of an existing structure files the claim, the board must receive the claim not later than one year after the date the work was substantially completed.

(c) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the builder failed to begin the work, the board must receive the claim not later than one year after the date the parties entered into the contract.

(d) Regardless of whether the claim involves a new or existing structure, if the owner files the claim because the builder failed to substantially complete the work, the board must receive the claim not later than one year after the date the builder ceased work on the structure.

(e) If a registered general contractor files the claim against a registered subcontractor, the board must receive the claim not later than one year after the date the subcontractor performed the work.

(f) If a registered general contractor files the claim against a registered subcontractor, because the subcontractor failed to substantially complete the work, the board must receive the claim not later than one year after the date the subcontractor ceased to work on the structure.

(g) If a material or equipment supplier, an employe, or a registered subcontractor files the claim, the board must receive the claim not later than one year after the date the registrant incurred the indebtedness.

(4) Upon acceptance 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 disci-

plinary proceeding brought by the board. [1971 c.740 §16; 1979 c.874 §4, 1983 c.616 §14]

701.150 Priority of satisfying claims from bond or deposit. If a final board order is not paid by the registrant, the board shall notify the surety on the bond. The claim shall be satisfied from the deposit or by the surety from the bond as follows:

(1) If the total claims filed with the board against a builder within 90 days after the date the board receives notice of the first claim against the builder exceed the amount of the bond or deposit, the bond or deposit shall be apportioned in proportion to the amount the board adjudges to be owed on each claim, subject to the priorities established under this section.

(2) Claims shall be satisfied from the bond or deposit in the following priority:

(a) Within any 90-day period, claims filed against a builder by the owner of a structure shall have payment priority to the full extent of the bond or deposit over all other types of claims.

(b) If claims filed against a builder by the owner of a structure do not exhaust the bond or deposit, then all other types of claims filed within that 90-day period may be satisfied from the bond or deposit, except that the total amount paid from any one bond or deposit to nonowner claimants shall not exceed \$2,000.

(c) A subsequent 90-day period will begin on the date the first claim is filed after the close of each preceding 90-day period. Claims shall be satisfied from the bond or deposit in each 90-day period in the manner set forth in paragraphs (a) and (b) of this subsection.

(3) 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 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; 1981 c.618 §7; 1983 c.616 §15]

701.155 [1973 c.832 §59, repealed by 1981 c.618 §18]

BUILDERS BOARD

701.205 Builders Board; members; terms; confirmation; vacancies; qualifications. (1) There is established within the Department of Commerce the Builders Board, consisting of five members appointed by the Governor subject to confirmation by the Senate

in the manner provided by law. Three of the members shall be builders, including one builder engaged in the business of remodeling, one shall be a public member and one shall be an elected representative of governing bodies of local government.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor 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 Governor shall make an appointment immediately effective for the unexpired term.

(3) In order to be eligible for board membership, the three builder members of the board shall be registered under this chapter and shall maintain their registration in good order during their term of office. [Subsection (1) and (2) enacted as 1971 c.740 §3; subsection (3) enacted as 1971 c.740 §5; 1975 c.721 §8, 1977 c.537 §1; 1981 c.618 §13]

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; 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 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.

(4) If any person fails to comply with a subpoena 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 §18; 1975 c.721 §9]

701.230 Board to provide names of unregistered builders to other state agencies. At least once each month, the board shall provide to investigative units of the Department of Revenue, Workers' Compensation Department and Employment Division the name and address of each person who acts as a builder in violation of this chapter or who knowingly assists an unregistered person to act in violation of this chapter. [1983 c.616 §2]

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

701.245 [1971 c.740 §23; 1975 c.721 §10; repealed by 1979 c.31 §1]

RETAINAGE

701.410 Definitions for ORS 701.410 to 701.440. As used in ORS 279.400, 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 §1]

Note: 701.410 to 701.440 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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 ORS 701.430 (2), 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 ORS 701.430 (2), 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 subcontractor 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 §2]

Note: See note under 701.410.

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 §3]

Note: See note under 701.410.

701.435 Deposits in lieu of cash retainage. (1) When a contractor on a public contract deposits bonds or securities under ORS 279.420 (3), if the subcontract price exceeds \$50,000 and constitutes more than 10 percent of the cost of the public contract, a subcontractor on the public contract may deposit bonds or securities with the contractor or in any bank or trust company to be held in lieu of cash retainage for the benefit of the contractor. In such event the contractor shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on such bonds or securities shall accrue to the subcontractor.

(2) When a contractor on a public contract elects to have the public contracting agency deposit the accumulated retainage in an interest-bearing account under ORS 279.420 (4), the contractor, within 30 days following payment of the final amount due for construction of the public improvement, shall pay to each subcontractor who performed work on the construction the subcontractor's proportional share of the interest earnings that accrued to the contractor as a result of that election. A subcontractor's share of the total amount of interest earnings under this subsection shall be determined by the proportion which the amount of retainage withheld from the subcontractor bears to the amount of retainage withheld from the contractor and the length of time the retainage was withheld from the subcontractor. A share of the interest earnings shall be paid to a subcontractor under this subsection only when:

(a) Retainage is withheld from the subcontractor for more than 60 days after the day on which the first partial payment was due the subcontractor under the terms of the subcontract; and

(b) The amount of interest earnings due the subcontractor exceeds \$100.

(3) If the contractor incurs additional costs as a result of the exercise of the options described in subsections (1) and (2) of this section, the contractor may recover such costs from the subcontractor by reduction of the final payment. As work on the subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued additional costs.

(4) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall be of a character approved by the Director of the Department of General Services, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or its agencies.

(c) Obligations of any corporation wholly owned by the Federal Government.

(d) Indebtedness of the Federal National Mortgage Association. [1977 c.767 §2; 1983 c.690 §16]

Note: See note under 701.410.

701.440 Applicability to federal projects. ORS 279.400 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 monies. [1975 c.772 §6]

Note: See note under 701.410.

PENALTIES

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

701.992 Civil penalties; enforcement.
(1) Any person who violates any provision of this chapter or any rule adopted 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) An order of the board imposing a civil penalty which becomes final by operation of law or on appeal and remains unpaid 10 days after the order becomes final shall constitute a judgment in favor of the board against the person and may be recorded with the county clerk in any county of this state.

(3) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. After recording, the order is equivalent to a judgment and is controlled by and subject to statutes relating to judgments.

(4) 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; 1979 c.874 §5; 1981 c.618 §14; 1983 c.616 §16; 1983 c.696 §27]