

Chapter 701

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Construction Contractors

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GENERAL PROVISIONS

701.005 Definitions. As used in this chapter:

(1) "Board" means the Construction Contractors Board.

(2) "Contractor" means a person who undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. "Contractor" includes general contractors, residential contractors and specialty contractors as defined in this section.

(3) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part. "General contractor" does not include residential contractors, as defined in subsection (4) of this section, and does not include specialty contractors, as defined in subsection (6) of this section, or individuals who perform building trades or crafts personally and without employees.

(4) "Residential contractor" means a person who, for compensation, 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 used for residential purposes 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 used for residential purposes, and the appurtenances thereto. "Residential contractor" 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 residential structures with the intent of selling the residential 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 residential structure, the district sells the completed residential structure;

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

(d) Any person except a landscape contractor, nurseryman, gardener or person engaged in the commercial harvest of forest products who is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying; or

(e) An individual or business entity that is an independent contractor, as that term is defined in ORS 701.025.

(5) "Residential structure" means a residence, including a site-built home, a modular home constructed off-site, a floating home as defined in ORS 830.700, a condominium and a mobile home, a duplex or multiunit residential building consisting of four units or less. If the work is done on a nonresidential structure by a residential contractor, "residential structure" includes any building with a ground area of 4,000 square feet or less and is not more than 20 feet in height from the top surface of the lowest flooring to the highest interior overhead finish of the building.

(6) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" does not include residential contractors. [1971 c 740 §1; 1975 c 721 §1; 1977 c 537 §2; 1981 c 618 §8; 1983 c 616 §4; 1989 c 762 §7; 1989 c 928 §1]

701.007 "Builder" defined for ORS 701.015. "Builder" has the meaning set forth in ORS 701.005 (1987 Replacement Part) for the purposes of ORS 701.015. [1989 c.928 §3]

Note: 701.005 (2) (1987 Replacement Part) contained the following definition:

(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.

Note: 701.007 was enacted into law by the Legislative Assembly but was 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.

701.010 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 contractor.

(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 contractor.

(5) An owner who contracts for work to be performed by a registered contractor. 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 employee of a contractor.

(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 contractor required to be registered under this chapter.

(11) A commercial lending institution or surety company 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; 1989 c.928 §2]

701.015 Business license requirements in cities and metropolitan service districts; fees; application to landscape contractors; distribution of fees. (1) A builder or landscape contractor shall pay directly to any city within the boundaries of a metropolitan service district any business license tax imposed by the city when:

(a) The principal place of business of the builder or the landscape contractor is within the city; or

(b) The principal place of business of the builder or the landscape contractor is not within the city but the builder or landscape contractor derives gross receipts of \$100,000 or more from business conducted within the boundaries of the city during the calendar year for which the business license tax is owed.

(2) A builder or landscape contractor who conducts business during any year in any city within the boundaries of the metropolitan service district other than a city to

which the builder or landscape contractor has paid a business license tax for that year may apply for a business license from the metropolitan service district.

(3) When a builder or landscape contractor obtains a business license from the metropolitan service district under subsection (2) of this section, if a city within the boundaries of the metropolitan service district other than a city to which the builder or landscape contractor is required to directly pay a business license tax under subsection (1) of this section demands payment of a business license tax by the builder or landscape contractor, the city shall waive such payment upon presentation of proof by the builder or landscape contractor that the builder or landscape contractor has a business license issued by the metropolitan service district. Possession by the builder or landscape contractor of a current business license issued by the metropolitan service district under subsection (2) of this section shall be proof sufficient to obtain the waiver described in this subsection.

(4) The metropolitan service district shall issue a business license to a builder or landscape contractor when:

(a) The builder or landscape contractor presents proof to the district that the builder or landscape contractor has paid the business license tax imposed by each city within the boundaries of the district to which the builder or landscape contractor must directly pay a business license tax under subsection (1) of this section; and

(b) The builder or landscape contractor pays a license fee to the district. The license fee charged under this paragraph shall be twice the average business license tax charged builders by cities located within the metropolitan service district plus an amount that is sufficient to reimburse the district for the administrative expenses of the district incurred in carrying out its duties under this section.

(5) The metropolitan service district shall distribute the business license fees collected by the district under this section, less administrative expenses, to the cities that are located wholly or partly within the district and that collect a business license tax. In any year, each such city shall receive such share of the license fees as the number of residential building permits that it issued during that year bears to the total number of residential building permits that were issued during that year by all of the cities located wholly or partly within the district. Distribution of moneys under this subsection shall be made at least once in each year. The metropolitan service district shall determine the number of residential building permits

issued by cities within the district from statistics and other data published by the Construction Contractors Board.

(6) As used in this section:

(a) "Builder" means a person who is registered under ORS 701.055 while engaging in residential work only.

(b) "Business license tax" means any fee paid by a person to a city or county for any form of license that is required by the city or county in order to conduct business in that city or county. The term does not include any franchise fee or privilege tax imposed by a city upon a public utility under ORS 221.420 or 221.450 or any provision of a city charter.

(c) "Conducting business" means to engage in any activity in pursuit of gain including activities carried on by a person through officers, agents and employees as well as activities carried on by a person on that person's own behalf.

(d) "Landscape contractor" means a person or business who is licensed under ORS 671.510 to 671.710 as a landscape contractor.

(e) "Principal place of business" means the location in this state of the central administrative office of a person conducting business in this state. [1987 c.581 §2; 1989 c.1064 §§1, 2]

701.020 Certain cities exempt from application of ORS 701.015. (1) A city that imposes a business license tax based on or measured by adjusted net income earned by conducting business within the city shall be exempt from ORS 701.015.

(2) As used in this section, "business license tax" has the meaning given that term in ORS 701.015. [1987 c.581 §7]

Note: 701.020 was enacted into law by the Legislative Assembly but was 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.

701.025 Independent contractor; standards. As used in various provisions of this chapter and ORS chapters 316, 656 and 657, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met:

(1) The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;

(2) The individual or business entity providing labor or services is responsible for

obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;

(3) The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;

(4) The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;

(5) Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer;

(6) The individual or business entity providing labor or services is registered under this chapter, if the individual or business entity provides labor or services for which such registration is required;

(7) Federal and state income tax returns in the name of the business or a business Schedule C or farm Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and

(8) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:

(a) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

(b) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

(c) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

(d) Labor or services are performed only pursuant to written contracts;

(e) Labor or services are performed for two or more different persons within a period of one year; or

(f) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided. [1989 c.762 §1; 1989 c.870 §§3, 3a]

701.030 Rules to define independent contractor. In accordance with ORS 183.310 to 183.550, those agencies responsible for the administration of this chapter and ORS chapters 316, 656 and 657, jointly shall adopt rules to carry out the provisions of ORS 701.025. [1989 c.762 §1a]

Note: 701.030 was enacted into law by the Legislative Assembly but, was 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.

REGISTRATION

701.035 Applicant required to be independent contractor to register; classes of registration. (1) An applicant must qualify as an independent contractor, under ORS 701.025, to register with the board.

(2) The board shall establish two classes of independent contractor registration:

(a) The nonexempt class is a sole proprietor, partnership or corporation with employees or a partnership without employees.

(b) The exempt class is a sole proprietor without employees or a corporation whose officers have selected the option described in ORS 656.027.

(3) If a registrant who qualifies for registration under paragraph (b) of subsection (2) of this section hires one or more employees, the registration is invalid and reapplication shall be made.

(4) The decision of the board that a registrant is an independent contractor applies only when the registrant is performing work of the nature described in ORS 701.055 and 701.060. [1989 c.870 §4]

701.055 Registration for work required; issuance of building permits to unregistered contractor prohibited; information notice to property owners about construction responsibilities; evidence of activity; duties. (1) A person shall not undertake, offer to undertake or submit a bid to do work as a contractor unless that person has a current, valid certificate of registration 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 part-

nership, corporation or joint venture is registered. A partnership or joint venture shall be deemed registered for the purpose of offering to undertake work as a contractor on a nonresidential structure if any one of the partners or joint venturers whose name appears in the name under which the partnership or joint venture does business is registered.

(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.

(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 contractor's registration number on the permit obtained by that contractor.

(4) If the applicant for a building permit is exempt from registration under the provisions of ORS 701.010 (6), the city, county or State of Oregon shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or State of Oregon shall not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:

(a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and

(b) I own, reside in or will reside in the completed dwelling. My general contractor is _____, Construction Contractors Board registration no. _____, registration expiration date _____. I will instruct my general contractor that all subcontractors who work on this dwelling must be registered with the Construction Contractors Board; or

(c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.

(d) I will be my own general contractor and, if I hire subcontractors, I will hire only subcontractors registered with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is registered with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor _____.

(5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About Construction Responsibilities" which shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meaning, the responsibilities property owners are undertaking by acting as their own general contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with State of Oregon and federal laws regarding social security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

(6) The board shall develop and furnish to the city, county and State of Oregon building permit offices, at no cost to these offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(7) 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.

(8) It shall be prima facie evidence of doing business as a contractor 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 (4) if within any one

12-month period that person offers for sale two or more structures on which that work was performed.

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

(10) 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 contractor registered with the board. However, nothing in this subsection shall limit or abridge the authority of any city or county to:

(a) 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 contractors not required to be registered under this chapter; or

(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the service of the contractor.

(11)(a) Every contractor shall maintain a list which includes the following information about all subcontractors or other contractors performing work on a project for that contractor:

(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 72 hours after a request made during reasonable working hours.

(12) A contractor shall not hire any subcontractor or other contractor to perform work unless the subcontractor or contractor is registered under this chapter or exempt from registration under the provisions of ORS 701.010.

(13) A summary of this chapter, prepared by the board and provided at cost to all registered contractors, shall be delivered by the contractor to the owner when the contractor begins work on a residential structure. The summary prepared by the board shall include an explanation of the meaning of registration, including a statement that registration is not an indorsement of the quality of work.

(14) A contractor shall not perform work subject to this section for an owner of a residential structure without a written contract if the aggregate contract price exceeds \$2,500. If the price of such contract was initially less than \$2,500, but during the course of performance of the contract exceeds that amount, the contractor shall mail or other-

wise deliver a written contract to the owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,500. Failure to have a written contract will not void the contract. [1971 c.740 §7; 1975 c.721 §2; 1981 c.618 §10; 1983 c.616 §6; 1989 c.430 §6; 1989 c.624 §1, 1989 c.928 §4]

701.060 Registration in another category. (1) Any contractor registered under this chapter may at any time make application for registration in another category. The board may charge a transfer fee not to exceed \$20 for such additional registration.

(2) If a contractor 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 contractor 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 (10). [1977 c.426 §2; 1981 c.618 §11; 1983 c.616 §7; 1989 c.430 §2, 1989 c.928 §5]

701.065 Registration required to obtain judicial or administrative remedy; exception. A contractor may not file a lien, file a claim with the board 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 for work which is subject to this chapter, unless the contractor was:

(a) Registered under this chapter at the time the contractor 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) If the court determines that the contractor was not aware of the requirement that the contractor be registered, a court may choose not to apply subsection (1) of this section if the court finds that to do so would result in a substantial injustice to the unregistered contractor.

(3) If a contractor falsely swears to information provided under ORS 701.075 or knowingly violates the provisions of ORS 656.029, 701.025 or 701.075, the contractor may not file a lien, file a claim with the Construction Contractors 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. [1971 c.740 §8; 1973 c.832 §55; 1975 c.654 §1; 1979 c.874 §1; 1983 c.616 §8; 1989 c.870 §§ 10, 10a; 1989 c.928 §6]

701.067 Suit for damages for misrepresentation. If any person suffered costs or

damages as a result of an individual providing a false or invalid Construction Contractors Board number or otherwise misleading a person with respect to registration with the board, that person may bring suit in a court of competent jurisdiction to recover the costs, damages and attorney fees. [1989 c.870 §9]

Note: 701.067 was enacted into law by the Legislative Assembly but was 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.

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

701.075 Registration application. (1) A person who wishes to register as a contractor shall submit an application upon a form prescribed by the board. The application shall include, but not be limited to, at least the following information regarding the applicant:

(a) Classification of registration being sought.

(b) A list of unsatisfied judgments resulting from bond claims and litigation involving the applicant or its principals within the prior five years.

(c) Social security number.

(d) Workers' compensation insurance account number if help is hired or traded.

(e) Unemployment insurance account number if help is hired.

(f) State withholding tax account number if help is hired.

(g) Federal employer identification number, if help is hired or if self-employed and participating in a retirement plan.

(h) 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.

(2) An applicant shall conform to the information provided by the applicant on the application, and to the terms of the application.

(3) The board shall adopt by rule an application form that requires an applicant to indicate, as set forth in ORS 701.025, the basis under which the applicant qualifies as an independent contractor. [1971 c.740 §9; 1973 c.832 §56; 1979 c.312 §2; 1981 c.618 §12; 1989 c.624 §2; 1989 c.870 §2, 1989 c. 928 §7]

701.080 Contractor to notify board of address change; effect of mail to last-known address. It shall be the duty of a contractor to notify the board of any change of address while registered and for one year

following the date the contractor's registration expires or otherwise becomes inactive. The contractor 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; 1989 c.928 §8]

701.085 When surety bond required of residential contractors; classes of residential contractors; conditions of bond; suspension or denial of certificate when bond liability exceeded. (1) A person who wishes to register as a residential contractor 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 set forth in subsections (2) to (4) of this section, 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 remain in effect for at least one year 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 matter how many years the bond is in force. No extension by continuation certificate, reinstatement, reissue or renewal of the bond shall increase the liability of the surety.

(2) A registrant who contracts to construct a new residential structure, who constructs a new residential structure on property owned by the registrant with the intent of selling the structure or who contracts directly with the home owner to perform remodeling of a residential structure shall be designated as an "A" residential contractor and shall obtain a surety bond in the amount of \$10,000. A registrant who performs residential construction regulated under ORS chapter 446 is not an "A" residential contractor. Such a registrant shall be designated as a "B" residential contractor.

(3) Except as provided in subsections (2) and (4) of this section, all residential contractors shall be designated as "B" residential contractors and shall obtain a surety bond in the amount of \$5,000.

(4) 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. These contractors shall be designated as "C" residential contractors.

(5) 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.

(6) 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.

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

(8) Upon determination of a claim under ORS 701.140 against a contractor 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.

(9) 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.

(10) 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; 1989 c.430 §3; 1989 c.624 §3, 1989 c.928 §10]

701.095 [1971 c.740 §11; 1975 c.721 §4; 1981 c.618 §5, repealed by 1987 c.414 §172]

701.100 Sanction for failure to comply with certain laws. (1) The failure of a builder to comply with the provisions of this section and ORS 656.021, 657.665, 701.025, 701.035, 701.065 to 701.075, 701.135, 701.240 and 701.250 or to be in conformance with the provisions of ORS chapters 316, 656 or 657 is a basis for suspension of the builder's registration, revocation of the builder's registration, refusal to issue or reissue a builder's registration, assessment of a civil penalty as set forth in ORS 701.992 or a combination of these sanctions.

(2) Any action against a builder under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497. [1989 c.870 §5]

Note: 701.100 was added to and made a part of ORS chapter 701 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

701.105 Insurance required of residential contractors. (1) Throughout the period of registration, the residential contractor shall have in effect public liability, personal injury and property damage insurance covering the work of that residential contractor which is subject to this chapter for an amount not less than \$100,000.

(2) Throughout the period of registration, the general contractor and the specialty contractor shall have in effect public liability and property damage insurance covering the work of the contractor that is subject to the provisions of this chapter in an amount of not less than \$500,000.

(3) The contractor shall provide satisfactory evidence to the board at the time of registration and renewal that the insurance required by subsections (1) and (2) 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, 1989 c.624 §4; 1989 c.928 §12]

701.115 Term of registration; renewal; registration identification card. (1) A certificate of registration is valid for up to four years 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 contractor registered under this chapter indicating the type of registration.

(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; 1989 c.624 §6; 1989 c.928 §13]

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 §37; 1975 c.721 §6; 1983 c.180 §3]

701.130 How registration fee determined. (1) Before July 1 of each year, the board shall determine the amount of the fee an applicant must pay for original contractor registration or renewal of contractor 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 as set by rule. [1983 c.180 §2; 1989 c.624 §5; 1989 c.928 §14]

701.135 Grounds for discipline; civil penalty; injunctions. (1) The board may revoke, suspend or refuse to issue or reissue a certificate of registration and the board may assess a civil penalty as provided in ORS 701.992 if it 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 required by ORS 701.085 is not currently in effect.

(e) That the registrant or applicant has engaged in conduct as a builder that is dis-

honest 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.

(i) That the registrant has knowingly provided false information to 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 ORS 701.055 (1) 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; 1987 c.414 §40b, 1989 c.430 §7; 1989 c.744 §4; 1989 c.870 §§11, 11a; 1989 c.928 §15]

701.137 Sanction for past unresolved activity. (1) The board may suspend the registration of or refuse to register any corporation, partnership or individual if any individual who is an owner, shareholder or officer of the business is or was the owner or officer of a previously registered business that owes any amount pursuant to a final order of the board or has an unsatisfied final judgment that was obtained against the bond filed with the board pursuant to the requirements of this chapter.

(2) The Construction Contractors Board may suspend or refuse to register the license of any corporation, partnership or individual if any individual who is an owner or officer of the business is or was the owner or officer of a previously registered business that owes any amount pursuant to a final order of the Construction Contractors Board. [Subsection (2) enacted as 1989 c.744 §2; subsection (1) enacted as 1989 c.928 §9]

Note: The provisions of subsections (1) and (2) are similar and have been compiled as one section for the user's convenience.

CLAIMS

701.140 Types of allowable claims involving residential structures. The board shall only accept and make determinations

for damages against contractors registered under this chapter. If upon final determination and order by the board a contractor fails to pay a claim determined, against the contractor by the board, the board shall notify the surety that payment is due from the bond required under ORS 701.085. The claim shall involve a residential structure, or the appurtenances thereto. Claims that involve nonresidential structures or the appurtenances thereto shall be resolved by a court of competent jurisdiction. The board shall only accept and make determination of the following types of claims:

(1) Claims against a contractor by the owner of a residential 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 contractor by the owner of a residential 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 contractor. The board shall only determine claims under this subsection if:

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

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

(3) Claims against a registered 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 to a contractor.

(5) Claims, as limited by rule of the board, but not exceeding \$2,000, by persons furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board shall not exceed \$150.

(6) Claims against a contractor by anyone who is injured as a result of the contractor's failure to comply with the requirements of ORS 454.605 to 454.745 or rules adopted by the Environmental Quality Commission un-

der ORS 454.625. [1981 c.618 §4; 1983 c.616 §13; 1989 c.167 §1; 1989 c.928 §16]

701.145 Procedure for making claims involving residential structures; investigation by board; disciplinary action. (1) Any person having a claim against a contractor 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 contractor against whom the claim is filed to be present at any inspection made by the board;

(c) The board determines that the contractor 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 contractor to comply with the recommendations. However, the board may refuse to accept or further process a claim under this paragraph only if the contractor 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 contractor 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 contractor

failed to substantially complete the work, the board must receive the claim not later than one year after the date the contractor ceased work on the structure.

(e) If a registered contractor files the claim against a registered contractor performing work as a subcontractor, 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.

(f) If a registered contractor files the claim against a registered contractor performing work as a 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 employee, 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 contractor 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 contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. [1971 c.740 §16; 1979 c.874 §4, 1983 c.616 §14; 1989 c.167 §2; 1989 c.928 §17]

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 by the surety from the bond as follows:

(1) If the total claims filed with the board against a contractor within 90 days after the date the board receives notice of the first claim against the contractor exceed the amount of the bond, the bond 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 contractor by the owner of a structure shall have payment priority to the

full extent of the bond over all other types of claims.

(b) If claims filed against a contractor by the owner of a structure do not exhaust the bond, then all other types of claims filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond or deposit to non-owner 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 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, all claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond 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; 1987 c.414 §40c; 1989 c.928 §18]

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

701.160 Nonlawyer may represent corporation before board. Notwithstanding ORS 9.320, a corporation that is registered or required to be registered as a contractor under this chapter and that is a party in any proceeding before the board or any representative thereof may appear or be represented in the proceeding by an officer of the corporation who is not a member of the Oregon State Bar. [1985 c.599 §3; 1989 c.928 §19]

701.170 Order constitutes judgment.

(1) An order of the board that determines a claim under ORS 701.140 to 701.160 which becomes final by operation of law or on appeal and remains unpaid 10 days after the period of time allowed in ORS 701.150 has expired, shall constitute a judgment in favor of the claimant against the person and may be recorded with the county clerk in any county of this state.

(2) 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. [1989 c.430 §4 and 1989 c.928 §20]

701.180 Arbitration; waiver of arbitration. (1) Notwithstanding the provisions of ORS 33.210 to 33.400, any other provision of law or any contractual provision, failure of a builder to initiate arbitration proceedings within 30 days after notification by the board that a claim under ORS 701.145 (4) has been filed with the Construction Contractors Board, is a waiver of any right to

arbitration unless otherwise agreed in writing between the person filing the claim with the Construction Contractors Board and the builder.

(2) Notwithstanding the provisions of ORS 33.210 to 33.400, any other provision of law or any contractual provision, failure of a contractor to initiate arbitration proceedings within 30 days after notification by the board that a claim under ORS 701.145 (4) has been filed with the Construction Contractors Board, is a waiver of any right to arbitration. [Subsection (1) enacted as 1989 c.430 §5, subsection (2) enacted as 1989 c.928 §21]

Note: The provisions of subsections (1) and (2) are similar and have been compiled as one section for the user's convenience

CONSTRUCTION CONTRACTORS BOARD

701.205 Construction Contractors Board; members; terms; confirmation; vacancies; qualifications. (1) The Construction Contractors Board is established, consisting of nine members appointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three of the members shall be residential contractors, including one contractor engaged in the business of remodeling, two shall be public members and one shall be an elected representative of governing bodies of local government. Two of the members shall be general contractors, and one shall be a specialty contractor.

(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 six contractor 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, 1987 c.414 §40; 1989 c.928 §22]

Note: Section 22a, chapter 928, Oregon Laws 1989, provides:

Sec. 22a. (1) The members of the Builders Board as it exists on the effective date of this Act [August 2, 1989] shall be members of the Construction Contractors Board and shall continue in office for the terms appointed as if the name of the board did not change

(2) Notwithstanding the term of office specified in ORS 701.205, of the additional four members added to the Construction Contractors Board by the amendments to ORS 701.205 by section 22 of this Act:

(a) Two shall serve for a term ending June 30, 1991.

(b) One shall serve for a term ending June 30, 1992.

(c) One shall serve for a term ending June 30, 1993.

(3) Any reference in the statutes to the Builders Board shall be considered a reference to the Construction Contractors Board.

(4) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the Builders Board, wherever they occur in Oregon Revised Statutes, words designating the Construction Contractors Board. [1989 c.928 §22a]

701.215 Officers; quorum; compensation and expenses; committee membership. (1) The board shall select from among its members a chairperson, a vice-chairperson 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.

(4) The chairperson of the board shall be a member of any committee created by the board. [1971 c.740 §6; 1989 c.928 §23]

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 board for the costs of such investigations.

(3) Any inspector authorized by the board to determine compliance with the provisions of this chapter is authorized to require any person who is engaged in any activity regulated by this chapter to demonstrate proof of compliance with the registration requirements of this chapter. If a person who is contracting directly with the owner of a structure does not demonstrate proof of compliance with the registration requirements of this chapter, the inspector shall give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the registration requirements of this chapter and shall provide that unless the person demonstrates proof of compliance within 10 days of the date of the notice, the inspector may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each structure upon which the person is then

performing work under contract, or mailed to all persons who are mortgagees or trust deed beneficiaries of record with respect to the real property upon which each such structure is situated. If more than one person is the owner of any such structure, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the 10-day period specified in the notice to demonstrate proof of compliance with the registration requirements of this chapter, the inspector is authorized to order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector may not order the work stopped until at least 10 days after the copies of the notice of noncompliance have been served upon or delivered to the owners or mailed to the mortgagees and trust deed beneficiaries specified in this subsection.

(4) 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.

(5) If any person fails to comply with a subpoena issued under subsection (4) of this section or refuses to testify on matters on which the person 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, 1987 c.414 §40d; 1989 c.744 §3; 1989 c.928 §26]

701.230 Board to provide names of unregistered contractors to other state agencies. At least once each month, the board shall provide to investigative units of the Department of Revenue, Department of Insurance and Finance and Employment Division the name and address of each person who acts as a contractor in violation of this chapter or who knowingly assists an unregistered person to act in violation of this chapter. [1983 c.616 §2; 1989 c.928 §27]

701.235 Rulemaking authority; rules to substitute letter of credit for bond. (1) The board shall adopt rules to carry out the provisions of this chapter.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state in lieu of the bond requirements prescribed in ORS 701.085 and 701.300. [1971 c.740 §19, 1989 c.928 §28]

701.240 Board to provide names of registered contractors to other state

agencies. (1) The board shall supply the Department of Revenue and the Employment Division with a partial or complete list of registrants as deemed necessary by the board.

(2) The lists required by subsection (1) of this section shall contain the name, address, social security or federal employer identification number of each registrant or such other information as the department or division may by rule require. [1989 c.870 §6]

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

701.250 Board to provide registrant status on request; fee. (1) Any individual may request and the board shall provide notification of the status of one or more registrants.

(2) The board may charge a standard fee for the notification described in subsection (1) of this section not to exceed the cost of preparation and provision of such notices. [1989 c.870 §7]

701.255 Funds retained for collection of civil penalties. The Construction Contractors Board may retain from the funds paid into the General Fund under ORS 701.992 an amount not to exceed 20 percent annually for the board's costs of collection of civil penalties imposed by order of the board, including but not limited to costs of investigation, travel and other expenses in connection therewith. [1989 c.928 §29]

701.260 Residential contractors committee; duties; claims appeal committee; duties; appeals. (1) From within its membership, the board shall appoint the three residential contractors, one of the public members and the elected official as the Residential Contractors Committee, which committee shall also constitute the Claims Appeal Committee.

(2) The Residential Contractors Committee shall:

(a) Make recommendations to the board regarding rules for implementation of chapter 928, Oregon Laws 1989, as it applies to residential contractors, including but not limited to the need for licensing of contractors and the need for continuing education of contractors.

(b) As the Claims Appeal Committee, hear appeals on claim-proposed orders and on petitions for reconsideration and rehearing and motions for stays on claims that were originally appealed to the board as proposed orders.

(3) The Construction Contractors Board shall not consider an appeal of a decision of the Claims Appeal Committee. The parties affected by a decision of the Claims Appeal

Board shall retain the right to appeal the decision to the Court of Appeals. [1989 c.928 §24]

Note: See note under 701.900.

701.270 Commercial and public works contractors committee; duties. (1) From within its membership, the board shall appoint the two general contractors, the specialty contractor and one public member as the Commercial and Public Works Contractors Committee.

(2) The Commercial and Public Works Contractors Committee shall make recommendations to the board regarding rules for implementation of chapter 928, Oregon Laws 1989, as it applies to general contractors and specialty contractors, including but not limited to the need for licensing of contractors and the need for continuing education for contractors. [1989 c.928 §25]

Note: See note under 701.900.

REGISTRATION, BOND REQUIREMENTS AND CLAIMS FOR GENERAL OR SPECIALTY CONTRACTOR

701.300 General and specialty contractor bond requirements; claim procedures.

(1) A person who intends to register as a general contractor shall file with the board a surety bond with one or more corporate sureties authorized to do business in this state in the following amounts:

- (a) If a general contractor, \$10,000; or
- (b) If a specialty contractor, \$5,000.

(2) Bonds filed under this section shall remain in effect for at least one year or until depleted by claims, unless the surety first cancels the bond. At the discretion of the surety, the bond may be continued for an additional period by continuation certificate. The liability of the surety for claims against the bond shall not exceed the penal sum of the bond no matter how many years the bond is in force. No extension by continuation certificate, reinstatement, reissue, or renewal of the bond shall increase the liability of the surety.

(3) A general contractor or specialty contractor may elect to include registration for work on residential structures. If a general contractor or a specialty contractor elects to include registration for work on residential structures, the contractor is required to file with the board only the bond required under this section. Claims involving residential structures shall only be allowed against the bond required under this section if the general contractor or specialty contractor elects to include registration for work on residential structures. Any amounts owed as a result of board determination or

court judgment against a general contractor or specialty contractor involving residential structures or nonresidential structures, or both, shall be paid by the surety in accordance with the priority system set forth in subsection (13) of this section.

(4) If a performance or payment bond is required by statute on a project, claimants shall not recover from the surety bond required by this section for claims that are covered by the performance or payment bond.

(5)(a) A person must file a claim with the board as set forth in ORS 701.140 to 701.150 for claims involving residential structures. A determination made pursuant to ORS 701.140 to 701.150 shall have priority over any other claim or judgment.

(b) Except for claims involving residential structures, any person with a claim against a general contractor or specialty contractor may bring an action upon the bond required by this section in a court of competent jurisdiction.

(6) In order to have access to the bond required under this section, the plaintiff in an action against a general contractor or specialty contractor must deliver a copy of the complaint to the board and to the surety on the bond by certified mail, return receipt requested. The copy shall be mailed to the board and to the surety immediately upon filing the complaint. The surety shall not be joined as a party to the action, but shall have the absolute right to intervene in the action. If notice is so given, the surety shall be bound by any judgment entered in the action, except as limited by this section. The date the board receives a copy of the complaint shall be the date the board uses to establish the priority of the claim.

(7) If a court issues a judgment against a general contractor or a specialty contractor, the plaintiff shall deliver a certified copy of the judgment to the board and to the surety within 30 days of the date of entry of the judgment in order to retain a claim against the bond. Execution on the judgment against the bond shall only be in accordance with this section.

(8) Upon receipt of a timely-filed copy of the judgment, the board shall issue a proposed order in the amount of the judgment, together with any court costs, interest, and attorney fees awarded by the court. The board's determination of the claim shall be limited only to a determination of whether the claim comes within the jurisdiction of the board.

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

(10) Upon determination of a claim under this section against a contractor 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.

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

(12) 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 following notification by the board under subsection (11) of this section, the court may award:

- (a) Costs;
- (b) Reasonable attorney fees to the prevailing party as a part of the costs; and
- (c) Twice the amount of damages against the surety as ordered by the board, 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.

(13) Determinations by the board or judgments against the surety bond of a general contractor or a specialty contractor shall be satisfied in the following priority in any 90-day period. A 90-day period shall begin on the date the first claim is filed against a general contractor or specialty contractor. A subsequent 90-day period shall begin on the date the first claim is filed after the close of each preceding 90-day period. Within a 90-day period:

(a) Determinations and judgments as a result of claims against a contractor by the owner of a residential structure shall have payment priority to the full extent of the bond over all other types of claims.

(b) If the claims described in paragraph (a) of subsection (13) of this section do not exhaust the bond, then amounts due as a result of all other types of residential structure claims filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner claimants shall not exceed \$2,000.

(c) If determinations involving residential structures do not exhaust the bond, the judgments involving nonresidential claims shall be satisfied in the following order:

- (A) Labor, including employee benefits.
- (B) Claims for breach of contract by a party to the construction contract.
- (C) Any court costs, interest, and attorney fees the plaintiff may be entitled to re-

cover. The total cost paid from any one bond for court costs, interest, and attorney fees shall not exceed \$2,000.

(d) If the total claims filed with the board against a general contractor or a specialty contractor within 90 days after the board receives notice of the first claim against the contractor exceed the amount of the bond, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(e) If the total amounts due as a result of claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond, all amounts due as a result of claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond is exhausted, but not later than one year after whichever occurs first:

(A) The date of expiration of the certificate of registration in force at the time the work was completed or abandoned; or

(B) Cancellation by the surety of the certificate of registration in force at the time the work was completed or abandoned.

(14) The board shall not process a claim against the surety of a general contractor or a specialty contractor unless it is filed in a timely manner as follows:

(a) For claims involving residential structures, the claim must meet the criteria contained in ORS 701.145 (3).

(b) For claims involving nonresidential structures, the claim must be filed with the board no later than one year after the project upon which the claim is based was completed or abandoned.

(15) In the event any final order or judgment impairs the liability of the surety upon the bond so that a bond in the full amount required by this section is not in effect, the board shall suspend the registration of the contractor until the bond liability in the required amount is unimpaired. If the bond becomes fully impaired, a new bond shall be furnished.

(16) In order to carry out the purposes of chapter 928, Oregon Laws 1989, the board may adopt rules including, but not limited to establishing language for the surety bonds and processing requirements for the different types of claims described in this section. [1989 c.928 §11]

Note: See note under 701.900.

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 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; 1987 c.158 §148]

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 the contractor or subcontractor is responsible for the performance of construction work under the contract when the contractor or subcontractor considers the work that the contractor or subcontractor 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 the contractor or subcontractor is responsible for the performance of construction work under the 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 the 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 the contractor 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 the contractor 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 employees 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 the failure of the contractor or subcontractor to faithfully perform the obligations of the 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 moneys. [1975 c.772 §6]

Note: See note under 701.410.

701.900 Short title. Chapter 928, Oregon Laws 1989, shall be known as the Construction Contractors Registration Act. [1989 c.928 §31]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "chapter 928, Oregon Laws 1989," in 701.260, 701.270, 701.300 and 701.900. Chapter 928, Oregon Laws 1989, enacted into law and amended the ORS sections which may be found by referring to the 1989 Comparative Section Table located in volume 15 of Oregon Revised Statutes (1989 Edition).

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]