

**Enrolled**  
**House Bill 3689**

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT ACCOUNT-  
ABILITY

CHAPTER .....

AN ACT

Relating to construction in connection with residential property; creating new provisions; amending  
ORS 87.007, 701.005, 701.410 and 701.420; repealing ORS 87.091; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 87.007 is amended to read:

87.007. (1) This section applies to a sale of the following residential property:

(a) A new single family residence or a single family residence where the sales price **is \$50,000 or more** for original construction or **the contract price is \$50,000 or more** for improvements to the residence completed within three months [*prior to*] **before** the date [*of the sale of*] the property [*is \$50,000 or more*] **is sold**.

(b) A new condominium unit or a condominium unit where the sales price **is \$50,000 or more** for original construction or **the contract price is \$50,000 or more** for improvements to the condominium unit completed within three months [*prior to*] **before** the date [*of the sale of*] the property [*is \$50,000 or more*] **is sold**. As used in this paragraph, "condominium unit" has the meaning given that term in ORS 100.005.

(c) A new residential building or a residential building where the sales price **is \$50,000 or more** for original construction or **the contract price is \$50,000 or more** for improvements to the residential building completed within three months [*prior to*] **before** the date [*of the sale of*] the property [*is \$50,000 or more*] **is sold**. As used in this paragraph, "residential building" means a building or structure [*containing*] **that contains** not more than four dwelling units capable of [*being used*] **use** as residences or homes.

(2) [*For purposes of protecting purchasers of residential property with respect to claims of lien that arise before the date the sale of the residential property is completed but may be perfected under ORS 87.035 after the date the sale of the property is completed, when*] An owner of record **at the time the owner of record** sells residential property to a purchaser[, *the owner*] shall [*provide such protection*] **protect the purchaser from claims of lien that arise before the date on which the sale is complete but that may become perfected under ORS 87.035 after the date on which the sale is complete** by one of the following methods:

(a) Purchase or otherwise provide title insurance on **the purchaser's** behalf [*of the purchaser*] by **means of** a policy issued:

(A) Without exception for filed and unfiled claims of construction lien [*existing*] **that exist** at the **closing** date [*of closing*] of the purchase; and

(B) On forms and at rates filed with, but not disapproved by, the Director of the Department of Consumer and Business Services.

(b) Retain in escrow, as defined in ORS 696.505, an amount of funds that is not less than 25 percent of the sale price of the residential property. The funds *[shall]* **must** be maintained in or released from escrow *[pursuant to]* **in accordance with** written instructions to the escrow agent from the **purchaser and the** owner that sold the property *[and the purchaser]*. The written instructions shall *[provide that any claims]* **require the escrow agent to pay upon the purchaser's demand a claim** of lien that *[are]* **is** perfected after the date of the sale of the property and that *[are not paid by]* the owner that sold the property *[shall be paid upon demand by the purchaser from the amount maintained in escrow]* **has not paid. The escrow agent shall make the payment from the amount maintained in escrow.** The escrow agent shall release the unused funds from escrow to the owner that sold the property if the escrow agent receives a request from the owner that sold the property and the owner **that sold the property** provides documentation from a title company that:

(A) *[Claims of lien have]* **A claim of lien has** not been perfected against the property and 90 days have passed since the date that construction was completed; or

(B) *[One or more claims]* **A claim** of lien *[have]* **has** been perfected against the property, that 135 days have passed since the date that each such claim of lien was filed and that all *[such]* perfected claims of lien have been released or waived.

(c) Maintain a bond or letter of credit in an amount that is not less than 25 percent of the sale price of the property. The Construction Contractors Board shall prescribe by rule the amount, terms and conditions of the bond or letter of credit to be maintained under this paragraph.

(d) Obtain written waivers from every person *[claiming]* **that claims or perfects** a lien or liens **under ORS 87.010 or 87.035 that**, in an aggregate amount *[that exceeds]*, **exceed** \$5,000 with respect to the property *[under ORS 87.010, 87.021 or 87.035,]* and provide copies of the waivers to the purchaser not later than the date the sale of the property is completed.

(e) Complete the sale of the residential property after the deadline for perfecting *[all claims of liens]* **a claim of lien** under ORS 87.035 with respect to the property.

*[(f) Obtain a signed written waiver from the purchaser of the residential property. The waiver shall be in a form described in ORS 87.091 and shall specify that the provisions of paragraphs (a) to (e) of this subsection do not apply to the sale of the residential property. The waiver must be printed on a form that is separate from any residential property sales contract or agreement and may be signed by the purchaser at any time after the purchaser enters into the sales contract or agreement with respect to the residential property and before closing of the transaction.]*

(3) Not later than the date **on which** the sale of the residential property is completed, the owner who sold the property shall complete, sign and deliver to the purchaser a form *[specifying]* **that specifies** the method that the owner has selected to comply with the requirements of subsection (2) of this section or that **states that** subsection (2) of this section does not apply to the sale of the property. The notice *[shall]* **must** be in a form *[designated by]* the Construction Contractors Board **designates** by rule under ORS 701.235.

(4) A real estate licensee, as defined in ORS 696.010, acting in the professional capacity of a licensee *[may not be]* **is not** liable in *[any]* **a** criminal, civil or administrative proceeding *[arising]* **that arises** out of the failure of an owner of record to comply with subsection (2) or (3) of this section.

(5) Violation of subsection (3) of this section is a Class A violation.

(6) In addition to any other remedy or penalty provided by law, a purchaser may bring an action to recover up to twice the amount of actual damages caused by a violation of subsection (2) of this section. The court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees. Any action brought under this subsection must be commenced not later than two years after the date **on which** the sale of the property is completed.

(7) For purposes of subsections (5) and (6) of this section and ORS 646.608:

(a) It is a defense to a violation of subsection (2) or (3) of this section that *[there is]* no enforcement or *[attempted enforcement of any]* **attempt to enforce a** claim of lien against the prop-

erty that is the subject of the sale [*arising*] **occurred** before the date the sale of the property [*is*] **was** completed; and

(b) As to [*any*] a claim of lien, it is a defense to a violation of subsection (2) or (3) of this section if the owner that sold the property:

(A) Proves that the claim of lien against the property that is the subject of the sale is invalid; or

(B) Satisfies the claim of lien or obtains a release from the claim of lien on the property that is the subject of the sale.

(8) A violation of subsection (2) or (3) of this section [*is not considered to have occurred*] **does not occur** with respect to a lien described in ORS 87.010 during the period that the validity of the lien is disputed in a judicial proceeding or a proceeding described in ORS chapter 701.

(9) Nothing in this section requires the payment of a lien that is not otherwise valid. This section does not apply to claims of lien perfected by persons [*furnishing any*] **that furnish** materials, equipment, services or labor at the request of the purchaser of the residential property.

**SECTION 2. Section 3 of this 2010 Act is added to and made a part of the Construction Lien Law.**

**SECTION 3. (1) A subcontractor or a person that provides labor, materials or equipment for a project to renovate, remodel, repair or otherwise alter an existing owner-occupied residence may not perfect a claim of lien against the owner's property under ORS 87.035 if the subcontractor or the person provided or contracted to provide services, labor, materials or equipment to a contractor that was unlicensed at the earlier of the following times:**

**(a) The time the subcontractor or the person first contracted with the contractor for the project; or**

**(b) The time the person first delivered labor, materials or equipment to the project site.**

**(2) Subsection (1) of this section does not apply if the services, labor, materials or equipment is purchased with cash or consumer credit.**

**(3) The Construction Contractors Board may notify a person at the person's request of the status of a contractor's license using any means the board uses to notify a contractor of the contractor's license status. The board may charge the person a fee in an amount the board specifies by rule for the cost of providing the notice to the person.**

**SECTION 4. ORS 701.005 is amended to read:**

701.005. As used in this chapter:

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

(2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

(a) Commercial general contractor level 1;

(b) Commercial specialty contractor level 1;

(c) Commercial general contractor level 2;

(d) Commercial specialty contractor level 2; or

(e) Commercial developer.

(3) "Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.

(4) "Construction debt" means an amount owed under:

(a) An order or arbitration award issued by the board that has become final by operation of law;

(b) A judgment or civil penalty that has become final by operation of law arising from construction activities within the United States; or

(c) A judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017.

(5) "Contractor" means any of the following:

(a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, [*any*] a building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to do any part thereof.

(b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.

(c) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(d) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(e) [Any] A person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(f) A business that supplies the services of a home inspector certified under ORS 701.350 or a cross-connection inspector and backflow assembly tester certified under ORS 448.279.

(g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid to clean or service chimneys.

(6) “Developer” means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.

(7)(a) “General contractor”[:]

[a)] 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, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board.

(b) “General contractor” does not mean a specialty contractor or a residential limited contractor.

(8)(a) “Home improvement” means a renovation, remodel, repair or alteration by a residential contractor to an existing owner-occupied:

(A) Residence that is a site-built home;

(B) Condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

(E) Floating home, as defined in ORS 830.700.

(b) “Home improvement” does not include a renovation, remodel, repair or alteration by a residential contractor:

(A) To a structure that contains one or more dwelling units and is four stories or less above grade; or

(B) That the residential contractor performed in the course of constructing a new residential structure.

[(8)] (9)(a) “Home inspector” means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure and the appurtenances [thereto.] of the residential structure.

(b) “Home inspector” does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

[(9)] (10) “Key employee” means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee [identified by] the board identifies by rule.

[(10)] (11) “Large commercial structure” means a structure that is not a residential structure or small commercial structure.

[(11)] (12) “Officer” means any of the following persons:

- (a) A president, vice president, secretary, treasurer or director of a corporation.
- (b) A general partner in a limited partnership.
- (c) A manager in a manager-managed limited liability company.
- (d) A member of a member-managed limited liability company.
- (e) A trustee.

(f) A person [*defined*] **the board defines by rule** as an officer [*under board rules*]. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

[(12)] **(13)** “Residential contractor” means a licensed contractor that holds an endorsement as a:

- (a) Residential general contractor;
- (b) Residential specialty contractor;
- (c) Residential limited contractor; or
- (d) Residential developer.

[(13)] **(14)** “Residential developer” means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.

[(14)] **(15)(a)** “Residential structure”[:]

[(a)] means:

(A) A residence that is a site-built home;

(B) A structure that contains one or more dwelling units and is four stories or less above grade;

(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

- (D) A modular home constructed off-site;
- (E) A manufactured dwelling; or
- (F) A floating home as defined in ORS 830.700.

(b) **“Residential structure”** does not mean:

(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;

- (B) Transient lodging;
- (C) A residential school or residence hall;
- (D) A state or local correctional facility other than a local facility for persons enrolled in work release programs maintained under ORS 144.460;
- (E) A youth correction facility as defined in ORS 420.005;
- (F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;
- (G) A detention facility as defined in ORS 419A.004;
- (H) A nursing home;
- (I) A hospital; or
- (J) A place constructed primarily for recreational activities.

[(15)] **(16)** “Responsible managing individual” means an individual who:

(a) Is an owner described in ORS 701.094 or an employee of the business;

(b) Exercises management or supervisory authority, as defined by the board by rule, over the construction activities of the business; and

(c)(A) [*Has*] Successfully completed the training and testing required for licensing under ORS 701.122 within a period [*identified by*] the board **identifies** by rule;

- (B) [*Has*] Demonstrated experience [*required by*] the board **requires** by rule; or
- (C) [*Has*] Complied with the licensing requirements of ORS 446.395.

[(16)] **(17)** “Small commercial structure” means:

(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;

(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit; or

(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000.

[(17)] **(18)** “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” includes a person who performs work regulated under ORS 446.395.

[(18)] **(19)** “Zero-lot-line dwelling” means a single-family dwelling unit constructed in a group of attached units in which:

(a) Each attached unit extends from foundation to roof with open space on two sides; and

(b) Each dwelling unit is separated by a property line.

**SECTION 5. Section 6 of this 2010 Act is added to and made a part of ORS chapter 701.**

**SECTION 6. Notwithstanding the conditions specified for probation in ORS 701.102 (3), the Construction Contractors Board may place a contractor on probation as provided in ORS 701.102 (3) if the contractor offers to perform a home improvement, accepts a deposit of more than 50 percent of the total contract price and:**

**(1) Fails to perform diligently and in accordance with the contract specifications the home improvement for which the contractor received the deposit; or**

**(2) Fails to perform the home improvement for which the contractor received the deposit and fails to return the deposit within 10 days after a reasonable demand to return the deposit.**

**SECTION 7.** ORS 701.410 is amended to read:

701.410. (1) As used in ORS 279C.555, 279C.570, 701.410, 701.420, 701.430, 701.435 and 701.440[, unless the context otherwise requires]:

(a) “Construction” [includes] **means:**

(A) Excavating, landscaping, demolishing and detaching existing structures, leveling, filling in and [doing other preparation of] **otherwise preparing** land for the making and placement of a building, structure or superstructure;

(B) Creating or making a building, structure or superstructure; and

(C) Altering, partially constructing and doing repairs in and upon a building, structure or superstructure.

(b) “Contractor” [includes a person who] **means a person that** contracts with an owner on predetermined terms to be responsible for [the performance of] **performing** all or part of a job of construction in accordance with established specifications or plans, [retaining] **and that retains** control of **the** means, method and manner of accomplishing the desired result.

(c) “Owner” [includes a person who] **means a person that** 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] **that** enters into an agreement with a contractor for the construction.

(d) “Subcontractor” [includes a person who] **means a person that** contracts with a contractor or another subcontractor on predetermined terms to be responsible for [the performance of] **performing** all or part of a job of construction in accordance with established specifications or plans.

(2) As used in ORS 701.410, 701.420, 701.430, 701.435 and 701.440, “retainage” means the difference between the amount [earned by] a contractor or subcontractor **earns** 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] **the owner pays on the contract to the contractor, the amount the contractor pays on the contract to the subcontractor or the amount the subcontractor pays on the contract to another subcontractor.**

**SECTION 8.** ORS 701.420 is amended to read:

701.420. (1) Partial payment *[shall be]* **is** allowed and **may be** made on contracts for construction **and home improvement**. Except as provided in ORS 701.430 (2), **an owner, contractor or subcontractor may withhold as retainage** 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]* **is not** acceptance or approval of some of the work or *[as]* a waiver of *[any]* defects *[therein]* **in the work**.

(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 **contractor or subcontractor has completed and the owner has accepted the** work under the contract for construction for which the final payment is due *[has been completed and accepted and]*. **The interest** shall run until the date when final payment is tendered to the contractor or subcontractor. **When** the contractor or subcontractor **considers the work that the contractor or subcontractor is contracted to perform to be complete, the contractor or subcontractor** shall notify the party to whom the contractor or subcontractor is responsible for *[the performance of]* **performing the** 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]*. **The** 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]* **under** the contract. If the party *[to whom the contractor or subcontractor is responsible for the performance of construction work under the contract]* does not **accept the work or 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 **the contractor** withheld as retainage, the owner with whom *[that]* **the** contractor has the contract shall pay the contractor, out of the amount that *[is withheld by]* the owner **withheld** from *[that]* **the** 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.

**SECTION 9. ORS 87.091 is repealed.**

**SECTION 10.** (1) Sections 3 and 6 of this 2010 Act, the amendments to ORS 87.007, 701.005, 701.410 and 701.420 by sections 1, 4, 7 and 8 of this 2010 Act and the repeal of ORS 87.091 by section 9 of this 2010 Act become operative on January 1, 2011.

(2) Sections 3 and 6 of this 2010 Act, the amendments to ORS 87.007, 701.005, 701.410 and 701.420 by sections 1, 4, 7 and 8 of this 2010 Act and the repeal of ORS 87.091 by section 9 of this 2010 Act apply to sales of residential property and home improvements that occur and claims of lien that are filed, perfected or waived on or after the operative date specified in subsection (1) of this section.

(3) The Construction Contractors Board, before the operative date specified in subsection (1) of this section, may adopt rules or take any action that is necessary to enable the board to exercise, on or after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board by sections 3 and 6 of this 2010 Act and the amendments to ORS 87.007, 701.005, 701.410 and 701.420 by sections 1, 4, 7 and 8 of this 2010 Act.

**SECTION 11.** This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

**Passed by House February 15, 2010**

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Chief Clerk of House

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Speaker of House

**Passed by Senate February 20, 2010**

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President of Senate

**Received by Governor:**

.....M,....., 2010

**Approved:**

.....M,....., 2010

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2010

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Secretary of State