# Construction Lien Flowchart (OR)

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A Flowchart outlining the construction lien process in Oregon. This Flowchart includes preliminary notice requirements and the procedures for perfecting, enforcing, and releasing a construction lien.

# **Construction Lien** Under the Oregon Construction Lien Law, a claimant may use a construction lien (also known as a mechanic's lien or materialman's lien) to secure payment for the labor, services, materials, equipment, or supplies it provides to improve privately owned real property (lienable work). Potential claimants include: ■ Contractors. Subcontractors (any tier). Equipment lessors and materials suppliers. Design professionals. ■ Trustees of employee benefit plans. **Confirm All Contractors Are Licensed** Verify each contractor has a valid license with all proper endorsements from the Oregon Construction Contractors Board (CCB) both: When bidding or entering into a contract for lienable work. Continuously while providing the lienable work. Obtain a Written Contract (Residential Property) Confirm each original contractor (any contractor in a direct contractual relationship with the property owner, such as a prime or general contractor) enters into a written contract with the owner if performing lienable work both: ■ To construct, improve, or repair a residential structure or zero-lot-line dwelling (such as a townhouse). For an aggregate price exceeding \$2,000.



# **Provide the Consumer Notices (Residential Property)**

Ensure the original contractor provides each of the following notices to the owner on or before entering into a written contract (when required):

- A consumer protection notice describing contractor licensing, bonding, and insurance requirements (Or. Rev. Stat. § 701.330(1)).
- A notice of procedure explaining the necessary steps before beginning arbitration or court proceedings against a contractor (Or. Rev. Stat. § 701.330(2)).

Confirm the original contractor provides an additional information notice about construction liens (Or. Rev. Stat.  $\S$  87.093) if performing lienable work both:

- Under a written residential construction or improvement contract (including work on any structure or land adjacent or appurtenant to a residential dwelling).
- With an aggregate contract price exceeding \$2,000.

The original contractor must deliver the information notice about liens to:

- The owner or the owner's agent (other than a licensed contractor) when signing the contract.
- The first purchaser of the property if the property is sold before or within the 75-day period immediately after the completion of construction.

The original contractor must maintain proof of delivery of all notices for at least two years after signing the contract (and preferably at least two years after finishing its lienable work).

# **Evaluate the Subject Property**

Consider ordering a title search to determine:

- The subject property's legal description.
- The extent of the owner's interest in the property.
- Whether there are any mortgages, deeds of trust (trust deeds), or other liens or encumbrances against the property.
- The parties to name as defendants in a lien foreclosure action.

# Serve a Pre-Lien Notice on the Owner (If Applicable)

Serve the owner with a notice of right to a lien (pre-lien notice) in the required form and manner if the claimant performs lienable work for:

- A residential project unless the claimant provides the work at the owner's request.
- A commercial improvement only if the claimant provides materials without labor.

Serve the pre-lien notice within eight days (excluding weekends and holidays) after the lienable work begins.

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# Serve a Pre-Lien Notice on a Mortgagee (If Applicable)

To preserve the priority of the claimant's lien, serve any mortgagee (or trust deed beneficiary) with a pre-lien notice within eight days (excluding weekends and holidays) after the claimant delivers materials or supplies.

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#### Respond to a Demand for Information

Respond in writing within 15 days (excluding weekends and holidays) after receiving a demand for more information from the owner or a mortgagee/trust deed beneficiary.

# Post and Record a Notice of Completion (Optional)

After all original contractors on the project have substantially performed their contracts, any of the following parties (or their agents) may post a notice of completion in the statutory form and manner:

- The owner.
- A mortgagee/trust deed beneficiary.
- Any original contractor.

The party posting the notice must record a copy of the notice and an affidavit within five days after the date of posting.

# Prepare and Record a Lien Claim

Prepare a claim of lien (lien claim) that:

- Contains all the information required by statute.
- Is properly verified and acknowledged.

 $\label{thm:claimant} The \ claimant\ should\ separately\ itemize\ the\ costs\ for\ all\ labor,\ materials,\ and\ equipment.$ 

#### Record the Lien Claim

Record the lien claim in each county where the property is located within 75 days after:

- The earlier of the date the claimant finishes its lienable work or the completion of construction, if the claimant provided labor, materials, or equipment.
- The completion of construction for all other lienable work.

# Send a Notice of Lien

Send a notice of filing claim of lien (notice of lien):

- To the owner and any mortgagee/trust deed beneficiary.
- By registered or certified mail.
- Within 20 days after filing the lien claim for recording.

Attach a copy of the lien claim to the notice of lien.

## Owner Records a Lien Release Bond (Optional)

The owner or another interested person (principal) may release the property from the claimant's lien after the claimant records its lien claim by either:

- Recording a lien release bond in the county where the claim is filed.
- Making an equivalent cash deposit with the treasurer of the same county.

The principal must provide a notice to the claimant in the statutory manner within 20 days after recording the bond or making the deposit.

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#### **Enforce the Lien Claim**

Enforce the lien claim by bringing a timely foreclosure action.

# Serve a Notice of Intent

Provide a notice of intent to foreclose (notice of intent):

- To the owner and any mortgagee/trust deed beneficiary.
- In the statutory manner.
- At least ten days before filing a foreclosure complaint.

Consider combining the notice of intent with the notice of lien to meet the statutory deadline. If applicable, respond within five days to any demand for additional information from the owner.

# **Identify the Parties**

Name the following parties as defendants in the foreclosure complaint:

- The owner.
- Any other person contractually obligated to pay for the lienable work (for example, an original contractor).
- Any other construction lien claimant with a recorded lien claim.
- Any holder of a junior or inferior lien or interest against the property (for example, a later or subordinated mortgage, trust deed, or judgment lien).

# Plead the Facts

State the required facts in the complaint, including details of the claimant's compliance with all statutory obligations. Attach copies of:

- Any written contracts and change orders.
- The lien claim.
- All pre-foreclosure notices.
- Receipts for all registered and certified mailings.

#### Request:

- Foreclosure of the lien and the right to sell the property.
- Attorneys' fees and costs.
- If desired, a money award against any party personally liable for the lien claim and the right to a deficiency judgment.

# File and Serve the Complaint

Commence the action within 120 days after recording the lien claim by:

- Filing the complaint in the circuit court for the county where the property is located.
- Serving the complaint with a summons.

The action commences as to each defendant:

- On the filing date of the complaint if the claimant serves the summons within 60 days.
- Otherwise when the claimant serves the summons.

#### Record a Notice of Lis Pendens

Immediately after filing the complaint, record a notice of pendency of an action (notice of *lis pendens*) in the statutory form in each county where the property is located.

#### Owner's Additional Remedies (Optional)

In addition to contesting the lien claim, the owner may:

- Avoid liability for liens arising from an unauthorized improvement by timely posting a notice of nonresponsibility after discovering the construction.
- Withhold funds from a contractor during a foreclosure action against the contractor.
- File a complaint with the CCB to recover against a contractor's bond.

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# Waive or Release a Lien (If Applicable)

Deliver a lien waiver or release if the claimant provides materials or supplies and both:

- Accepts payment of the amount due.
- Receives demand from the person making the payment.

The claimant automatically waives its lien rights if it accepts a mortgage or trust deed as security for payment of its lienable work.

# Obtain and Execute on a Judgment

Obtain a judgment from the court. In addition to any damages, confirm the judgment includes awards of the claimant's:

- Recording and title search fees.
- Attorneys' fees.

Satisfy the judgment by bringing the property to sale under the judicial foreclosure procedures or by recovering against a lien release bond or cash deposit (if applicable).

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