

A-Engrossed
Senate Bill 382

Ordered by the Senate May 3
Including Senate Amendments dated May 3

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon State Bar Construction Law Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires lien claimants to send required notice of lien claim only to mortgagees that comply with requirement to record name and address with county clerk.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to notices required for construction lien claimants; creating new provisions; amending ORS
3 87.005 and 87.018; and declaring an emergency.

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

5 **SECTION 1.** ORS 87.005 is amended to read:

6 87.005. As used in ORS 87.001 to 87.060 and 87.075 to 87.093:

7 (1) "Commencement of the improvement" means the first actual preparation or construction
8 upon the site or the first delivery to the site of materials of such substantial character as to notify
9 interested persons that preparation or construction upon the site has begun or is about to begin.

10 (2) "Construction" [*includes creation*] **means creating** or making [*of*] an improvement[, *and*] **or**
11 **performing an** alteration, partial construction [*and repairs*] **or repair** [*done*] in and upon an im-
12 provement.

13 (3) "Construction agent" [*includes*] **means** a contractor, architect, builder or other person hav-
14 ing charge of construction or preparation.

15 (4) "Contractor" means a person [*who*] **that** contracts on predetermined terms to be responsible
16 for [*the performance of*] **performing** all or part of a job of preparation or construction in accordance
17 with established specifications or plans, retaining control of **the** means, method and manner of ac-
18 complishing the desired result, and [*who*] **that** provides:

19 (a) Labor at the site; or

20 (b) Materials, supplies and labor at the site.

21 (5) "Improvement" [*includes any*] **means a** building, wharf, bridge, ditch, flume, reservoir, well,
22 tunnel, fence, street, sidewalk, machinery, aqueduct [*and all*] **or** other [*structures and superstruc-*
23 *tures, whenever it can be made applicable thereto*] **structure or superstructure.**

24 (6) "Mortgagee" means a person [*who*]:

25 (a) **Whose name and address appear in a mortgage of record or a trust deed of record**
26 **that is recorded under ORS 205.234 with the county clerk of the county within which the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **property or improvement is located; and**

2 **(b) That** has a valid subsisting mortgage of record or trust deed of record [*securing*] **that se-**
3 **cures** a loan upon land or an improvement.

4 (7) “Original contractor” means a contractor [*who*] **that** has a contractual relationship with the
5 owner.

6 (8) “Owner” means:

7 (a) A person [*who*] **that** is or claims to be the owner in fee or a lesser estate of the land on
8 which preparation or construction is performed;

9 (b) A person [*who has*] **that** entered into a contract [*for the*] **to** purchase [*of*] an interest in the
10 land or improvement [*thereon*] sought to be charged with a lien created under ORS 87.010; or

11 (c) A person [*to whom*] **that has** a valid [*subsisting*] lease on land or an improvement [*is*
12 *made,*] and [*who*] **that** possesses an interest in the land or improvement by reason of [*that*] **the** lease.

13 (9) “Preparation” [*includes*] **means** excavating, surveying, landscaping, [*demolition and*
14 *detachment of*] **demolishing or detaching** existing structures[,] **or** leveling, filling in[, *and other*
15 *preparation of*] **or otherwise making** land **ready** for construction.

16 (10) “Site” means the land on which construction or preparation is performed.

17 (11) “Subcontractor” means a contractor [*who*] **that** has no direct contractual relationship with
18 the owner.

19 **SECTION 2.** ORS 87.018 is amended to read:

20 87.018. (1) Except as provided in ORS 87.093, all notices required under ORS 87.001 to 87.060
21 and 87.075 to 87.093 [*shall*] **must** be in writing and **be** delivered in person or [*delivered*] by regis-
22 tered or certified mail.

23 **(2) A notice that must be given under ORS 87.001 to 87.060 and 87.075 to 87.093 to a**
24 **mortgagee must be delivered to the mortgagee only if the name and address of the**
25 **mortgagee appear in a mortgage of record or a trust deed of record as required under ORS**
26 **205.234 (1)(g).**

27 **SECTION 3.** The amendments to ORS 87.005 and 87.018 by sections 1 and 2 of this 2011
28 Act apply to mortgages and trust deeds recorded on or after January 1, 2008.

29 **SECTION 4.** This 2011 Act being necessary for the immediate preservation of the public
30 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
31 on its passage.

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