

## Frequently Asked Questions Dispute Resolution Program

# FILING CLAIMS

### **I have a valid claim against a contractor. Why can't I just apply to the CCB and get my money?**

Many claimants wonder why the CCB doesn't operate like an auto insurance company. In that type of claim a claimant simply applies to the company for reimbursement, and in a short time, the insurance company either pays or not. The CCB is limited by the authority granted by the legislature. The laws that govern the CCB require that we investigate the claim and determine if the contractor performed negligent or improper work and, if so, the amount the claimant should be awarded. We cannot simply take the information the claimant submits and issue payment based on that information. We must take evidence from both sides and then decide based on the evidence.

### **Why is the CCB so mean (or strict) about time limit for filing a claim?**

The statutes that govern our claim process set out the time frames in which claims must be filed. Unfortunately, those laws do not allow us any discretion to make exceptions and process claims that are not filed within the required time, regardless of the reason that the claim was filed outside of that time. We would process your claim if the law allowed us to do so, but it does not.

The fact that we are not legally able to process your claim does not mean that you cannot sue the contractor in a court of law or another forum. You may want to contact an attorney for advice on other legal ways to deal with the problem.

We believe the legislature limited the time to file CCB claims for several reasons. First, the CCB claim process is tied to a surety bond, which the State requires every licensed contractor to purchase. A surety bond without a fixed time limit or a time limit longer than one year would be more expensive. Second, the CCB claim process is an alternative to the court system. When the legislature balanced the interest of consumers in a longer time limit against the interest of contractors in a more affordable bond, the legislature may have been influenced by the knowledge that a consumer who could not file a timely claim could still seek relief in the court system.

**Why do I have a one-year limit to file a claim when I have a five year warranty?**

Your warrantee is part of your personal contract with a contractor. As with other terms of that contract, not all are within the jurisdiction of the CCB. As stated above, the time limitation for filing a claim are prescribed by Oregon law. There is no provision under the law that can extend those limitations because of terms set in your personal contract.

**The contractor kept saying he would fix the problem but did not. Why can't I file a claim past the one year since he kept saying he would come back until the one year was up?**

Please see above about time limits for filing a claim.

**I did not find any problems with the work until after one year. Why can't I file a claim within one year of the date I found the problems?**

Please see above about time limits for filing a claim.

**I am a lumber yard in Central Oregon. I supplied lumber to a contractor. The contractor did not pay for it. I am certain the lumber was used on a building in Oregon because no one would buy lumber and haul it to another state from here. Why do I have to give a particular address where the lumber was installed in order to file a claim?**

Oregon law requires that claims involving residential property be filed with and processed by the CCB. Most claims involving large commercial property must be filed in court with notice to the CCB and the contractor's surety company. The division of a bond between multiple claimants also depends on the type of structure involved in the claim. Claims involving residential and small commercial structures get first priority to the bond. If a claimant does not know where material is installed, there is no way to determine if the claim was filed under the correct procedure or the priority for possible payment from the bond.

The State of Oregon provides the CCB claim process as a remedy that is in addition to pursuing an action on a contract in state court. When the legislature set up the claim process, it chose to put limit on the availability of the CCB claim process that do not apply to a litigant in court. One of those limits is the rule discussed above. If a claimant cannot provide an address where a product was installed, that does not prevent filing a court action to collect an unpaid bill. It does, however, prevent a claimant from pursuing a CCB claim. Note that the CCB processes hundreds of material supplier claims a year that do meet the requirement to provide addresses.

A person furnishing materials or labor may file a lien against the property if they are not paid. The claim process is an alternative to filing a lien in order to protect the home owner. If you do not have the job site address then you cannot file a lien against the property. If you are not able to file a lien, then the home owner is not at risk and a claim would not be necessary.

**My contractor sent me a bill that is grossly overstated. I have not paid it. Why can't I file a claim and have the CCB decide this dispute?**

If you did not pay this bill and you only want a decision on whether the bill is overstated, we do not have jurisdiction to take the claim and will have to dismiss it. If we do, you can request a hearing to contest our dismissal. However, at that hearing you would have to prove you suffered actual damages because of the contractor's actions.

It may seem not seem right that we can take a claim when a claimant has risked money by paying an overstated bill, but that we cannot take it if the claimant wisely refused to pay the bill. This situation is because of the limited jurisdiction granted to the CCB under the legislation that created it. CCB jurisdiction is based on processing claims against a contractor's bond. If a claim can't result in an order against the contractor's bond, we do not have jurisdiction. This is the basis for administrative rule OAR 812-004-0550(1)(e). That rule says that the agency will issue an order proposing to dismiss a claim if "the evidence in the claim record persuades the agency that . . . the monetary value of damages sustained by the claimant is less than an amount due to the respondent from the claimant under the terms of the contract." If a bill has not been paid, any order could only establish that the entire amount of the bill or some lesser amount was due. In any case, the order would not be an order that the respondent pay the claimant and the claim would have to be dismissed.

**How come a homeowner doesn't have to give a "Notice of Defect" when he or she files a CCB Claim? Why do they only have to give a "Notice of Intent to File a Claim," which provides much less information to the contractor?**

ORS 701.565 requires a homeowner to give a "Notice of Defect" before filing a lawsuit against a contractor. ORS 701.600 exempts CCB claims from this requirement. A notice of defect requires much more information than a "Notice of Intent to File a Claim."

Oregon law sets up two procedures for resolving construction disputes on residential structures. The first and older procedure is traditional litigation (filing in court). The notice of defect requirement in ORS 701.565 applies to litigation and is well adapted to litigation. Parties in litigation are usually represented by attorneys, the amounts at stake are usually large, and the proceedings are more formal.

The second dispute resolution procedure is the CCB claim. Our procedure is designed to provide a relatively quick and inexpensive resolution to disputes. Many parties to CCB claims can resolve their claims with little or no help from an attorney.

The formal notice of defect is not compatible with the CCB claims process. The notice of defect requirement is designed for attorneys, not homeowners and contractors. The procedures set out in ORS 701.585 - 701.595 are also inconsistent with the CCB claims process. In the CCB claims process, the statement of claim and on-site meeting and investigation serve the same purpose as the statement of defects and the inspection procedures required under ORS 701.585 - 701.595.

The notice of defect is designed to allow contractors a chance to resolve a dispute before a court complaint gets insurance companies and their attorneys involved. These factors are not usually present in a CCB claim.

The pre-claim notice of a CCB claim provides notice to the contractor that a customer intends to file a claim. Although this notice does not have all of the detail required in a notice of defect, we are certain that it serves its intended purpose. After the pre-claim notice became effective, we saw a significant drop in the number of claims filed. We believe that many claims that were not filed were resolved by contractors after they received the pre-claim notice.

Litigation and the CCB claims process are two different ways to resolve disputes. Each procedure provides due process protections to the parties involved by different means.

## **INDUSTRY STANDARDS**

### **What is a construction industry standard and what does it have to do with my claim?**

An industry standard cannot always be defined. It is the standard care of the industry regarding a specific part of a construction job. Our investigators have observed the construction industry over the years, through their position at the agency and through their personal experience in construction. They will review the work the contractor performed and determine, based on several things, if that work was performed within industry standards. Some standards are explained in publications that our investigators use. If they do not feel that the work meets the standard, they will recommend the work be corrected. They will state what standard they feel is appropriate. If they used a publication for that standard, they will cite that publication.

Please see below for more information on these publications.

**Is there any publication that details what the industry standard is on a particular type of work?**

The CCB investigators use a variety of publications to review the work the contractor did on the project. They use National Association of Home Builders of the United States Residential Construction Performance Guidelines (2000). They also use Residential and Light Commercial Construction Standards (R.S. Means Co, Inc, 2002). When reviewing a home inspection claim, they will reference OAR Chapter 812 Section 8. They occasionally refer to manufacturer's specifications for installation or warranty. If they need information that they are not able to locate in a publication or that they have not observed in the past, they may find it on the internet. If this is the case they will cite where they got the information.

## **INVESTIGATIONS**

**Why does the CCB insist on holding an on-site meeting when the parties have entered into a verbal settlement?**

If you have a verbal settlement with the contractor and it is breached, it is very difficult for the agency to enforce that agreement. The details of the agreement can be vague, and your understanding may be different from the contractor's understanding. You may not know what you can or should do if the agreement is breached.

If our investigator comes out to the job site, he can discuss the agreement with you and the contractor and put it in writing. You both will have a clear understanding of the agreement and what to do if it is breached.

**Why can't we schedule the on-site meeting around my work schedule? Can I send in times best for me?**

Before an on-site meeting is scheduled, you can send in a list of times when you will not be available to meet. However, our investigators schedule meetings several weeks in advance based on the job location and estimated meeting length. Because of these factors and notice requirements, they may not be able to schedule to meet your needs. This could also be affected by the reasons you cannot be available (i.e. scheduled doctors appointments, etc.)

**Do I have to let the contractor come into my house when the CCB comes out for an on-site meeting?**

The law requires you to let the contractor to come to the job site and into the property while the on-site meeting is being held. The investigator will be present the entire time. The only exception to this is if there is a legal order (like a restraining order) forbidding the contractor to be on the property.

**Do I have to let the contractor's subcontractors or employees come into my house when the CCB comes out?**

You are not required to let the contractor's subcontractors or employees come to the job site for the on-site meeting. However, their attendance may help in reaching a settlement, especially if the work in question was work a subcontractor or employee performed.

You must allow a contractor to bring an attorney to the job site for an on-site meeting.

**I do not want the contractor to do any more work on my house. Does the CCB make me let the contractor come back and do work?**

If the investigator recommends that the work be repaired and the contractor has a valid CCB license, the law requires you to let the contractor repair the work. If you do not let the contractor to do the work, we cannot process your claim.

If the investigator decides that the contractor is not capable of making the repairs or the contractor does not have a valid CCB license, then you are not required to let the contractor repair the work. If you believe the contractor is not capable of making the repairs, you should discuss your concerns with the investigator during the on-site meeting.

**I want to file a claim but the contractor wants to come back and try to fix the work first. Do I have to let the contractor try to fix the work before I can file a claim?**

You do not have to let the contractor correct the work before you file a claim. However, if you let the contractor make repairs, you may not need to file a claim.

**Can I go ahead and do the work since the claim process takes so long?**

There is no law that prevents you from having the work corrected or completed before an on-site meeting is held. However, you must be able to prove the issues existed and that the respondent is responsible for each problem. If you have the work done before the meeting, you lose the chance to have a neutral third party look at the job as it exists after the contractor worked on it.

**Do I need an attorney for the on-site meeting because the other party has one?**

See language in investigation instructions.

If the other party has an attorney, that attorney will not be excluded because you do not have an attorney present. If you decide at the meeting that you do not want to participate because the other party has an attorney, that could cause the meeting to be postponed and lengthen the time to process your claim.

**The on site isn't for a month. The claim process is so long and I can't cook or stay in my house. Who is going to pay for restaurants and motels?**

The law requires a claimant to mitigate their damages. That means taking the necessary steps to lessen ongoing damages or expenses, such as tarping a leaking roof or repairing a shorting electrical switch that could cause a fire.

If damages occur between the time the contractor did the work and the time the work gets repaired, the contractor may not be held liable for all of those damages. An example would be a leaking roof. If you do not take steps to stop the leak (tarping, etc) and that leaking caused damages to the interior of your home, the contractor might not be responsible for the damages caused by the leaking. You may want to talk with an attorney before proceeding with the work.

**Are the investigators capable of handling volatile situations?**

All of our investigators are experienced negotiators. If a situation may get out of control, they will take steps to defuse the situation or, if necessary, stop the meeting. If you feel that there may be a problem at the meeting, you should notify your examiner in writing, so they can pass that information on to the investigator and he can be prepared.

## **FEE & NOTICE**

**Do I send my processing fee with the claim form?**

The CCB will ask you for the processing fee when they decide they have jurisdiction and can process the claim.

**What does my pre-claim notice need to say? Do you have a form I can use?**

The notice must say that you intend to file a CCB claim. We have a sample pre-claim notice on our website that you may use. You will find it under Programs, Dispute Resolution (Claims), and it is titled "Sample Pre-Claim Notice".

# MISC

## **Why can't I speak to the Dispute Analyst (Claims Examiner) assigned to my claim?**

By law the decision maker (Dispute Analyst) can only communicate if all parties are present. If the Dispute Analyst (Claims Examiner) speaks to one party on the phone, the other party would also have to be on the phone. Each Dispute Analyst (Claims Examiner) has a Specialist that answers all the phone calls about specific claims. The Specialists are trained to answer all questions about the claims process. They work with the Dispute Analyst (Claims Examiner) and can answer any question that arises during the processing. If you want the Dispute Analyst (Claims Examiner) to respond to a question, you must ask your question in writing.

## **Why can't I speak to the Investigator that came to my house?**

Once the Investigator does the on-site meeting and issues a report, his part of the process is complete. The Dispute Analyst (Claims Examiner) will review the report and any other documents that are submitted to make a decision about the claim. If you have further information you feel needs to be considered, you must send it in writing. If you have a question that needs to be answered, you may call the Claims Specialist assigned to your claim and ask them or put your question in writing to the Dispute Analyst (Claims Examiner).

## **The contractor is calling and harassing me. What can you do to stop him?**

We cannot make a contractor leave you alone. You should call an attorney or your local law enforcement agency to deal with this problem.

## **I have looked up several contractors' claims histories. Some of them list 0 (zero) claims in the last three years and many more have no number listed at all. Should I take that information to mean that they have no (0, zero) claims against them?**

If the website lists 0 (zero) there may have been claims filed in the past that are closed. If there is no number listed at all, there have not been any claims received against the license number.