

APPENDIX B - SUMMARY OF STEPS NECESSARY TO PERFECT A CONSTRUCTION LIEN IN OREGON

USE THIS INFORMATION WITH CAUTION

This summary contains general information only, and must not be construed as legal advice, or take the place of competent legal counsel. Its purpose is to provide general – not specific – information on some of the steps and precautions that must be taken, so that a claim of lien may be valid and may be enforced, if necessary. The Oregon Construction Lien Law is complicated, and the procedures and follow-through on the preparation of any lien should be carefully checked. Always check to see whether statutes may have been amended by the Oregon Legislature and to see if there is any new relevant case law – thus, the general information contained in this summary may be dated. In addition, all contractors should make

1. Pre-claim Notice

Action	Who	When
Provide Information Notice to Owner to all owners in manner required. (ORS 87.093) [See OAR 812-001-0200 for the current form of this notice. See OAR 812-012-0130 for the rules concerning maintaining proof of delivery of this notice and other notices.]	All original contractors engaged in residential construction that exceeds \$2,000. (If original contract does not exceed \$2,000 but subsequent negotiations result in the contract being amended to exceed \$2,000, then original contractor must give the notice at that time).	On date contract is signed (or if contract is initially under \$2,000, within 5 days contractor knows or should reasonably know that the contract price will exceed \$2,000).
Provide Notice of Right to a Lien to all owners and mortgagees. (ORS 87.021 and 87.025)	All original contractors, subcontractors, suppliers, and design professionals should give this notice in order to fully protect their rights.	Only protects lien rights (and some potential priority rights) for a period of 8 business days prior to the notice being sent.
Respond to a request from an owner or mortgagee with a list of materials or labor, etc., and a statement of charges, and the unpaid balance. (ORS 87.025 and 87.027)	All original contractors, subcontractors, and suppliers.	Within 15 business days after receipt of a written demand from an owner or mortgagee (this only applies to demands received before a claim of lien is recorded).
Consider other potential pre-lien issues: License, endorsement, or registration requirements. See e.g. ORS 701.131. Written contract requirement? See ORS 87.037; Customer licensure requirement? See ORS 87.037. Limitation on	All original contractors, subcontractors, suppliers, and design professionals.	Prior to bid or contracting for work.

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design professional liens under ORS 87.010(5)-(6) if owner-occupied residence. See ORS 87.021(1).		
2. The Claim		
Action	Who	When
Record Lien Claim containing all elements and verification required by ORS 87.035 in real property records of county where improvement(s) is located. (ORS 87.035)	All lien claimants.	Within 75 calendar days after last substantial performance of labor, delivery of materials, or rental of equipment <u>or</u> 75 calendar days after completion of construction whichever is earlier.
3. Post-claim Notice		
Action	Who	When
Provide a Notice of Filing Claim of Lien to all owners and mortgagees with a copy of recorded Lien Claim attached. (ORS 87.039)	All parties who have recorded a Lien Claim.	Within 20 days after the Lien Claim is recorded. Consider the potential application of the Fair Debt Collection Practices Act ("FDCPA") (15 USC §§1692–1692p).
Provide Notice of Intent to foreclose Lien Claim to all owners & mortgagees. (ORS 87.057)	All parties who have recorded a Lien Claim.	Not less than 10 days before filing suit to foreclose Lien Claim. Consider the potential application of FDCPA, including prohibition on demands inconsistent with 30 day dispute rights (see OSB CLE CONSUMER LAW IN OREGON (2013 rev.), §22.3-6(b)(2))
Provide to owner a list of the materials and supplies with the charge therefor, or a statement of a contractual basis for the owner's obligation, for which a claim will be made in the suit to foreclose.. (ORS 87.057)	All parties who have recorded a Lien Claim.	Within 5 days after receipt of written demand from owner (for demands received after Lien Claim is recorded and Notice of Intent to foreclose is provided).

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4. Action		
Action	Who	When
File suit to foreclose Lien Claim. (ORS 87.055(1))	All parties who have recorded a Lien Claim.	Within 120 calendar days after Lien Claim is recorded.
Serve foreclosure lawsuit on necessary parties. (ORS 87.055(2-3); ORS 12.020).	All lien claimants.	Within 60 calendar days after filing suit or claim (but see ORS 87.055(3)).
Record notice of pendency of action in County real property records (recommended). (ORS 93.740)	Lien claimants	Promptly after filing suit.

COURTESY OF DOUGLAS GALLAGHER LAW OFFICE PC
(Thank you to Alan Mitchell (retired) for his substantial contribution to earlier editions)

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