

2011 LEGISLATION ALERTS

CONSTRUCTION LAW

CONSTRUCTION LIEN CLAIMS

NOTICES TO MORTGAGEES

**ORS 87.005, 87.018, 87.021,
87.039, 87.057, 205.234
2011 OR LAWS CH 505 (SB 382)**

SB 382 makes changes concerning the notices that construction lien claimants must send to lenders. First, it defines the term "Mortgagee" to be only those persons whose name and address appear in the county's real property records. It can also include an assignee, but only if the assignee's name and address are shown in the county's real property records. The proponents proposed this bill in part due to the issues surrounding the Mortgage Electronic Registration System (MERS).

Second, the bill clarifies that a construction lien claimant needs to send statutorily required notices only to those mortgagees (or assignees) whose name and address are shown in the county's real property records. These notices are required under ORS 87.021, 87.039, and 87.057.

Effective date: January 1, 2012.

These changes to ORS chapter 87 apply to assignments recorded after January 1, 2008, which was the date when ORS 205.234(1)(g) required that information to be included. The other changes apply to mortgages recorded on or after the bill's effective date.

CONSTRUCTION CONTRACTORS BOARD (CCB)

**CCB DISPUTE RESOLUTION SERVICES
ORS 87.058, 701.145, 701.148
2011 OR LAWS CH 630 (SB 939)**

Sections 38 through 73 of this omnibus bill set out major changes to the dispute resolution procedures of the Construction Contractors Board (CCB). Previously, complaints filed through the CCB had a two-step procedure: the first step was an on-site investigation/mediation, and the second step was referral to the Office of Administrative Hearings (OAH) (for complaints that were not settled at the on-site meeting). The major effect of SB939 is that this second step has been eliminated.

Effective July 1, 2011, ORS 701.145(5) has been amended to provide that, if the CCB does not settle a complaint under CCB-assisted mediation efforts, then the complainant must file a circuit court action or an arbitration against the contractor. Once the complainant obtains a final judgment or award, the CCB will issue a determination ordering the contractor's surety to pay that portion of the judgment that is within the CCB's jurisdiction. Another impact of these changes is that a CCB Final Order can no longer be recorded to create a judgment lien.

Two other impacts of these changes are the repeal of ORS 701.148 (which allowed the CCB to require that OAH hearings were held as arbitrations) and ORS 87.058 (which allowed a property owner, in certain situations, to obtain a stay of a construction lien foreclosure action

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by filing a complaint with the CCB). Note that Section 56 reinstates that “stay” ability; however, that section does not take effect until July 1, 2017.

Practitioners should also note that many of these changes have a “sunset” date of July 1, 2017. Thus, Sections 56 through 72 reverse most of these changes, including the CCB’s ability to use the OAH.

Effective date: July 6, 2011.

Note that Section 53 expressly states a legislative intent that these statutory changes may be applied retroactively in order to process a CCB complaint filed after July 1, 2011.

LANDSCAPE CONTRACTORS BOARD (LCB)

COVERAGE FOR LANDSCAPE CONTRACTORS' EMPLOYEES ORS 671.525, 671.565, 671.610 2011 OR LAWS CH 283 (HB 2157)

See Workers’ Compensation.

MISCELLANEOUS

NOTICE OF DEFECT IN RESIDENCES ORS 701.560 – 701.600 2011 OR LAWS CH 268 (SB 383)

SB 383 makes changes to the “Notices of Defect in Residence” statutes found in ORS 701.560 through 701.600. First, the bill allows the mandatory construction defect notices to be sent via certified mail (previously, only registered mail was acceptable). Second, the bill expands the exemptions to the “Notice of Defect” requirements. Under the bill, the requirements do not apply to small claims actions or to counterclaims or arbitration responses, since in all of those cases the other party already has effective notice of the action.

Effective date: January 1, 2012.

The amendments apply to notices and responses mailed on or after the effective date.

PRIVATE PROMPT PAY ACT ORS 701.620 – 701.645 2011 OR LAWS CH 553 (SB 384)

SB 384 is intended to be a “clean up” of the private prompt pay statutes (ORS 701.620 through 701.645); it was not intended to make any major substantive changes to this area of law. Among other changes, the bill (1) clarifies the circumstances in which attorney fees for claims for “payment of interest” can be recovered; and (2) corrects an omission in which the established time for final payment, the fourth of the four established prompt payment deadlines, currently does not have an opt-out provision.

Effective date: January 1, 2012.

The amendments apply to construction contracts that an owner enters into on or after the effective date.

WAIVER OF SUBROGATION 2011 OR LAWS CH 518 (SB 961)

SB 961 voids certain waiver of subrogation clauses in construction contracts; other types of clauses are not affected. This bill’s full impact is yet to be determined. Its proponents asserted that the changes would prohibit a general contractor from forcing a subcontractor to indemnify the general contractor even if the subcontractor was wholly without fault. Some opponents argued that this issue was clarified by the *Walsh Construction v. Mutual of Enumclaw* circuit court decision and that this change would allow parties to re-litigate these issues.

Effective date: June 23, 2011.