

Construction Liens in Practice (OR)

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A Practice Note addressing statutory construction liens arising from the improvement of privately owned residential and commercial real property in Oregon. This Note provides practical guidance on the procedures in Oregon for creating, perfecting, enforcing, and releasing a construction lien.

A construction lien (also known as a mechanic's lien or materialman's lien) is a powerful tool for a contractor, subcontractor, laborer, supplier, equipment lessor, or design professional to secure payment for the labor or services it performs, or the materials, equipment, or supplies it furnishes, to improve real property.

The Oregon Construction Lien Law (CLL) governs construction liens on privately owned residential and commercial real property in Oregon (Or. Rev. Stat. §§ 87.001 to 87.093). Public property in Oregon is not subject to construction liens (Or. Rev. Stat. § 279C.505(1)(c)).

This Note discusses the processes and procedures in Oregon to:

- Prepare a construction lien claim.
- Perfect and enforce lien rights.
- Determine lien priority.
- Waive or release a lien.

CREATING A CONSTRUCTION LIEN

Oregon law imposes several prerequisites on any person seeking to create and enforce a construction lien (claimant).

WORK COVERED BY A CONSTRUCTION LIEN

A claimant acquires the right to a construction lien by providing labor, services, materials, equipment, or supplies to:

- Construct an improvement.

- Prepare a site for construction.
- Plan or supervise the construction or site preparation. (Or. Rev. Stat. § 87.010.)

Construction is the creation, alteration, or repair of an improvement. Site preparation involves:

- Excavating, surveying, and landscaping.
- Demolishing or detaching existing structures.
- Leveling, filling in, or otherwise making a site ready for construction. (Or. Rev. Stat. § 87.005(2), (9).)

An improvement is:

- A building, wharf, or bridge.
- A ditch, flume, reservoir, well, tunnel, or aqueduct.
- A fence, street, or sidewalk.
- Machinery.
- Any other structure or superstructure. (Or. Rev. Stat. § 87.005(5).)

PERSONS ENTITLED TO A CONSTRUCTION LIEN

Claimants may include:

- Contractors.
- Subcontractors (any tier) (*Christman v. Salway*, 205 P. 541, 548 (Or. 1922); *G. Zanello & Son v. Portland Cent. Heating Co.*, 139 P. 572, 575 (Or. 1914)).
- Laborers.
- Equipment lessors and materials suppliers.
- Design professionals.
- Trustees of an employee benefit plan. (Or. Rev. Stat. § 87.010.)

The CLL does not require a written contract to support a construction lien unless the claimant is an original contractor working on a qualified residential project (Or. Rev. Stat. § 87.037; see *Contractors, Subcontractors, and Construction Agents and Written Contract with the Owner*).

Claimants Constructing an Improvement

A claimant may assert a construction lien against an improvement if the claimant contributes to the construction of the improvement by:

- Performing labor.
- Transporting or furnishing materials.
- Renting equipment.

(Or. Rev. Stat. § 87.010(1).)

The claimant must act at the request of the owner or the owner's construction agent (Or. Rev. Stat. § 87.010(1); see Contractors, Subcontractors, and Construction Agents). The claimant's lien may extend to the project site and other related land (see Extent of a Lien Against the Land).

The trustees of an employee benefit plan may claim a lien against an improvement for any contributions required to be paid to the plan due to labor performed on the improvement (Or. Rev. Stat. § 87.010(4)).

Claimants Planning or Supervising Construction

An architect, landscape architect, land surveyor, or registered engineer may assert a construction lien if it either:

- Prepares plans, drawings, or specifications to use in or facilitate the construction of an improvement.
- Supervises the construction.

(Or. Rev. Stat. § 87.010(5).)

The claimant must perform its services at the request of either:

- The owner.
- The owner's construction agent, unless the services are for an owner-occupied residence.

(Or. Rev. Stat. §§ 87.010(5) and 87.021(1); see Contractors, Subcontractors, and Construction Agents.)

The resulting lien attaches to the land and structures necessary for using the plans, drawings, or specifications or performing the supervision (Or. Rev. Stat. § 87.010(5)). The lien may encompass other related land (see Extent of a Lien Against the Land).

Claimants Preparing a Site

The following claimants may assert a construction lien against the subject land only:

- Any person that:
 - prepares a site for construction or rents equipment for that purpose; or
 - at the owner's request, improves a street or road adjoining a property or rents equipment for that purpose.
- Except when requested by an owner's agent for an owner-occupied residence, a landscape architect, land surveyor, or other person that:
 - creates plans, drawings, surveys, or specifications to landscape or prepare a site for construction; or
 - supervises the landscaping or preparation.

(Or. Rev. Stat. §§ 87.010(2), (6) and 87.021(1).)

Contractors, Subcontractors, and Construction Agents

Any person in charge of site preparation or construction (including a contractor, architect, or builder) is deemed a construction agent (Or. Rev. Stat. § 87.005(3)).

Under the CLL, a claimant is considered a contractor if it does all the following:

- Contracts to prepare a site or construct an improvement under established specifications or plans.
- Controls the means, method, and manner of its work.
- Provides:
 - only labor; or
 - labor together with materials and supplies.

(Or. Rev. Stat. § 87.005(4).)

A contractor is:

- An original contractor if it enters into a contract directly with the owner (for example, a prime or general contractor).
- A subcontractor if it does not have a direct contractual relationship with the owner.

(Or. Rev. Stat. § 87.005(7), (11).)

A contractor may not perfect a construction lien unless it has a valid license from the Oregon Construction Contractors Board (CCB) both:

- At the time the contractor bids or enters into a contract.
- Continuously while providing its work.

(Or. Rev. Stat. § 701.131(1).)

The contractor's license must be properly endorsed for the type of work it performs (Or. Rev. Stat. §§ 701.021 and 701.131(1)). An owner or another interested party may verify a contractor's status using the CCB's online search.

For an overview of Oregon laws affecting contractors and subcontractors, including prompt payment, retainage, and licensing and bonding requirements, see State Q&A, Construction Laws and Customs: Oregon ([W-010-5605](#)).

Parties Without Lien Rights

In addition to an unlicensed contractor, the following parties do not have construction lien rights:

- A subcontractor that provides labor, materials, or equipment:
 - to an unlicensed contractor;
 - for work on an existing owner-occupied residence; and
 - for payment in any form other than cash or consumer credit.
 (Or. Rev. Stat. § 87.036(1), (2).)
- An unlicensed or unregistered architect or engineer.
- A manufacturer or wholesaler that sells materials to a retailer acting as a materialman (*Fisher v. Tomlinson*, 66 P. 696, 697 (Or. 1901); but see *Peerless Pac. Co. v. Rogers*, 158 P. 271, 272 (Or. 1916) (lien permitted for wholesaler furnishing materials to retailer serving as contractor)).

PROPERTY SUBJECT TO A CONSTRUCTION LIEN

The property subject to a construction lien depends on:

- The claimant and the lienable labor, services, materials, equipment, or supplies (lienable work) it provides.
- The extent of the owner's interest in the improvement and the related land.

An owner is any person that:

- Is or claims to be the owner of the land on which the lienable work takes place.
- Enters into an agreement to purchase an interest in the subject land or improvement.
- Possesses an interest in the land or improvement in a valid lease.

(Or. Rev. Stat. § 87.005(8).)

Before preparing a construction lien claim, the claimant should order a title search (foreclosure guarantee) to determine:

- The subject property's legal description.
- Whether there are any mortgages, deeds of trust (trust deeds), or other liens or encumbrances against the property.

Extent of a Lien Against the Land

A claimant entitled to a lien for constructing an improvement or planning or supervising the construction may also assert its lien against the following land if it is owned by the person ordering the construction:

- The project site.
- Any other land required for the convenient use and occupation of the improvement as determined by the court when the lien is foreclosed (see Plead the Required Facts).

(Or. Rev. Stat. §§ 87.010(1), (5) and 87.015(1); see Claimants Constructing an Improvement and Claimants Planning or Supervising Construction.)

If the person ordering the construction owns less than a fee simple estate in the site or related land, the lien encumbers only that person's limited interest (Or. Rev. Stat. § 87.015(1)).

A claimant acquires a lien solely against the land and not the resulting improvement if the lienable work is limited to site preparation (Or. Rev. Stat. § 87.010(2), (6); see Claimants Preparing a Site).

Construction Ordered by a Tenant

A tenant may order the construction of an improvement. If the tenant later forfeits its rights to the improvement (for example, by breaching its lease) and the improvement and leasehold interest are sold to enforce a construction lien, the purchaser of the improvement:

- Is deemed the tenant's assignee.
- May owe the landlord all delinquent rent and costs under the lease.

(Or. Rev. Stat. § 87.015(3).)

The purchaser may remove the improvement within 30 days after the sale if the landlord either:

- Regains possession of the property.
- Obtains a judgment for possession before construction of the improvement begins.

(Or. Rev. Stat. § 87.015(3).)

If the purchaser opts to remove the improvement, the landlord must receive any outstanding rent from the proceeds of the sale (Or. Rev. Stat. § 87.015(3); see Judgment and Sale).

Condominiums

If a claimant performs lienable work on a condominium any time after a declaration is recorded, a construction lien:

- Attaches to:
 - the individual unit subject to the lienable work; and
 - that unit's share of the common elements.
- Cannot arise against any other unit unless:
 - the owner of the other unit (or that owner's agent, contractor, or subcontractor) consents to the lienable work; or
 - the condominium association requests emergency repairs.

(Or. Rev. Stat. §§ 87.015(2) and 100.440(1), (2).)

PRELIMINARY REQUIREMENTS FOR ORIGINAL CONTRACTORS (RESIDENTIAL PROJECT)

Original contractors must satisfy preliminary contract and notice requirements to preserve their construction lien rights when working on certain residential projects.

Written Contract with the Owner

An original contractor must have a written contract with the owner for any lienable work it performs both:

- To construct, improve, or repair:
 - a residential structure; or
 - a zero-lot-line dwelling (such as a townhouse) (Or. Rev. Stat. § 701.005(20)).
- For an aggregate price exceeding \$2,000.

(Or. Rev. Stat. §§ 87.037 and 701.305(1); see Contractors, Subcontractors, and Construction Agents.)

The original contractor must mail or otherwise deliver a written contract to the owner within five days after the contractor knows or reasonably should know that the contract price exceeds \$2,000 (Or. Rev. Stat. § 701.305(1)).

The contract must contain the terms required by the CCB's regulations (Or. Rev. Stat. § 701.305(2); OAR 812-012-0110). The CCB provides a sample contract for guidance.

Provide the Consumer Protection Notice and Notice of Procedure

An original contractor must provide each of the following statutory notices to the owner using the CCB's forms whenever a written contract is required for a residential project:

- A consumer protection notice containing:
 - a description of contractor licensing, bonding, and insurance requirements; and
 - advice for dealing with contractors, including how to file a complaint with the CCB.
- A notice of procedure explaining the steps the owner must take before beginning arbitration or court proceedings against the contractor.

(Or. Rev. Stat. § 701.330; OAR 812-001-0200(2), (4).)

The original contractor must give the notices to the owner on or before entering into the contract (OAR 812-012-0130(1)).

Provide the Information Notice About Construction Liens

An original contractor must also provide the statutory Information Notice to Owner (information notice) if a project both:

- Involves the construction or improvement of:
 - a residential dwelling; or
 - an adjacent or appurtenant structure or land, such as a driveway, swimming pool, fence, or garage.
- Has an aggregate contract price exceeding \$2,000.

(Or. Rev. Stat. § 87.093(4), (8).)

The information notice must be in the form prescribed by the CCB and describe:

- Methods to avoid construction liens.
- The owner's rights to:
 - file a complaint against a licensed contractor (see File a Complaint with the CCB);
 - obtain reimbursement from the contractor's bond; and
 - on written request, receive a statement of the reasonable value of the lienable work performed by any subcontractor that is hired by the contractor and issues a notice of right to a lien (see Serve a Notice of Right to a Lien).

(Or. Rev. Stat. § 87.093(1); OAR 812-001-0200(1).)

The original contractor must give the information notice to both:

- The owner or the owner's agent when signing the contract, unless the owner is a licensed contractor.
- The first purchaser of the property if the property is sold:
 - before the completion of construction; or
 - within 75 days after the completion of construction.

(Or. Rev. Stat. § 87.093(2), (5); see Post a Notice of Completion (Optional).)

The original contractor must serve the information notice by one of the following means:

- Personal delivery.
- Registered or certified mail.
- First-class mail with a certificate of mailing.

(Or. Rev. Stat. § 87.093(3).)

Failing to provide the information notice when necessary:

- Forfeits the original contractor's right to claim a construction lien.
- May result in:
 - suspension of the original contractor's license; or
 - a civil penalty of up to \$5,000.

(Or. Rev. Stat. §§ 87.093(7) and 701.992(1).)

For convenience, the CCB offers a combined form containing the consumer protection notice, notice of procedure, and information notice. Many original contractors either incorporate the notices directly into the contract with the owner or deliver them when the owner signs the contract.

Maintain Proof of Delivery

The original contractor must keep proof of delivery of all required notices for two years after the owner enters into a contract.

Acceptable proof includes:

- Signed copies of the notices.
- An unambiguous phrase in the contract that:
 - acknowledges receipt of the notices; and
 - is initialed by the owner.
- A copy of the contract if it fully contains the notices.

(OAR 812-012-0130(2).)

For additional protection, the original contractor should consider maintaining proof of delivery of the notices for at least two years after finishing its lienable work under the contract.

POST A NOTICE OF NONRESPONSIBILITY (OWNER)

If someone other than the owner (for example, a tenant) orders the construction of an improvement on the owner's property and the owner knows about it:

- The CLL deems the owner to have requested the construction.
- The owner's property is subject to a construction lien.

(Or. Rev. Stat. § 87.030(1).)

To rebut this presumption and avoid liability for any construction liens, the owner may post a notice of nonresponsibility on the site within three days after learning of the construction (Or. Rev. Stat. § 87.030(1)). The notice should include:

- The owner's name and signature.
- A citation to the applicable statute (Or. Rev. Stat. § 87.030).
- Statements that:
 - the owner is not responsible for any construction on its property; and
 - the property is not subject to a construction lien for any lienable work provided as part of the construction.

SERVE A NOTICE OF RIGHT TO A LIEN

To obtain a valid construction lien, a claimant performing lienable work for:

- A residential project must serve a notice of right to a lien (pre-lien notice) on the owner unless the claimant provides the work at the owner's request (for example, if the claimant is an original contractor).
- A commercial improvement must serve a pre-lien notice only if the claimant provides materials without labor.

(Or. Rev. Stat. § 87.021(1), (3).)

Form and Service of the Pre-Lien Notice

The pre-lien notice must follow the statutory form and state:

- The date of mailing, if applicable.
- The owner's name and address.
- The claimant's name, address, and telephone number.
- The name of the party requesting the lienable work and the nature of the work.

- The location of the property. The claimant should consider attaching the property's legal description if the street address is unknown.
- General information about construction liens, including suggestions for avoiding them.

(Or. Rev. Stat. §§ 87.021(2) and 87.023.)

The claimant must serve the pre-lien notice on the owner by either:

- Personal delivery.
- Registered or certified mail.

(Or. Rev. Stat. § 87.018(1).)

The claimant may serve the pre-lien notice at any time. However, the notice only protects the claimant's construction lien rights for lienable work it provides after the date eight days (excluding weekends and holidays) before delivering or mailing the notice. (Or. Rev. Stat. § 87.021(1).) In most cases, therefore, the claimant should attempt to serve the pre-lien notice within eight days after starting its lienable work.

Owner's Demand for More Information

After receiving a pre-lien notice, an owner may send a written demand to the claimant for more information concerning the lienable work, including either:

- A list of the materials or equipment or a description of the labor or services provided.
- A statement of:
 - the contractual basis for providing the lienable work; and
 - the percentage of the contract completed.

(Or. Rev. Stat. § 87.027.)

The owner may also request the outstanding balance due for the lienable work calculated to the date of the demand (Or. Rev. Stat. § 87.027).

The owner must send the demand by either:

- Personal delivery.
- Registered or certified mail.

(Or. Rev. Stat. § 87.018(1).)

The claimant must respond in writing within 15 days after receiving the demand (excluding weekends and holidays). Failing to respond forfeits the claimant's rights to attorneys' fees and costs in a lien foreclosure action. (Or. Rev. Stat. § 87.027; see Judgment and Sale.)

Serve a Pre-Lien Notice on the Mortgagee

A claimant providing materials or supplies (with or without labor) must serve a pre-lien notice on any mortgagee of the subject property to preserve the priority of the claimant's construction lien over a recorded mortgage or trust deed (Or. Rev. Stat. § 87.025(3); see Priority of Construction Liens).

Under the CLL, a mortgagee:

- Includes:
 - the holder of a mortgage;
 - the beneficiary of a trust deed; or
 - an assignee of either.

- Must have a valid mortgage, trust deed, or assignment that:
 - contains the mortgagee's, beneficiary's, or assignee's name and address;
 - secures a loan against land or an improvement; and
 - is recorded in the county where the land or improvement is located.

(Or. Rev. Stat. § 87.005(6).)

The claimant does not have to provide a pre-lien notice to the mortgagee if the mortgagee's name and address is not stated in the recorded instrument (Or. Rev. Stat. § 87.018(2)). Otherwise, the claimant must deliver to the mortgagee either:

- A copy of the owner's pre-lien notice.
- A separate pre-lien notice in the same form.

(Or. Rev. Stat. § 87.023.)

The claimant must serve the pre-lien notice on the mortgagee:

- In the same manner as the owner's pre-lien notice (see Form and Service of the Pre-Lien Notice).
- Within eight days after the claimant delivers its materials or supplies (excluding weekends and holidays).

(Or. Rev. Stat. §§ 87.018(1) and 87.025(3).)

After receiving the pre-lien notice, the mortgagee may demand the following information in the same manner as the owner:

- A list of the materials or supplies provided by the claimant.
- A statement of the amount due.

(Or. Rev. Stat. § 87.025(4).)

Failing to respond to the mortgagee's demand within 15 days after receipt (excluding weekends and holidays) also waives the priority of the claimant's construction lien (Or. Rev. Stat. § 87.025(4); see Priority of Construction Liens).

POST A NOTICE OF COMPLETION (OPTIONAL)

Construction of an improvement is considered complete when any of the following occur:

- A notice of completion (completion notice) is posted and recorded.
- The improvement is substantially complete.
- The improvement is abandoned.

(Or. Rev. Stat. § 87.045(1).)

The following parties may post and record a completion notice after all original contractors on the project have substantially performed their contracts:

- The owner.
- A mortgagee.
- Any original contractor.
- An agent of any of the foregoing.

(Or. Rev. Stat. § 87.045(2).)

The completion notice must follow the statutory form and include:

- The date of the notice.
- The property's legal description and street address, if known.

- The name and address of the owner, mortgagee, or original contractor issuing the notice.
- Statements that:
 - the improvement is completed; and
 - any claimants should file their construction lien claims.

(Or. Rev. Stat. § 87.045(2).)

The completion notice must be:

- Posted:
 - on the date stated in the notice; and
 - in a conspicuous place on the land or improvement.
- Recorded:
 - with an affidavit stating the date, place, and manner of posting;
 - in the county where the property is located; and
 - within five days after the date of posting.

(Or. Rev. Stat. § 87.045(3).)

Determining the Date of Completion

The CLL does not define when an improvement is substantially complete. The posting of a completion notice alone is insufficient evidence that a construction project has actually reached either substantial or final completion (*Dallas Lumber & Supply Co. v. Phillips*, 436 P.2d 739, 741 (Or. 1968)). If a completion notice is not posted, a court must determine the date of completion by analyzing the pertinent facts (*PIH Beaverton, LLC v. Super One, Inc.*, 294 P.3d 536 (Or. Ct. App. 2013)).

For more information on completion targets in construction projects, see Practice Note, Understanding Project Finance Construction Contracts ([1-422-1870](tel:1-422-1870)).

PERFECTING A CONSTRUCTION LIEN

The claimant must follow specific recording and service procedures to perfect its lien.

RECORD A CLAIM OF LIEN

A claimant asserting its right to a construction lien for providing labor, materials, or equipment must record a claim of lien (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.
- The completion of construction (see Post a Notice of Completion (Optional)).

(Or. Rev. Stat. § 87.035(1), (2).)

Any other claimant must record a lien claim within 75 days after the completion of construction (Or. Rev. Stat. § 87.035(1), (2); see Persons Entitled to a Construction Lien).

The lien automatically expires if the claimant fails to timely record a lien claim (*Maddox v. Balboa Raceways, Inc.*, 516 P.2d 1293, 1296-97 (Or. 1973)).

The lien claim must contain:

- The claimant's name and address. If a contractor, include the claimant's license number.

- The name of the owner or reputed owner, if known.
- The name of the person that ordered the lienable work and the date of the contract.
- The dates that the claimant performed the lienable work.
- A description of the property sufficient to identify it. Include the property's:
 - street address, if known; and
 - legal description, if available.
- A true statement of the amount demanded after deducting all just credits and offsets. Separately itemize the amounts for labor, materials, and equipment.
- If applicable, the terms of any agreement to extend the payment deadline under the claimant's contract (see Enforcing a Construction Lien).
- A verification:
 - made by the claimant or some other person with knowledge of the facts of the lien claim; and
 - acknowledged under oath.

(Or. Rev. Stat. § 87.035(3), (4).)

Amount of the Lien Claim

The amount a claimant may recover under its lien is typically limited to the contract price for the lienable work (Or. Rev. Stat. § 87.070; *L.H. Morris Elec., Inc. v. Hyundai Semiconductor Am., Inc.*, 125 P.3d 1, 9-11 (Or. Ct. App. 2005)). A subcontractor must deduct only the credits and offsets it owes under the pertinent contract for the lienable work (*John L. Jersey & Son, Inc. v. Bud Bailey Constr. Co.*, 499 P.2d 817, 818-19 (Or. 1972); *Brown v. Farrell*, 483 P.2d 453, 458 (Or. 1971)).

The lien amount may cover the separately itemized costs of the following resources used to construct an improvement:

- Labor, including charges for:
 - liability and industrial accident insurance premiums; and
 - social security and unemployment compensation payments. (*Mathis v. Thunderbird Village, Inc.*, 389 P.2d 343, 346-47 (Or. 1964).)
- Materials.
- Rented equipment, but only to the extent of its reasonable rental value (Or. Rev. Stat. § 87.010(3)).

The claimant may also include in the lien amount:

- Contractual interest.
- The recording fee for the lien claim.

Amending the Lien Claim

The CLL does not provide a procedure for amending a lien claim. The Oregon Supreme Court has held that a materially defective lien claim may not be cured by amendment (*Christman*, 205 P. at 550-51). Oregon courts have provided little additional guidance on this issue.

SEND A NOTICE OF FILING CLAIM OF LIEN

The claimant must send a notice of filing claim of lien (notice of lien):

- To the owner and any mortgagee.
- By registered or certified mail.
- Within 20 days after the lien claim is filed for recording.

(Or. Rev. Stat. § 87.039(1).)

The claimant may send the notice of lien to the same owner and mortgagee that received a pre-lien notice unless the claimant has actual knowledge that the owner or mortgagee is different (Or. Rev. Stat. § 87.039(1); see *Serve a Notice of Right to a Lien*).

The claimant must attach a copy of the lien claim to the notice of lien (Or. Rev. Stat. § 87.039(1)). The notice of lien should also state:

- The claimant's name.
- The property's legal description or street address, if known.
- The parties to the contract for the lienable work.
- The recording information for the lien claim.

Failing to send the notice of lien forfeits the claimant's rights to attorneys' fees and costs in a lien foreclosure action (Or. Rev. Stat. § 87.039(2); see *Judgment and Sale*).

Many claimants serve the notice of lien together with and in the same manner as a notice of intent to foreclose (see *Serve a Notice of Intent to Foreclose*).

ENFORCING A CONSTRUCTION LIEN

The claimant must enforce its lien claim by commencing a foreclosure action within 120 days after recording the claim. To commence the action, the claimant must both:

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

(Or. Rev. Stat. §§ 12.020(1), 87.055, and 87.060(1); Or. R. Civ. P. 7; see *State Q&A, Commencing an Action: Oregon: Questions 12 and 13 (W-001-6305)*).

The foreclosure action commences as to each defendant:

- On the date the claimant files the complaint, if the claimant serves the summons within 60 days after filing.
- Otherwise on the date the claimant serves the summons.

(Or. Rev. Stat. § 12.020.)

The 120-day deadline to commence the action does not apply to service on another construction lien claimant (Or. Rev. Stat. § 87.055(2); see *Name the Necessary Parties*).

The lien claim automatically expires if the claimant fails to commence its action with the 120-day period unless both:

- The contracting parties agree to extend the payment deadline for the lienable work.
- The claimant provides the terms of the extension in the lien claim.

(Or. Rev. Stat. § 87.055; *Otness v. Or. Livestock Coop.*, 307 P.2d 320, 322-23 (Or. 1957); see *Record a Claim of Lien*).

Even if the parties agree to a payment extension, the claimant's lien may not continue more than two years after the lien claim is recorded (Or. Rev. Stat. § 87.055).

SERVE A NOTICE OF INTENT TO FORECLOSE

At least ten days before filing the foreclosure action, the claimant must serve a notice of intent to foreclose (notice of intent) on the owner and any mortgagee in the same manner as a pre-lien notice (see *Form and Service of the Pre-Lien Notice*). The claimant may send the notice of intent to the same mortgagee that received a pre-lien notice unless the claimant has actual knowledge that the mortgagee is different (see *Serve a Pre-Lien Notice on the Mortgagee*).

There is no statutory form for the notice of intent. A statement indicating that the claimant plans to initiate a lien foreclosure action after ten days is sufficient. Many claimants combine the notice of intent with the notice of lien (see *Send a Notice of Filing Claim of Lien*).

After receiving the notice of intent, the owner may demand either:

- A list of the materials and supplies provided by the claimant and their cost.
- A statement of the contractual basis for the owner's obligation.

(Or. Rev. Stat. § 87.057(2).)

The claimant must provide the requested information to the owner within five days. Failing to do so or to comply with the other requirements for the notice of intent forfeits the claimant's right to attorneys' fees and costs. (Or. Rev. Stat. § 87.057(2), (3); see *Judgment and Sale*.)

CONDUCT A FORECLOSURE ACTION

The claimant conducts the foreclosure action in the same manner as the judicial foreclosure of a mortgage or trust deed (Or. Rev. Stat. § 87.060(7); see *Practice Notes, Residential Foreclosures (Judicial) (OR): Conducting a Judicial Foreclosure (W-014-9447)* and *Commercial Foreclosures (Judicial) (OR): Conducting a Judicial Foreclosure (W-014-9448)*).

Name the Necessary Parties

The claimant must name the following parties as defendants:

- The owner.
- Any person other than the owner contractually obligated to pay the claimant for the lienable work (for example, an original contractor).
- Any other construction lien claimant that has recorded a lien claim.

(Or. Rev. Stat. § 87.060(7); *Wood Panel Structures, Inc. v. Grangaard*, 637 P.2d 1320, 1322-23 (Or. Ct. App. 1981).)

The claimant should also name all holders of junior or inferior liens or interests against the property (such as later or subordinated mortgages, trust deeds, or judgment liens) as defendants. Failing to do so preserves those liens or interests from foreclosure. (Or. Rev. Stat. § 87.060(7); see *Priority of Construction Liens*.)

The claimant should:

- Review its foreclosure guarantee to confirm that the complaint includes all necessary parties (see *Property Subject to a Construction Lien*).

- Update the guarantee before the foreclosure (sheriff's) sale (see Judgment and Sale).

Plead the Required Facts

The foreclosure complaint should contain:

- A description of the lien claim, including:
 - the dates and nature of the lienable work;
 - the party that ordered the work;
 - the amount demanded, including any interest and recording fees; and
 - the recording date of the lien claim.
- A statement that the claimant timely:
 - recorded the lien claim; and
 - sent the notice of lien by registered or certified mail. State the date of mailing and the recipients.
- A statement that the claimant timely provided all other required notices and responses, including the pre-lien notice (if applicable), the notice of intent, and responses to any demands for information. Indicate the manner of service and recipients for each notice and response.
- The subject property's legal description and street address, if known. Explain whether additional land outside the project site is required to secure the lien (see *Extent of a Lien Against the Land*).
- If the claimant is a contractor, a statement that the claimant was properly licensed both when entering into the contract and while performing the lienable work (see *Contractors, Subcontractors, and Construction Agents*).
- If the claimant is an original contractor on a qualified residential project, confirmation that the claimant provided the consumer protection notice, notice of procedure, and information notice (see *Preliminary Requirements for Original Contractors (Residential Project)*).
- If seeking a money judgment (money award), any additional facts necessary to establish a breach of contract or other similar claim.
- A request for relief in the form of:
 - foreclosure of the lien and the right to sell the property;
 - attorneys' fees and costs; and
 - if desired, both a money award against any party personally liable for payment of the lien claim and the right to pursue a deficiency judgment.

The claimant should attach:

- Copies of any written contracts and change orders for the lienable work.
- Copies of:
 - the lien claim;
 - all required pre-foreclosure notices and responses to demands for information; and
 - receipts for all registered and certified mailings.
- Proof of the actual costs of the lienable work (for example, invoices or applications for payment). This evidence creates a rebuttable presumption that the costs represent the reasonable value of the work. (Or. Rev. Stat. § 87.060(2).)

Consider Demanding a Jury Trial

The claimant may demand a jury trial on all issues that are typically triable by a jury (for example, a breach of contract claim). The claimant must file and serve the demand on all parties before the court conducts a trial on the foreclosure claim. Failing to timely serve the demand waives the claimant's right to a jury trial if the court rejects the claimant's lien. (Or. Rev. Stat. § 87.060(3), (4).)

RECORD A NOTICE OF LIS PENDENS

Immediately after filing the foreclosure complaint, the claimant should record a notice of pendency of an action (notice of *lis pendens*) in the statutory form in each county where the property is located. Recording the notice of *lis pendens* provides constructive notice to third parties that pending litigation affects the property's title. (Or. Rev. Stat. § 93.740; see Practice Notes, Residential Foreclosures (Judicial) (OR): Record a Notice of Lis Pendens ([W-014-9447](#)) and Commercial Foreclosures (Judicial) (OR): Record a Notice of Lis Pendens ([W-014-9448](#))).

JUDGMENT AND SALE

A contractor may recover the amount stated in its lien claim after deducting the amounts of any other lien claims for which it is liable (Or. Rev. Stat. § 87.070). When entering judgment for the claimant, the court may order reimbursement of any recording and title search fees if the claimant properly pleads and proves service of the notice of intent (see Plead the Required Facts). The court may also award attorneys' fees to the prevailing party. (Or. Rev. Stat. § 87.060(5).)

Unless the judgment is satisfied by a lien release bond or cash deposit, the claimant must enforce the judgment through a sheriff's sale of the property (see *Record a Lien Release Bond*). After payment of the sheriff's fees and sale costs, the sale proceeds are deposited with the court administrator pending satisfaction of the judgment and any further distribution ordered by the court (Or. Rev. Stat. § 18.950(1)). The claimant may collect a deficiency on a money award by executing against the obligated party (Or. Rev. Stat. § 87.060(6); see Plead the Required Facts).

The court may order an improvement to be sold separately from the land to enforce a construction lien. The purchaser may remove the improvement within 30 days after the sale if it pays the owner a reasonable rent calculated from the date of sale. (Or. Rev. Stat. § 87.025(2); see *Construction Ordered by a Tenant*.)

For more information on executing on a foreclosure judgment, see Practice Notes, Residential Foreclosures (Judicial) (OR): Execute on the Judgment ([W-014-9447](#)) and Commercial Foreclosures (Judicial) (OR): Execute on the Judgment ([W-014-9448](#)).

PRIORITY OF CONSTRUCTION LIENS

For the purpose of determining priority, a construction lien attaches to the property automatically at the commencement of the improvement. The commencement of the improvement is the date of the first preparation, construction, or delivery of materials at the project site substantial enough to notify interested persons that site preparation or construction has started or is about to start (Or. Rev. Stat. § 87.005(1)). The claimant's lien relates back to that date when the claimant records a lien claim to perfect the lien. (Or. Rev. Stat. §§ 87.025(7) and 87.035(2); *Henry v. Hand*, 59 P. 330, 332

(Or. 1899); *SERA Architects, Inc. v. Klahowya Condo., LLC*, 290 P.3d 881, 888-89 (Or. Ct. App. 2012); see Record a Claim of Lien.)

A perfected lien arising from:

- The construction of an improvement has priority over any earlier lien or other encumbrance (including a mortgage or trust deed) against the underlying land.
- The preparation of a site has priority over any lien or other encumbrance that:
 - attaches to the land after the commencement of the improvement; or
 - is unrecorded.

(Or. Rev. Stat. § 87.025(1), (2).)

The following exceptions apply:

- A lien related to the alteration or repair of an improvement does not have priority over a mortgage or trust deed recorded before the commencement of the improvement unless the mortgage or trust deed secures a construction loan for the work (Or. Rev. Stat. § 87.025(6)).
- A lien for providing materials or supplies does not have priority over a recorded mortgage or trust deed if the claimant fails to timely:
 - serve a pre-lien notice on the mortgagee; or
 - respond to the mortgagee's demand for information.
 (Or. Rev. Stat. § 87.025(3), (4); see *Serve a Pre-Lien Notice on the Mortgagee*.)
- If there are multiple construction lien claims against a property and the proceeds from a sheriff's sale are insufficient to fully pay them all:
 - each claim has equal priority regardless of when it is perfected or the underlying lien attaches; and
 - the claims are paid pro rata.

(Or. Rev. Stat. §§ 87.025(7) and 87.060(6).)

OWNER'S RIGHTS AND REMEDIES

Oregon law provides owners and purchasers with several methods to mitigate against construction liens in addition to posting a notice of nonresponsibility (see *Post a Notice of Nonresponsibility (Owner)*).

RESIDENTIAL OWNER'S OBLIGATION TO PROTECT PURCHASER

The Oregon Homebuyer Protection Act (HPA) requires an owner to protect a purchaser from construction lien claims when selling either:

- A new single-family residence, condominium unit, or residential building.
- An existing single-family residence, condominium unit, or residential building with original construction (including an addition) or improvements completed:
 - within three months before the sale date; and
 - for a price of \$50,000 or more.

(Or. Rev. Stat. § 87.007(1); OAR 812-012-0140.)

Protective Measures

The owner must take one of the following steps to secure the purchaser against any construction liens that arise before closing on the sale of the property:

- Purchasing a title insurance policy:
 - without exceptions for construction lien claims; and
 - approved by the Oregon Department of Consumer and Business Services.
- Retaining funds in escrow equal to 25 percent or more of the sale price. At the owner's request and after receiving substantiating documentation from a title company, the escrow agent may return the balance of the funds to the owner:
 - 90 days after the completion of the lienable work if no lien claim is perfected; or
 - if a lien claim is perfected, 135 days after that claim is filed for recording and all perfected claims are released or waived.

- Obtaining a bond or letter of credit:

- in an amount equal to 25 percent or more of the sale price; and
- under the terms and conditions prescribed by the CCB (OAR 812-012-0145 and 812-012-0150).

- Providing written waivers from every claimant with one or more liens exceeding \$5,000 in the aggregate (see *Release on Payment or Taking of Security*).
- Delaying closing until after all deadlines for perfecting lien claims expire.

(Or. Rev. Stat. § 87.007(2).)

An owner that fails to take a protective measure when required may be liable for:

- Double the amount of the purchaser's actual damages.
- Attorneys' fees and costs.

(Or. Rev. Stat. § 87.007(6).)

Provide a Notice of Compliance

The owner must sign and deliver a notice of compliance to the purchaser in the required form on or before closing that either:

- Specifies the protective measure taken by the owner.
- States that the sale of the property is not subject to the HPA.

(Or. Rev. Stat. § 87.007(3); OAR 812-001-0200(5) and 812-012-0140(2), (3), and (4).)

Defenses and Exceptions

The owner may defend against the HPA's requirements by:

- Asserting that a claimant did not attempt to enforce its lien claim before the parties closed on the sale of the property.
- Proving a lien claim is invalid.
- Satisfying a lien claim or obtaining a release.

(Or. Rev. Stat. § 87.007(7).)

The HPA's requirements do not apply either:

- While the validity of a lien is disputed in a judicial or CCB proceeding.
- If a perfected lien claim arises from lienable work ordered by the purchaser.

(Or. Rev. Stat. § 87.007(8), (9).)

RECORD A LIEN RELEASE BOND

Any time after a claimant records a lien claim, an owner or another interested person (principal) may either:

- Record a lien release bond in the county where the lien claim is filed. The bond amount must be the greater of:
 - 150 percent of the lien amount; or
 - \$1,000.
- Make an equivalent cash deposit with the treasurer of the same county.

(Or. Rev. Stat. § 87.076(1), (2), and (3).)

Once the principal serves the required notice:

- The claimant's lien attaches to the bond or cash deposit.
- The property is released from the lien.

(Or. Rev. Stat. § 87.083(1).)

Serve a Notice of Filing or Deposit (Principal)

Within 20 days after recording the bond or making the cash deposit, the principal must serve a notice on the claimant:

- Stating the location and time of the filing or deposit. Attach a copy of the bond, if applicable.
- By either:
 - personal delivery; or
 - registered or certified mail.

(Or. Rev. Stat. § 87.078(1).)

The principal must also file an affidavit of service with the county recording officer (Or. Rev. Stat. § 87.081). Failing to provide a notice of filing or deposit renders the bond or cash deposit ineffective (Or. Rev. Stat. § 87.078(2)).

Demand a Release of the Lien (Principal)

The principal may serve the claimant with a written demand to release its lien:

- By either personal delivery or registered or certified mail.
- With a notice that failing to release the lien makes the claimant liable for the greater of:
 - the principal's actual costs to comply with the notice and filing requirements for the bond or cash deposit; or
 - \$500.

(Or. Rev. Stat. § 87.076(4)(a).)

The claimant may be obligated to pay the stated damages if it fails to both:

- Release its lien within ten days after delivery of the demand and notice.
- File a timely foreclosure action to enforce the lien.

(Or. Rev. Stat. § 87.076(4)(a).)

Challenge the Bond Amount (Claimant)

The claimant may challenge the amount of a bond by petitioning the court within ten days after receiving a notice of filing of the bond. The claimant must:

- Provide detailed reasons for the inadequacy of the bond amount.
- Within two days after filing the petition, send a notice of the filing and a copy of the petition by registered or certified mail to the principal.

(Or. Rev. Stat. § 87.086.)

Apply the Bond or Cash Deposit

If the court allows the claimant's lien, the judgment must be satisfied from the bond or cash deposit (see Judgment and Sale). If the court disallows the lien, the court must order the bond or cash deposit returned to the principal. (Or. Rev. Stat. § 87.083(3), (4).)

Grounds to Release the Lien

The recording officer must record a lien release or the treasurer must return the cash deposit in any of the following cases:

- The claimant fails to sufficiently respond to a notice from the principal sent by certified mail (with a copy to the treasurer, if applicable):
 - stating that the claimant has failed to timely begin a foreclosure action; and
 - requiring the claimant within 15 days to both prove that the foreclosure action is timely and object to a release of the lien (or return of the cash deposit).
- The principal presents a certified copy of a court order for the release of the bond or cash deposit.
- The principal provides a lien release signed by the claimant.

(Or. Rev. Stat. § 87.088.)

WITHHOLD FUNDS FROM A CONTRACTOR

An owner may withhold the lien amount from a contractor during a lien foreclosure action against the contractor. If judgment is entered against the owner or its property, the owner may:

- Deduct any payments due to the contractor from the judgment amount.
- Recover from the contractor any amount of the judgment exceeding the contract price if:
 - the judgment amount is greater than the payments due to the contractor; or
 - the owner has fully settled with its contractors.

(Or. Rev. Stat. § 87.070.)

FILE A COMPLAINT WITH THE CCB

An owner may file a complaint with the CCB to discharge a construction lien resulting from a licensed contractor's failure to pay the lien claimant (Or. Rev. Stat. § 701.140(2)). If the owner prevails, it may recover against the contractor's CCB bond. The disadvantages of this process include:

- A 30-day notice requirement before filing a complaint and a short limitations period for bringing a claim (for example, one year after substantial completion of the lienable work for existing structures) (Or. Rev. Stat. §§ 701.133(1) and 701.143; see Post a Notice of Completion (Optional)).
- Mandatory mediation of all disputes concerning residential and certain small commercial structures (unless waived by the

contractor). If the parties do not reach a settlement, the owner must still initiate arbitration or court proceedings to obtain relief. (Or. Rev. Stat. §§ 701.139(1), (3), 701.140(2)(c), 701.145(4), (5), and 701.180.)

- Limitations on the recovery amount depending on the contractor's bond and endorsements (for example, total costs and interest paid from a residential bond may not exceed \$3,000) (Or. Rev. Stat. §§ 701.150(1) and 701.153(6); see *Contractors, Subcontractors, and Construction Agents*).

The CCB provides a sample complaint form with instructions for owners and a guide on the dispute process.

WAIVING OR RELEASING A CONSTRUCTION LIEN

A claimant may waive or release its construction lien rights in several circumstances.

RELEASE ON PAYMENT OR TAKING OF SECURITY

A claimant providing materials or supplies must sign a lien waiver or release if it both:

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

(Or. Rev. Stat. § 87.025(5).)

Any claimant may agree to release its lien rights in exchange for payment under the contract for the lienable work or another agreement. This is common in construction contracts requiring periodic payments (see Practice Note, Payment Provisions in Construction Contracts: Drafting Strategies: Waiver and Release of Claims ([1-568-1506](#))).

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

(*Evergreen Pac., Inc. v. Cedar Brook Way, LLC*, 284 P.3d 509, 514-15 (Or. Ct. App. 2012)).

PROSPECTIVE WAIVERS

Oregon courts have upheld prospective lien waivers in construction contracts if they are sufficiently clear and unambiguous (*Nelson v. Cohen*, 84 P.2d 658, 659-60 (Or. 1938); *Gray v. Jones*, 81 P. 813, 814 (Or. 1905)). When reviewing a waiver, the court examines the relevant language, the sequence of events, and the surrounding circumstances (*Harder Mech. Contractors, Inc. v. Fairfield Erectors, Inc.*, 564 P.2d 1356, 1358 (Or. 1977); *Portland Elec. & Plumbing Co. v. Simpson*, 651 P.2d 172, 174-75 (Or. Ct. App. 1982)).

Courts have clarified that:

- A claimant's promise in a contract to prevent any liens or other encumbrances from attaching to a property may be insufficient to waive the claimant's own construction lien rights (*Nelson*, 84 P.2d at 659-60; but see *Gray*, 81 P. at 813-14).
- A stipulation in a contractor's bond to complete a project without construction liens does not waive the contractor's lien rights (*Maynard v. Lange*, 143 P. 648, 649 (Or. 1914)).
- An agreement to arbitrate a dispute does not deprive a claimant of its lien rights absent an express waiver (*Harris v. Dyer*, 623 P.2d 662, 665 (Or. Ct. App. 1981), *aff'd with modification*, 637 P.2d 918 (Or. 1981)).

For more information on waivers and releases in construction contracts, including those affecting construction lien rights, see Practice Note, Waivers and Releases in Construction Contracts: Drafting Strategies ([W-001-0219](#)) and Standard Documents, Partial Lien Waiver and Release (Construction) ([W-008-8952](#)) and Final Waiver and Release of Liens and Claims (Construction) ([W-009-8445](#)).

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