

# **RESOLVING DISPUTES WITH YOUR CONTRACTOR**

## **Information for Complainants**

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### **Oregon Construction Contractors Board**

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*This booklet is not meant to be a complete analysis of the Construction Contractors Board's laws and rules. This information is general in nature and is not legal advice. If you have questions about how the law applies to your particular situation, you should talk to an attorney.*

*You can find the Construction Contractors Board's laws in ORS Chapter 701 and the Construction Contractors Board's rules in OAR Chapter 812. You can get copies of these laws and rules at [www.oregon.gov/CCB](http://www.oregon.gov/CCB) or by calling 503-378-4621.*

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# **NOTES**

# **GENERAL INFORMATION**

## **INTRODUCTION**

If you are a customer of a contractor or if you are a material supplier, prime contractor, subcontractor, or contractor's employee and you are involved in a dispute about a construction project, the Construction Contractors Board (CCB) may be able to help you resolve the dispute. These instructions will explain:

- Steps you may take before you file a CCB breach of contract complaint.
- How to file a breach of contract complaint.
- What to do after the complaint is filed.
- What the CCB can do if the parties do not want to enter into the complaint process (sometimes referred to as the dispute resolution process) or a complaint can't be filed.

If you file a complaint, we will try to help both parties settle the dispute. If the dispute cannot be settled, we may investigate it. If we find that the complaint is valid, we may issue an order that the contractor pay you money. If we order a contractor to pay and the contractor does not pay, we may ask the contractor's bonding company to pay. ***The only way to get access to the contractor's bond is through the CCB complaint process.***

You should be aware that:

- Under the U.S. and Oregon constitutions and Oregon statutes, we must protect due process rights of each party. We cannot take sides in the dispute.
- We must apply the same law that a court applies to a breach of contract or negligence claim. In other words, the legal standards that determine if a contractor breached a contract or did negligent work are the same as those that apply in court. This includes the need for you to supply evidence that proves the complaint.
- Some cases involve difficult legal issues. You may need legal advice from an attorney.

At times the process might become frustrating because of the time it takes to process the complaint and the effort needed for you to prove your complaint. The CCB tries to make the complaint process as easy as possible considering the demands of due process requirements and Oregon laws. Usually our process is easier and less expensive than a court action, but it is more complicated than making an insurance claim.

We have a website that gives more information about complaints. If you have access to a computer, we suggest you look at that website. It is located on the internet at [www.oregon.gov/CCB](http://www.oregon.gov/CCB). Our laws and rules are posted on this website. If you do not have a computer, you can get a copy of our laws and rules by calling 503-378-4621.

Sometimes these instructions refer to Frequently Asked Questions (FAQ) on our website. These provide answers to questions about our dispute resolution program. If you do not have a

computer, you can get a printed copy of the FAQ by calling 503-378-4621 and asking for a copy of the Dispute Resolution Services FAQ.

## **DEFINITIONS**

A “complainant” is an owner, primary contractor, material supplier, subcontractor, or employee who files a breach of contract complaint.

A “respondent” is the contractor that the complaint is filed against.

“Day” means a calendar day.

“Party” means a complainant or a respondent.

## **WORDS OF CAUTION**

### **Time Limits for Filing Complaints**

There are strict time limits for filing complaints. If your complaint is for any of the following, you may need to file it immediately:

- Remodeling work that was done almost a year ago.
- A new structure that was occupied almost a year ago.
- A new structure that was built almost two years ago.
- An unpaid fee for work that was done almost a year ago.
- Materials that were delivered almost a year ago.

For information about specific time limits for filing your type of complaint, see the section at the end of this booklet for your particular type of complaint. See page 5 to determine the type of complaint you should file.

### **Mail**

If you change your address or hire an attorney after you file the complaint, you must notify the CCB **in writing**. Sometimes during the complaint process we may send a notice, a request for information, or a request for you to respond. Most of these notices or requests will have a deadline for your response. We will send most of them by regular mail, but we will send some of the most important notices by certified mail.

If you are away from your address for more than a week or do not pick up your mail, you may miss a notice or request. This could result in your complaint being closed or your missing a chance to request a hearing. If we close your complaint, we cannot help you resolve the dispute and you will lose possible access to the contractor’s bond. For these reasons you should ask someone you trust to pick up your mail and notify you of mail from the CCB. Be sure to promptly pick up and review all mail from the CCB, including certified mail.

## **Original Documents**

Do **not** send original documents unless we ask you for them. You should send us legible copies of documents that support your side of the dispute. We cannot make clear copies of photographs or documents that are larger than a legal size sheet of paper (such as house plans). If you send any photographs or large documents, you must send us four copies so we can send one to the other party and hold the rest in case of hearing. Be sure to keep a copy of any letters or documents you send to us.

## **Everything We Receive Must be in Writing**

All decisions that the CCB makes must be based on a written record. We cannot make a decision that is not supported by a written record. Therefore, you must put all information about your complaint in writing.

## **Do Not Use E-Mail to Communicate with the CCB**

E-mail is not a reliable method to send information to the CCB. The state e-mail filters may delete your e-mail before we receive it or we may delete the e-mail thinking it is spam. We recommend that you not use e-mail to communicate with us.

## **Copies of Everything We Receive are Sent to the Other Party**

The CCB must send all information received from one party to the other party to the complaint. This guarantees that each party sees all the information that we use to make our decision. This also allows each party a chance to respond to information we receive from the other party.

## **Seeking Advice from an Attorney**

Many people can settle their dispute with a contractor without the help of an attorney. However, it might be a good idea for you to talk to an attorney. Even a short discussion with an attorney may be enough to inform you of your rights, the position you should take in settlement negotiations, or the best way to present your case. If your complaint is complicated, you should get legal advice.

## **We Cannot Give Legal Advice**

CCB staff cannot take your side in the dispute. We also cannot give legal advice. Only an attorney you hire can give you legal advice. We can explain how the complaint process works, how we interpret the laws relating to the complaint process, and requirements for filing the complaint or continuing its processing. However, we cannot answer questions of a legal nature, including what other legal actions you may be able to or should take, how to present your evidence at hearing, etc.

# **BEFORE FILING A COMPLAINT**

## **RESOLVING THE PROBLEM INFORMALLY**

You should try to resolve the problem with your contractor before you file the complaint. Some contractors are willing to resolve the problem before a complaint is filed but become defensive or aggressive after a complaint is filed. First, make sure you let your contractor know about your complaint. Talk to the contractor about the problem and try to reach an agreement to correct the problem. If this doesn't help, write a list of your complaints and deliver that list to your contractor. Suggest that the contractor respond to you about those complaints within a reasonable time. However, be aware of the time limits for filing a complaint discussed below.

## **REQUIRED PRE-COMPLAINT NOTICE**

Before you file a complaint you must send a written notice to the contractor that the complaint will be filed against. This notice must:

- Include your name.
- State that you intend to file a CCB complaint against the contractor.
- Be sent by certified mail. You must keep the certified mail receipt the post office gives you showing the date you mailed the notice and the address it was mailed to. You will need this when you file your complaint.
- Be sent to the address the contractor listed in CCB records on the date you mail the notice. To get this address, go to the "Find a Licensee" link at [www.ccb.state.or.us](http://www.ccb.state.or.us) or call 503-378-4621. Be very careful to correctly identify the contractor so that you send the notice to the right address. You **must** send the notice by certified mail to the address listed in the CCB records even if you know this address is not correct. You may also send a copy of the notice to any other address you have for the contractor if you wish.
- Be mailed 30 or more calendar days before you file your CCB complaint.

If you have access to the internet, you can create a pre-complaint notice letter using our website at [www.oregon.gov/CCB](http://www.oregon.gov/CCB).

When you file the complaint, you must send copies of the notice and the certified mail receipt with your complaint information.

There are time limits for filing a complaint. These are described below. If you mail the pre-complaint notice less than 45 calendar days before the end of the time limit for filing the complaint, that time limit is extended to 60 calendar days after you mail the notice. The time limit is not extended if you mail your notice more than 45 calendar days before the end of the time limit. You should avoid filing your complaint or sending the pre-complaint notice too close to the end of the time limit. If you mail the pre-complaint notice after the end of the time limit for filing your complaint, the CCB must dismiss your complaint.

# **REQUIREMENTS FOR FILING A COMPLAINT**

The dispute resolution (complaint) system is backed up by a bond that each contractor must purchase. Therefore, there are limits on complaints that are stricter than limits on filing a lawsuit.

## **THE RESPONDENT MUST BE LICENSED**

The respondent must have been licensed with the CCB during at least a portion of the work period involved in the complaint or at the time the respondent incurred the debt in a subcontractor, material supplier, or employee complaint. If the respondent was not licensed at the time, the CCB cannot process the complaint. The work period began on the date the respondent offered a written proposal, entered into a contract, accepted a payment, or began construction (whichever comes first) and ended when the respondent substantially completed the work. If the respondent did not substantially complete the work, the work period ended on the date the respondent last worked on the structure involved in the complaint.

## **TYPES OF COMPLAINTS THE CCB CAN ACCEPT**

Oregon law limits the CCB to processing only the following types of complaints:

### **Owner Complaints**

This is a complaint by the owner of the structure or property where the respondent performed the work. The owner must allege that the respondent performed negligent or improper construction work or breached the terms of the construction contract. For specific information, see page 16.

### **Construction Lien Complaint**

This is also a complaint by the owner of the structure or property where the respondent performed the work. The owner must allege that the respondent was paid in full for the construction work; however, the respondent did not pay a subcontractor, material supplier, or employee and that subcontractor, material supplier, or employee filed a lien. For specific information, see page 18.

### **Primary Contractor Complaint**

This is a complaint by a licensed contractor against a respondent subcontractor alleging negligent or improper construction work or breach of a construction contract by the respondent. For specific information, see page 21.

### **Subcontractor Complaint**

This is a complaint by a subcontractor alleging that the subcontractor performed construction work for the respondent but the respondent did not pay for all of the work. For specific information, see page 23.

## Employee Complaint

This is a complaint by a person who performed construction work for the respondent as an employee and alleges that the respondent did not pay for all of the work. For specific information, see page 25.

## Material Supplier Complaint

This is a complaint by a material supplier or equipment rental company that sold materials to the respondent to be used and installed in a structure or who rented equipment to the respondent to be used on a structure. The complainant must allege that the respondent did not pay for all of the materials or equipment. For specific information, see page 26.

## HOW TO FILE A COMPLAINT

**A. Type of structure.** First, identify the structure involved in the dispute. The following are the three structure types:

- **Residential structure:** A residence that is a site-built home; a structure that contains one or more dwelling units and is four stories or less; a condominium, rental residential unit or other residential dwelling unit that is part of a larger structure (if the property interest in the unit is separate from the property interest in the larger structure); a modular home constructed off-site; a manufactured dwelling; or a floating home. An appurtenance (such as a sidewalk, driveway, deck, fence, garage, or shop building) to one of these structures is also considered part of a residential structure.
- **Small commercial structure** means: (1) A structure that is not a residence with a ground area of 10,000 square feet or less and a height from the top surface of the lowest flooring to the highest interior overhead finish of the building of 20 feet or less; (2) an appurtenance (such as a sidewalk, driveway, deck, or fence) to one of these structures; (3) a structure that is not a residence that is a leasehold, rental, or other unit and that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less and a height from the top surface of the lowest flooring to the highest interior overhead finish of the unit of 20 feet or less; or (4) A structure of any size that is not a residence for which the contract price of all construction to be performed on the structure does not total more than \$250,000.
- **Large commercial structure:** Any structure not fitting the above definitions. This includes work on a street, a public works project, an apartment or condominium building more than four stories high, a structure not used as a residence that is more than 10,000 square feet in ground area or more than 20 feet high, or a leasehold or rental unit in a larger structure not used as a residence that is more than 12,000 square feet in ground area or more than 20 feet high.

**B. Contractors License.** The CCB will determine how to process your complaint depending on (1) when you first hired your contractor and (2) the license held by your contractor. The following tables are for your information only. If you provide the CCB with the date on which

you first hired your contractor, the CCB will search its records and determine the license category or endorsement of your contractor.

**(1)** If you first hired your contractor before July 1, 2008, your contractor is licensed in one of the following categories. If you first hired your contractor on or after July 1, 2008, and your contractor has not yet renewed its license since July 1, 2008, your contractor is licensed in one of the following categories.

General Contractor – All Structures
General Contractor – Residential Only
Specialty Contractor – All Structures
Specialty Contractor – Residential Only
Inspector
Limited Contractor
Licensed Developer

**(2)** If you first hired your contractor on or after July 1, 2008 and your contractor was first licensed on or after July 1, 2008, your contractor is licensed in one of the following endorsements. If you first hired your contractor on or after July 1, 2008 and your contractor renewed its license before you hired your contractor, your contractor is licensed in one of the following endorsements.

**(a)** A residential contractor is endorsed as one of the following:

Residential General Contractor
Residential Specialty Contractor
Residential Limited Contractor
Residential Developer

**(b)** A commercial contractor is endorsed as one of the following:

Commercial General Contractor – Level 1
Commercial General Contractor – Level 2
Commercial Specialty Contractor – Level 1
Commercial Specialty Contractor – Level 2
Licensed Developer

**(c)** A contractor can be endorsed as both a residential contractor (subsection (a), above) and a commercial contractor (subsection (b), above)

If you want to learn the status of your contractor's license, you can get that information on the CCB website at [www.oregon.gov/ccb](http://www.oregon.gov/ccb) or you can contact the CCB at 503-378-4621.

**C. Contractor Licensed in a Category listed in Section (B)(1).** If you file a complaint against a contractor based on work performed before July 1, 2008, or against a contractor licensed before July 1, 2008, who had not yet renewed in an endorsement, the CCB will process the complaint based on the structure type.

- **Residential Structure:** If the dispute involves a residential structure, you must use the *residential complaint procedure*. See further instructions on page 8.
- **Small Commercial Structure:** If the dispute involves a small commercial structure, you may use *either* the *residential complaint procedure* or the *commercial complaint procedure*. It is your choice which procedure you want to use. See further instructions on page 8.
- **Large Commercial Structure:** If the dispute involves a large commercial structure, you must use the *commercial complaint procedure*.

**D. Contractor Endorsed as a Residential Contractor listed in Section (B)(2)(a).** If you file a complaint against a contractor endorsed as a residential contractor at the time you hired the contractor, you must use the *residential complaint procedure*. See further instructions on page 8.

**E. Contractor Endorsed as a Commercial Contractor listed in Section (B)(2)(b).** If you file a complaint against a contractor endorsed as a commercial contractor at the time you hired the contractor, you must use the *commercial complaint procedure*. See further instructions on page 9.

**F. Contractor Endorsed as both a Residential Contractor and a Commercial Contractor described in Section (B)(2)(c).** If you file a complaint against a contractor endorsed as both a residential contractor and a commercial contractor at the time you hired the contractor, you must file your complaint based on the structure type.

- **Residential Structure:** If the dispute involves a residential structure, you must use the *residential complaint procedure*. See further instructions on page 8.
- **Small Commercial Structure:** If the dispute involves a small commercial structure, you may use *either* the *residential complaint procedure* or the *commercial complaint procedure*. It is your choice which procedure you want to use. See further instructions on page 8.
- **Large Commercial Structure:** If the dispute involves a large commercial structure, you must use the *commercial complaint procedure*.

## **Filing Under the Residential Complaint Procedure**

To file a complaint under the residential complaint procedure, complete a Breach of Contract Complaint form and send it to the CCB. Instructions for the form are attached to it. Please follow

these instructions carefully. Be sure to attach a copy of your contract, a copy of your pre-complaint notice, and a copy of the certified mail receipt from the post office. The date the CCB receives your substantially completed complaint form is the date of filing. It is the date we must use to determine if the complaint is filed within the required time.

## **Filing Under the Commercial Complaint Procedure**

To file a complaint under the commercial complaint procedure, you must file a complaint in court or start arbitration. As soon as you file in court or start arbitration, you must complete a Breach of Contract Complaint form and send it along with a copy of the court complaint or arbitration documents (such as the arbitration demand or application) to the CCB and to the respondent's bonding company by certified mail, return receipt requested. Be sure to attach a copy of your contract, a copy of your pre-complaint notice, and a copy of the certified mail receipt from the post office for the pre-complaint notice. The date the CCB receives both the substantially completed complaint form and copy of the court complaint or arbitration documents is the date of filing. It is the date we must use to determine if the complaint is filed within the required time.

The CCB and the bonding company must receive the copy of the court complaint or arbitration documents no later than the earlier of:

- 90 calendar days after you file your court complaint or arbitration or
- 14 calendar days before the first day of trial or hearing or
- 30 calendar days before the court issues a judgment or the arbitrator issues an award.

You should also send:

- A cover letter stating that the complaint is filed under the commercial complaint procedure and
- Pre-complaint notice documents. For specific information, see page 4.

If you do not provide a Breach of Contract Complaint form with the copy of the court complaint or arbitration documents, we will return your documents to you. We cannot accept or process complaint under the commercial complaint procedure unless we received both the completed complaint form and a copy of the court complaint or arbitration documents.

## **TIME LIMITS FOR FILING COMPLAINTS**

The laws giving the CCB jurisdiction to process complaints also limit the time to file a complaint. Unfortunately, the law does not allow the CCB to process any complaint that is not timely. There are no exceptions to this law. This applies even if you notified the contractor of the problem within the required time or you were not aware of the problem. If we do not receive your complaint in our office within the required time, we cannot process it or help you resolve the problem.

For specific information about the time limit for filing each type of complaint, see the section about your particular type of complaint at the end of this booklet. Time requirements for owner

complaints begin on page 16, construction lien complaints on page 18, primary contractor complaints on page 21, subcontractor complaints on page 23, employee complaints on page 25, and material complaints on page 26.

## **CERTAIN CONTRACTUAL RELATIONSHIPS ARE REQUIRED**

The laws governing our complaint process require specific relationships between the complainant and the respondent. We cannot process the complaint unless you have one of the following relationships with the respondent.

- **A direct contractual relationship.** This means that you entered into a contract (either oral or written) with the respondent.
  - ◆ If you hired a primary contractor or general contractor who then hired a subcontractor and that subcontractor did not properly perform the work, we cannot accept a complaint from you against that subcontractor. This is because your direct contractual relationship was with the primary contractor or general contractor, not with the subcontractor. In this case you need to file your complaint against the general contractor or primary contractor. The general contractor or primary contractor can then file a complaint against the subcontractor.
  - ◆ If you are a subcontractor or a material supplier making a complaint for non-payment, you must have been hired by the respondent or you must have sold materials directly to the respondent.
- **A real estate purchase conditioned upon an inspection report or repairs made by the respondent.** This means that you can file a complaint if:
  - ◆ You purchased a structure and one of the terms of your purchase contract is that the seller would make repairs. If this is the case you can file a complaint against the contractor that the seller hired to perform those repairs.
  - ◆ You purchased a structure based on the respondent's inspection report. If this is the case you can file a complaint against the inspector if you allege that the inspector performed an improper inspection.
- **An employment relationship.** This means that the respondent hired you as an employee to perform construction work.

If you do not have one of these contractual relationships with the respondent, we cannot process your complaint.

## **WHAT TO DO IF YOU HAVE A COMPLAINT THAT DOES NOT FALL WITHIN THESE REQUIREMENTS**

If you are not sure that we can process your complaint because it may not meet the above requirements, consider filing it anyway. We will review your information to determine whether we can process it. We will also review your information for possible violations of CCB laws.

Always file a complaint if you believe that the contractor violated the law so the CCB can review the alleged violation for possible enforcement action.

If we cannot process your complaint, that does not mean you cannot take action against the contractor. We are an alternative to the court system; we do not replace it. In many cases you can still file the complaint in court. Talk to an attorney for advice about other legal options you may have.

The CCB may arbitrate construction disputes even if we cannot process a complaint for possible access to the bond. We may do this only if both you and the respondent agree to binding arbitration by the CCB and we consent to act as arbitrator. Arbitration may be a better choice than filing in court. If you are interested in this, call 503-378-4621 and ask for an arbitration packet.

## **RESIDENTIAL COMPLAINT PROCEDURE**

When the CCB receives a complaint under the residential complaint procedure, we assign it to a dispute analyst. The analyst reviews the complaint, determines if it is in our jurisdiction, and decides how the complaint should be processed. The analyst will notify you in writing describing the next step or steps in the process.

### **COMPLAINTS FILED IN COURT OR ARBITRATED OUTSIDE THE CCB**

If you file a complaint that has also been filed in court or is being arbitrated, you should submit a copy of one of the following documents with the complaint form:

- The court complaint or
- The documents (such as letters or application forms) related to starting arbitration.

If the subject of the court action or arbitration is in our jurisdiction, we will open a complaint file. If the court action or arbitration is still pending, we will suspend action on the complaint until the court case or arbitration is finished. We will give you instructions on what you must do to keep the complaint open until the court or arbitrator makes a decision. Once the court or arbitration decision is made, we will base continued processing of the complaint on the court judgment or arbitration award. Normally the dispute analyst will review the judgment or award, decide what part of the award is within the CCB's jurisdiction, and issue an order based on that decision. If a party to the complaint disagrees with that order, that party may request a hearing. Any hearing held in these circumstances will only address whether the CCB has jurisdiction over the complaint and will not decide issues that were already decided by the court or arbitrator. See page 12 for a description of hearings.

### **COMPLAINTS NOT FILED IN COURT**

If there is no pending court action or arbitration related to the complaint, the CCB will investigate the allegations in your complaint. That investigation might include an on-site meeting

with the parties and one of our investigators. See pages 16 and 21 for more information on on-site meetings.

If we do not hold an on-site meeting, our investigation will consist of collecting and reviewing documents from each party.

If the dispute is not resolved during the investigation, the dispute analyst will make one of two decisions based on the evidence in the file:

- There is enough **written** evidence in the file to support a proposed order. A proposed order may order the respondent to pay damages to you or it may dismiss the complaint. If neither party requests a hearing on the order, it will automatically become final.
- There is not enough evidence in the file to support a proposed order. In this case the dispute analyst will refer the complaint to the Office of Administrative Hearings because a hearing will be needed before any decision can be made on the complaint.

## **COMMERCIAL COMPLAINT PROCEDURE**

As noted above, certain complaints involving commercial structures must be filed in court or must be arbitrated. When the CCB receives a complaint under the commercial complaint procedure, a dispute analyst reviews the complaint. If the complaint appears to be within our jurisdiction, the analyst suspends processing the complaint until the court action or arbitration is finished. From this point on, processing continues the same as processing of a complaint filed in court under the residential complaint procedure.

## **PROCESSING FEE**

Depending on the type of complaint you file and whether we have jurisdiction over the complaint, you may need to pay a processing fee of \$50. A dispute analyst will review your complaint. If you are required to pay a processing fee, the analyst will request it from you. **DO NOT PAY ANY FEE TO THE CCB UNTIL WE REQUEST THAT YOU PAY IT.** If the complaint is not in our jurisdiction or if you file the complaint using the commercial complaint procedure, you do not usually need to pay any fee.

## **HEARINGS**

The CCB's decisions are issued as orders. CCB orders include a description of what you must do if you disagree with the order. If the dispute analyst issues a proposed order, either party may request a hearing within 21 calendar days from the order date. Hearings are also necessary if the dispute analyst cannot issue an order. If a hearing is necessary, we will send you information about the hearing process.

Hearings are held before an Administrative Law Judge (ALJ) from the Office of Administrative Hearings. The Office of Administrative Hearings is independent from the CCB. Most hearings are held in Salem. Testimony is taken under oath and is subject to cross-examination. ALJs make decisions based on all of the evidence presented at the hearing. A hearing is similar to a trial before a court, but it is a bit less formal.

## **AGENCY ORDERS**

The dispute analyst or ALJ may issue one of two types of orders:

- **Dismissal.** If the order is for dismissal, the complaint is dismissed and closed effective on the date the order becomes final.
- **Payment.** If the respondent is ordered to pay you, the respondent has 30 calendar days from the date the order becomes final to make that payment.

## **PAYMENT FROM THE RESPONDENT'S BOND**

If the respondent does not pay you as ordered, 30 calendar days after the order becomes final we will determine if we can send the complaint to the respondent's bonding company. We will let you know if we can submit it to the bonding company immediately or if we must wait until processing of other complaints is complete.

The date we receive the first complaint against a contractor begins a 90-day period. We cannot tell a bonding company to pay a complaint if there are any other complaints filed in the same 90-day period that are not ready for bond payment. Sometimes this causes delays in submitting complaints for payment.

**Contractor Licensed in a Category.** If you file a complaint against a contractor based on work performed before July 1, 2008, or a contractor licensed before July 1, 2008 who had not yet renewed in an endorsement. The law states that complaints filed during that 90-day period have equal access to the respondent's bond, within certain limits based on the type of each complaint. Owner complaints for work involving residential or small commercial structures get paid from the bond first. If money remains in the bond after those complaints are paid, non-owner complaints (employee, primary contractor, subcontractor, and material complaints) for work on residential and small commercial structures get paid (up to a maximum total of \$3,000 from the bond). If there is still money in the bond after those payments are made, complaints involving large commercial structures may be paid from the bond.

**Contractor Endorsed as a Residential Contractor.** If you file a complaint against a contractor endorsed as a residential contractor when you hired it to perform the work. The law states that complaints filed during that 90-day period have equal access to the respondent's bond, within certain limits based on the type of each complaint. Owner complaints for work involving

residential or small commercial structures get paid from the bond first. If money remains in the bond after those complaints are paid, non-owner complaints (employee, primary contractor, subcontractor, and material complaints) for work on residential and small commercial structures get paid (up to a maximum total of \$3,000 from the bond).

**Contractor Endorsed as a Commercial Contractor.** If you file a complaint against a contractor endorsed as a commercial contractor when you hired it to perform the work. The law states that complaints filed during that 90-day period have equal access to the respondent's bond, within certain limits based on the type of each complaint. Persons furnishing labor to a contractor or who are owed employee benefits by a contractor get paid from the bond first. If money remains in the bond after the employee complaints are paid, owner complaints for work involving small commercial or large commercial structures get paid.

**Contractor Endorsed as Both a Residential Contractor and a Commercial Contractor.** If you file a complaint against a contractor endorsed as both a residential contractor and a commercial contractor when you hired it to perform the work. If the work at issue involved a residential structure or a small commercial structure and the complaint was filed and processed under the residential complaint procedure, the payment from the bond will be made as described in "Contractor Endorsed as a Residential Contractor", above. If the work at issue involved a small commercial structure or a large commercial structure and the complaint was filed and processed under the commercial complaint procedure, the payment from the bond will be made as described in Contractor Endorsed as a Commercial Contractor, above.

**Contractor Working without Proper Endorsement.** You may file a complaint with the CCB against a residential contractor involving the construction of a large commercial structure. Although the CCB may help resolve the dispute, the CCB will not be able to order the bonding company to make payment from the residential bond. Similarly, you may file a lawsuit against a commercial contractor involving the construction of a residential structure. If you prevail in court and get a judgment in your favor, you should notify the CCB so that we may suspend the contractor's license if the contractor does not pay the judgment. However, the CCB will not be able to order the bonding company to make payment from the commercial bond.

The law states that complaints filed during that 90-day period have equal access to the respondent's bond, within certain limits based on the type of each complaint. Owner complaints for work involving residential or small commercial structures get paid from the bond first. If money remains in the bond after those complaints are paid, non-owner complaints (employee, primary contractor, subcontractor, and material complaints) for work on residential and small commercial structures get paid (up to a maximum total of \$3,000 from the bond). If there is still money in the bond after those payments are made, complaints involving large commercial structures may be paid from the bond.

## **HOW LONG ALL THIS MIGHT TAKE**

### **If an On-Site Meeting is Needed (most Owner and Primary Contractor complaints)**

Most owner and primary contractor complaints require on-site meetings. The time for scheduling this meeting is usually a month or more. If the dispute is not resolved at that meeting and the respondent does not repair the work, two more months may go by before you can get bids for the repair work. The dispute analyst may take one to two weeks to study the bids and issue a proposed order. If we issue a proposed order, each side has 21 calendar days to request a hearing before the order becomes final. If an order to pay damages becomes final without a hearing, the respondent has 30 calendar days to pay it. If the respondent does not pay it and all other complaints in your 90-day period are ready for bond payment, we can send it to the bonding company for payment. The bonding company may take up to a month to pay. Adding up these time periods, we can say that a complaint may normally take at least six months before a bonding company pays it.

If you delay in providing information to the dispute analyst, that will delay final action on the complaint. If a hearing is needed, final action on the complaint will be delayed by at least six months. Occasionally, because of hearings, appeals, and other delays, a complaint may take several years to resolve.

### **If No On-Site Meeting is Needed (most Construction Lien, Subcontractor, Employee, and Material complaints)**

A dispute analyst will review all information you provide. If all information is complete, the analyst will send a copy of the complaint to the respondent and give the respondent an opportunity to respond. If you delay in providing information to the dispute analyst, that will delay final action on the complaint.

If we issue a proposed order, each side has 21 calendar days to request a hearing before the order becomes final. If an order to pay damages becomes final without a hearing, the respondent has 30 calendar days to pay it. If the respondent does not pay it and all other complaints in your 90-day period are ready for bond payment, we can send it to the bonding company for payment. The bonding company may take up to a month to pay. Adding up these time periods, we can say that a complaint may normally take at least five months before a bonding company pays it.

If a hearing is needed, final action on the complaint will be delayed by at least six months. Occasionally, because of hearings, appeals, and other delays, a complaint may take several years to resolve.

# **INFORMATION ON SPECIFIC COMPLAINT TYPES**

## **OWNER COMPLAINTS**

### **COMPLAINT FORM**

“Breach of Contract Complaint Form for Owners and Prime Contractors”, OW Complaint 7/1/08.

### **WHO CAN FILE AN OWNER COMPLAINT**

An owner is a person who does not need a CCB license and:

- Has a structure built by a contractor or
- Purchases or enters into an agreement to purchase a structure from a contractor or developer or
- Owns, leases, or rents a structure on which construction work is being or has been performed.

Property managers may be considered owners if they are licensed under ORS chapter 696. A person acting for an incapacitated person based on a formal guardianship, power of attorney, or other legal document may also be considered an owner.

You may authorize someone (such as a son or daughter) to act as your agent. That person may act for you regarding most actions on the complaint. However, an agent cannot appear for you at a hearing, except in certain limited cases. If a hearing is held on the complaint, you will receive instructions on who may appear on your behalf.

**If you are required to have a CCB license for the work, you must file a primary contractor complaint, not an owner complaint** unless the property involved in the complaint is your personal property and you do not intend to sell it when work is completed.

### **TIME LIMITS FOR FILING AN OWNER COMPLAINT**

If the complaint involves a **new structure**, we must receive it within one year from the date you or your tenant first moved into the structure or two years from the date the structure was completed and ready for occupancy, whichever comes first.

If the complaint involves work on an **existing structure** and the respondent substantially completed the job, we must receive the complaint within one year from the date the respondent substantially completed the work. This is the date the respondent finished the job, not including returns for repair work or warranty work.

Regardless of whether the complaint involves a **new** or **existing** structure:

- If the respondent abandoned the job and did not substantially complete it, we must receive the complaint within one year from the date the respondent last performed work on the job.
- If you entered into a contract with the respondent but the respondent did not perform any work under that contract, we must receive the complaint within one year from the date you entered into the contract.

## **WHAT YOU NEED TO SEND WITH THE COMPLAINT FORM**

Be sure to complete all areas of the complaint form. All of the information requested on that form is necessary for quick review and action on the complaint. In addition to the complaint form, you must send evidence to show that you had a contract for construction with the respondent. If you do not complete the complaint form or provide necessary information, it will delay processing of your complaint.

### **Pre-Complaint Notice**

You must send a copy of your pre-complaint notice letter and the certified mail receipt. (See page 4 for details on pre-complaint notice requirements.)

### **Written Contract**

If the contract was in writing, you must send a copy of the entire contract, including any change orders. If there are terms listed on the back of the contract document, you must also send a copy of the back side of that contract. If you purchased a home from the respondent, the purchase contract might be named something like Sales Agreement/Receipt for Earnest Money. Those contracts usually have many pages. You must send a copy of every page included in your contract.

### **Oral Contract**

If you did not have a written contract, you must send other documents to show that you had a contractual relationship with the respondent, such as copies of work orders, invoices, both sides of cancelled checks, billings, proposals, etc.

## **EMERGENCY SITUATIONS AND MITIGATION OF DAMAGES**

There are situations where the respondent's work must be repaired immediately. Examples include a leaking roof or structural work that is in danger of collapsing. In these cases you may need to hire a contractor to make necessary repairs before we complete our process. We are not permitted under the law to shortcut the administrative process for resolving complaints. Normally our investigators are fully booked, so we cannot schedule emergency on-site meetings because that would require canceling another complainant's meeting.

You have the burden of proving the complaint. Therefore, if you must repair the work before we can hold an on-site meeting, you will need proof that the repairs were needed and that the respondent should be responsible for your repair costs. This can be done through photos, samples

of the work, written reports from the contractors who repair the work, a home inspector's report, etc. Note that video may not be the best evidence because it is difficult and time consuming to review.

## **ON-SITE MEETINGS**

Once the CCB determines it has jurisdiction over your complaint, in most cases we will hold an on-site meeting. The meeting will be held at the job site where the work was performed. If an on-site meeting is scheduled, we will send instructions to you before the meeting. A CCB investigator will meet with the parties at the job site. At that meeting the investigator will try to help the parties settle the dispute. If the problem cannot be settled, the investigator will review the respondent's work on each complaint item. The investigator will determine if the work does or does not need repair and will submit written recommendations that will be sent to the parties. If a party does not agree with the investigator's recommendations, that party may request a hearing.

If the parties agree to a settlement at the on-site meeting, we will continue processing the complaint based on that settlement agreement. We will send you written instructions about the next step at that time.

If the investigator recommends that the respondent make repairs to the work, you are required to give the respondent a chance to make those repairs **unless** the respondent is not licensed at the time of the on-site meeting or the investigator recommends that the respondent not be allowed to make repairs. If you do not allow the respondent to make recommended repairs, the complaint may be dismissed and closed.

After the on-site meeting, if the respondent does not do the repair work, you may need to get estimates from other licensed contractors for the costs of those repairs. We will process the complaint for damages based on the investigator's recommendations or settlement agreement and any estimates you submit. If you need to get estimates, we will inform you in writing.

## **CONSTRUCTION LIEN COMPLAINTS**

### **COMPLAINT FORM**

"Breach of Contract Complaint Form for Owners and Prime Contractors", OW Complaint 7/1/08.

### **WHO CAN FILE A CONSTRUCTION LIEN COMPLAINT**

You may only file a construction lien complaint if you are an owner (see definition below) and:

- You hired a licensed contractor to perform construction work and
- You paid that contractor for the work and
- The contractor purchased materials on credit or hired a subcontractor or employee to perform part of the work and

- The contractor did not pay the material supplier, subcontractor, or employee for the work or materials and
- The material supplier, subcontractor, or employee filed a lien against your property to try to get paid for the contractor's debt.

The person or business filing the lien is called the "lienor".

If a contractor files a lien against you because you did not pay that contractor for work, you may file an owner complaint. Do not file a construction lien complaint under this circumstance. (Please note that these complaints use the same form.) If you are a primary contractor and you do not own the structure where the work was performed, you cannot file a construction lien complaint.

An owner is a person who does not need a CCB license and:

- Has a structure built by a contractor or
- Purchases or enters into an agreement to purchase a structure from a contractor or developer or
- Owns, leases, or rents a structure on which construction work is being or has been performed.

Property managers may be considered owners if they are licensed under ORS chapter 696. A person acting for an incapacitated person based on a formal guardianship, power of attorney, or other legal document may also be considered an owner.

You may authorize someone (such as a son or daughter) to act as your agent. That person may act for you regarding most actions on the complaint. However, an agent cannot appear for you at a hearing, except in certain limited cases. If a hearing is held on the complaint, you will receive instructions on who may appear on your behalf.

## **NOTICE OF RIGHT TO A LIEN**

A material supplier, subcontractor, or an employee cannot file a valid lien against residential property unless they gave a Notice of Right to a Lien to the owner of the property shortly before or shortly after beginning to provide labor, materials, or services. A Notice of Right to a Lien is not a lien. It is just a notice to let the property owner know that the person giving the notice has begun to deliver materials or perform work on the job and has lien rights. You cannot file a construction lien complaint based only on a Notice of Right to a Lien. You must wait until a construction lien is actually recorded with the county before you can file a construction lien complaint.

## **TIME LIMITS FOR FILING A CONSTRUCTION LIEN COMPLAINT**

The time limits for filing a construction lien complaint are the same as those for filing an owner complaint. See information about those time limits on page 16.

## **WHAT YOU NEED TO SEND WITH THE COMPLAINT FORM**

Be sure to complete all areas of the complaint form. All of the information requested on that form is necessary for quick review and action on the complaint. In addition to the complaint form, you must send evidence to show that you had a contract for construction with the respondent. If you do not complete the complaint form or provide necessary information, it will delay processing of your complaint.

### **Pre-Complaint Notice**

You must send a copy of your pre-complaint notice letter and the certified mail receipt. (See page 4 for details on pre-complaint notice requirements.)

### **Written Contract**

If the contract was in writing, you must send a copy of the entire contract, including change orders. If there are terms listed on the back of the contract document, you must also send a copy of the back side of that contract. If you purchased a home from the respondent, the purchase contract might be named something like Sales Agreement/Receipt for Earnest Money. Those contracts usually have many pages. You must send a copy of every page included in your contract.

### **Oral Contract**

If you did not have a written contract, you must send other documents to show that you had a contractual relationship with the respondent, such as copies of work orders, invoices, both sides of cancelled checks, billings, proposals, etc.

### **Lien Documents**

You must also send all of the following:

- A copy of the Notice of Right to a Lien that the lienor gave you when they either delivered materials or began their work.
- A copy of the recorded construction lien showing the county recorder's stamp and date of filing information.
- Proof that you paid your primary contractor for the work.

### **Additional documents you might need to provide**

If you paid the lien to keep a foreclosure suit from being filed or for any other reason, you need to send documents to show that you paid to have the lien removed and the amount you paid.

If the lienor filed a foreclosure suit to collect on the lien, you must also send a copy of that foreclosure suit.

# **PRIMARY CONTRACTOR COMPLAINTS**

## **COMPLAINT FORM**

“Breach of Contract Complaint Form for Owners and Prime Contractors”, OW Complaint 7/1/08.

## **WHAT IS A PRIMARY CONTRACTOR COMPLAINT**

A primary contractor complaint is filed by a licensed primary contractor against a licensed subcontractor who the primary contractor hired to do construction work.

A primary contractor is an individual or business that:

- Has a contract with the owner of a structure to perform construction work or
- Is building or remodeling a structure with the intent to sell it.

A primary contractor may hire one or more subcontractors to perform all or part of the work.

Primary contractor complaints may be filed for negligent construction work, improper construction work, or breach of a construction contract.

## **TIME LIMITS FOR FILING A PRIMARY CONTRACTOR COMPLAINT**

If the complaint involves a **new structure**, we must receive it within 14 months from the date someone first moved into the structure or two years from the date the structure was completed and ready for occupancy, whichever comes first.

If the complaint involves work on an **existing structure** and the respondent substantially completed the job, we must receive the complaint within 14 months from the date the respondent substantially completed the work. This is the date the respondent finished the job, not including returns for repair work or warranty work.

Regardless of whether the complaint involves a **new** or **existing** structure, if the respondent abandoned the job and did not substantially complete it, we must receive the complaint within 14 months from the date the respondent last worked on the job.

## **WHAT YOU NEED TO SEND WITH THE COMPLAINT FORM**

Be sure to complete all areas of the complaint form. All of the information requested on that form is necessary for quick review and action on the complaint. In addition to the complaint form, you must send evidence to show that you had a contract for construction with the respondent. If you do not complete the complaint form or provide necessary information, it will delay processing of your complaint.

## **Pre-Complaint Notice**

You must send a copy of your pre-complaint notice letter and the certified mail receipt. (See page 4 for details on pre-complaint notice requirements.)

## **Written Contract**

If the contract was in writing, you must send a copy of the entire contract, including change orders. If there are terms listed on the back of the contract document, you must also send a copy of the back side of that contract.

## **Oral Contract**

If you did not have a written contract, you must send other documents to show that you had a contractual relationship with the respondent, such as copies of work orders, invoices, both sides of cancelled checks, billings, proposals, etc.

## **EMERGENCY SITUATIONS AND MITIGATION OF DAMAGES**

There are situations where the respondent's work must be repaired immediately. Examples include a leaking roof or structural work that is in danger of collapsing. In these cases you may need to hire a contractor to make necessary repairs before we complete our process. We are not permitted under the law to shortcut the administrative process for resolving complaints. Normally our investigators are fully booked, so we cannot schedule emergency on-site meetings because that would require canceling another complainant's meeting.

You have the burden of proving the complaint. Therefore, if you must repair the work before we can hold an on-site meeting, you will need proof that the repairs were needed and that the respondent should be responsible for your repair costs. This can be done through photos, samples of the work, written reports from the contractors who repair the work, a home inspector's report, etc. Note that video may not be the best evidence because it is difficult and time consuming to review.

## **ON-SITE MEETINGS**

Once the CCB determines it has jurisdiction over your complaint, in most cases we will hold an on-site meeting. The meeting will be held at the job site where the work was performed. If an on-site meeting is scheduled, we will send instructions to you before the meeting. A CCB investigator will meet with the parties at the job site. At that meeting the investigator will try to help the parties settle the dispute. If the problem cannot be settled, the investigator will review the respondent's work on each complaint item. The investigator will determine if the work does or does not need repair and will submit written recommendations that will be sent to the parties. If a party does not agree with the investigator's recommendations, that party may request a hearing.

If the parties agree to a settlement at the on-site meeting, we will continue processing the complaint based on that settlement agreement. We will send you written instructions about the next step at that time.

If the investigator recommends that the respondent make repairs to the work, you are required to give the respondent a chance to make those repairs **unless** the respondent is not licensed at the time of the on-site meeting or the investigator recommends that the respondent not be allowed to make repairs. If you do not allow the respondent to make recommended repairs, the complaint may be dismissed and closed.

After the on-site meeting, if the respondent does not do the repair work, you may need to get estimates from other licensed contractors for the costs of those repairs. We will process the complaint for damages based on the investigator's recommendations or settlement agreement and any estimates you submit. If you need to get estimates, we will inform you in writing.

## **SUBCONTRACTOR COMPLAINTS**

### **COMPLAINT FORM**

"Breach of Contract Complaint Form for Subcontractors", SUB Complaint 7/1/08.

### **WHAT IS A SUBCONTRACTOR COMPLAINT**

A subcontractor complaint is a complaint filed by a subcontractor against a licensed primary contractor for unpaid labor or materials furnished under a construction contract between the subcontractor and the primary contractor.

If you sold materials to the primary contractor and your contract did not include performance of any construction work, you must file a material complaint. For more specific information about material complaints, see page 26. If you sold materials to the primary contractor and installed any of those materials or performed any construction work under the contract, you must file a subcontractor complaint.

You must use the agency's subcontractor complaint form. You must provide specific job site addresses (including street, city, and state) for each job site where you performed work at issue in the complaint. Do not file your complaint on the general complaint form for owners and prime contractors or on the specific complaint form for material or employee complaints.

If the work you performed requires a CCB license, we may only process the complaint if you were properly licensed with this agency:

1. At the time the bid was made or the contract was entered into **and**
2. Continuously throughout the work period involved in the complaint.

### **TIME LIMITS FOR FILING A SUBCONTRACTOR COMPLAINT**

You must file your complaint within one year from the date the debt was incurred. This is normally the last day you worked on the job.

## **WHAT YOU NEED TO SEND WITH THE COMPLAINT FORM**

Be sure to complete all areas of the complaint form. All of the information requested on that form is necessary for quick review and action on the complaint. If you do not complete the form or provide necessary information, it will delay processing of your complaint.

In addition to the completed complaint form, you must also send:

- A copy of your pre-complaint notice letter and certified mail receipt. (See page 4 for details on pre-complaint notice requirements.)
- A copy of each invoice billing the primary contractor for your work.
- If the contract was in writing, you must send a copy of the entire contract. If there are terms listed on the back of the contract document, you must also send a copy of the back side of that contract.

## **USUALLY THERE IS NO ON-SITE MEETING**

Normally the only issue in subcontractor complaints is whether the subcontractor was paid. In most cases no on-site meeting is held. However, if the primary contractor alleges you were not paid because you did not properly perform the work or if it appears a settlement meeting might settle the issues in the complaint, the agency may hold an on-site meeting so our investigator can review the issues and help the parties settle the matter without a hearing.

# **EMPLOYEE COMPLAINTS**

## **COMPLAINT FORM**

“Breach of Contract Complaint Form for Employees”, EM Complaint 7/1/08.

## **WHAT IS AN EMPLOYEE COMPLAINT**

An employee complaint is filed by an employee of a licensed contractor for unpaid wages or benefits.

## **TIME LIMITS FOR FILING AN EMPLOYEE COMPLAINT**

You must file your complaint within one year from the date you performed the work.

## **WHAT YOU NEED TO SEND WITH THE COMPLAINT FORM**

You must use the employee complaint form. Be sure to complete all areas of the form and the calendar. All of the information requested on that form is necessary for quick review and action on the complaint. If you do not complete the form or provide necessary information, it will delay processing of your complaint.

You must list on the complaint form the specific job site addresses (including street, city, and state) for each job site where you performed the work. Also check the box for the type of structure located at each of those job sites. See the instructions attached to the complaint form for more information.

In addition to the completed complaint form, you must also send:

- A copy of your pre-complaint notice letter and mail receipt. (See page 4 for details on pre-complaint notice requirements.)
- Evidence to prove that you worked as an employee of the contractor. That evidence might be copies of time cards, copies of previous paycheck stubs, a copy of your W-4 form, or a notarized written statement from a person not related to you stating facts indicating that you worked for the contractor.

# **MATERIAL COMPLAINTS**

## **COMPLAINT FORM**

“Breach of Contract Complaint Form for Owners and Prime Contractors”, Complaint 7/1/08.

## **WHAT IS A MATERIAL COMPLAINT**

A material complaint is filed by a supplier who has not been paid for materials sold to or equipment rented to a licensed contractor.

## **TIME LIMITS FOR FILING A MATERIAL COMPLAINT**

You must file your complaint within one year from the date the materials were delivered or the date the purchaser took possession of the materials. If you do not know the delivery date, the date of the invoice applies except in the case of special or custom ordered materials. In that case you must file the complaint within one year from the date the materials were ordered.

## **WHAT YOU NEED TO SEND WITH THE COMPLAINT FORM**

You must use the material/equipment complaint form. Be sure to complete all areas of the form. All of the information requested on that form is necessary for quick review and action on the complaint. If you do not complete the complaint form or provide necessary information, it will delay processing of your complaint.

You must list each invoice on the complaint form. For each invoice you must state the complete job site addresses (including street, city, and state) where the materials listed in that invoice were used and installed. You must also check the box for the type of structure located at each job site. See the instructions attached to the complaint form for more information.

In addition to the completed complaint form, you must also send:

- A copy of your pre-complaint notice letter and certified mailing receipt. (See page 4 for details on pre-complaint notice requirements.)
- A copy of each invoice you list on the complaint form.

