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OREGON LIEN LAW SUMMARY

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Oregon Revised Statutes
(As of 06/09)

QUESTIONS

PRIVATE WORKS

(87.001 et seq.)

PUBLIC WORKS

(279C.100 et seq., 279A.010, 701.420 et seq., 742.061)

What work is covered?

Construction of any improvement, including building, bridge, reservoir, etc. [87.005, 87.010]

Construction, reconstruction or major renovation on real property by or for a public agency. Contracts for personal services as well as for the sale, purchase, lease, rental or other acquisition of personal property, services other than personal services, and minor alterations, repair and maintenance are now covered by bond laws as well. Privately owned property that is leased by a public agency is not covered. NOTE that on projects involving the Oregon University System, claimants do not have the right to a claim against retainage. [279A.010; 279C.800; 351.086]

Who may have a lien?

READ THIS ENTIRE SECTION: LICENSED contractors and subcontractors; laborers; transporters or furnishers of materials; equipment rental; architect, etc., at least to owner, general, or “other person having charge of construction”. This latter category can include a 1st- or even 2nd-tier sub, if the subcontractor has a significant enough control over or involvement in a portion of the project to be considered a “construction agent”. There is a risk in bringing such a claim. [87.010; Nucor Corp. v. Mohr Const. Co., 763 P.2d 754, 755, 93 Or.App. 709, 712 (Or.App. 1988)] There

Supplier of labor, materials or supplies to contractor or sub of any tier. Contractors must be licensed with the Oregon Construction Contractors’ Board to bring a claim. The rules for architects, engineers, and land surveyors are not discussed here; see 279C.110. [279C.100 et seq.; Cushman at §38.03[B][2]; 279C.600]

are now specific license endorsements that contractors, subcontractors and developers must have in order to bid or work on residential, small commercial and large commercial projects. Contractors and subcontractors must be licensed with the Construction Contractors' Board to enforce a lien, and contractors must hire licensed contractors and subs that have the proper endorsement for the work they are hired to do. Note that developers may not perform any construction work on a property. NOTE that the definition of a contractor now also includes a person who purchases or owns property and constructs or arranges for the construction of one or more residential or small commercial structures with the intent of selling the structures, as well as a school district or community college district that has students build a structure in order to learn building techniques, and then sells the structure. To have lien rights, the contractor or subcontractor must be licensed or endorsed for the work performed. In addition, on a project exceeding \$2,000 that is either a residential structure or a zero-lot-line dwelling, the original contractor must have a *written* contract with the owner, or the contractor will not have lien rights. [87.010; 87.037; 701.005; 701.055; 701.065; Cushman at §§38.01, 38.02[A]; G. Zanello & Son v. Portland Cent. Heating Co., 70 Or. 69, 139 P. 572 (1914)]

What is the lien against?

The improvement and land required for convenient use. [87.010, 87.015]
NOTE that a contractor or subcontractor's lien is limited to their contract amount. [87.070; L.H. Morris Elec., Inc. v. Hyundai Semiconductor America, Inc., 125 P.3d 1, 203 Or.App. 54 (2005)]
There are provisions for bringing a claim against the contractor's license surety bond, but these are not discussed here. [701.139 et seq.]

The contractor's or sub's payment bond 279C.380, 279C.600] Retainage may be withheld, but there are no provisions for subcontractors or suppliers to collect from it. But retainage is not required to be withheld on a project for the Oregon University System. [701.420-701.430, 279C.550, 279C.555; 351.086] A subcontractor or supplier may make a claim against the contract funds, except on projects involving the Oregon University System. [279C.515; 351.086] Before beginning work on a project, contractors and subcontractors are also required to post a public works bond in the amount of \$30,000 with the Construction Contractors Board, to pay all claims ordered

Special contractual
notices on residential
projects.

by the Bureau of Labor and Industries to workers performing labor on public works projects. If, however, the contract price is less than \$100,000, the contractor or subcontractor may choose not to post the public works bond, in which case any claim for wages would be brought against the contractor's or subcontractor's payment bond. [279C.800; 279C.870; 279.836] The public agency or official may be liable if the required payment bond is not provided. [279C.625]

RESIDENTIAL:

On residential and zero-lot-line dwellings, there are now several different requirements for contractual terms and other notices.

1) Standard Contractual terms are to be adopted by the Construction Contractors Board for use in all residential and zero-lot-line dwelling contracts. The terms are to be clear, using words of common understanding, and must include (a) a statement that the contractor is licensed by the board; (b) the name, license number, address and phone number of the contractor as shown on CCB records on the date the contract is entered into; (c) an acknowledgment of a written offer of a warranty, if required, and an indication of the acceptance or rejection of the offered warranty; (d) a summary of the statutorily required notices on the contractor's bid proposal; (e) an acknowledgment of the receipt of the maintenance information required by the CCB; and (f) an explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a claim with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner. [701.305]

2) A contractor may not perform work for an owner of a residential structure or zero-lot-line dwelling without a written contract if the contract price exceeds \$2,000. If the contract price was initially less than that but during performance exceeds that amount, the contractor must mail or otherwise deliver a written contract to the owner not later than 5 days after the

contractor knows or should reasonably know that the contract price will exceed \$2,000. Failure to have a written contract does not, however, void the contract. [701.305]

3) For contracts entered into on or after July 1, 2008, a licensed contractor that contracts to construct a new residential structure or zero-lot-line dwelling must give to the first purchaser or owner of the residence or dwelling a written offer of a warranty against defects in materials and workmanship. The purchaser or owner may accept or refuse the offer of warranty. If the contractor makes the written warranty offer before the owner and contractor have signed the written construction contract, and the owner refuses the warranty, the contractor may withdraw the offer to construct the residence or dwelling. [701.320]

4) For all new projects completed on or after July 1, 2008, a contractor is now also required to provide to the first purchaser or owner a recommended maintenance schedule. The information to be included in this form is to be determined by rules established by the CCB, according to guidelines included in the statute, which are not set out here but generally relate to moisture intrusion and water damage. [701.335]

5) The CCB will be creating a consumer notice form and a notice of procedure form for contractors to give owners and purchasers, as well as rules determining when the notices are to be given, and the length of time the contractor must retain proof of delivery of the forms. [701.330]

Who must give preliminary notice?

RESIDENTIAL (i.e., owner-occupied building with four or fewer units):

No one.

See the special contractual notices section, above. There are now several notices to be given with or in relation to the contract on residential projects, which are discussed immediately above. They are separate and in addition to the preliminary notices discussed here.

There are two notices that may be required:
1) Notice of Right to a Lien is required of all claimants except those furnishing at an

owner's request. If the owner IS the general contractor, then presumably the claimant is required to give the preliminary notice. [87.021] If, however, you do not contract with all of the owners, or if there is a mortgagee, even though you contract directly with an owner, you must still send a notice to the other owners and to the mortgagee. **NOTE ALSO** that all claimants, except those performing only labor, must send notice to the mortgage lender and anyone with a security interest in the property, in order to retain priority over those potential claimants as to their claim for materials. In the event the claimant only seeks to claim for his or her labor, then no notice is required. If the notice is not given, then the claimant may bring a claim for his or her labor, as long as the labor and materials portions of the claims are segregated. It is strongly recommended that all claimants give the Notice of Right to Lien to the owner, mortgage lender, and anyone with a security interest in the property, in order to protect their entire claim. [87.021(3)(b), 87.025; Cushman at §38.04[B][2]] This will maximize lien rights and ensure that the claimant takes priority over any mortgage.

2) The other notice is required to be sent by any **contractor employed by the owner** on a residential project where the contract is (or becomes) greater than \$1,000. (It is also required to be given to a purchaser of property where the contractor sells it to the purchaser within 75 days of completion of the contract.) This is called the **Information Notice to Owner**. Failure to give this notice where it is required forfeits the original contractor's lien rights. [87.093]

COMMERCIAL: The only claimants who are required to give a preliminary notice to the owner are those who supply only materials or specially fabricated materials to a project AND who do not contract directly with the owner. If the claimant supplies materials or specially fabricated materials to the owner, no notice is necessary. If a claimant specially fabricates the materials and also installs them on a project, they need not give preliminary notice. If a claimant

supplies labor AND materials to a project, they need not give preliminary notice to the owner. **NOTE, HOWEVER,** that all claimants, except those performing only labor, must send notice to the mortgage lender and anyone with a security interest in the property, in order to retain priority over those potential claimants as to their claim for materials. In the event they only seek to claim for their labor, then no notice is required. If no notice is given, then the claimant may bring a claim for their labor, as long as the labor and materials portions of the claims are segregated. It is strongly recommended that all claimants give the Notice of Right to Lien to the owner, mortgage lender, and anyone with a security interest in the property, in order to protect their entire claim. [87.021(3)(b), 87.025; Cushman at §38.04[B][2]] This will maximize lien rights and ensure that the claimant takes priority over any mortgage.

To whom is preliminary notice given?

NOTE that on residential projects there are now several notices to be given with or in relation to the contract on residential projects, which are discussed immediately above. They are separate and in addition to the preliminary notices discussed here. See the Special contractual notices on residential projects section, above.

No one.

Notice of Right to Lien: (Residential AND Commercial) Owner, mortgagee (where mortgage is recorded), and anyone with a recorded security interest in the property. Those supplying only materials are actually the only ones REQUIRED to notify the owner, but it is recommended that everyone give the owner notice anyway. Every claimant is required to give the notice to the mortgage lender and the holders of recorded security interests, where the claimant seeks to protect his or her claim for the materials portion of their claim. Also strongly recommend giving notice to general contractor as well. [87.021, 87.025; Cushman at §38.04[B][3]]

Information Notice to Owner: To the Owner, and to the first purchaser of the property constructed by the contractor and

sold before or within 75 days after completion of construction. Note, however, that where the owner is a licensed contractor, this notice need not be given. [87.093]

When must preliminary notice be given?

NOTE that on residential projects there are now several notices to be given with or in relation to the contract on residential projects, which are discussed immediately above. They are separate and in addition to the preliminary notices discussed here. See the Special contractual notices on residential projects section, above.

Not applicable.

Notice of Right to Lien: (Residential AND Commercial) During the progress of the improvement, and must be received within 8 business days of first supplying to project. If received later, relates back 8 business days. [87.021]

Information Notice to Owner: If there is a written contract, the Notice must be delivered at the time of signing the written construction or improvement contract. If the contract is oral, the notice must be delivered within five days after the contract is made. [87.093(2)]. If the contract is initially for less than \$1,000, but during the course of performance exceeds that amount, the notice must be delivered within 5 days after the contractor knows or reasonably should know that the price will exceed \$1,000. [87.093(3)]

Response to demand by mortgagee: A mortgagee may demand a list of those materials or supplies including a statement of the amount due by reason of delivery thereof. Claimant must deliver this information, using a method that establishes proof of delivery, within 15 business days of receipt of the demand, or its priority over prior mortgages and encumbrances will be deemed waived. Failure to provide other requested information could result in the loss of attorney's fees and costs. See Special Notes, below. [87.025(4), 87.027]

Contents of preliminary notice?

NOTE that on residential projects there are now several notices to be given with or in relation to the contract on residential projects, which are discussed immediately

Not applicable.

above. They are separate and in addition to the preliminary notices discussed here. See the Special contractual notices on residential projects section, above.

Notice of Right to Lien: (Residential AND Commercial) See Form A, attached. There is no requirement of a signature on this form. [87.023]

Information Notice to Owner: This form is to be prepared by CCB, and should be obtained from it. It must now include signature lines for the owner and the contractor. [87.093]

How must preliminary notice be given?

NOTE that on residential projects there are now several notices to be given with or in relation to the contract on residential projects, which are discussed immediately above. They are separate and in addition to the preliminary notices discussed here. See the Special contractual notices on residential projects section, above.

Not applicable.

Notice of Right to Lien: (Residential AND Commercial) Personal delivery or by registered or certified mail, return receipt requested. [87.018]

Information Notice to Owner: Same as above, or via first class mail with a Certificate of Mailing. [87.093]

Who must give final notice?

All claimants must file claim of lien AND give notice that claim was filed. [87.035, 87.039]

All claimants. [279C.605]

All original subcontractors and subcontractors who intend to either suspend performance based on nonpayment, or terminate a contract based on suspended performance that has continued for at least 30 days. **NOTE**, however, that these provisions do not apply where the project is a low-rise (3 stories or less above grade) one- or two-family dwelling, where it is a public project, or where it involves low-income housing. [701.635]

To whom is final notice given?

- 1) **Claim of lien:** County recorder where improvement located. [87.035]
- 2) **Notice that claim was filed:** Owner, mortgagee, and anyone with a recorded security interest in the property. [87.039];

BOND CLAIM: READ THIS ENTIRE PARAGRAPH. To the Contractor supplying the bond, to the subcontractor if applicable, and to the public body or state agency that LET the contract, which may not be the same

Cushman at §38.04[D]]

3) **Claimants suspending performance or terminating contract:**

-Original contractor: Owner.

-Subcontractors: Original contractor and owner. [701.635]

as the agency where the work is being done. [279C.605]

CLAIM AGAINST CONTRACT FUNDS: No specific procedure, but if a contractor or first-tier subcontractor fails or refuses to promptly pay someone furnishing labor or materials on the project, then the officers of the public body may pay the claimant and charge the amount paid against the funds due or to become due to the contractor. In addition, if the contractor or first-tier sub fails or refuses to pay their labor or materials suppliers within 30 days after receiving payment from the contracting agency or the contractor, then, unless the payment is subject to a good faith dispute, they also owe the claimant interest, which is not waivable. Finally, if the contractor or first-tier subcontractor fails or refuses to promptly pay the claimant, unless the payment is subject to a good faith dispute, the claimant may file a complaint with the Construction Contractor's Board. NOTE, HOWEVER, that no claim against the contract funds is allowed on a project for the Oregon University System. [279C.515; 351.086]

When is final notice given?

Claim of lien by suppliers of labor or materials: Within the earliest of 75 days after claimant last provided labor, materials, etc. or 75 days after completion of construction. NOTE, HOWEVER, that if the notice is filed before construction is complete or before the last delivery (whichever is appropriate), then the notice is premature and therefore INVALID. Also, NOTE that if there are separate contracts on one parcel of property, each contract has its own deadline. NOTE ALSO that an improvement is deemed complete when it is substantially completed, when a completion notice has been posted and recorded, or when it has been abandoned. Abandonment occurs when work has ceased for 75 days, or a notice of abandonment is posted and recorded by the owner or mortgagee. Note that if work ceases but the owner or mortgagee intends to resume construction and does not want abandonment to occur, they may post a notice of nonabandonment,

BOND CLAIM: For projects first advertised or, if not advertised, commencing on or before May 25, 2009, notice must be sent within 120 days after claimant last provided labor or materials (150 days for contributions to an employee benefit plan). For projects first advertised or, if not advertised, commencing on or after May 26, 2009, notice must be sent within 180 days after claimant last provided labor or materials (200 days for contributions to an employee benefit plan). [279C.605]

CLAIM AGAINST CONTRACT FUNDS: No specific date. The contractor is required to pay its subcontractors promptly after the contractor has been paid. Notice should not be given during that period. If the claimant is not paid within 30 days after the contractor (or subcontractor) has received payment for the claimant's work or materials, then the contractor or first-tier subcontractor is obligated to pay interest. All of these deadlines assume that the

within 74 days after work ceases. There are statutory requirements for the notices of abandonment and nonabandonment that are not discussed here. [Cushman at §38.04[C][2]; 87.045]

NOTE ALSO that a mortgagee may demand a list of those materials or supplies including a statement of the amount due by reason of delivery thereof. Claimant must provide this information, using a method that establishes proof of delivery, within 15 business days of receipt of the demand, or its priority over prior mortgages and encumbrances will be deemed waived. Failure to provide other requested information could result in the loss of attorney's fees and costs. See Special Notes, below. [87.025(4), 87.027]

Claim of lien by trust funds: Within 75 days after completion of construction. [87.035]

Notice that claim was filed: Mailed within 20 days of filing claim, and must include copy of claim of lien. [87.039]

Notice that claimant is suspending performance or terminating contract:

Original contractor: At least seven days before suspending performance or terminating the contract, unless a shorter period is specified in the contract.

Subcontractors: Where the notice is given because of nonpayment by the owner or because of suspended performance that has continued for at least 30 days, the notice must be given at least three days before suspending performance or terminating the contract, unless a shorter period is specified in the contract. Where the notice is given because either the original contractor has been paid but has not timely paid the sub, or the owner has refused to pay the original contractor for the sub's work for reasons that are not the fault of or directly related to the sub's work, then the sub needs to give at least seven days' notice. [701.635]

nonpayment is not due to a good faith dispute. Note that the complaint to the CCB cannot be filed until more than 30 days have passed since the contractor was paid, and the claimant remains unpaid. Remember, no claim against the contract funds is allowed on a project for the Oregon University System [279C.515; 351.086]

Contents of final notice?

Claim of lien (must be under oath):

-Statement of demand, less credits and offsets (**BUT NOTE that a contractor or subcontractor's lien is ultimately limited to their contract amount.**) [87.070; L.H.

BOND CLAIM: See Form B, attached. The notice is to be signed "by the person making the claim or giving the notice." While the case law pertaining to earlier versions of the statute allows the claimant's

Morris Elec., Inc. v. Hyundai Semiconductor America, Inc., 125 P.3d 1, 203 Or.App. 54 (2005)];

-Owner/reputed owner's name, if known;

-Name of person who employed claimant or to whom claimant furnished materials or rented equipment;

-Description of liened property sufficient for identification, including address, if known; and

-Must be verified by the claimant or some other person having knowledge of the facts. Per Cushman and case law, the claimant's attorney may sign the lien claim if he or she has sufficient knowledge to do so, but then they may be subject to examination as a fact witness. [87.035; Teeny v. Haertl Constructors, Inc., 111 Or.App. 543, 826 P.2d 1029, (1992); review allowed, 313 Or. 627, 835 P.2d 916; review denied, 313 Or. 628, 835 P.2d 917; reversed in part, 314 Or. 688, 842 P.2d 788. Cushman at §38.04[C][4]]

Notice that claim was filed: Written statement that claim was filed, with copy of claim attached. [87.039]

Notice that claimant is suspending performance or terminating contract: None specified; presumably the notice should include notice that the claimant is suspending performance for nonpayment, or terminating the contract based on suspended performance that has continued for at least 30 days. The notice should also presumably identify the project, the claimant, and the claimant's customer, at a minimum. [701.635]

Claim of lien: Filed. [87.035]

Notice that claim was filed: Personal service or by certified or registered mail. [87.018]

Notice that claimant is suspending performance or terminating contract: Personal service or certified mail, return receipt requested, or other means that provides written third party verification of delivery. [701.635]

attorney to sign, it is unclear whether the claimant's attorney qualifies as the person "giving the notice", thus it is recommended that the claimant sign the form for claims. [State ex rel. Town Concrete Pipe, Inc. v. Andersen, 264 Or. 565, 505 P.2d 1162 (1973); Cushman at §38.03[B][3]. 279C.605]

CLAIM AGAINST CONTRACT FUNDS: No specific provisions.

How is final notice given?

BOND CLAIM: Registered or certified mail or hand delivered. [279C.605]

CLAIM AGAINST CONTRACT FUNDS: No specific provision.

Time to start suit?

Within 120 days after filing (but time may be extended 120 days at a time for up to two

BOND CLAIM: Within two years after claimant last provided labor or materials.

years after filing if there is an extended payment plan arranged between the parties and its terms are stated in lien itself). [87.055] BUT NOTE PREREQUISITES, BELOW. NOTE ALSO that where suit is filed and the owner files a claim against the contractor's bond (with the Construction Contractors Board) the foreclosure suit may be stayed, if certain requirements are met. Note also that per case law, a lien claimant not properly served with a Notice of Filing Bond or Deposit does not have the right to foreclose its lien on the bond. [87.058; Tualatin Valley Builders Supply, Inc. v. TMT Homes of Oregon, Inc., 179 Or. App. 575, 41 P.3d 429 (2002)]

[279C.610] MUST wait 6 months from filing the proof of loss before foreclosing in order to recover attorney fees and costs from the surety. (See "Are attorney's fees allowed" section, below.) If there is some other basis for a recovery of attorney's fees from the claimant's customer or the prime contractor, then the claimant need not wait 6 months to file suit against the customer or the prime contractor. [742.061]

CLAIM AGAINST CONTRACT FUNDS: No specific provision.

Prerequisites to starting suit?

Claimant must give owner and mortgagee written notice at least 10 days before filing suit stating that it intends to file suit. NOTE that the owner, mortgagee and anyone with a recorded security interest in the property must RECEIVE this notice at least 10 days before claimant files suit. This notice may either be personally delivered and a receipt obtained, or it may be sent by registered mail, return receipt requested. If owner then so demands, claimant must give owner, within 5 days of demand, list of materials supplied, with prices, or a statement of the contractual basis for owner's obligation. Failure to do so results in loss of costs and attorney fees. [87.057]

Not applicable.

Are attorney fees allowed?

Yes, as long as all notices are given, including giving copy of Notice of Filing Claim of Lien to owner and mortgagee, and including responding to a demand for information upon receipt of a Notice of Right to a Lien. Also, fees will be allowed at trial and on appeal where the plaintiff prevails, and where the plaintiff gives the defendant a written demand for payment of the claim more than 20 days before commencing the action. If, however, before commencing the action, the defendant offers the plaintiff an amount at least as much as the damages the plaintiff is awarded, the defendant will be awarded attorneys' fees. In addition, costs of filing the lien, obtaining title reports, and preparing and foreclosing

Yes, BUT they are only allowed where the surety fails to pay within 6 months of receiving the plaintiff's proof of loss, AND where the plaintiff's recovery exceeds the amount tendered by the surety. BOTH circumstances must occur for an award of fees. NOTE ALSO that attorney's fees may be awarded to the surety where the claimant's recovery is LESS than the amount tendered by the surety. [742.061; Cushman at §38.03[B][4]].

They are also allowed to the prevailing party where a general contractor brings an action against the public body to recover interest. [279C.570]

NOTE that prejudgment interest may be awarded on the amount recovered at trial.

the lien are all recoverable. Also, if the owner files a bond to cover the lien, it will cover attorney's fees. Also, where the legal action is taken pertaining to the suspension of performance or termination of the contract, then the prevailing party will be entitled to attorney's fees. [87.039, 87.060, 87.076; Cushman at §38.04[F][5]; 701.635]

[Konen Const. Co. v. U.S. Fid. & Guar. Co., 234 Or. 554, 380 P.2d 795 (1963), *aff'd on other grounds*, 240 Or. 295, 501 P.2d 48 (1965)]

NOTE ALSO that where a general or sub fails to pay their subs or suppliers within 30 days of receiving payment, they must pay interest, which may not be waived, in an amount up to 30% per annum. [279C.515]

Are claims assignable?

No specific provision.

Yes. [279C.600]

How are claims ranked?

LIENS: PLEASE READ THE WHOLE SUBSECTION.

All lien claimants share pro rata. [87.060]
Liens of claimants who, at the request of the owner or owner's construction agent, perform labor upon, transport or furnish any material to be used in, or rent equipment used in the construction of any improvement, and liens of employee benefit plans, architects and some surveyors and landscape architects, have priority over prior liens, mortgages and other encumbrances, as long as the proper notices are all given.

NOTE, however, that liens pertaining to the alteration and repair of an improvement will NOT take priority over mortgages or trust deeds recorded prior to the commencement of the alteration or repair UNLESS the mortgage or trust deed is given to secure a loan made to finance the alteration or repair.
NOTE, also, that liens of lessors of equipment used for preparing the land or adjacent roads, and liens of some surveyors and landscape architects only take priority over unrecorded mortgages and mortgages filed *after* commencement of the improvement. [87.025; 87.010]

CLAIMS AGAINST THE CONTRACTOR'S LICENSE or SURETY BOND:

Payments from a commercial contractor's surety bond pursuant to an order by the CCB are to be satisfied as follows:

- (1) Orders resulting from claims by a person furnishing labor to a contractor or who is owed employee benefits by a contractor.
- (2) Amounts due as a result of all other types of small or large commercial structure

Labor and materials liens are preferred to all other liens. [279C.615]

claims, excluding costs, interest and attorney fees.

(3) Claims for costs, interest and attorney fees.

Note that claims are grouped based on 90-day periods, beginning with the date the first claim is filed with the CCB. All claims filed within 90 days thereafter are grouped together for payment purposes. There may be more than one 90-day period, but the funds may be exhausted in paying the claims filed during the first 90-day period.

Payments from a residential contractor's surety bond pursuant to an order by the CCB are to be satisfied as follows:

(1) Claims by the owner of the residential or small commercial project.

(2) All other claims filed within the same 90 day period as the owner's claim, up to a total of \$3,000 altogether. The 90-day period begins on the day the first claim is filed with the CCB.

Note that the total amount paid from a residential contractor bond to a non-owner for costs, interest and attorney fees cannot exceed \$3,000. [701.153]

Can lien rights be waived?

Yes. [Cushman at §38.04[G]]

NOTE, however, that a claimant's right to suspend performance based on non-payment or to terminate a contract based on suspended performance for at least 30 days, may NOT be waived. [701.640]

No specific provision.

Special Provisions

1) Mortgagee must receive either a copy of the preliminary notice OR the information contained in the claim of lien within eight days (excluding weekends and holidays) of commencing furnishing in order for the materials portion of a claimant's claim to have priority over that mortgage. [87.025]

2) After receiving preliminary notice, owner or mortgage holder may make written demand that claimant supply statement containing list of materials, description of labor, or statement of contractual basis for supplying labor or materials, plus the percentage of the contract completed and the charge for supplies to the date of the demand. Claimant's statement must be delivered to owner within 15 business days of

1) If contractor does not pay for labor, services or materials, and the public body neglected to require the contractor to post a bond, the state or public body and the officers authorizing the contract are liable for the labor, materials, etc. [279C.625]

2) All public contracts must contain a condition that the contractor and first tier subcontractor will pay their suppliers of materials or labor within 30 days of receiving their payment (except where there is a bona fide dispute), or else must pay the principal plus interest, and the unpaid party can file a complaint with the Construction Contractors Board. The interest amount cannot be waived. [279C.515]

3) Where a payment is paid late by the public

receiving demand. Claimant needs proof of service or certified or registered mail receipt. Failure to cooperate results in loss of attorney's fees and costs. In addition, a mortgagee may demand a list of those materials or supplies including a statement of the amount due by reason of delivery thereof. Claimant must provide this information within 15 business days of receipt of the demand, delivered using a method that provides proof of delivery, or its priority over prior mortgages and encumbrances will be deemed waived. [87.027, 87.025(4)]

3) There is a provision for retainage on private works jobs, but there is no provision for others to recover against it. [701.410]

4) There are now special rules and forms as to when the owner must pay the contractor its progress payments, when a job runs longer than 60 days. If the owner wishes to have a billing cycle other than every 30 days, or to be required to make the payments within more than 14 days after receiving the billings, then there are certain forms that must be used, which are not attached to this summary. Subs and suppliers are required to pay their subs and suppliers within 7 days after receiving payment. If they are not timely paid, interest at the rate of 1.5% per month may be charged. [701.625 – 701.640]

5) There are now continuing education requirements for all contractors and subcontractors licensed by the Construction Contractors Board. [701.126]

body, and not because of a bona fide dispute, interest is to be paid automatically. [279C.570]

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