

Top Things to Know About Oregon Construction Liens

In Oregon, construction liens are governed entirely by statute (Chapter 87 of the Oregon Revised Statutes), and are designed to provide security to suppliers and contractors by allowing them to place a lien on land that they improved by their efforts. The construction lien statutes are highly technical. Failure to precisely follow the notice and filing requirements could result in the invalidation of lien rights, and possibly a counter-claim against the lien claimant for slander of title or abuse of process. This article summarizes only the most important legal requirements. Consultation with a knowledgeable attorney is highly advisable.

Liens Generally

A construction lien claimant who complies with the applicable notice and filing requirements has a right to file a lien. This is true even if the person with whom the claimant has a contract has been paid in full by the property owner (such as in a contractor/sub-contractor situation where the property owner paid the general contractor but the general contractor failed to pay the sub-contractor; in that case, the sub-contractor may have a breach of contract claim against the general contractor, but may also have the right to file a construction lien against the property).

Who is Entitled to a Construction Lien

Anybody who performs labor, furnishes materials, or rents equipment used in construction of any improvement or in preparation of land for improvement, shall have a lien upon the improvement if the labor, materials, or rented equipment were provided at the instance of the property owner or the construction agent of the property owner. In addition, architects, landscape architects, land surveyors, and registered engineers may have a lien on the land or structures that their services benefitted. To be entitled to file a construction lien, a contractor must be properly licensed at the time of bidding or entering into the agreement for such work, and the contractor must remain licensed continuously throughout performance of the work. If a contractor is not licensed, the contractor's rights will be severely limited.

Interests Subject to Lien

The property interests subject to lien include any land that may be necessary for the use and occupancy of the improvement as well as the site of the improvement. However, the lien encumbers only the interest in the site and land of the person that requested the construction of improvement.

Notices Generally

The lien laws require a variety of notices. A potential lien claimant must provide some notices before recording a construction lien claim, and other notices after recording. All notices must be in writing and delivered in person or delivered by registered or certified mail, except for the "Information Notice to Owner".

- 1) **Notice of Right to Lien.** This notice must be provided in substantially the form set forth in Oregon Revised Statute 87.023. The notice may be given at any time during the construction of the improvement, but should be given within the first seven (7) days of commencement of work. This is because the notice covers all future activity, but is retroactive for only eight (8) days. It is just as important that the Notice of Right to Lien not be given prematurely, before any activity. The notice must be given “during the progress of the improvement” to be effective. In summary, this notice might be ineffective if given too early or too late.
 - a) **Labor Supplier.** A labor supplier whose contract is with the property owner is not required to send a Notice of Right to Lien to that owner. A labor supplier who is a subcontractor on a commercial improvement need not provide a Notice of Right to a Lien to the owner of the commercial improvement. A labor supplier who is a subcontractor on a residential improvement IS required to send a Notice of Right to a Lien to the owner of the residential building.
 - b) **Materials Supplier.** A materials supplier whose contract is with the property owner is not required to send a Notice of Right to Lien to that owner. A materials supplier whose contract is with the owner= construction agent must provide a Notice of Right to Lien to owners of both commercial and residential improvements. A Notice of Right to a lien should also be provided to a mortgage holder to give the materials supplier’s lien priority over a mortgage or trust deed.
 - c) **Labor and Materials Supplier.** A person who provides both materials and labor need not deliver or send a Notice of Right to a Lien if that person is the original contractor. However, if that person is a subcontractor then a Notice of Right to a Lien is required, but only when the labor and materials are used in construction of a residential building.
 - d) **Failure to Provide Notice of Right to a Lien.** A lien may be perfected only if a Notice of Right to a Lien, if required, is given.
- 2) **Information Notice to Owner.** An Information Notice to Owner must be given only by original contractors who contract for residential construction or improvements in excess of \$1,000. The notice must be given to the owner at the time the contract for work is signed. Failure to provide the notice prevents the original contractor from claiming a lien. In addition, the state Construction Contractor=s Board (ACCB@) may fine or suspend the original contractor.
- 3) **Notice of Filing a Claim of Lien.** After a claimant files a lien, he or she must mail written notice that the lien has been filed to the owners and mortgagees. The notice must be sent to all owners and all mortgagees via certified or registered mail within 20 days after the lien is filed. Failure to provide a notice of filing of a lien claim prevents a lien claimant from recovering costs, disbursements, and attorney fees that may otherwise be allowable in a suit to foreclose a construction lien. Suit to foreclose the construction lien must be commenced within 120 after the date the lien was filed.
- 4) **Notice of Intent to Foreclose.** Written notice of intent to commence a suit to foreclose a construction lien must be delivered to all owners and all mortgagees not later than 10 days before commencing the suit.

Since a suit to foreclose a construction lien must be commenced within 120 days after the date the lien was filed, the delivery of the Notice of Intent to Foreclose must, at a minimum, be made 10 days before the expiration of the 120 day deadline.

5) Reply Notices

- a) **By Mortgagee.** A mortgagee who receives a Notice of Right to a Lien may demand a list of materials supplied and the amount due from the materials supplier. The material supplier must deliver the required list within 15 business days or else the supplier loses his or her priority status over the mortgagee.
- b) **By Owner.** An owner who receives a Notice of Right to a Lien may demand that the lien claimant provide an itemization and description of materials or services rendered. The lien claimant has 15 business days to answer following receipt of the Owner's request. Otherwise, the lien claimant loses his or her right to attorney fees and costs otherwise allowable in a foreclosure action. If an owner receives a Notice of Intent to Foreclose then the owner may demand a list of the supplier's materials and supplies together with the charges for them and a statement as to the contractual basis of the owner's liability. The supplier has five days to respond, and the supplier will lose his or her entitlement to costs, disbursements, and attorney fees if a response is not timely delivered.

Filing a Claim of Lien

A construction lien must be recorded (filed) with the recording office of the county in which the improvement is situated. A lien claimant must file the lien within 75 days after ceasing to provide labor, equipment, or materials or 75 days after construction is completed, whichever is earlier. Completion of construction occurs when the improvement is substantially completed or when a completion notice is posted, or when the improvement is abandoned.

Contents of Claim of Lien

A claim of lien must contain the following:

- Name of the owner
- Property description
- Itemization of all balances owing, with all just credits and offsets; simply listing a lump-sum balance may prevent enforcement of the lien
- The verified oath of the person filing the lien that the lien is legitimate and valid

Timing of Foreclosure

A suit to foreclose a claim of lien must be commenced within 120 days after the lien is filed. After that time, the lien expires and cannot be renewed.

Attorney Fees

Generally, the prevailing party in a foreclosure suit is entitled to recover their attorney fees from the losing party. This amount could be substantial and could greatly exceed the amount of the lien.

Stay of Foreclosure Action

The foreclosure proceeding might be stayed (frozen) for several reasons. First, the action may be stayed upon court order if the contract which gives rise to the construction lien has a binding arbitration clause. Second, the property owner may obtain a stay if the owner files a claim with the CCB. However, the CCB claim must be related to a residential or small commercial structure.

Bonding Around a Construction Lien

A perfected construction lien may be removed from the land or improvement by posting a bond or cash deposit. The bond or cash deposit must be 150% of the amount of the lien claim or \$1,000, whichever is greater.



For more information or questions, please contact Keith R. Shepherd at 503-228-8588 or by email at ks@pmblaw.com.

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