

RESOLVING DISPUTES WITH YOUR CONTRACTOR

Information for Filing a Complaint

July 1, 2011

Oregon Construction Contractors Board
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Salem, OR 97309-5052

Phone: 503-378-4621
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www.oregon.gov/CCB



DISCLAIMER: This booklet is not meant to be a complete analysis of the Construction Contractor 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.

NEW LAW FOR COMPLAINTS FILED ON OR AFTER JULY 1, 2011

Starting July 1, 2011, the Construction Contractors Board (CCB) will process complaints against contractors differently.

Things that will stay the same are:

1. You will file a complaint with CCB.
2. You will pay CCB a \$50 processing fee.
3. If you are an owner, CCB will schedule an on-site meeting between you and your contractor.
4. CCB will provide an Investigator/Mediator to attend the on-site meeting and help you reach a settlement with your contractor.
5. The Investigator/Mediator may prepare a report on the condition of the work.
6. If you obtain a court order and the contractor does not pay you, CCB will help you obtain payment from the contractor's bonding company.

Things that will change:

1. If you are not an owner, CCB will still try and assist you in settling your dispute. A Dispute Analyst or Investigator/Mediator will set up telephone mediation for the parties.
2. If the dispute does not settle, you must start arbitration or take your contractor to court.
3. Except for wage claims, if the dispute does not settle, you will need a court judgment in order to recover from the contractor's bond. Wage claims may be based on a final order from the Bureau of Labor and Industries.
4. There will be no administrative hearing before the Office of Administrative Hearings.

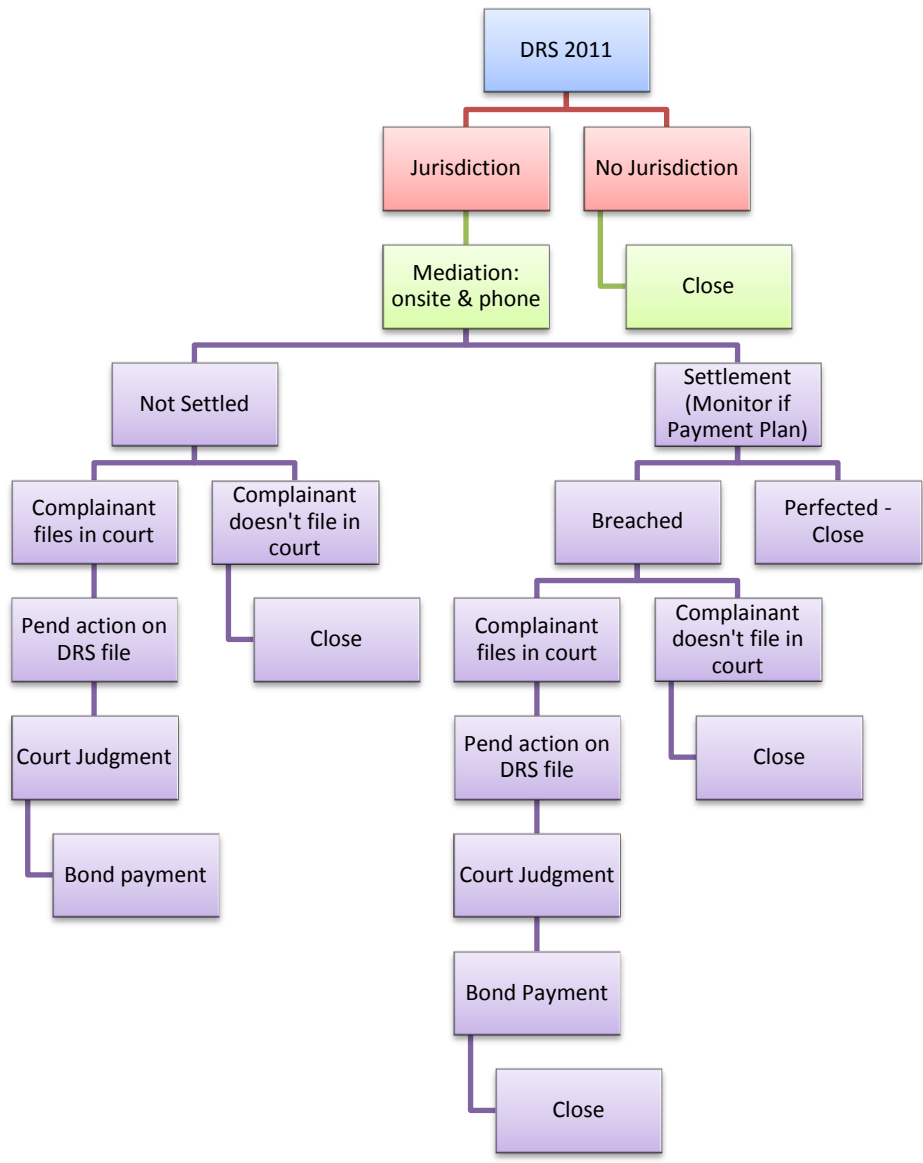


Table of Contents

INTRODUCTION	1
GENERAL INSTRUCTIONS.....	1
Filing and Handling the Complaint	2
Notice of Defect for Residential Owner Claims.....	3
Time Limits for Filing a Complaint:	4
Miscellaneous Instructions.....	5
How long does the process take?.....	6
RESIDENTIAL OWNER COMPLAINTS.....	7
What Type of Complaint can be filed?.....	7
Who Can File a Residential Owner Complaint?.....	7
Complaint Form to Use	7
Complaint Processing Fee	8
After Filing the Complaint	8
SMALL COMMERCIAL OWNER COMPLAINTS	9
What Type of Complaint can be Filed?	9
Who Can File a Small Commercial Structure Owner Complaint?.....	9
Special Requirements for Small Commercial Structure Owner Complaints	10
COMMERCIAL OWNER COMPLAINTS.....	10
What Type of Complaint Can be Filed?	10
Who Can File a Large Commercial Structure Owner Complaint?	10
Filing Complaint in Court or Beginning Arbitration.....	11
Complaint Form to Use	11
Notifying CCB and the Bonding Company of Court Action or Arbitration	11
After Filing the Complaint	12
CONSTRUCTION LIEN COMPLAINTS	13
Who Can File a Construction Lien Complaint?	13
Special Requirements for Construction Lien Complaints.....	13
Complaint Form to Use	14

PRIMARY CONTRACTOR COMPLAINTS.....	15
What Type of Complaint can be Filed?	15
Who Can File a Primary Contractor Complaint?	15
Complaint Form to Use	15
SUBCONTRACTOR COMPLAINTS	16
What Type of Complaint Can be Filed?	16
Who Can File a Subcontractor Complaint?	16
Complaint Form to use	16
EMPLOYEE COMPLAINTS.....	16
What Type of Complaint Can be Filed?	17
Who Can File an Employee Complaint?	17
Complaint Form to Use	17
MATERIAL SUPPLIER OR EQUIPMENT RENTAL COMPLAINTS	18
What Type of Complaint can be Filed?	18
Who Can File a Material Supplier or Equipment Rental Complaint?	18
Complaint Form to Use	18

INTRODUCTION

If you are a customer of a contractor, a primary (prime) contractor, a subcontractor, an employee, or a material supplier, you may file a complaint against a licensed contractor with whom you have a dispute.

This booklet contains:

- Steps you must take before you file a complaint.
- How to file a complaint.
- What to do after filing the complaint.

Additional information is available on the CCB website at www.oregon.gov/CCB. You may contact CCB at 503-378-4621.

GENERAL INSTRUCTIONS

These general instructions apply to all complaints. Specific instructions are included for each type of complaint. The types of complaints are:

- Residential owner complaints
- Non-residential owner complaints: small commercial structure
- Non-residential owner complaints: large commercial structure
- Construction lien complaints
- Primary contractor complaints
- Subcontractor complaints
- Employee complaints
- Material supplier and equipment rental complaints

Work on projects other than structures: If the work involves a project other than a structure, like road improvements, follow the process that corresponds to the type of zoning or construction that comes after or is performed using your work.

Filing and Handling the Complaint



Pre-Complaint Notice: Before you file a complaint you must file a pre-complaint notice.

You must send a *written pre-complaint notice* to the contractor **AT LEAST 30 DAYS BEFORE** filing your complaint with the CCB.

The purpose of the notice is to give the contractor an opportunity to resolve the dispute with you. The CCB website can generate a pre-complaint notice for you at: http://ccbed.ccb.state.or.us/new_web/asp/preclaim_notice.htm.

The pre-complaint notice you send to the contractor must have all of the following information in it: (1) date; (2) contractor's name; (3) contractor's address; (4) a statement that you plan to file a complaint with CCB; and (5) your name.

This is a sample of what your letter must say:

Date
Contractor's name
Contractor's address
Dear _____:
I intend to file a complaint with the Construction Contractors Board thirty days after I mail this letter.
Your name

You must send the pre-complaint notice to the contractor's *name and address listed in the CCB records*, even if you have been using another address for the contractor. To find this address, go to the "Contractor Search" link at www.oregon.gov/CCB.

BE CAREFUL TO USE THE CORRECT NAME OF THE CONTRACTOR WHEN PERFORMING THE SEARCH. SOME NAMES ARE VERY SIMILAR.



You must send the pre-complaint notice by *certified mail*. Keep the certified mail receipt from the post office to show the address you mailed to and that you mailed the notice.

This is a sample of a properly completed post office receipt with postmark.

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$.37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.42

Postmark Here
PORTLAND, ME KENTON STA. 02211
MAR 21 2011
USPS

Sent To
Contractor's Name
Contractor's Address of record
City, State, ZIP+4

PS Form 3800 See Reverse for Instructions

Be sure the respondent's name and address show here.

Be sure the post office date-stamp is here and you can read the date.

Notice of Defect for Residential Owner Claims

If your dispute does not settle, you must start arbitration or take your contractor to court. If you own a residence, the following also applies.

You must file a complaint (different from the CCB complaint) to start a court action. You must provide a notice to start arbitration. However, before you can do either, you must provide a "Notice of Defect." This is different from the "Pre-Complaint Notice" that you must send before you file a CCB complaint.

Before January 1, 2012:

- A "Notice of Defect" is required for all court actions and arbitrations.
- You must send the "Notice of Defect" by registered mail.

On or after that date, you do not need to provide a "Notice of Defect" if:

- You intend to go to Small Claims Court; or
- The contractor started a court action and you are responding.

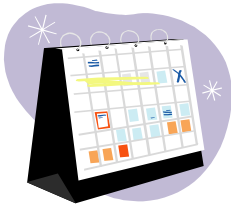
Another change after January 1, 2012 is that you will be able to send the "Notice of Defect" by registered or certified mail. (The "Pre-Complaint Notice" is sent by certified mail. See page 2.)

The “Notice of Defect” must include:

- The name and address of the owner or owner’s attorney, if any.
- A statement that you may seek to:
 - Start arbitration; or
 - Start a court action.
- The address and location of the residence.
- A description of:
 - Each defect;
 - What you think is necessary to correct the defects; and
 - Any other damages that you have experienced that cannot be corrected.
- Any report or other document about the defects and other damages.

If you send this “Notice of Defect” before you file your CCB complaint, please also include a copy with your CCB complaint. If you send a Notice of Defect after filing your CCB complaint, send a copy of the notice to the CCB.

Time Limits for Filing a Complaint:



There are *strict time limits* for filing complaints. You must file your complaint within the time limit allowed for your type of complaint.

If the CCB complaint involves:

- A **NEW STRUCTURE**, the owner must file the complaint so that CCB receives it within *one year* from the date it was *first occupied*, or *two years* from the date it was *substantially completed* and ready for occupancy, whichever comes first. (Repair work does not extend the date the work was substantially completed).
 - If a prime contractor files against a subcontractor, the *one year* period is extended to *14 months*.
- A **AN EXISTING STRUCTURE**, the owner must file the complaint so that CCB receives it within *one year* from the date the contractor *substantially completed* the work. (Repair work does not extend the date the work was substantially completed).
 - If a prime contractor files against a subcontractor, the *one year* period is extended to *14 months*.

- A **NEW OR EXISTING STRUCTURE** and the contractor ***abandoned*** the work, the owner must file the complaint so that CCB receives it within ***one year*** from the date the contractor ***last performed*** work on the job.
 - If a prime contractor files against a subcontractor, the ***one year*** period is extended to ***14 months***.
- A **NEW OR EXISTING STRUCTURE** and the contractor ***did not perform*** any work, an owner must file the complaint so that CCB receives it within ***one year*** from the date you ***entered into the contract***.
- ***ANY STRUCTURE***, a subcontractor, employee, or material or equipment supplier must file the complaint no later than one year after the date the contractor entered into the debt.

THERE ARE NO EXCEPTIONS TO THE TIME LIMITS.

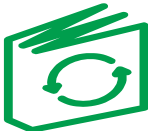
Miscellaneous Instructions

You will need to ***mail or hand-deliver*** your complaint to CCB.
PLEASE DO NOT USE E-MAIL TO CONTACT CCB ABOUT YOUR COMPLAINT.



Notify CCB **in writing** if you change your address or if you hire an attorney. CCB will communicate with you by mail.

Do ***not*** send original documents. Instead, send legible copies. If you send photographs or large documents, include three (3) copies. Keep copies of what you send to CCB for your records. Prepare photographs by mounting them on 8½ x 11 paper and place a caption near each photograph stating what the photo is meant to represent.



CCB must send all information you send to the person against whom you are filing the complaint. Similarly, CCB will send you all information it receives from that person.

You may wish to talk to an attorney about your complaint. CCB staff cannot provide you with legal advice. Only an attorney can do that.



If acting for an *incapacitated person* by a legal guardianship, power of attorney, or other legal status, you may file a complaint on behalf of the owner. A *property manager* may also file on behalf of the owner. An owner may authorize a person to act as their *agent*. You may appear at the on-site meeting as the owner's agent if you have authority to settle the matter.

How long does the process take?

It depends on the complexity of your complaint. Because each complaint is different, the amount of time and the necessary steps may vary. If the matter only needs an on-site meeting to resolve, it may be resolved within a couple of months. A matter that goes to court and is appealed may take up to 2 – 5 years to resolve.

If you are required to have a CCB license for *your* work, you must file a *primary contractor complaint*, unless you performed the work on your own property and do not intend to sell the property. See page 15.

RESIDENTIAL OWNER COMPLAINTS

Some common residential structures are:



- ❖ A house
- ❖ A building no more than four stories with living units only, such as an apartment building, as long as there are no businesses also located in the building.
- ❖ A condominium or other dwelling unit
- ❖ A modular home
- ❖ A manufactured dwelling
- ❖ A floating home (for example, a houseboat)
- ❖ Note: Mixed-use structures that contain both shops or offices and dwelling units are commercial, not residential, structures.

What Type of Complaint can be filed?

The complaint must be for breach of contract or negligent or improper work.

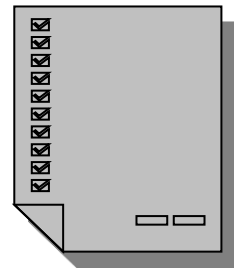
Who Can File a Residential Owner Complaint?

You may file a residential owner complaint if:

- ❖ You had a licensed contractor build a residential structure or work on property used or zoned as residential, or
- ❖ You purchased, or agreed to purchase, a residential structure from a licensed contractor or developer, or
- ❖ You owned, leased, or rented a residential structure and had a licensed contractor perform construction work on the structure.

Complaint Form to Use

Use the complaint form: “Breach of Contract Complaint Form for Owners and Prime Contractors.” FILL IN THE ENTIRE FORM.



Include the following with the complaint form:

- ◆ A copy of the *pre-complaint notice* and the *certified mail receipt* for the notice.
- ◆ A copy of the written contract. If you purchased a home, the agreement may be the Sales Agreement, Receipt for Earnest Money, or similar document.
- ◆ If there was no written contract, include copies of proposals, bids, work orders, invoices, billings, or both sides of cancelled checks.

- ◆ If there is a pending or resolved court action or arbitration, a copy of the court complaint or arbitration request or demand.

Complaint Processing Fee



After CCB reviews your complaint and determines that it has the authority to process the complaint, CCB will notify you to pay a \$50 processing fee. DO NOT PAY THE FEE UNTIL CCB ASKS YOU FOR IT.

After Filing the Complaint

Wait until you hear from CCB. The next steps may be:

- A determination that CCB cannot process your complaint and is closing the matter. You will not need to pay the \$50 fee.
- An on-site meeting involving you, the contractor and a CCB representative.

SMALL COMMERCIAL OWNER COMPLAINTS

A small commercial structure is a structure that is *not a residential structure* and is one of the following:

- A structure with no more than 10,000 square feet and not more than 20 feet tall
- A unit (including one rented or leased) that is part of a larger structure if the *unit* is no more than 12,000 square feet and not more than 20 feet tall
- A structure of any size for which the contract price for *all construction* on the structure is \$250,000 or less.
-



What Type of Complaint can be Filed?

The complaint must be for breach of contract or negligent or improper work.

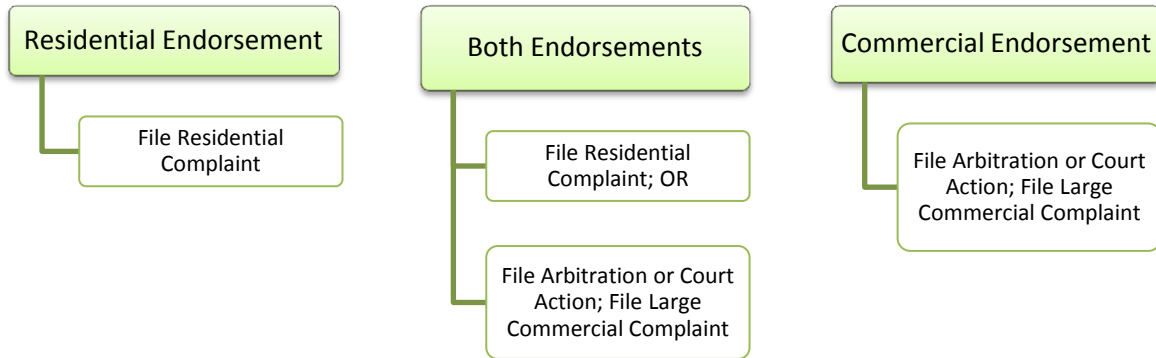
Who Can File a Small Commercial Structure Owner Complaint?

You may file a small commercial structure owner complaint if:

- ❖ You had a licensed contractor build a small commercial structure or work on property used or zoned for a small commercial structure, or
- ❖ You purchased, or agreed to purchase, a small commercial structure from a licensed contractor or a developer, or
- ❖ You owned, leased, or rented a small commercial structure and had a licensed contractor perform construction work on the structure.

Special Requirements for Small Commercial Structure Owner Complaints

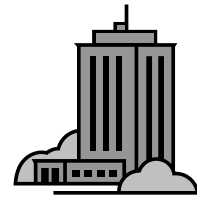
You may file a **RESIDENTIAL OWNER COMPLAINT** (page 7) or a **COMMERCIAL OWNER COMPLAINT** (page 10). Use the following chart to determine which type of complaint to file.



COMMERCIAL OWNER COMPLAINTS

A large commercial structure is:

- ◆ Any structure that is not a residential structure or a small commercial structure.
- ◆ Most public works projects fall within this classification.



What Type of Complaint Can be Filed?

The complaint must be for breach of contract or negligent or improper work.

Who Can File a Large Commercial Structure Owner Complaint?

You may file a large commercial structure owner complaint if:

- ❖ You had a licensed contractor build a large commercial structure or work on property used or zoned for a large commercial structure, or
- ❖ You purchased, or agreed to purchase, a large commercial structure from a licensed contractor or a developer, or

- ❖ You owned, leased, or rented a large commercial structure and had a licensed contractor perform construction work on the structure.

Filing Complaint in Court or Beginning Arbitration

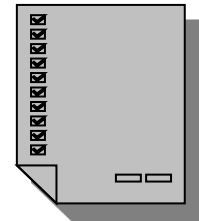


As a large commercial structure owner, before you can file a CCB complaint you must first file a complaint in court or begin arbitration. However, you must file with the CCB before the trial or arbitration begins or before a judgment is entered. See Section C. for requirements for sending court complaints or arbitration requests or demands.

Complaint Form to Use

Use the complaint form:

“Breach of Contract Complaint Form for Owners and Prime Contractors.”



Include the following with the CCB complaint form:

- ◆ A copy of the *pre-complaint notice* and the *certified mail receipt* for the notice.
- ◆ A copy of the written contract.

Notifying CCB and the Bonding Company of Court Action or Arbitration



Send a copy of the court complaint or a copy of the demand or request for arbitration to CCB and the contractor’s bonding company by *certified mail, return receipt requested*.

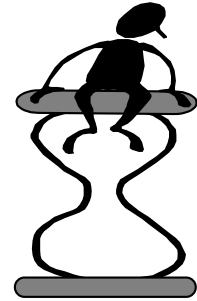
Delivery to the CCB and the bonding company must be no later than the earlier of:

- ◆ 90 calendar days after you file a court complaint or demand or request for arbitration, or
- ◆ 14 calendar days before the first day of trial or arbitration, or
- ◆ 30 calendar days before the court issued a judgment or the arbitrator issues an award.

After Filing the Complaint

Wait until you hear from CCB. The next steps may be:

- ◆ Upon receipt of the court judgment, CCB will determine how much, if any, of the judgment is subject to payment from the bond.
- ◆ If subject to payment, CCB will submit its determination to the bonding company for payment.



CONSTRUCTION LIEN COMPLAINTS

A construction lien is:

- ◆ A security interest in real property that secures the payment of a debt due to a person who provided labor, materials or equipment in the construction of a structure or improvement.



Who Can File a Construction Lien Complaint?

You may file a construction lien complaint if you are an owner

AND

- ❖ You had a licensed contractor build a structure or improve property for you, or
- ❖ You purchased, or agreed to purchase, a structure from a licensed contractor or a developer, or
- ❖ You owned, leased, or rented a structure and had a licensed contractor perform construction work on the structure,

AND

- ❖ You paid your contractor for the work but the contractor did not pay its subcontractors or employees or for materials or equipment,

AND

- ❖ The material supplier, equipment provider, subcontractor or employee filed a lien on your property.

If the *contractor that you hired* filed a lien on your property, you cannot file a construction lien complaint. Instead, you may file an *owner complaint*. See page 7.

Special Requirements for Construction Lien Complaints

Do not file a construction lien complaint if you received only a Notice of Right to a Lien. That document simply tells you that the person who delivered the notice has a right to file a lien if they are not paid. You must wait until the person files the lien with the court before filing a complaint with CCB.

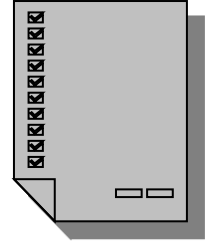
Include the following with the complaint form:

- ◆ A copy of any *Notice of Right to Lien* that you received.
- ◆ A copy of the court-recorded construction lien (showing the county recorder's stamp and date of filing).
- ◆ A copy of any lien foreclosure documents.
- ◆ Proof that you paid the primary contractor for the work performed.
- ◆ If you paid the lien, documents showing the amounts paid.
- ◆ If the person filing the lien filed a foreclosure action, a copy of the foreclosure action documents.

Complaint Form to Use

Use the complaint form:

“Breach of Contract Complaint Form for Owners and Prime Contractors.”



IF YOU ARE FILING A CONSTRUCTION LIEN COMPLAINT FOR A:

RESIDENTIAL STRUCTURE: Follow instructions on page 7.

SMALL COMMERCIAL STRUCTURE: Follow instructions on page 7 or 10.

LARGE COMMERCIAL STRUCTURE: Follow instructions on page 10.

PRIMARY CONTRACTOR COMPLAINTS

A primary contractor is an individual or business that:



- ◆ Has a contract with an owner of a structure to perform construction work, or
- ◆ Is building or remodeling a structure with the intent to sell it, and
- ◆ Hires one or more subcontractors to perform construction work.

What Type of Complaint can be Filed?

The complaint must be for breach of contract or negligent or improper work.

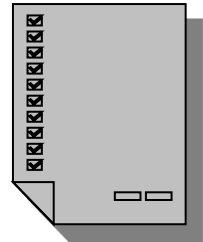
Who Can File a Primary Contractor Complaint?

A licensed primary contractor may file a complaint against a licensed subcontractor that the primary contractor hired to perform construction work.

Complaint Form to Use

Use the complaint form:

“Breach of Contract Complaint Form for Owners and Prime Contractors.”



IF YOU HIRED A SUBCONTRACTOR TO HELP YOU CONSTRUCT A:

RESIDENTIAL STRUCTURE: Follow the instructions on page 7

SMALL COMMERCIAL STRUCTURE: Follow the instructions on page 7 or 10

LARGE COMMERCIAL STRUCTURE: Follow the instructions on page 10.

SUBCONTRACTOR COMPLAINTS

A subcontractor is an individual or business that:

- ◆ Has a contract with the primary contractor, and
- ◆ Does not have a contract with the owner of a structure, and
- ◆ Is responsible for a specific portion of the construction project.



What Type of Complaint Can be Filed?

The complaint must be for unpaid labor or for unpaid labor and materials. If the complaint is for unpaid materials only, it must be filed as a material supplier complaint. Usually, there is no on-site meeting for subcontractor complaints.

Who Can File a Subcontractor Complaint?

A subcontractor may file a complaint against a licensed primary contractor that hired the subcontractor to perform construction work.

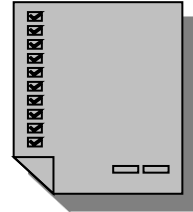
Complaint Form to use

Use the complaint form:

“Breach of Contract Complaint Form for Subcontractors.”

Note: You may include claims involving more than one job site on this form.

FILL IN THE ENTIRE FORM.



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

- ◆ A copy of your pre-complaint notice letter and certified mail receipt.
- ◆ A copy of each invoice billing the primary contractor for work.
- ◆ If the contract was in writing, a copy of the entire contract.

IF YOU WORKED ON A

RESIDENTIAL STRUCTURE, follow the instructions on page 7.

SMALL COMMERCIAL STRUCTURE, follow the instructions on page 7 or 10.

LARGE COMMERCIAL STRUCTURE, follow the instructions on page 10

EMPLOYEE COMPLAINTS



An employee is an individual who:

- Works for wages
- Works for a licensed contractor.

What Type of Complaint Can be Filed?

The complaint must be for unpaid wages or benefits.

Who Can File an Employee Complaint?

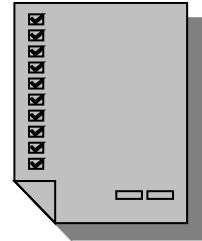
An employee of a licensed contractor may file a complaint.

Complaint Form to Use

Use the complaint form:

“Breach of Contract Complaint Form for Employees.”

FILL IN THE ENTIRE FORM



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

- ◆ A copy of your pre-complaint notice letter and certified mail receipt.
- ◆ Evidence to prove that you worked as an employee of the contractor. This may include copies of time cards, paycheck stubs, or W-4 forms. If not available, you may submit a notarized affidavit from a person not related to you stating facts indicating that you worked for the contractor.
- ◆ You must list on the complaint form the *specific job site addresses* (including street, city and state) for each job site where you performed work.

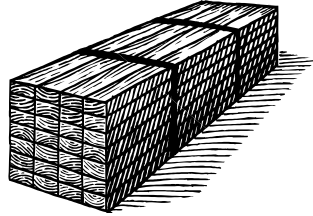
IF YOU WORKED ON A

RESIDENTIAL STRUCTURE, follow the instructions on page 7.

SMALL COMMERCIAL STRUCTURE, follow the instructions on page 7 or 10.

LARGE COMMERCIAL STRUCTURE, follow the instructions on page 10

MATERIAL SUPPLIER OR EQUIPMENT RENTAL COMPLAINTS



- ◆ A material supplier is a business that supplied materials to a contractor for use in construction but did not install the materials.
- ◆ An equipment rental company is a business that rented equipment to a contractor for use in construction.

What Type of Complaint can be Filed?

The complaint must be for the cost of materials or equipment rental.

Who Can File a Material Supplier or Equipment Rental Complaint?

A person that supplied materials to a contractor on credit and has not received payment may file a complaint. A person that rented equipment to a contractor on credit and has not received payment may file a complaint.

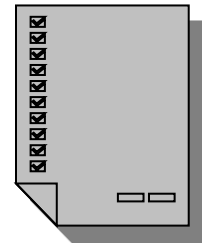
Note: If you supplied materials *and* installed the materials, you must file a *Subcontractor Complaint*. See page 16.

Complaint Form to Use

Use the complaint form:

“Breach of Contract Complaint Form for Material/Equipment”

FILL IN THE ENTIRE FORM



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

- ◆ A copy of your pre-complaint notice letter and certified mail receipt.
- ◆ A copy of each invoice.
- ◆ For each invoice, list the *specific job site address* (including street, city, and state) where the materials were installed or the equipment used.

IF YOU SUPPLIED MATERIALS OR RENTED EQUIPMENT FOR CONSTRUCTION OF A:

RESIDENTIAL STRUCTURE, follow the instructions on page 7.

SMALL COMMERCIAL STRUCTURE, follow the instructions on page 7 or 10.

LARGE COMMERCIAL STRUCTURE, follow the instructions on page 10.

NOTES:

