

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on October 27, 2009 by the
(Date prior to or same as filing date.)

<u>Construction Contractors Board</u> (Agency and Division)	<u> </u> OAR 812 (Administrative Rules Chapter Number)
<u>Catherine Dixon</u> (Rules Coordinator)	<u>700 Summer Street NE Suite 300, Salem OR 97310</u> (Address)
	<u>378-4621 ext. 4077</u> (Telephone)

to become effective January 1, 2010 Rulemaking Notice was published in the October 2009 Oregon Bulletin.**
(Date upon filing or later) (Month and Year)

RULE CAPTION

Changes notices, contracts, inspection reports for home inspectors; waiver for armed forces; housekeeping; and exemption promotion gifts
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND:

812-001-0200 812-003-0120 812-003-0140 812-004-0320 812-008-0070 812-008-0110 812-008-0202 812-020-0062

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend & Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 87.093, 293.445, 670.310, 701.124, 701.235, 701.238, 701.325, 701.330, 701.350, 701.530

Stat. Auth.

Other Authority

ORS 87.093, 293.445, 701.010, 701.026, 701.056, 701.063, 701.124, 701.131, 701.133, 701.139, 701.140, 701.143, 701.145, 701.146, 701.235, 701.238, 701.325, 701.330, 701.350, 701.355, 701.530

Stats. Implemented

RULE SUMMARY

- 812-001-0200 is amended to correct grammar and adopts the form "Home Inspection Consumer Notice".
- 812-003-0120 is amended to reorganize and clarify existing language and to exempt promotional gifts from the requirement that such items contain the CCB license number.
- 812-003-0140 is amended to revise the wording for consistency.
- 812-004-0320 is amended to remove the third-party beneficiary provision that a buyer who makes a home purchase conditioned upon an inspection report purchased by the homeowner will no longer be able to file a complaint for damages.
- 812-008-0070 is amended to waive the continuing education requirements, if within the two-year period preceding renewal a home inspector serves on active duty in the United States armed forces, including mobilization or deployment.
- 812-008-0110 is amended to add language to comply with the requirements of ORS 408.450 that excuses certified home inspectors on active duty service from paying license renewal fees.
- 812-008-0202 is amended to require on the first page of the contract and inspection report a disclaimer notifying any person other than the home inspector's client that they should not rely upon the report and to revise the reference to the notice requirement to the new CCB notice "Home Inspection Consumer Notice".

- 812-020-0062 is amended, see ORS 701.124(7)(b), which authorizes CCB to exempt commercial contractors by rule. Exempts continuing education requirement if, within the two-year period preceding renewal, a commercially endorsed contractor serves on active duty in the United States armed forces, including mobilization or deployment.

Authorized Signer

Catherine Dixon

Printed Name

November 30, 2009

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.
ARC 930-2005

NOTE: In order to save postage and printing costs in these difficult times, CCB is only providing a copy of the notice. To view the language of each individual rule change, please go to our web site at http://www.oregon.gov/CCB/Laws_Rules.shtml#Administrative_Rule_Notices. If you don't have web access, contact Cathy Dixon at (503) 378-4621 ext. 4077 for assistance in receiving a copy.

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 February 20, 2009.

(3) In order to comply with the requirement to adopt [a] an "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.

(7) The board adopts the form "Home Inspection Consumer Notice" dated October 27, 2009.

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, 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, 11/09 (eff. 1/1/10))

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

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

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

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

[~~(d)~~] **(g)** [~~Except as set forth in subsection (2)(e) of this rule all~~] **All** business cards, business letterhead, business signs at construction sites[;] **and** all **other written or visual** advertising[;] shall show the contractor's license number.

[~~(e)~~] **(h)** [~~Subsection (2)(d) of this rule~~] **This section** 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.

(i) This section does not apply to promotional gifts, including, but not limited to, pencils, pens, cups and items of clothing.

~~(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, 11/09 (eff. 1/1/10))

812-003-0140

License Application Fees

(1) The application fee for all new, renewal, or reissued licenses is \$260.

(2) Except as provided in section (3) of this rule, application fees will not be refunded or transferred.

(3) If a licensee submits an application to renew a license and the agency cannot renew the license because the applicant has formed a new business entity, the agency may refund the renewal application fee, less a \$40 processing fee.

~~(4)(a) Any licensee in the [military or naval service of the United States, or any of its auxiliary corps,]~~
United States armed forces need not pay a license renewal fee if such fee would be due during the licensee's active duty service.

~~(b) A licensee in the [military or naval service of the United States, or any of its auxiliary corps,]~~
United States armed forces shall pay the next license renewal fee that will become due after the licensee is discharged from active duty service.

(c) The agency may request that the licensee provide documentation of active duty status and of discharge.

(d) Section (4) of this rule applies to licensees that are sole proprietors or partners in a general partnership.

Stat. Auth.: ORS 670.310, 701.238 & 701.235

Stats. Implemented: ORS 701.056, 701.063, & 701.238

(12/04, 8/05, 12/06, 2/08, 1/09 (eff. 2/1/09), 9/09, 11/09 (eff. 1/1/10))

812-004-0320

Jurisdictional Requirements

(1) A complaint must be of a type described under ORS 701.140.

(2) A complaint must be filed with the agency within the time allowed under ORS 701.143.

(3) A complaint will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section must be determined as follows:

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. Damages will be awarded only for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which the respondent was licensed.

(4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.026 in order to perform the work; and

(B) The complainant files a complaint arising out of a contract to construct the work at issue and the complaint is for unpaid labor or materials furnished under the contract.

- (b) As used in section (4) of this rule, “properly licensed” means the complainant:
- (A) Had a current valid license issued by the agency and was not on inactive status;
 - (B) Was licensed for the type of work at issue in the complaint;
 - (C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to the complainant’s license status as an “exempt” or “nonexempt” contractor; and
 - (D) Complied with any other requirements and restrictions on the complainant’s license.
- (5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:
- (a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;
 - (b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;
 - (c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or
 - (d) A real estate purchase conditioned upon ~~[an inspection report or]~~ repairs made by the respondent.
- (6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.
- (7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be dismissed under this section (7) if the previously filed complaint was:
- (a) Withdrawn before the on-site meeting;
 - (b) Closed without a determination on the merits before the on-site meeting;
 - (c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110.
 - (d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or
 - (e) Closed or withdrawn because the respondent filed bankruptcy.
- (8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.
- (9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.
- (10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount, not including the processing fee required by 812-004-0110.
- (11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146

(10/98, 6/00, 12/01, 5/02, 3/03, 8/03, 12/03, 10/04, 12/04, 12/05, 12/06, 6/08, 11/09 (eff. 1/1/10))

812-008-0070

Requirements for Renewal of Certification

- (1) An Oregon certified home inspector shall submit the following to the agency for renewal of certification:
- (a) A properly completed renewal application on an agency form; and
 - (b) The renewal fee as required under OAR 812-008-0110; and

(c) Copies of completion certificates listing no less than 30 continuing education units (CEUs) completed by the Oregon certified home inspector during the two years immediately preceding the expiration date of the certification for which renewal is sought.

(2) If, during the two years immediately preceding the expiration date of the certification, an Oregon certified home inspector served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

(6/99, 9/01, 3/03, 12/04, 1/06, 12/07, 11/09 (eff. 1/1/10))

812-008-0110

Prescribed Fees

The following prescribed fees are established:

- (1) Application to become certified, \$50.
- (2) Test, first attempt, \$50.
- (3) Test, each sitting to retake one or more sections, \$25.
- (4) Initial two-year Certification, \$150.
- (5) Certification renewal (two years), \$150.
- (6) Refunds:

(a) The agency shall not refund fees or civil penalties overpaid by an amount of \$20 or less unless requested by the payer in writing within three years after the date payment is received by the agency, as provided by ORS 293.445.

(b) Except as set forth in subsection (6)(c) of this rule, all fees are non-refundable and nontransferable.

(c) When an applicant withdraws their application for a certification or a certification renewal prior to issuance of a certification or certification renewal, or fails to complete the certification process, the agency may refund the certification fee but shall retain a processing fee of \$40.

(d) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

(7)(a) Any certified home inspector in the United States armed forces need not pay a renewal fee if such fee would be due during the certified home inspector's active duty service.

(b) A certified home inspector in the United States armed forces shall pay the next license renewal fee that will become due after the certified home inspector is discharged from active duty service.

(c) The agency may request that the certified home inspector provide documentation of active duty status and of discharge.

Stat. Auth.: ORS 293.445, 670.310, 701.235 & 701.350

Stats. Implemented: ORS 293.445, 701.350 & 701.355

(2/98, 6/99, 9/01, temp. 1/03, 6/03, 12/04, 12/05, 12/07, 11/09 (eff. 1/1/10))

812-008-0202

Contracts and Reports

(1) Home inspections undertaken according to Division 8 shall be based solely on the property conditions, as observed at the time of the home inspection.

(2) Oregon certified home inspectors shall:

(a) Provide a written inspection contract, signed by both the Oregon certified home inspector and client, prior to completing a home inspection that shall:

(A) State that the home inspection is in accordance with standards and practices set forth in Division 8 of OAR chapter 812;

(B) Describe the services provided and their cost;

(C) State where the planned inspection differs from the standard home inspection categories as set forth in OAR 812-008-0205 through 812-008-0214; and

(D) Conspicuously state whether the home inspection includes a wood destroying organism inspection and if such inspection is available for a fee.

(E) For the purpose of this rule, a home inspection shall be deemed completed when the initial written inspection report is delivered.

(b) Observe readily visible and accessible installed systems and components listed as part of a home inspection as defined by these rules unless excluded pursuant to these rules in OAR 812-008-0200 through 812-008-0214; and

(c) Submit a written report to the client that shall:

(A) Describe those systems and components as set forth in OAR 812-008-0205 through 812-008-0214;

(B) Record in the report each item listed in OAR 812-008-0205 through 812-008-0214 and indicate whether or not the property inspected was satisfactory with regard to each item of inspection; it will not be sufficient to satisfy subsection (2)(c) of this rule that the certified home inspector prepare a report listing only deficiencies;

(C) State whether any inspected systems or components do not function as intended, allowing for normal wear and tear; and how, if at all, the habitability of the dwelling is affected[-];

(D) State the inspector's recommendation to monitor, evaluate, repair, replace or other appropriate action[-];

(E) State the Construction Contractors Board license number of the business and the name, certification number and signature of the person undertaking the inspection[-]; **and**

(F) Include on the first page of the contract and on the first page of the report, in bold-faced, capitalized type and in at least 12 point font, the following statement: "THIS REPORT IS INTENDED ONLY FOR THE USE OF THE PERSON PURCHASING THE HOME INSPECTION SERVICES. NO OTHER PERSON, INCLUDING A PURCHASER OF THE INSPECTED PROPERTY WHO DID NOT PURCHASE THE HOME INSPECTION SERVICES, MAY RELY UPON ANY REPRESENTATION MADE IN THE REPORT."

(d) Submit to each customer at the time the contract is signed a copy of [~~Summary of Oregon Home Inspector Certification Law (ORS 701) or Summary of Oregon Home Inspector Certification Law (ORS 701) and Standards of Practice for Home Inspectors~~] **"Home Inspection Consumer Notice."**

(3) Division 8 does not limit Oregon certified home inspectors from reporting observations and conditions or rendering opinions of items in addition to those required in Division 8.

(4) All written reports, bids, contracts, and an individual's business cards shall include the Oregon certified home inspector's certification number.

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

(2/98, 10/98, 2/00, 6/00, 8/00, 9/01, 6/02, 8/05, 3/06, 11/09 (eff. 1/1/10))

(Amended and renumbered from 812-008-0080(1), 8/05)

812-020-0062

Exemptions – Continuing Education for Commercial Contractors

(1) Commercial contractors subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693 do not need to satisfy the continuing education requirements. These contractors include, but are not limited to:

(a) Electrical contractors subject to regulation under ORS 479.510 to 479.945.

(b) Plumbing contractors subject to regulation under ORS chapter 693; or

(c) Boiler contractor subject to regulation under ORS 480.510 to 480.670.

(d) Elevator contractors subject to regulation under ORS 479.510 to 479.945.

(e) Renewable energy contractors subject to regulation under ORS 479.510 to 479.945.

(f) Pump installation contractors subject to regulation under ORS 479.510 to 479.945.

(g) Limited sign contractors subject to regulation under ORS 479.510 to 479.945.

(2) Commercial contractors endorsed only as commercial developers do not need to satisfy the continuing education requirements.

(3) If, during the two years immediately preceding the expiration date of the license, a commercial contractor served on active duty in the United States armed forces, including but not limited to mobilization or deployment, the continuing education requirement is waived for that two-year period. This exemption applies only if the commercial contractor is a:

(a) Sole proprietor;

(b) Sole owner of a corporation; or

(c) Sole member of a limited liability company.

Stat. Auth.: ORS 670.310, 701.124 & 701.235

Stats. Implemented: 701.124

(11/08, 11/09 (eff. 1/1/10))