

OREGON CONSTRUCTION LIEN PAMPHLET

published by the
Legal Committee
of the
Associated General Contractors
Oregon-Columbia Chapter

AGC Oregon
Columbia
Chapter
ASSOCIATED GENERAL CONTRACTORS



CONSTRUCTION LIENS: PROTECT YOUR MONEY

This pamphlet outlines only the statutory notice and time requirements for perfection of construction lien claims in Oregon. Strict compliance with these requirements is necessary in order to preserve your lien claim rights.

Construction liens apply only to privately-owned projects. If you have not been paid for work on a publicly-owned project, the mechanism provided by law for securing payment is a claim on the prime contractor's statutory bond and not a construction lien.

While construction liens provide important security for payment, breach of contract and other similar claims for nonpayment are also usually available to protect your interests.

WHO IS ENTITLED TO A CONSTRUCTION LIEN

The following are entitled to claim a lien:

- contractors/subcontractors
- material suppliers
- equipment lessors
- architects and engineers
- trustees of employee benefit plans
- landscape architects
- land surveyors
- any person providing labor, materials, or rental equipment for use in either the construction of an improvement, the preparation of land, or the improvement of a road or street adjoining the land.

INFORMATION NOTICE TO OWNERS OF RESIDENTIAL STRUCTURES BUILDINGS

Definition*

A residential structure is one which the owner does or will occupy as a residence and the structure is not more than four units capable of being used as a residence.

Notices Required

The original contractor for a residential building or structure that is or will be occupied by the owner as a residence and that contains not more than four units capable of being used as residences or homes must provide the owner or the owner's agent with an "Information Notice to Owner" at the time of signing a written contract or within five days after an oral contract is made. A written contract is required for all construction over \$2,500. Pursuant to statute, the state Construction Contractors Board (CCB) has adopted a form of notice that must be used. This form may be obtained from the CCB. If an original residential contractor fails to provide the information notice, the contractor may not claim a lien and may be fined up to \$15,000 or have his/her registration as a builder suspended.

* Definitions for most terms used in this pamphlet are located in a glossary located on page 8 of this pamphlet.

NOTICE OF RIGHT TO A LIEN TO OWNERS

Who Must Give Notice

Oregon construction lien statutes provide that certain persons furnishing labor, materials, or rental equipment must give a written *Notice of the Right to a Lien* to the owner of a project. Whether a person is required to give the notice depends on whether the labor, materials, or rental equipment are provided on a residential or commercial project. Failure to provide this notice when required will bar a lien claimant from enforcing its lien.

Residential Projects

All persons providing labor, materials, or rental equipment on residential projects must give a written Notice of the Right to a Lien to the owner, except when the labor, materials, or rental equipment are provided under a direct contract with the owner.

Commercial (Non-Residential) Projects

On commercial projects, only persons providing materials only (material suppliers) must give a written Notice of the Right to a Lien to the owner. Even material suppliers need not give the notice when the materials are provided under a direct contract with the owner.

When To Give Notice

Although the notice may be given at any time during the construction process, it is only effective for labor, materials, or rental equipment provided after the date which is eight days before the notice is given. The eight day “look back” period does not include Saturdays, Sundays, or holidays. Ideally, lien claimants should deliver the notice on or before the first day they provide labor, materials, or rental equipment, but a “late” notice will still be effective as to the prior eight days and thereafter.

Form Of Notice

The form for this notice is provided in ORS 87.023 and commercial forms are available at private establishments specializing in legal forms. The notice must be sent to the owner of the improvement by registered or certified mail or delivered in person.

Lien Notice Services

Private firms offer lien notice services. Consult your telephone directory for listings.

NOTICE OF RIGHT TO A LIEN TO MORTGAGEES

Notice Is Necessary

A lien for material will have priority over prior recorded mortgages only if the person furnishing the materials, not later than eight days after the delivery of materials, delivers to the mortgagees either a copy of the notice given to the owner or a notice that provides substantially the same information. Even when a Notice of Right to A Lien is not required to be given to the owner in order to preserve construction lien rights, all persons providing materials on residential or commercial project must—within eight days after the delivery of such materials—deliver to mortgagees and others with a recorded interest in the land or the improvement a copy of the Notice of Right to A Lien given to the owner (or a notice

that provides substantially the same information) in order to preserve the priority of their lien against these recorded interests. This notice is effective only for materials provided after the date which is eight days before the notice is mailed or delivered. Such notices to mortgagees should be given by any person providing any materials on a project, whether a material supplier, subcontractor, or contractor. If a contractor or subcontractor providing materials as well as labor or rental equipment fails entirely to deliver this notice to mortgagees or others with recorded interests, and the contractor's or subcontractor's lien would have otherwise had priority over the prior recorded interest, only the non-materials portion of the lien will retain priority (and then only if the materials portion of the lien is separated out on the claim of lien form). If a contractor providing labor and materials does not deliver the notice, only the labor portion of the lien will have priority over a prior recorded mortgage as a person providing only labor does not need to give a notice.

Priority Is Important

The priority of a lien is often the deciding factor in whether the lien claimant is paid. Assume the following: an improvement has a value of \$100,000; a mortgage on the improvement secures a \$95,000 obligation; and a contractor files a lien for \$30,000. Unless the lien has priority, the contractor will probably not recover more than \$5,000.

REQUIREMENTS FOR FILING A CLAIM OF LIEN

Filing Deadline

Any person who wishes to claim a construction lien for labor, materials, or rental equipment must file a claim of lien with the recording officer in the county where the project is located no later than 75 days after ceasing to perform or 75 days after completion of construction of the overall project, whichever is earlier. All other lien claimants must record their claims of lien no later than 75 days after completion of construction. Completion of construction occurs when the improvement is substantially completed (i.e., when the improvement can be used by the owner for its intended purpose), when a Notice of Completion is posted and recorded as required by statute, or when the improvement is abandoned. An improvement is considered abandoned on the 75th day after work on the construction of the improvement ceases, or when the owner or mortgagee of the improvement or an agent of either posts and records an abandonment notice in writing signed by either the owner or the mortgagee. A claim of lien filed before completion of construction or before the last day of performance, delivery, or rental (as applicable) will be considered premature and on that basis invalid.

POST-LIEN NOTICES

Notice of Filing Claim of Lien

Within 20 days after the claim of lien is recorded, the lien claimant must mail to the owner and any mortgagees or others with a recorded interest in the improvement or the land a notice in writing that the claim of lien has been filed. A copy of the claim of lien must be attached. Failure to deliver this notice does not invalidate the lien, but no costs, disbursements, or attorneys' fees will be allowed to the lien claimant upon foreclosure of the lien. The notice must be sent by registered or certified mail or delivered in person.

Notice of Intent to Foreclose a Lien

At least 10 days before filing a foreclosure suit, a lien claimant intending to foreclose a construction lien must give a written Notice of Intent to Foreclose a Lien to the owner and any mortgagees or others with a recorded interest in the improvement or the land. Failure to give this notice does not invalidate the lien, but no costs, disbursements, or attorneys' fees will be allowed to the lien claimant upon foreclosure of the lien. This notice must be sent by registered or certified mail or delivered in person.

FORECLOSING A LIEN

A claimant's lien rights will be lost unless a foreclosure suit is commenced within 120 days after the claim of lien is filed. A foreclosure suit is commenced upon filing a complaint to foreclose the lien in the circuit court in the county where the project is located. Costs, disbursements and attorneys' fees are recoverable if the lien claimant prevails on the merits of the foreclosure suit.


The purpose of this pamphlet is to provide AGC members with general information regarding their rights under the Oregon construction lien statutes in effect on January 1, 2006. The filing, perfection, and foreclosure of construction liens is a complicated matter. This pamphlet must not be construed as legal advice and is clearly not a substitute for seeking competent legal counsel. A list of law firms associated with the AGC is provided at the end of this pamphlet.

This pamphlet was originally prepared in 1992 based on excerpts from an article written by Lynn K. Woods and published in the *Business Journal*. It was updated in August 2000 by James A. Zehren and Timothy J. Calderbank of the construction and design practice group of the law firm of Stoel Rives LLP, and again in 2006 by Jeremy T. Vermilyea, with the Dirt Law[®] practice group at Jordan Schrader PC.

Additional information about the Oregon-Columbia Chapter of the Associated General Contractors of America can be found on the world wide web at www.agc-oregon.org.

The current version of Oregon's construction lien statutes (ORS 87.001 et seq.) can also be found on the Internet, www.leg.state.or.us/ors/087.html.

NOTICE OF RIGHT TO A LIEN

		COMMERCIAL		RESIDENTIAL	
		Original Contractor	Sub-Contractor	Original Contractor	Sub-Contractor
MATERIALS	Owner	No	Yes	No	Yes
	Mortgagee	Yes	Yes	Yes	Yes
LABOR & MATERIALS	Owner	No	No	No	Yes
	Mortgagee	Yes	Yes	Yes	Yes
LABOR	Owner	No	No	No	Yes
	Mortgagee	No	No	No	No
EQUIPMENT	Owner	No	No	No	Yes
	Mortgagee	No	No	No	No

* For purposes of this chart, “Original Contractor” means a person providing labor, materials, or rental equipment under direct contract with the owner, and “Subcontractor” means a person providing labor, materials, or rental equipment but not under direct contract with the owner.

EXAMPLE - You are a Subcontractor on a commercial improvement, you provide labor and materials. Are you required to send a Notice of Right to a lien to the owner? NO. Are you required to send a Notice of Right to a Lien to the Mortgagee? YES.

* Remember, the original contractor for a residential structure must provide to the owner or an the owner’s agent of the owner with an “Information Notice to Owner” at the time of signing a written contract or within 5 days after an oral contract is made.

TIP: RECORDKEEPING

The lien claimant should establish an accounts receivables aging system based upon the latter of completion of the project or the last date that the lien claimant provided labor, materials or rental equipment for the project. The aging system should “red flag” any account more than 60 days old. At that time the lien claimant should decide whether to file a claim of lien. If the lien claimant desires to have an attorney file a claim of lien, legal fees can be reduced by initially providing the attorney with the amount of the claim, broken down into the categories of labor, materials and rental equipment. Legal fees can be substantially reduced if the claimant does the initial organizational work.

GLOSSARY*

Construction includes the creation, alteration, partial construction and repair done in and upon an improvement.

Construction agent includes a contractor, architect, builder or other person having charge of construction or preparation.

Contractor means a person who contracts to be responsible for the performance of all or part of a job of preparation or construction and who provides labor at the site or materials, supplies and labor at the site.

Improvement includes any building, wharf, bridge, ditch, flume, reservoir, well, tunnel, fence, street, sidewalk, machinery, aqueduct and all other structures.

Commercial improvement means any structure or building not used or intended to be used as a residential building, or other improvements to a site on which such a structure or building is to be located.

Original contractor means a contractor who has a direct contractual relationship with the owner.

Owner means a person (a) who is or claims to be the owner in fee or a lesser estate of the land on which preparation or construction is performed; (b) who has entered into a contract for the purchase of an interest in the land or improvement

thereon sought to be charged with a lien; or (c) to whom a valid subsisting lease on land or an improvement is made.

Preparation includes excavating, surveying, landscaping, demolition and detachment of existing structures, leveling, filling in, and other preparation of land for construction.

Residential building means a building or structure that is or will be occupied by the owner as a residence and that contains not more than four units capable of being used as residences or homes.

Residential construction or improvement means the original construction of residential property and constructing, repairing, remodeling or altering residential property and includes, but is not limited to, the construction, repair, replacement or improvement of driveways, swimming pools, terraces, patios, fences, porches, garages, basements and other structures or land adjacent to a residential dwelling.

Residential construction or improvement contract means an agreement, oral or written, between an original contractor and an owner for the performance of a home improvement and includes all labor, services and materials furnished and performed thereunder.

Site means the land on which construction or preparation is performed.

Subcontractor means a contractor who has no direct contractual relationship with the owner.

*Definitions as provided by Oregon’s construction lien statutes, ORS 87.001 *et seq.*

**Law Firm Members Of The Oregon-Columbia Chapter of
AGC**

Portland/Metro Area

Ball Janik LLP	503-228-2525
Barran Liebman LLP	503-228-0500
Bateman Seidel PC	503-972-9920
Bradach Law Offices	503-238-7170
Bullivant Houser Bailey	503-499-4425
Davis Wright Tremaine LLP	503-241-2300
Dunn Carney Allen Higgins & Tongue LLP	503-224-6440
Grenley, Rotenberg, Evans, et al	503-241-0570
Jordan Schrader PC	503-598-7070
Kell, Alterman & Runstein	503-222-3531
Miller Nash LLP	503-224-5858
Parsons Farnell & Grein, LLP	503-222-1812
Schwabe, Williamson & Wyatt	503-222-9981
Smith, Freed, Eberhard PC	503-227-2424
Stewart Sokol & Gray, LLC	503-221-0699
Stoel Rives LLP	503-224-3380
Sussman Shank LLP	503-227-1111
Tarlow Naito & Summers, LLP	503-968-9000
Yazbeck, Cloran & Hanson, LLC	503-227-1428