

MINUTES OF THE APRIL 28, 2009 CONSTRUCTION CONTRACTORS BOARD MEETING

The Construction Contractors Board met on Tuesday, April 28, 2009, in the Oregon Room, West Salem Roth's IGA, 1130 Wallace Rd. NW, Salem, Oregon.

Attendees:

Board Members: Chair, Tom Skaar, Chuck Crump, Richard DeWolf, Rob Hernandez, Dennis Schad, Mary Stern, Sandy Trainor, and Rob Yorke.

Staff: Administrator Craig P. Smith, Administrative Services Manager Linda Teet, Education Manager Gina Fox, Enforcement Manager Richard Blank, Dispute Resolution Manager Bill Boyd, Licensing/CSU Manager Kristie Patton, Information Technology Manager Shelly Wiles, Field Investigations Manager Robert Rambo, and Board Secretary Catherine Dixon. Assistant Attorney General Katharine Lozano was also present.

Guests: John Mangis, Bonnie Sullivan, Pat McBeth, Marilyn Schuster, Michael Tobin, Barry Durmaz, Harry Schneider, Tim Gerkin, Mike Bellamy, Thaddeus Hettle, Debra and Jack Wall, Heidi and Robert Ofelt, and Flynn Case.

A. PROCEDURAL

1. Call to Order:

Chair Tom Skaar called the meeting to order at 8:05 a.m.

2. Approval of Agenda and Order of Business:

The agenda for the April 28, 2009, meeting was approved.

3. Approval of Minutes:

The January 27, 2009, Board meeting minutes and Appeal Committee meeting minutes were approved.

4. Board Member Reports:

Board members reported on what was happening in the geographic region, in which they live and work.

Board members welcomed Jon Mangis to the Board meeting. Mr. Mangis is awaiting Senate confirmation to become a new Board member filling the public member vacancy on the Board.

Administrator Smith introduced Katharine Lozano, Assistant Attorney General, to the Board members. Ms. Lozano is filling-in for Joanna Tucker Davis while she is on maternity leave.

5. Agency Report:**a. Legislatively Approved Funds—Consumer Awareness:**

Administrator Smith discussed the letter sent to Rachel Nolin, Budget Analyst, Department of Administrative Services, Budget and Management Division, regarding CCB not spending the consumer awareness campaign funds approved in the 2007-09 budget.

b. 2007-09 Projected Savings:

Administrator Smith discussed the projected savings chart with Board members. He hoped the agency would be able to fill some vacant positions, but has determined that the vacancies should not be filled until the 2009-11 budget has been approved. He reported that staff vacancies are causing staff great amounts of stress, which is affecting performance measures.

Administrator Smith reported that while the number of complaints and the number of licensees is going down, the requests for services are going up. On a typically day CCB receives 400 to 500 phone calls, on April 27 we received 600 phone calls. The length of time to answer the phone calls has tripped due to lack of staff to answer the phones.

Administrator Smith reported that the reductions/cuts include not filling vacancies when employees leave, cutting the consumer awareness campaign, reducing travel, employee training, and Attorney General costs, and reducing purchases of furniture and equipment. The SIU budget was also reduced because the number of requests from the Department of Justice, Financial Fraud Unit, has been very low. The current limited duration employees are looking for other jobs and may leave prior to their limited duration position ending.

c. Summary of Expenditures for 2007-09 Biennium:

Administrator Smith discussed the expenditure report with Board members.

d. Summary of Revenue 2007-09 Biennium:

Administrator Smith discussed the revenue report with Board members. The projected ending balance is \$4,180,137 on June 30, 2009.

e. Number of New Licenses Processed Per Month:

Administrator Smith reported that the number of new licenses processed in March 2009 was 360. The average number of new licensees per month for the period July 2008 through March 2009 was 294. The 2007-09 budget is based on an average of 385 new licenses per month. The number of new licenses is down significantly. The number of new licenses must be carefully watched during the next several months.

f. Rate of Renewals:

Administrator Smith reported that the renewal rate for March 2009 was 76.3 percent. The 2007-09 budget is based on 80 percent renewal rate. The average renewal rate for the period July through March 2009 was 76.2 percent. The

number of renewals went up in March, which is typical each year, but did not rise as high as in previous years. We believe that the field investigators having a presence out in the field is helping to keep the renewal rates up. The inactive status category is steadily rising.

g. Fee Comparison with Other States:

Administrator Smith briefly discussed the fees of other states with Board members. In Oregon the average license fee is \$295/2 year; Arizona's average license cost is \$1,433/2 years; California's average license cost is \$499/2 years; Nevada's average license cost is \$1,812/2 years, and Washington's average license cost is \$830/2 years. The Oregon State Landscape Contractors Board's average license cost is \$600/2 years, and their services are almost identical to that of the CCB and with a lower number of licensees to serve.

h. Letters of Support for Fee Increase:

Administrator Smith briefly discussed the letters of support for the fee increase with Board members.

Administrator Smith reported that the agency's budget was heard by the General Government Subcommittee; legislators had some questions, especially regarding why CCB proposes to raise fees. The fee increase will be a very difficult sell and may not be approved.

i. 2007-09 Budget, Expenditure and Revenue Charts;

Administrator Smith discussed the expenditure and revenue charts with Board members. Revenue dropped below the amounts projected in the 2007-09 budget, but are currently on target. CCB is spending down its cash reserves, which were high last biennium. The cash reserve is projected to drop \$1 million in the last three months of the 2007-09 biennium. The ending balance on June 30, 2009 is projected to be \$3.9 million.

Administrator Smith discussed the Governor's recommended budget (GRB) and the essential budget level (EBL) with Board members. The EBL is last year's budget plus inflation, which is designed to keep the same as previous biennium, which is what we are trying to achieve in the 2009-11 budget.

B. ONGOING ISSUES:

1. 2009 Legislation:

Administrator Smith reported that all of the CCB bills have passed out of the Senate, except for the budget. The CCB sponsored bills (SB 202 thru SB 206) are awaiting a hearing on the House side. Other bills reported on were:

HB 2134 --Lead-Based Paint: The bill creates a program under the Department of Human Services (DHS) and the Construction Contractors Board (CCB) for licensing and certification of lead based paint renovation and lead based paint activities. Requires DHS establish standards for best practices related to lead based paint activities and to develop and approve training programs for certification of service

providers. CCB will establish rules for licensing contractors in lead based paint activities and that include the DHS certification. Allows DHS and CCB to suspend or revoke a license or certification and to inspect and fine up to \$5,000. Requires cross reporting of fines; establishes an account for CCB for fines. Requires both DHS and CCB to use fine proceeds for lead based paint activities including abatement, blood screening and education based on their areas of regulation and expertise.

Administrator Smith reported that Home Builders Association, Scott Barrie worked with Gail Shibley, DHS, to amend the bill. CCB looks forward to a great partnership with DHS.

HB 2366: This bill creates a lien assistance recovery fund. The bill was developed by Representative Holvey. The bill would do the same things that HB 2133 (2007) did last session. Some suggest the bill may cause financial problems for contractors because the material suppliers will not give them a line of credit to purchase supplies. CCB may need to set up a workgroup to look at this issue.

HB 2519: The bill allows residential general contractors, residential specialty contractors or residential limited contractors to undertake, offer to undertake or submit bid to perform work on large commercial structure if price of work does not exceed \$250,000. If the bill does not pass, CCB will need to ask the AAG for an opinion regarding the \$250,000 exemption.

HB 2815A: This bill creates an Interagency Compliance Network. The bill creates a tax that the Secretary of State would collect from every business. CCB would receive approximately eight percent of the taxes collected for one compliance officer dedicated to finding violations of paying under the table and misclassification of workers. The Interagency Compliance Network would target the construction industry because they believe there are a lot of violations occurring.

HB 2954: This bill would move CCB to the Department of Consumer and Business Services (DCBS). The electrical contractors would like to CCB move into Building Codes Division. The bill has had one hearing.

HB 3127: Locksmiths' Bill: The bill requires person performing locksmithing services to be certified by Construction Contractors Board. The bill is being amended. The certification will be similar to the home inspector certification with an advisory committee.

2. **CCB Strategic Plan:**

Administrator Smith reported that staff recommends the Board set up a workgroup to work on a one year and five year strategic business plan. After discussing the issue, Board members Chuck Crump and Rob Yorke volunteered to serve on the workgroup to work on the CCB one year and five year strategic plans.

(Staff Action Item 4.09.B.2)

3. Boards and Commissions Best Practices Review (KPM 10):

Administrator Smith briefly discussed the handout on Best Practices for Boards and Commissions with Board members. This item was held over to the June 28, 2009, Board meeting, with a final vote scheduled for the August 25, 2009, Board meeting.

4. New Testing Vendor:

Education Manager Gina Fox reported that the new testing vendor has an option where the test can be viewed in English or Spanish with a toggle switch to go back and forth. The testing fee went from \$106 down to \$85 with the new testing vendor.

C. ADMINISTRATIVE RULES HEARINGS**1. Discussion of Administrative Rules:**

Administrator Smith discussed the continuing education draft proposed rules with Board members. Education Manager Gina Fox gave a PowerPoint presentation on the proposed rules regarding residential continuing education.

CCB Licensing Numbers in Ads:

The Board, regarding OAR 812-003-0120, directed staff to issue warnings until January 1, 2010, to allow contractors enough time to learn about the revised rules and make changes to their advertisements.

The Board directed staff to set an effective date that staff would start enforcement the new provisions in OAR 812-001-0220 and 812-012-0170. Place an article in an upcoming newsletter with a link to the form with a statement that on or after January 1, 2010 or staff's chosen date, if CCB receives a court judgment from someone else, and more than 30 days has gone by since the date of the judgment, they will be fined.

2. Rulemaking Hearing:**a. Rule Notice 1:**

Chair Tom Skaar opened the rulemaking hearing on notice 1 of the proposed rules. Board members discussed the need to include internet media in OAR 812-001-0120 and asked Assistant Attorney General Katharine Lozano to suggest language for an amendment. AAG Lozano read the proposed rule amendment into the record as follows:

“(2)(h) All advertising by internet media, including but not limited to, website advertising must show visually the contractor’s license number.”

Public Comment:

No one came forward to give public comment.

MOTION: Rob Hernandez moved to adopt the rules contained on pages 138-141 of the Board packet with the amendment to 812-003-0120 to include paragraph (2)(h).

VOTE: 7-1, Ayes—Crump, Hernandez, Schad, Stern, Skaar, Trainor, and Yorke; Nays—DeWolf.,

(See Attachment B for the language of the adopted rules.)

b. Rule Notice 2:

Chair Tom Skaar opened the rulemaking hearing on notice 2 of the proposed rules.

Public Comment:

Pat McBeth, McBeth Inc.: I would like to make one comment. If the court can't enforce these rules, why would CCB be able to? In court appointed judgments, isn't that up to the court to enforce those?

Chair Skaar responded that it is not a matter to enforce the judgment; it is a matter of requiring the contractor to notify CCB of the judgment because the statutes require licensees to notify the CCB.

Pat McBeth: Stated that he had misunderstood.

MOTION: Chuck Crump moved to adopt the proposed rules in notice 2 on pages 172-178 of the Board packet with amendments to 812-001-0220 to delete the date at the end of the rule and 812-012-0170 (4) to add "if:" to the end of the sentence.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Schad, Stern, Skaar, Trainor, and Yorke.

(See Attachment B for the language of the adopted rules.)

c. Rule Notice 3:

Chair Tom Skaar opened the rulemaking hearing on notice 3 of the proposed rules. Education Manager Gina Fox discussed the proposed rules.

Public Comment:

Michael Tobin, Sungrain Hardwood Floors: "I tried to get a bus load of people out here, but some people said they had to swing a hammer and others just said good luck. I don't believe that I and people like me have been taken into consideration when you guys are outlining the educational standards mandated to you by the legislature. I refinish hardwood floors exclusively in residential, single-family dwellings. I have over 30 years of experience and 100 percent customer satisfaction record. Over 20 years of using eco friendly products. No insurance or safety problems, 100 percent compliance with CCB legislative notifications no matter how annoying they get. I think I can justify them because it is good for the consumer it is good for me. I don't have any inconsistencies in my workmanship, mainly because I don't use employees."

"Taking courses every two years in subjects such as outer shell construction and other non-related courses will not help me or my customers. Education should be commensurate with arbitration, customer complaints, or insurance claims. If a

company is having problems, they should be required to take courses. The cost of these courses presents undue economic hardship to companies like mine who are doing the right thing; providing quality work to customers. It is just as though we are being lumped together with those that do shabby work and cause this legislative mandate and we are being punished for doing the right thing. Residential companies licensed as exempt limited status, should be limited to ongoing education in codes and laws every license period. I do agree with that. They should be excluded from other continuing education unless the CCB overseer deems that education is necessary based on the CCB code infractions, customer complaints of poor workmanship, insurance or bond claims, or safety infractions.”

“If I go into a class and a job comes up, the job has to take precedence. I don’t have someone else that can go take my place. The customer has to have their job done and they got move into their house or apartment. If I don’t do it, they will hire someone else. If I am in class and I have to not go to the class in order to do the job, and I get an incomplete in class. So then I don’t get licensed, so then I don’t work; not to mention that the cost is somewhere between \$1,600 to \$2,000 just for the course work every two years. That is to me, that is the difference between being able to pay a fifth of getting a new vehicle, which I am going to need soon, or getting my roof redone, which is at the same time as the car. I don’t have this kind of money.”

“The whole logic just doesn’t make any sense to me because this is all in response to like about a 13 year old court case that went on for a long time over DuPont and siding in people’s houses in West Linn and Forrest Heights who, you know, we didn’t need the education as workmen when we are walking around talking to each other smoking cigarettes, eating lunch shaking our heads and saying man this isn’t going to work and then years later customers, residential customer suing contractors and suing DuPont. They finally win, it goes through a long period of court and legislative committee comes down to educating. So, if you got a general contractor with a siding company and he has 20 employees, one of them takes the education. How is that going to help these customers and how am I learning outer shell construction, which I can already tell 13 years ago this stuff wasn’t going to work. I didn’t need to take any outer shell construction then to know it wasn’t going to work. I have watched employees get fired because they made comments to residential customers, that general contractor called that employee’s boss and the guy was fired because he made a comment to the customer about how the siding wasn’t going to work. So, if we were educated and we all out there education and able to tell people this isn’t code, this isn’t proper, how is that going to help the system? The whole thing is we are trying to help the residential customer. I am trying to do the right thing. I do the right thing and they want to hire me because they see me as someone who wants to help them.”

“If I am in education learning things that don’t even apply to my specialty, it doesn’t, it is so illogical to me that I don’t understand. I agree with the codes and

the laws. I think we all should have to take that, but I think that every two years. Gees, I could get a doctorate degree in a few years with the money and time that is...I am a flooring contractor. I am 55 years old, I am going to be dead soon. It doesn't apply to a lot of people who are doing what I am doing. That doesn't mean that there aren't a lot of contractors who do what I do that do bad work. But you guys catch them quickly, they are not licensed or they are not doing something they are supposed to, like give a consumer notification to a customer, that is grounds to having to take five extra hours beyond the codes and laws, but codes is laws is the only thing that really applies to me. I could teach this. Who is going to teach me something I haven't learned in 30 years? About a year ago I heard that there was going to be continuing education, but the way it was told to me. I would make phone calls to keep up with it, it was like it seems like everybody that I called, other contractors to try to get them to come out here, they all said well I thought I would be grandfathered in, you know, I read about it in the thing. I thought it only applies to commercial contractors. So I heard about it and I have tried to keep up with what is going on, I had reports sent to me by Catherine Dixon's office, because I am not online, I don't have a computer online system, so she sends me hard copies. And there would be a meeting, I would get the notification for the meeting either the next day or the next week in Salem and I would either have a job come up or I would not have enough time to come out here. I mean I hope what I am saying makes sense. It would be fair if all employees had to be educated."

Harry Schneider: "I don't know if you are talking about a contractor with just a license and a skill saw and a level or a guy 250 half a million dollar fine. This is my position. I have been a general, I have 25 employees in the State of Oregon, I have done Class A work, I have built residential, and I learned the trades in California. When I was young and in development, I actually helped make the first trusses that were ever made with a guy named Jack Nation. It is all about education and I think that is the foundation we have. I respect what this man is saying, but an employee, if you develop an employee that has education, no matter what level he is at, he is a value to your company and a value to what the consumer is getting. That is where most problems occur, is the lack of education of most people in the trades. I have done site, foundation, structural all the way to ownership and every employee I have had I have tried to educate them and make them more valuable. I know they will move on and I think that the program you have, that you are talking about, is something that needs to be expanded and encouraged, no matter what level of business the guy is in because he may want to expand his business. This gentleman here may want to go, maybe he doesn't want to sand boards any more, maybe he wants to go into finishing and trimming out and he needs to be experienced in those areas to have that knowledge."

"I again, I am a firm believer in education and that needs to be a strong point. If we are going to continue in the trades, and there are a lot of guys out there, our workforce is a lot of hand and feet. There is a lack of education in high school and that is only one way they going to learn the trades. I did learn the trades from a union background. I started in that trade and went above that, first and second

term apprentice and I had journeymen working for me. It depends on the individual, but that level of education, I know is an inconvenience, but the requirement for every year or whatever it is going to be, the CEUs you are going to have to have is something you have to account for and understand that is part of your trade.”

Pat McBeth, McBeth Inc.: “I have been in residential and probably have one the oldest licenses here. I have been in the business 15 years longer than you folks have been in existence. I have got a pretty good track record. One of your biggest problems with this envelope thing that you are talking about is the residential developer exemption. You are talking about the guys paying the bills, not supposed to know what is going on. The money people at the top have to be educated to ask for this stuff or they are not going to get it. Your guys are just going the wrong way. I don’t know what else to say.”

Administrator Smith discussed the letter from State Representatives Ben Cannon and Mike Schaufler with Board members.

Board members suggested putting the court judgment form in the next newsletter. Board members discussed the staff suggestion on the possibility of changing the implementation date. Board members suggested that CCB might want to look into the possibility of requiring bonds for the prerequisite education providers like the requirement in the draft rules for continuing education providers.

AAG Katharine Lozano suggested that CES might want to think about the length of time a licensee can be in the inactive status without having to take some continuing education. Do you want someone being in the inactive status for say 15 years and then decide to become active again without any continuing education requirements.

MOTION: Chuck Crump moved to adopt the proposed rules on pages 200-208 of the Board packet.

VOTE: 2-6, Ayes—Crump, Yorke, Nays—DeWolf, Hernandez, Schad, Stern, Skaar, and Trainor. The motion failed.

The Board directed staff to meet and make recommendations on revisions to the draft proposed rules. Staff are to consider changes based on the number of employees and size of the contracting business. Staff were directed to meet with State Representatives Ben Cannon and Mike Schaufler who wrote a letter regarding the proposed rules and report back to the Board in June. Bring the proposed rules back to the June Board meeting for further testimony, Board review and vote. Look at setting a start date for the rules to become effective 7/1/2010 or 7/1/2011.

(Staff Action Item 4.09.C.2.c.)

MOTION: Rob Yorke moved to hold the record open and continue the rulemaking hearing to the June Board meeting.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Schad, Stern, Skaar, Trainor, and Yorke.

d. Temporary Rules Filed February 23, 2009:

Administrator Smith briefly discussed the rule filing with Board members.

e. Permanent Rules Filed January 30, 2009:

Administrator Smith briefly discussed the rule filing with Board members.

D. NEW BUSINESS:

1. Douglas Hamil Issue:

Due to lack of time to adequately address the issue, the matter was set over to the June 23, 2009, Board meeting.

2. Time it Takes to Process DRS Complaints:

Due to lack of time to adequately address the issue, the matter was set over to the June 23, 2009, Board meeting.

3. Review Website Information:

Administrator Smith discussed the memo from Education Manager Gina Fox with Board members. Over the past few months CCB has received requests from industry groups and contractors to review the information displayed on the website. Staff recommended that the Board assign a workgroup to review what is displayed on the website regarding complaints. Trade associations have asked the Board to consider taking frivolous complaints off the website, items that are out of CCB's jurisdiction, and items where a decision has not been made. Board members Tom Skaar, Richard DeWolf, Jon Mangis (when confirmed), and Mary Stern (schedule permitting) will serve on the workgroup committee.

(Staff Action item 4.09.D.3)

4. Lead-Based Paint Oversight Responsibility:

Administrator Smith briefly discussed HB 2134 and lead-based paint oversight responsibilities with Board members.

5. How Enforcement Works/Process Settlement Agreements:

Due to lack of time to adequately address the issue, the matter was set over to the June 23, 2009, Board meeting.

6. Proposed Rule Change Regarding Refunds:

Administrator Smith and Licensing/CSU Manager Kristie Patton discussed the draft proposed rule regarding refunds with Board members. Staff will proceed with rulemaking process for the proposed rule amendment.

7. Premsign & Associates Corp. Issue:

Administrator Smith briefly discussed the memo regarding the tort claim filed by Premsign and Associates with Board members.

8. Letter from DHS re: Electronic Data-Match:

Administrator Smith reported that staff are working with the Department of Human Services to data match records.

E. PUBLIC COMMENT:

Chair Skaar opened the meeting to take public comment.

Harry Schneider: “Here is my position on the residential continuing education rules, when a specialty contractor works outside of his trade, a paver or floor sander, because there are other issues involved, site approval, there are structural things going on, I don’t know all the facts, I don’t know what all the requirements are, but basic knowledge as I understand is only a one time deal. Basic concepts, this is how we get into problems and issues because we have people that are in the trades and work outside of their general contractor, I am a general contractor. They think they can do anything and everything and they can’t. They are not educated enough to do that. When those trades cross over each other, it becomes an issue and problems occur. Then the consumer, I am talking the consumer point, then we have problems and this is why it went to the legislature because consumers were saying...Okay who is at fault here? Say there is a paving guy and siding guy, the guy says well here is the on-site concrete and you paved here and you were supposed to pave there. So general knowledge of all of the trades, again goes back to education. In my 30 years of experience and it is a one-time thing, I don’t see how harmful that could be to have the one-time education of just general knowledge. Now I am assuming that is what it is. Um, I think you would be protecting the consumer and the integrity of the trades by setting a level above because of the knowledge of that person, either the owner or the worker.”

Barry Durmaz, Strategic Cleaning & Access: Mr. Durmaz submitted written testimony. Mr. Durmaz testified that four years ago in 2005, he appeared before the Board and asked for an exemption because of a discrepancy in OAR 812 concerning the definition of contractor. CCB’s AAG found that pressure washing contractors did not need to be licensed with CCB and OAR 812 was revised. “Since then, I have continued to be a student of law and history, including the biblical principles of self government and civil government, of which, America’s highest laws, founding documents, social and civil institutions are based upon.”

“I have come to discover a greater truth—there never has been a legal requirement for me to hold a contractors license, for the idea of contracting or making agreements with others I a right, inherent by way of creation under God. I continue to be a contract cleaner and am now pursuing a new venture in the area of compliant fall protection, such as roof anchors on commercial structures. Since my previous license was allowed to expire, though the requirement for the license was unlawfully applied by this Board, I am now expected to obtain a license again due to the installation of roof anchors. I do have evidence of passing the examination for the license, but as I began to fill-out the application again, I am

compelled to carefully consider the lawful nature of a contractors license for me and petition this Board to exempt me from obtaining such a license.” ...

“I petition the CCB to provide me an Affidavit of Exemption from the contractor license that I may present to those who ask for a contractors license.”

Administrator Smith stated that it is a time for public comment; it is not a time to seek exemptions from licensure. We acknowledge the comments from Mr. Durmaz and we will provide some written comments back to him and some advice from counsel back to the Board. I don't know of any statutory authority to exempt anyone from licensure, but it is almost a request for a declaratory ruling.

Administrator Smith gave a history of how the rule Mr. Durmaz discussed came into existence and why it was later rescinded.

F. CCB PROGRAM ISSUES:

1. Administrative Services:

a. Quarterly Report: Administrator Smith asked Board members if they had any questions regarding the quarterly report.

2. Education:

a. Quarterly Report: Administrator Smith asked Board members if they had any questions regarding the quarterly report.

3. Licensing/CSU:

a. Quarterly Report: Administrator Smith asked Board members if they had any questions regarding the quarterly report.

4. Enforcement Program:

a. Quarterly Report: Administrator Smith asked Board members if they had any questions regarding the quarterly report.

5. Field Investigations:

a. Quarterly Report: Administrator Smith asked Board members if they had any questions regarding the revised quarterly report that was handed out.

6. Dispute Resolution Services (DRS):

a. Quarterly Report: Administrator Smith asked Board members if they had any questions regarding the quarterly report.

7. Administration:

a. CCB Newsletter:

Administrator Smith briefly mentioned the newsletter.

b. Oregon Real Estate New-Journal:

Administrator Smith briefly discussed the newsletter.

c. Consider-Published by Scott Hooklund LLP:

Administrator Smith briefly discussed the newsletter with Board members.

d. News Clippings:

Administrator Smith briefly mentioned the news clippings.

e. Letters to the Board:

Administrator Smith briefly discussed the letters to the Board with Board members.

f. Board Calendar 2008 and 2009:

Administrator Smith discussed the possibility of a Board meeting being held on May 19, 2009 in case budget issues, legislation or other items come up prior to the June 23, 2009, Board meeting. Board member consensus was to tentatively set a telephone meeting for May 19, 2009 at 9:00 a.m. Staff will notify the Board whether a meeting will need to take place by May 12, 2009.

(Staff Action Item 4.09.F.7.f.)

g. Agenda Items for the Next Meeting:

- Administrative Rules
- Legislative Concepts
- Budget Issues
- Virtual Painting Issue/Requirement Bigger Bonds

h. Appeal Committee Meeting:

Note: At the April 28, 2009, Appeal Committee meeting Heidi Ofeldt, Virtual Painting LLC, stated that they are being required to obtain a bond five times the amount because they had five or more complaints in a one-year period. "We have found one contractor that is still in business that has had five or more complaints filed against them, three years in a row that has not been held to that same standard and is still operating in business today with only a \$15,000 bond. And we feel that we have been singly targeted in my case and say have been discriminated against by the CCB by allowing us to require the bond and not allowing consistently all contractors to have the same requirements."

Ms. Ofeldt further stated that they missed filing exceptions on the complaint by one day. In that complaint the final order required them to pay back all of the money (\$4,300), therefore causing them to have worked for free. In addition, the CCB is now assessing a civil penalty in the amount of \$1,000 against them for working without a license. Ms. Ofeldt stated that she has a copy of the certified letter that she mailed to Rich Blank in the past and never received a response from CCB.

Staff Action Item 4-09.F.7.h.:

Board members determined that staff will report back at the June 23, 2009, Board meeting on the allegations that Virtual Painting LLC is being discriminated against, and report on the letter Virtual Painting sent to CCB.

G. Adjournment

The Board meeting adjourned at 1:00 p.m. The next Board meeting is scheduled for June 23, 2009.

Sincerely,

Catherine Dixon
Board Secretary

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Attachment A
MINUTES OF THE APRIL 28, 2009
CONSTRUCTION CONTRACTORS BOARD
APPEAL COMMITTEE MEETING

The Construction Contractors Board Appeal Committee met on Tuesday, April 28, 2009, at West Salem Roth's IGA, Oregon Room, 1130 Wallace Rd NW, Salem, Oregon. Appeal Committee Members present included: Chair, Tom Skaar, Chuck Crump, Richard DeWolf, Rob Hernandez, Dennis Schad, Mary Stern, Sandy Trainor, and Rob Yorke. Construction Contractors Board staff present were: Administrator Craig P. Smith, Education Manager Gina Fox, Enforcement Manager Richard Blank, Dispute Resolution Manager Bill Boyd, Licensing/CSU Manager Kristie Patton, Administrative Services Manager Linda Teet, Field Investigations Manager Robert Rambo, Information Technology Manager Shelly Wiles, and Board Secretary Catherine Dixon. Assistant Attorney General Katharine Lozano was also present.

Guests Included: Bonnie Sullivan and Patrick McBeth

The agenda for the April 28, 2009, meeting was approved.

The Committee convened at 1:05 p.m. to decide the following cases for which exceptions have been filed:

1. Enforcement No. 72431, Virtual Painting LLC (respondent). The respondent, Heidi Ofelt and Robert Oflet, appeared before the Board.

MOTION: Chuck Crump moved to affirm the Administrative Law Judge's proposed order and issue a final order in the amount of \$1,000.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, Trainor, and Yorke.

2. Enforcement No. 72386, David L. Ashford dba The Building Mechanics (respondent). The respondent, David L. Ashford, did not appear before the Board.

MOTION: Mary Stern moved to affirm the Administrative Law Judge's proposed order and issue a final order in the amount of \$1,000.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, Trainor, and Yorke.

3. Complaint No. 111078-104, Harry Schneider and Kelly Schneider (complainants) vs. Crown Homes Inc. (respondent). The complainant, Harry Schneider, appeared before the Board. The respondent, Mike Bellamy, and respondent's Attorney, Tim Gerkin, appeared before the Board.

MOTION: Rob Yorke moved to affirm the Administrative Law Judge's proposed order and issue a final order to dismiss the complaint.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, Trainor, and Yorke.

4. Complaint No. 171009-101, Duncan Hettle (complainant) vs. Homemasters Inc. dba Gutter Helmet of Oregon. Attorney Thaddeus Hettle appeared on behalf of the complainant before the Board. The respondent, Richard Lundstrom, appeared before the Board.

MOTION: Tom Skaar moved to remand the matter back to staff to rewrite the findings and conclusion to address the issue of negligence and upon conclusion of the rewrite of the findings and conclusions staff will email and/or mail a copy of the revised document to all parties. A notice of the May 19 telephone meeting will be sent to all parties. The Board will review and consider the amendments and vote on the matter at the May 19, 2009, meeting.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, Trainor, and Yorke.

5. Complaint No. 171360-101, Flynn D Case (complainant) vs. Northwest Paving & Grading Inc. (respondent). The complainant, Flynn D. Case, appeared before the Board. The respondent, Northwest Paving & Grading Inc., Steve Gardner, appeared before the Board.

MOTION: Sandy Trainor moved to remand this matter back to the Office of Administrative Hearings for additional findings that establish whether there was or was not a contract between complainant and respondent.

VOTE: 8-0, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, Trainor, and Yorke.

6. Complaint No. 14794-101, Husain Razzaki (complainant) vs. Winner Electric Construction Inc. (respondent). The complainant, Husain Razzaki, appeared before the Board. The respondent, Winner Electric Construction Inc., Debra and Jack Wall, appeared before the Board.

MOTION: Tom Skaar moved to remand the matter back to the Administrative Law Judge (ALJ); specifically, we want the ALJ to: 1) Look at the issue of whether, in fact, there was a contract between the complainant and the respondent and provide additional analysis on whether or not there was a contract. We find some discomfort in the fact there was not. 2) Further, if there was a contract between the parties, we ask that the ALJ determine what the damages were. And, if the ALJ in doing so needs to open the record again for further hearing, then we direct the ALJ to do so to determine damages.

VOTE: 7-1, Ayes—Crump, DeWolf, Hernandez, Schad, Skaar, Stern, and Yorke; Nays—Trainor.

The meeting adjourned at 3:30 p.m. The next Appeal Committee meeting is scheduled for June 28, 2009.

Respectfully submitted,

Catherine Dixon
Appeal Committee Secretary

Attachment B

RULE NOTICE 1:

812-001-0200

Consumer Notices Adoption

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled "Information Notice to Owner About Construction Liens," as revised December 20, 2007. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under ORS 701.330(1), the board adopts the form "Consumer Protection Notice" as revised [~~December 20, 2007~~] **February 20, 2009**.

(3) In order to comply with the requirement to adopt a "Information Notice to Property Owners About Construction Responsibilities" form under ORS 701.325(3), the board adopts the form "Information Notice to Property Owners About Construction Responsibilities" as revised September 23, 2008.

(4) In order to comply with the requirement to adopt a notice of procedure form under ORS 701.330(2), the board adopts the form "Notice of Procedure" dated December 4, 2007.

(5) The board adopts the form "Notice of Compliance with Homebuyer Protection Act" (HPA) as revised December 16, 2003.

(6) The board adopts the form "Model Features for Accessible Homes" dated December 4, 2007.

Stat. Auth.: ORS 87.093, 670.310, 701.235, 701.325, 701.330 & 701.530

Stats. Implemented: ORS 87.093, 701.235, 701.325, 701.330 & 701.530

(4/81, 11/81, 1/82, 3/82, 6/82, 1/83, 1/83, 3/83, 3/83, 10/83, 2/87, 7/87, 1/89, 11/89, 5/92, 7/92, 8/92, 3/99, 9/99, temp. 5/00, 8/00, 6/02, 12/02, temp. 3/03, 6/03, 12/03, temp. 12/03, temp. 12/03, 2/04, 5/04, temp. 6/04, 8/04, 12/05, temp. 1/06, 3/06, 6/07, 12/07, temp. 1/08, 4/08, 9/08, temp. 2/09, 5/09)

(Amended and renumbered from 812-001-0020, 12/05)

812-002-0420

Lapse in License

"Lapse in license" as used in [~~ORS 701.131(2)(b),~~] ORS 701.063(4), [~~OAR 812-006-0020(1)(b), OAR 812-006-0020(2)(b), and OAR 812-020-0085~~] **ORS 701.131(2)(b), ORS 701.225(6)(b) and OAR chapter 812** commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed, reissued or reinstated by the agency.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.063, 701.131 & 701.225

(4/98, 6/00, 6/03, temp. 7/03, 12/03, 12/05, 12/07, 6/08, 11/08, 5/09)

812-003-0120

License Required to Advertise

(1) No person shall advertise or otherwise hold out to the public that person's services as a contractor unless that person holds a current, valid license, nor shall any person claim by advertising or by any other means to be licensed, bonded, or insured unless that person holds a current, valid license.

(2) License number in advertising and contracts:

(a) All newsprint classified advertising and newsprint display advertising for work subject to ORS chapter 701 prepared by a contractor or at the contractor's request or direction, shall show the contractor's license number.

(b) All written bids, written inspection reports and building contracts subject to ORS chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) Except as set forth in subsection (2)(e) of this rule all business cards, business letterhead, business signs at construction sites, all advertising, shall show the contractor's license number. [~~This rule is effective upon filing for all contractors filing for new license, and is effective for all existing contractors when they purchase new business cards, business letterhead, and business signs for construction sites, or January 1, 1998, whichever date occurs sooner.~~]

(e) Subsection (2)(d) of this rule does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

(f) All advertisements by audio-only media, such as radio commercials, must contain an audible statement of the contractor's license number.

(g) All advertisements by video media or video and audio combined media, such as television commercials, must show visually the contractor's license number.

(h) All advertising by internet media, including but not limited to, website advertising must show visually the contractor's license number.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010 & 701.026

(12/04, 6/08, 5/09)

812-003-0330

Inactive Status Generally

(1) A licensee may not convert a license to an inactive status if the licensee is engaged in work as a contractor.

(2) A licensee may not offer to undertake work, advertise work as a contractor, submit a bid for construction work, obtain a building permit or perform construction work while in an inactive status.

(3) A licensee shall notify the agency of any change of address while in an inactive status. During the period when the status of a license is inactive, the agency shall send notices and any other communications to the licensee at the last known address of record of the licensee.

(4) To convert to an inactive status **a license must have:**

(a) ~~[A licensee must have a current]~~ **A current** active license ~~[or a license that lapsed no more than two years prior to the application for inactive status];~~

(b) A current suspended license; or

(c) A license that has expired no more than one year.

~~[(b)]~~ **(5)** If the licensee was subject to discipline by the agency, the licensee must satisfy any conditions imposed by the agency as a result of the discipline **in order to be eligible for the inactive status.**~~;~~

~~[(e)]~~ **(6)** The licensee must submit a request to convert to inactive status on forms provided by the agency; and

~~[(d)]~~ **(7)** The licensee must comply with OAR 812-003-0340, 812-003-0350, and 812-003-0360.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.056 & 701.063

(12/04, 6/08, 5/09)

812-006-0300

Testing Requirements

(1) The test required in ORS 701.122 shall cover the subjects listed in OAR 812-006-0250.

(2) A person seeking to take the test shall:

(a) Pay any fees required by the test administrator;

(b) Provide approved government-issued picture identification to the test administrator;

(c) Pay for the authorized ~~[interpreter]~~ **translator** needed to take the test; and

(d) Complete the test within a time limit approved by the agency.

(3) A person taking the test shall be allowed to use an Oregon Contractor's Reference Manual and one language translation book during the test.

(4) A person taking the test shall not:

(a) Retake the same version of the test on consecutive attempts.

(b) Be accompanied by anyone while taking the test, except ~~[a state-certified interpreter]~~ **an authorized translator.**

(5) After the test is completed, a person shall not review the test questions or answers.

(6) There are no reciprocal agreements with other states or organizations that test contractors.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.122

(5/00, 12/01, 3/03, 8/03, 12/05, 9/06, 3/07, 6/08, 5/09)

(Amended and renumbered from 812-006-0012, 9/06)

812-006-0400

Training and Testing Period

(1) ~~[For training and testing completed on or after October 1, 2006,]~~ **The** training and testing required under ORS 701.122 (1) and (3) shall be valid for 24 months from the date the training was completed. Training and testing that is past the 24-month period from the date of the completed training will not be considered for the purposes of fulfilling the requirements set forth in ORS 701.091.

(2) ~~[In lieu of complying with section (1) of this rule,]~~ **An** RMI may satisfy the requirements of ORS 701.091 provided that the RMI:

(a) Has completed the training and passed the test;

(b) Has been the RMI of a licensee within two years of the date of application by the new applicant; and

(c) The license of the licensee that was previously owned by or that previously employed the RMI has not lapsed or, if lapsed, has lapsed for not more than 24 months.

(3) Sections (1) and (2) of this rule do not apply to an RMI that meets the experience requirements under 812-006-0450.
Stat. Auth.: ORS 670.310, 701.122 & 701.235
Stats. Implemented: ORS 701.122
(9/06, temp. 11/06, 3/07, 6/08, 5/09)

RULE NOTICE 2:

812-001-0220

Unpaid Court Judgment Form Adoption

The Construction Contractors Board adopts the form “Unpaid Court Judgment Filing With the CCB (ORS 701.109)”.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.109

(5/09)

812-003-0200

Insurance Generally

- (1) An applicant for a license, renewal or reissue shall certify that the applicant:
 - (a) Has procured insurance from an insurer transacting insurance in Oregon; and
 - (b) Will continue to meet those insurance requirements for as long as the applicant is licensed.
- (2) Licensees shall provide a certificate of insurance or other evidence of insurance as required by the agency upon request or prior to the expiration date of their insurance.
 - (3) A certificate of insurance must include:
 - (a) The name of the insurer;
 - (b) Policy or binder number;
 - (c) Effective dates of coverage;
 - (d) Coverage in at least the amount required in OAR 812-003-0221;
 - (e) A statement that products and completed operations coverage is included as required by ORS 701.073(1).
 - (f) The agent's name, and agent's telephone number; and
 - (g) The CCB listed as the certificate holder.

~~[(4) If the licensee, in performance of work subject to ORS chapter 701, through failure to comply with this rule, causes damage to another entity or to the property of another person for which that entity could have been compensated by an insurer had the required insurance been in effect, the agency may assess a civil penalty against the licensee in an amount up to \$1,000 in addition to such other action as may be taken under ORS 701.098.]~~

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.073 & 701.098

(12/04, 5/06, 9/06, 12/07, 2/08, 5/09)

812-003-0320

Record Changes

(1) Except as provided in section ~~[(3)]~~ **(4)** of this rule, requests for record changes that require a new license card shall be accompanied by a \$20 fee.

(2) Every licensed entity that changes its name, including any assumed business name under which it may operate, must notify the agency within 30 days of assuming, filing or registering the new name. This section also applies to sole proprietors that change their surname.

~~[(2)]~~ **(3)** Except as provided in OAR 812-003-0190, requests for business name amendments of a partnership, joint venture, corporation, limited liability company or limited liability partnership shall be accompanied by a rider from the surety and a new Certificate of Insurance to reflect the amended name.

~~[(3)]~~ **(4)** No charge will be made for an address change on the record.

~~[(4)]~~ **(5)** With the exception of record changes due to agency error, a record change request shall be submitted in writing.

Stat. Auth.: ORS 670.310, 701.235 & 701.238

Stats. Implemented: ORS 701.056, 701.068, 701.088 & 701.238

(6/76, 7/76, 11/77, 1/78, 5/78, 5/80, 6/80, 10/80, 11/80, 1/83, 3/83, 10/83, 3/84, 5/84, 1/89, 11/89, 9/99, 6/00, 8/00, 12/04, 6/08, 5/09)

(Amended and renumbered from 812-003-0005, 12/04)

812-005-0280

Fitness Standards

(1) In considering whether to revoke, suspend, or refuse to issue a license pursuant to ORS 701.098(1)(h)(A)-(I), the agency shall consider whether the applicant's or licensee's criminal conduct is substantially related to the fitness and ability of the applicant or licensee to engage in construction contracting.

(a) Fitness to engage in construction contracting includes, but is not limited to the ability to:

(A) Refrain from violent, threatening, intimidating or sexually predatory behavior;

(B) Refrain from dishonest or fraudulent conduct; or

(C) Be financially responsible.

(b) Factors to be considered in denying or refusing to issue or renew a license include, but are not limited to, the date of the offense and the circumstances of the crime. In addition, factors relating to rehabilitation, or lack thereof, as evidenced by intervening events include, but are not limited to: failure to complete the criminal sentence, including probation or parole; failure to complete court ordered treatment; or failure to pay court ordered restitution.

(c) Upon notice and request from the Board, it will be the duty of an applicant or licensee to provide the requested information in order for the Board to conduct a criminal background check as authorized by 701.098(1)(h)(A)-(I). Requested information includes but is not limited to police reports, record of conviction, parole or probation reports, restitution records, counseling reports, and letters of recommendation.

(d) Failure to provide requested information in [(4)] (1)(c) of this section may result in the denial of a license.

(2) The agency may revoke, suspend, or refuse to issue a license if the applicant, licensee, or an owner, officer or responsible managing individual of the applicant or licensee demonstrates a lack of financial responsibility pursuant to ORS 701.098(2) and ORS 701.102(2)(d).

(a) Lack of financial responsibility is evidenced by failure to pay a final order of the board, issued under ORS 701.145 or 701.146, where the final order exceeds the amount of the applicable bond and the final order was issued against:

[(a)] **(i)** The applicant or licensee; or

[(b)] **(ii)** A business in which the owner, officer or responsible managing individual of the applicant or licensee is, or was, an owner, officer or responsible managing individual during the work period in which the business' obligation giving rise to the final order arose or was incurred.

[(c)] **(iii)** As used in [section (2)] **subsection (a)** of this rule, "officer" includes any person listed in ORS 701.005(11) or OAR 812-002-0533.

(b) Lack of financial responsibility is evidenced by failure to pay a civil penalty final order of the Director, Department of Consumer and Business Services, issued under ORS 654.086.

(3) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to [reissue] **issue** a license if a contractor engages in conduct that harms a consumer by:

(a) Arranging for or undertaking work as a contractor that:

(A) Is performed in a manner not in accordance with state building codes or accepted building standards demonstrating negligent or improper work;

(B) The work causes damage to the consumer or to the consumer's property; and

(C) The work is significantly substandard or is part of a pattern of substandard work performed by the contractor.

(4) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0160 and 437-001-0165 for a fifth or subsequent repeat violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

(5) Pursuant to ORS 701.098(2), the agency may revoke, suspend, or refuse to issue a license if the Director, Department of Consumer and Business Services, by final order, sanctions a contractor under OAR 437-001-0175 for a willful or egregious violation of any statute, regulation, rule, standard or order relating to the Oregon Safe Employment Act.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.098 & 701.102

(6/08, 11/08, 5/09)

(Note: Section (1) was formerly 812-003-0450, 11/08)

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.026 and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.026 when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner.

(a) A “complaint for damages” as used in section (4) of this rule includes, but is not limited to:

(A) A Construction Contractors Board Dispute Resolution Services (DRS) complaint; or

(B) A letter to Construction Contractors Board indicating that a citizen has been damaged by the contractor; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency’s request for the list of subcontractors required in ORS 701.345; and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an “Information Notice to Owners about Construction Liens” as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to notify the Construction Contractors Board of a new or additional business name or personal surname (for sole proprietors) under which business as a contractor is conducted, in violation of OAR 812-003-0320: First offense warning, second offense \$50, subsequent offenses \$200.

~~[(11)]~~ **(12)** Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.

~~[(12)]~~ **(13)** Violation of OAR 812-012-0130(1), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

~~[(13)]~~ **(14)** Failure to conform to information provided on the application in violation of ORS 701.046(4), issuance of a \$5,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application and the terms of the application.

(a) If the violator is a limited contractor or residential limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130 or 812-003-0131, the licensee shall be permanently barred from licensure in the limited contractor category or residential limited contractor endorsement.

(b) If the violator is a licensed developer, residential developer or commercial developer working in violation of the conditions established pursuant to ORS 701.005(3), (6) or (13) or 701.042, the licensee shall be permanently barred from licensure in the licensed developer category or residential developer or commercial developer endorsement.

~~[(14)]~~ **(15)** Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

~~[(15)]~~ **(16)** Failure to comply with any part of ORS chapters 316, 656, or 657, 701.035, 701.046 or 701.091, as authorized by ORS 701.106, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

~~[(16)]~~ **(17)** Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

~~[(17)]~~ **(18)** Working without a construction permit in violation of ORS 701.098, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

~~[(18)]~~ **(19)** Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

~~[(19)]~~ **(20)** Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

~~[(20)]~~ **(21)** Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

- (b) Violating the federal Davis-Bacon Act; or
- (c) Failing to pay minimum wages or overtime wages as required under state and federal law; or
- (d) Failing to comply with the payroll certification requirements of ORS 279C.845; or
- (e) Failing to comply with the posting requirements of ORS 279C.840:

\$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

~~[(21)]~~ **(22)** Violation of ORS 701.098(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

~~[(22)]~~ **(23)** When, as set forth in ORS 701.098(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

~~[(23)]~~ **(24)** Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

~~[(24)]~~ **(25)** Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

~~[(25)]~~ **(26)** Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

~~[(26)]~~ **(27)** Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

~~[(27)]~~ **(28)** Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

~~[(28)]~~ **(29)** Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

~~[(29)]~~ **(30)** Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

~~[(30)]~~ **(31)** Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

~~[(31)]~~ **(32)** Violation of ORS 701.315, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

~~[(32)]~~ **(33)** Violation of ORS 701.345, failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

~~[(33)]~~ **(34)** Violation of 701.098(1)(e), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

~~[(34)]~~ **(35)** Failing to provide a written contract with the contractual terms provided by ORS 701.305 or OAR 812-012-0110: \$200 for the first offense; \$500 for the second offense; and \$1,000 for subsequent offenses.

~~[(35)]~~ **(36)** Working while the license is suspended if the licensee was required to provide an increased bond under ORS 701.068(5), 701.068(6), or OAR 812-003-0175: revocation.

~~[(36)]~~ **(37)** Working while the license is suspended for any violation of ORS 701.098(4)(a)(A) or ORS 701.098(4)(a)(B): \$5,000 for first offense, and revocation for second or subsequent offense.

~~[(37)]~~ **(38)** Working while the license is suspended for any reason except as otherwise provided for by this rule: revocation.

~~[(38)]~~ **(39)** Failure to comply with ORS 701.106(1)(a); \$1,000 for the first offense, \$5,000 for the second offense; \$5,000 and permanent revocation of CCB license for the third offense.

(40) Failure to deliver as required by ORS 701.109(2) a copy of a final judgment; \$200 first offense, \$400 second offense; \$600 for the third offense; \$1,000 for each subsequent offense.

(41) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is no claim of loss submitted to the insurance company: first offense, \$500; second offense, \$1,000; third and subsequent offenses, \$5,000.

(42) Failure to maintain insurance as required under ORS 701.073 or to provide proof of insurance as required under OAR 812-003-0200, where there is a claim of loss submitted to the insurance company: first offense, \$2,000; second and subsequent offenses, \$5,000.

Stat. Auth.: ORS 183.310 to 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.026, 701.042, 701.046, **701.073**, 701.091, 701.098, 701.106, **701.109**, 701.227, 701.305, 701.315, 701.330, 701.345 & 701.992

(4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/85, 4/85, 1/87, 3/87, 1/88, 2/88, 6/88, 1/89, 11/89, 2/90, 3/90, 4/90, 5/90, 6/90, 7/90, 10/90, 11/90, 3/91, 9/91, 1/92, 2/92, 4/92, 6/92, 5/93, 12/93, 1/95, 9/95, 10/95, 8/96, 10/98), temp. 11/99, 5/00, 6/00, temp. 11/00, 4/01, 12/01, temp. 3/02, 3/02, 6/02, 9/02, 12/03, 6/04, 12/04, 12/05, 1/06, 6/06, 12/06, 6/07, 2/08, 6/08, 9/08, 11/08, 1/09 (eff. 2/1/09), 5/09)

812-012-0170

Unpaid Court Judgments

(1) A contractor against whom a court enters a judgment or order awarding arbitration must report that judgment or order to the Construction Contractors Board, if:

(a) The judgment or order arises from:

(A) Breach of contract,

(B) Negligent work, or

(C) Improper work.

(b) The judgment or order relates to construction or proposed construction of a residential structure.

(2) The contractor will transmit a copy of the final judgment or order to the Construction Contractors Board within 45 days after the final judgment or order is recorded.

(3) The contractor will transmit the copy of the final judgment or order with a completed "Unpaid Court Judgment Filing" form described in OAR 812-001-0220.

(4) The contractor is not required to send the Board a copy of the judgment or order, if:

(a) The contractor paid the damages and other amounts payable under the judgment or order within 30 days from the date the judgment or order was recorded; or

(b) The contractor appealed the judgment or order and has filed an undertaking on appeal as required by ORS 19.300.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.109

(5/09)