

APPENDIX C - SUMMARY OF STEPS NECESSARY TO PERFECT AN OREGON PUBLIC WORKS CLAIM

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 bond claim may be valid and may be enforced, if necessary. The bonding laws are complicated, and the procedures and follow-through on the preparation of any bond claim 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 sure that they are properly licensed and endorsed with the Oregon Construction Contractors Board.

1. Pre-claim Notice		
NONE		
2. The Claim		
Action	Who	When
Notice of the Claim form must be provided by certified or registered mail to both: (1) the contractor that provided the bond and (2) the contracting agency. ORS 279C.605.	All subcontractors and suppliers on Oregon public works projects.	Within 180 days after last provided labor, materials, or rental of equipment.
3. Post-Claim Notice		
NONE		
4. Action		
Action	Who	When
File lawsuit to foreclose Claim. ORS 279C.610.	All Claimants.	No later than 2 years after claimant last provided labor, delivery of materials, or rental of equipment.. Not based on the notice of claim date.

Oregon Notes (see also Federal Notes):

1. The Oregon Little Miller Act does not specify who at the contracting agency is supposed to receive the notice. While some state agencies historically have adopted specific administrative rules to specify exactly who should receive the notice, legislative history suggests that it is incumbent upon the contracting agency to route the notice to the appropriate person after it is received. To avoid any question on this

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issue, claimants should consider sending separate notices to: (1) The contracting agency that let the contract (CAUTION! This might not be the same agency for whom the work is being performed.); (2) The contracting agency c/o the project manager; and (3) The contracting agency c/o the agency's clerk, auditor, director or manager.

2. You should make certain that notice is actually received before the time period expires. The time period may not be extended if the last day falls on a Saturday, Sunday or other legal holiday. Consider using a "substantial" last day of performance for purposes of calculating the deadline for giving notice and filing suit. Confirm such date used for calculating deadlines can be established through claimant's records (e.g. a "will call" delivery typically means a delivery by a supplier at its place of business, not a delivery at the project site). Also, account for holidays, office closures, and other challenges to delivery of notices (e.g. weather).
3. You should also consider giving notice directly to the surety (the bonding company) since this may expedite payment and commence the six-month time period for the recovery of attorney fees against the surety under ORS 742.061. Consider whether to provide additional information requested by surety to satisfy "proof of loss" requirement under ORS 742.061.
4. Claimants must make certain that notices are provided to at least two parties:
 - a. The contracting agency that let the contract; and
 - b. The contractor who furnished the bond.
5. You should confirm that the contracting agency did not exempt the project from the requirements for a bond and that, if a bond was required, it was the "right" bond. (For example, the contracting agency for some reason may have required a bond form similar to the federal requirements, which are different from the state requirements). See ORS 279C.625 for potential liability of the public body if it did not require a bond when necessary. See also OSB CLE CONSTRUCTION LAW (2011 REV) CHAPTER 10, THE SURETY RELATIONSHIP AND PAYMENT AND PERFORMANCE BONDS (case law suggests a surety may not be entitled to rely on more restrictive requirements than statute requiring bond).

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

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