

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 June 11, 2008 by the  
(Date prior to or same as filing date.)

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

to become effective July 1, 2008. Rulemaking Notice was published in the May 2008 Oregon Bulletin.\*\*  
(Date upon filing or later) (Month and Year)

**RULE CAPTION**

Chapter 812 cite reference amendments to match 2007 statutes

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:**

812-001-0100	812-002-0440	812-003-0120	812-003-0410	812-004-0550	812-006-0350	812-010-0080
812-001-0140	812-002-0443	812-003-0160	812-003-0430	812-004-0560	812-006-0400	812-010-0090
812-001-0500	812-002-0460	812-003-0180	812-004-0110	812-004-0590	812-009-0020	812-010-0100
812-002-0011	812-002-0530	812-003-0190	812-004-0120	812-005-0100	812-009-0050	812-010-0120
812-002-0040	812-002-0533	812-003-0210	812-004-0210	812-005-0140	812-009-0070	812-010-0160
813-002-0140	812-002-0537	812-003-0240	812-004-0240	812-005-0160	812-009-0090	812-010-0400
812-002-0143	812-002-0630	812-003-0250	812-004-0250	812-005-0170	812-009-0140	812-010-0420
812-002-0160	812-002-0635	812-003-0310	812-004-0300	812-005-0200	812-009-0160	812-010-0425
812-002-0180	812-002-0640	812-003-0320	812-004-0340	812-005-0210	812-009-0200	812-010-0470
812-002-0190	812-002-0670	812-003-0330	812-004-0400	812-005-0250	812-009-0220	812-012-0110
812-002-0200	812-002-0673	812-003-0350	812-004-0440	812-006-0100	812-009-0320	
812-002-0260	812-002-0675	812-003-0370	812-004-0470	812-006-0150	812-009-0340	
812-002-0280	812-002-0760	812-003-0380	812-004-0520	812-006-0200	812-009-0430	
812-002-0345	812-002-0780	812-003-0390	812-004-0535	812-006-0250	812-010-0020	
812-002-0420	812-003-0110	812-003-0400	812-004-0540	812-006-0300	812-010-0060	

**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 25.990, 36.224, 183.310 to 183.500, 183.310 to 183.545, 183.310, 183.415, 670.310, 670.605, 701.085 (2005), 701.068, 701.088, 701.122, 701.133, 701.145, 701.148, 701.235, 701.238, 701.280, 701.305, 701.315, 701.330, 701.335, 701.992 & 1999 Or. Laws, ch. 849, sect. 8

Stat. Auth.

Other Authority

ORS 25.270, 25.785, 25.990, 36.224, 36.228, 36.230, 36.232, 36.600 to 36.740, 36.690, 36.700, 36.705, 36.710, 87.058, 87.093, ch. 183, 183.310, 183.335, 183.341, 183.413, 183.415, 183.417, 183.425, 183.440, 183.445, 183.450, 183.452, 183.457, 183.460, 183.464, 183.470, 183.482, 183.645, 448.115, 448.279, 634.116, 656.027, 670.310, 671.510-671.710, 670.600, 670.605, ch. 701, 701.005, 701.010, 701.021, 701.026, 701.035, 701.046, 701.056, 701.063, 701.068, 701.073, 701.085 (2005), 701.068, 701.073, 701.088, 701.091, 701.094, 701.098, 701.100, 701.102, 701.105, 701.117, 701.122, 701.131, 701.131 to 701.180, 701.133, 701.139, 701.140, 701.143, 701.145, 701.146, 701.148, 701.149, 701.150, 701.153, 701.180, 701.225, 701.227, 701.235, 701.238, 701.260, 701.305, 701.315, 701.320, 701.325, 701.330 & 701.335

Stats. Implemented

### RULE SUMMARY

The rules are amended to correct cite references due to the renumbering of ORS chapters 183, 192 and 701 by the 2007 legislation.

\_\_\_\_\_  
Authorized Signer

Catherine Dixon  
Printed Name

June 11, 2008  
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 1<sup>st</sup> 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 15<sup>th</sup> 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](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.

## **812-001-0100**

### **Notice of Proposed Rule**

Except as provided in OAR 812-001-0110, before adopting, amending, or repealing any permanent rule, the Construction Contractors Board shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule.

(2) By mailing or emailing a copy of the notice to persons on the Construction Contractors Board's mailing list established pursuant to ORS [~~183.335(7)~~] **183.335(8)** at least 28 days before the effective date of rule.

(3) By mailing or emailing a copy of the notice at least 28 days before the effective date of the rule to the:

- (a) Associated Press;
- (b) Oregon Labor Press;
- (c) Capitol Press Room, State Capitol;
- (d) Oregon Consumer League; and
- (e) Oregon Department of Health.

(4) By mailing or emailing a copy of the notice to legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.335, 183.341, 670.310 & 701.235

(12/75, 1/78, 5/78, 6/80, 11/80, 1/82, 3/82, 4/82, 3/87, 12/87, 1/88, 1/89, 11/89, 2/92, 4/92, 1/95, 11/97, 4/98, 10/98, 12/01, 2/04, 12/05, 6/08)

(Amended and renumbered from 812-001-0000, 12/05)

## **812-001-0140**

### **Response Time to Notices**

(1) Time for response to a notice delivered pursuant to ORS [~~701.080~~] **701.117** shall run from the date of mailing.

(2) OAR 137-003-0520(10) shall apply to the computation of time to respond to a notice under this rule, whether the notice is related to a contested case, arbitration or any other matter.

Stat. Auth.: ORS 183.415, 670.310 & 701.235

Stats. Implemented: ORS 183.415 & [~~701.080~~] **701.117**

(6/76, 7/76, 1/78, 5/78, 6/80, 11/80, 1/83, 3/83, 3/84, 5/84, 3/87, 12/87, 1/88, 1/89, 11/89, 1/91, 2/91, 2/92, 4/92, 10/98, 5/02, 10/04, 12/05, 6/08)

(Amended and renumbered from 812-001-0010, 12/05)

## **812-001-0500**

### **Confidentiality and Inadmissibility of Mediation Communications**

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to [~~192.690~~] **192.710**. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)-(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or

(f) Mediation by an authorized representative acting on behalf of the Construction Contractors Board in which the parties to the mediation are parties to a complaint or arbitration filed under ORS ~~[701.139]~~ **701.131** to 701.145, unless the mediator and the parties elect by written agreement consistent with the form set out in section (8) of this rule to participate in a confidential mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)-(d), (j)-(l) or (o)-(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)-(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

### **Agreement to Participate in a Confidential Mediation**

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 812-001-0500(7) and this agreement. This agreement relates to the following mediation:

a) \_\_\_\_\_  
(Identify the mediation to which this agreement applies)

b) To the extent authorized by OAR 812-001-0500(7), mediation communications in this mediation are: (check one or more)

Confidential and may not be disclosed to any other person.

Not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding.

Not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding.

c) \_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Signature of Agency's authorized representative Date  
(when agency is a party) or Agency employee acting  
as the mediator (when Agency is mediating the dispute)

d) \_\_\_\_\_  
Name of party to the mediation

\_\_\_\_\_  
Signature of party's authorized representative Date

e) \_\_\_\_\_  
Name of party to the mediation

\_\_\_\_\_  
Signature of party's authorized representative Date

(9) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under section (9) of this rule is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediation or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent that the agency administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS [~~30.402~~] **17.095** or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224, 670.310 & 701.235

States. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

(3/99, 5/02, 12/04, 12/05, 12/06, 6/08)

(Amended and renumbered from 812-001-0040, 12/05)

### **812-002-0011**

#### **Administrative Law Judge**

“Administrative law judge” means a person authorized to conduct hearings for the Office of Administrative Hearings.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & [~~701.147~~] **701.146**

(8/03, 6/08)

### **812-002-0040**

#### **Appurtenance**

“Appurtenance” means any accessory improvement to real estate associated with a structure.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 656.027, 701.005, [~~701.055~~], 701.139, 701.145, 701.146 & **701.325**

(4/98, 12/05, 6/08)

### **812-002-0140**

#### **Complaint**

“Complaint,” as used in ORS chapter 812, means a complaint filed and processed under ORS [~~701.139~~] **701.131**-701.180. Complaints are classified by type as follows:

(1) “Construction lien complaint” is a complaint filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien.

(2) “Employee complaint” is a complaint for unpaid wages or benefits filed by an employee of a licensee or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a licensee for work done by the employee relating to the licensee’s operation as a contractor under ORS chapter 701.

(3) “Employee trust complaint” is a complaint for unpaid payments for employee benefits filed by a trustee with authority to manage and control a fund that receives the employee benefit payments.

(4) “Material complaint” is a complaint filed by a supplier who has not been paid for materials sold to a licensee to be used and installed in a specific structure located within the boundaries of the State of Oregon, or for the rental of equipment to a licensee to be used in the performance of the work of a contractor in connection with such a structure.

(5) “Owner complaint” is a complaint filed by an owner for breach of contract, or for negligent or improper work subject to ORS chapter 701, or a construction lien complaint.

(6) “Primary contractor complaint” is a complaint by a primary contractor against a licensed subcontractor.

(7) “Subcontractor complaint” is a complaint filed by a subcontractor arising out of a contract between the subcontractor and a primary contractor for unpaid labor or materials furnished under the contract.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.058, 87.093 & ch. 701  
(4/98, 6/00, 5/02, 10/04, 12/06, 12/07, 6/08)

#### **812-002-0143**

##### **Complainant**

“Complainant” means a person who files a complaint against a contractor under ORS [~~701.139~~]  
**701.131** to 701.180.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.139~~] **701.131** to 701.180  
(12/06, 12/07, 6/08)

#### **812-002-0160**

##### **Construction Management**

“Construction management” is the coordinating of a construction project, including, but not limited to, selecting contractors to perform work on the project, obtaining permits, scheduling specialty contractors’ work, and purchasing materials. “Construction management” does not include consulting work performed by a registered engineer or a licensed architect when operating as provided by ORS 701.010(7).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, [~~701.055 & 701.130~~] **701.026 & 701.238**  
(4/98, 12/05, 6/08)

#### **812-002-0180**

##### **Contractor Became Aware of the Requirement**

“Contractor became aware of the requirement” (to license) as used in ORS [~~701.065~~] **701.131** includes but is not limited to the date a letter or a proposed order is mailed to the address of record from the agency indicating that the contractor was performing the work of a contractor and must be licensed with the Construction Contractors Board.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.065~~] **701.131**  
(4/98, 6/00, 6/08)

#### **812-002-0190**

##### **Court, Arbitrator or Other Entity**

“Court, arbitrator or other entity” means a court of competent jurisdiction or an arbitrator or other entity authorized by law or the parties to a dispute to effect a resolution to the dispute.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460 & [~~701.139~~] **701.131**-701.180  
(10/98, 10/04, 12/05, 6/08)

#### **812-002-0200**

##### **Date the Contractor Becomes Aware of a Lapse in License**

“Date the contractor becomes aware of a lapse in license” includes but is not limited to the date a notice is mailed to the address of record from the Construction Contractors Board that his/her license has been suspended, terminated or lapsed for any reason.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.065 & 701.115~~] **701.063 & 701.131**  
(4/98, 6/00, 12/03, 6/08)

## **812-002-0260**

### **Dishonest or Fraudulent Conduct**

"Dishonest or fraudulent conduct", as used in ORS [~~701.135(1)(k) and (2)(a)(D)~~] **701.098(1)(k) and (4)(a)(D)** includes, but is not limited to, the following:

(1) Acting in a manner that, because of a wrongful or fraudulent act by the applicant or licensee, has resulted in injury or damage to another person; or

(2) Failing to pay monies when due for materials or services rendered in connection with the applicant's or licensee's operations as a contractor when the applicant or licensee has received sufficient funds as payment for the particular construction work project or operation for which the services or materials were rendered or purchased; or

(3) Accepting payment in advance on a contract or agreement and failing to perform the work or provide services required by the contract or agreement in a diligent manner and failing to return payment for unperformed work, upon reasonable and proper demand, within ten days of demand; or

(4) Displaying to the public false, misleading, or deceptive advertising whereby a reasonable person could be misled or injured; or

(5) Submitting a license application that includes false or misleading information; or

(6) Submitting a false gross business volume certification in order to qualify for a reduced bond amount as set forth in OAR 812-003-0280; or

(7) Failing to pay minimum wages or overtime wages as required under state or federal law; or

(8) Failing to comply with the state Prevailing Wage Rate Law, ORS 279C.800 to 279C.870; or

(9) Failing to comply with the federal Davis-Bacon and related acts when the terms of the contract require such compliance.

(10) Failing to pay wages as determined by the Bureau of Labor & Industries, Wage and Hour Division.

(11) Failing to timely pay a civil penalty or fine imposed by a unit of local, state, or federal government.

(12) Presenting for payment to the Board a check that subsequently is returned to the agency due to non-sufficient funds or closure of the account.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.135~~] **701.098**

(4/98, 6/00, temp. 9/00, 12/00, 12/01, 5/02, 6/03, 12/04, 12/05, 5/06, 6/08)

## **812-002-0280**

### **For Compensation or With the Intent to Sell**

"For compensation or with the intent to sell" as used in ORS 701.005 is not intended to include real estate licensees engaged in professional real estate activities as defined in ORS 696.010(13).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, 701.010, [~~701.055 & 701.065~~] **701.026 & 701.131**

(4/98, 6/03, 6/08)

## **812-002-0345**

### **Hours of Training**

"Hours of Training" as used in OAR 812-006-0200 to 812-006-0250 of these rules refers to clock hours, not credit hours. "Hours of training" does not include time spent for registration or breaks.

Stat. Auth.: ORS 670.310, [~~701.072~~] **701.122** & 701.235

Stats. Implemented: ORS [~~701.072 & 701.078~~] **701.091 & 701.122**

(9/06, 6/08)

## **812-002-0420**

### **Lapse in License**

“Lapse in license” as used in ORS [~~701.065(2)(b)(A)~~] **701.131(2)(b)**, ORS [~~701.115~~] **701.063(4)**; OAR 812-006-0020(1)(b), and OAR 812-006-0020(2)(b) 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 [~~701.065, 701.115~~] **701.063, 701.131** & 701.225  
(4/98, 6/00, 6/03, temp. 7/03, 12/03, 12/05, 12/07, 6/08)

## **812-002-0440**

### **Last-Known Address of Record**

(1) “Last-known address of record” for a contractor, as used in ORS [~~701.080~~] **701.117**, or for a complainant means the most recent of:

(a) The mailing address provided by the contractor or complainant in writing to the agency, designated by the contractor or complainant as the contractor’s or complainant’s mailing address; or

(b) The forwarding address for the contractor or complainant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

(2) A forwarding address is not effective as a “last known address of record” until the address is entered into agency records or seven calendar days after the agency receives notice of the forwarding address, whichever occurs first.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.080~~] **701.117**  
(4/98, 3/99, 12/03, 12/06, 6/08)

## **812-002-0443**

### **Legal Capacity to Enter into Contracts**

“Legal capacity to enter into contracts” as used in ORS [~~701.075~~] **701.046(2)(b)**, means the attaining of the age of 18 for any sole proprietor, partner of any general partnership, limited liability partnership, limited partnership or joint venture, corporate officer, member, or any other persons similarly situated who holds or could hold the authority to enter into a contract on behalf of the licensed entity.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.075~~] **701.046**  
(12/01, 12/05, 6/08)

## **812-002-0460**

### **Monetary Damages**

“Monetary damages” may include, but is not limited to:

(1) The dollar amount required in excess of the contract amount to provide the complainant what was agreed to be provided under the terms of the contract minus any amount due and unpaid the licensee; or

(2) The dollar amount paid to the licensee less the reasonable value of any work properly performed by the licensee, plus the cost to demolish work that has no value, and to restore the property to the condition it was in before work began.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.085~~] **701.068** & 701.140  
(4/98, 6/00, 6/08)

## **812-002-0530**

### **Office of Administrative Hearings**

“Office of Administrative Hearings” means the Office of Administrative Hearings established under ORS 183.605.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 701.145 & ~~[701.147]~~ **701.146**  
(8/03, 5/04, 10/04, 6/08)

### **812-002-0533**

#### **Officer**

(1) “Officer”, as used in ORS chapter 701 and these rules means:

- (a) A person described as an “officer” in ORS 701.005;
- (b) A partner in a partnership, or limited liability partnership;
- (c) A responsible managing individual described in ORS ~~[701.078]~~ **701.091**; or

(d) A person who has a financial interest in a business and manages or shares in the management of the business; or

(2) “Officer”, as used in ORS chapter 701 and these rules, includes an individual who has a financial interest in another business and who is an officer of that other business if that other business owns more than fifty percent of the particular business.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS ~~[701.078]~~ **701.091**

(12/05, 5/06, 6/08)

### **812-002-0537**

#### **Owner**

“Owner”, as used in ORS ~~[701.078]~~ **701.005, 701.046, 701.094, 701.098**, 701.102, **701.227** and OAR 812-005-0210, means:

(1) A person described as an “owner” in ORS ~~[701.077]~~ **701.094**;

(2) A general partner in a limited partnership;

(3) A majority stockholder in a corporation;

(4) A manager in a manager-managed limited liability company;

(5) A member in a member-managed limited liability company; or

(6) A person who has a financial interest in a business and manages or shares in the management of the business.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS ~~[701.077 & 701.078]~~ **701.005, 701.010, 701.046, 701.094, 701.098 & 701.227**

(12/05, 6/06, 12/06, 6/08)

### **812-002-0630**

#### **Reinstate**

A license is reinstated when licensure is approved by the Board after a lapse that occurred because the license was suspended. A reinstated license is effective from the date that the suspension ends.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS ~~[701.085]~~ **701.063, 701.068 & 701.098(4)**

(12/07, 6/08)

### **812-002-0635**

#### **Reissue**

A license is reissued when licensure is approved by the Board after a lapse that occurred because the licensee failed to renew the license and failed to provide proof of bonding, letter of credit, or cash deposit coverage and insurance coverage during the lapse. A reissued license is effective from the date that the lapse ends.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS ~~[701.085]~~ **701.063 & 701.068**

(12/07, 6/08)

#### **812-002-0640**

##### **Renewal**

“Renewal” (of license) as used in ORS [~~701.065, 701.085 and 701.115~~] **701.063, 701.068, and 701.131** includes but is not limited to the act of submitting a replacement bond, a bond rider, or letter of credit or cash deposit, a certificate of insurance, a fee, the renewal form, any employer account numbers, and any prerequisite education. A renewed license is effective from the last date on which the contractor was licensed, either because the renewal application was submitted and approved prior to the expiration date or because the Board, in accordance with ORS [~~701.115~~] **701.063** and OAR 812-003-0290(3)(b), designated the last date on which the contractor was licensed as the effective date of licensure where a lapse in licensure occurred.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 670.310, [~~701.055, 701.065, 701.085, 701.105, 701.115, 701.125, 701.130 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~] **701.056, 701.063, 701.068, 701.073, 701.088, 701.105, 701.131 & 701.238**

(4/98, 9/98, 6/00, 6/03, 12/05, 12/07, 6/08)

#### **812-002-0670**

##### **Respondent**

“Respondent” means a contractor that a complaint is filed against under ORS [~~701.139~~] **701.131** to 701.180 or that the board proposes to impose a civil penalty against under ORS chapter 701, including but not limited to ORS 701.992.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.139~~] **701.131**-701.180

(temp. 1/00, 5/00, 4/01, 12/01, 12/05, 12/06, 6/08)

#### **812-002-0673**

##### **Signed by Respondent**

“Signed by respondent,” as used in OAR 812-004-0340, means signed by the respondent, if the respondent is a sole proprietorship, or an owner, officer, employee or authorized agent of the respondent.

Stat. Auth.: ORS 670.310, [~~701.147~~] **701.133** & 701.235

Stats. Implemented: ORS [~~701.147~~] **701.133**

(6/07, 6/08)

#### **812-002-0675**

##### **Small Commercial Structure**

“Small commercial structure” has the meaning given that term in ORS 701.005.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.005, **701.021**, 701.139, 701.145, 701.146, 701.150 & **701.153**

(12/01, 12/05, 6/08)

#### **812-002-0760**

##### **Work as a Contractor Includes**

“Work as a contractor”, as used in ORS [~~701.055(4)~~] **701.026** includes, but is not limited to:

(1) Except as modified by section (8) of this rule, construction, alteration, repair, improvement, inspection, set-up, erection, moving, or demolition of a structure or any other improvement to real estate, including activities performed on-site in the normal course of construction, or receiving and accepting any payments for the above.

(2) Concrete, asphalt and other testing that involves structural modifications, and soils testing associated with planned or existing structures.

- (3) Construction management.
- (4) Excavation, backfill, grading, and trenching for the structure or its appurtenances or to accomplish proper drainage and not for landscaping.
- (5) Improvement of lots with the intent of selling lots with structure(s). This may include contracting with a primary contractor to construct, alter or improve structures.
- (6) Inspection of cross connections and testing of backflow prevention devices performed by persons licensed under ORS 448.279 by the Health Division except when performed by a person licensed as a landscape contracting business as provided under ORS 671.510 through 671.710 or when performed by an employee of a water supplier as defined in ORS 448.115.
- (7) Labor only, regardless of whether compensated by the hour or by the job.
- (8) Pest control, if in the course of that work any structural modifications are performed. Structural modifications do not include the following when performed by a pesticide operator licensed under ORS 634.116. Installation of soil vapor barriers; sealing of holes, cracks, construction junctures or other small openings that allow the ingress of pests with mortar, plaster, caulking, or similar materials; installation of screens, bird netting and bird repellent devices; installation of rodent shields around utility entrances, doorways and other points of rodent ingress; and drilling of holes equal to or smaller than 3/8 inch in diameter for the purpose of injecting insecticides into small voids, removal and replacement of floor tiles for the purpose of drilling a slab floor for the control of subterranean termites; and the drilling of slab floors for control of termites.
- (9) Shoring.
- (10) Shelving attached to a structure.  
Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS 448.115, 448.279, 671.510-671.710, 701.005 & ~~701.055~~ **701.026**  
(4/98, 6/05, 12/07, 6/08)

## **812-002-0780**

### **Work as a Contractor Does Not Include**

- “Work as a contractor”, as used in ORS ~~701.055~~ **701.026**, does not include:
- (1) Sign painting unless the total area of all signs is more than 60 square feet.
  - (2) Work performed by persons engaged in creating objects, which exist exclusively for aesthetic reasons and have no other function, for example, murals, sculptures, etc., if said work by such person does not incorporate electrical or plumbing.
  - (3) Work performed by government agencies, except a school district.
  - (4) Work performed in setting, placing, removing, or repairing grave markers or monuments in cemeteries.
  - (5) Work by an employee when both the employer and employee are in compliance with applicable employer/employee requirements of ORS chapters 305, 314, 316, 317, 318, 656, 657, and state and federal wage and hour laws.
  - (6) Concrete pumping.
  - (7) Utility connections done by utility company employees when the connection is owned by a utility company.
  - (8) Installation or repair of stand-alone industrial equipment when such activities are exempt from the requirement for a building permit under the Oregon Structural Specialty Code.
  - (9) Inspections done under contract with government agencies.
  - (10) Cable television work done by cable television franchise holders.
  - (11) Operation of a crane, including the lifting and placement of trusses or other construction materials onto the structure.
  - (12) Improvement of lots with the intent of selling the lots without structures when contracting with licensed contractors to perform the improvement of lots.
  - (13) Arranging for work to be performed by a licensed construction contractor when the person who arranges for the work is a real estate licensee, licensed under ORS chapter 696; the real estate licensee is

representing the seller of the property; and the real estate licensee is acting as the agent for the seller, as evidenced by a contract or agreement between the real estate licensee and the seller.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 634.116, 701.010 & [~~701.055~~] **701.026**

(4/98, 6/00, 4/01, 12/05, 6/08)

### **812-003-0110**

#### **Standards of Behavior**

(1) A contractor shall not engage in dishonest or fraudulent conduct injurious to the welfare of the public.

(2) A contractor shall cooperate fully with any investigation undertaken by the Board pursuant to ORS 701.225.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.135~~] **701.098** & 701.225

(12/04, 6/08)

### **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.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.055~~] **701.010** & **701.026**

(12/04, 6/08)

### **812-003-0160**

#### **Entity Name Required on Bond, Letter of Credit or Cash Deposit**

(1) The name of the entity as it appears on the bond, letter of credit or cash deposit must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond, letter of credit or cash deposit must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond, letter of credit or cash deposit must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the bond, letter of credit or cash deposit must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the bond, letter of credit or cash deposit must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the bond, letter of credit or cash deposit;

(e) If the entity is a corporation or trust, the bond, letter of credit or cash deposit must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond, letter of credit or cash deposit must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

(3) The inclusion or exclusion of business name(s) on a bond, letter of credit or cash deposit does not limit the liability of an entity. Complaints against a licensed entity will be processed regardless of business names used by an entity.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.085 (2005), 701.068 & 701.088 [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(12/04, 12/06, 12/07, 6/08)

### **812-003-0180**

#### **Effective and Cancellation Dates of the Bond, Letter of Credit or Cash Deposit**

(1) The surety bond, letter of credit or cash deposits effective date is the date on which the licensee has first met all requirements for licensing, renewal or reissue as determined by the agency.

(2) The bond shall remain in effect and be continuous until cancelled by the surety or until the licensee no longer meets the requirements for licensing as determined by the agency, whichever comes first.

(3) A surety bond may be cancelled by the surety only after the surety has given 30 days' notice to the agency. Cancellation will be effective no less than 30 days after receipt of the cancellation notice.

(4) The letter of credit or cash deposit shall remain in effect and be continuous until released by the agency.

(5) Immediately upon cancellation of the bond, or cancellation without an authorized release by the agency of a letter of credit or cash deposit the agency may send an emergency suspension notice to the contractor as provided for in ORS [~~701.135~~] 701.098(4)(a)(A), informing the contractor that the license has been suspended.

(6) The bond, letter of credit or cash deposit shall be subject to final orders as described in OAR 812-004-0600.

(7) The surety or financial institution will be responsible for ascertaining the bond, letter of credit or cash deposit's effective date.

Stat. Auth.: ORS 670.310, 701.085 (2005), 701.068, 701.088 & 701.235

Stats. Implemented: ORS 701.085 (2005), 701.068, 701.088 & 701.098 [~~701.135 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(12/04, 5/06, 12/07, 6/08)

### **812-003-0190**

#### **New Bond, Letter of Credit or Cash Deposit Required for Change in Entity**

(1) If an entity licenses as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types, the application must be accompanied by a new:

(a) Bond separate from the bond held for the previous entity;

(b) Letter of credit separate from the letter of credit held for the previous entity; or

(c) Cash deposit separate from the previous cash deposit held for the previous entity.

(2) Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

Stat. Auth.: ORS 670.310, 701.085 **(2005), 701.068, 701.088** & 701.235

Stats. Implemented: ORS 701.085 **(2005), 701.068, 701.088** [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(12/04, 12/07, 6/08)

### **812-003-0210**

#### **Entity Name Required on Insurance Certification**

(1) The name of the entity as it appears on the certificate of insurance or other evidence of insurance must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the certificate of insurance or other evidence of insurance must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the certificate of insurance or other evidence of insurance must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the certificate of insurance or other evidence of insurance must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the certificate of insurance or other evidence of insurance must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the certificate of insurance or other evidence of insurance;

(e) If the entity is a corporation or trust, the certificate of insurance or other evidence of insurance must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the certificate of insurance or other evidence of insurance must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.105~~] **701.073**

(12/04, 6/08)

### **812-003-0240**

#### **Independent Contractor**

(1) Purpose of Rule. The Landscape Contractors Board, Department of Revenue, Department of Consumer and Business Services, Employment Department, and Construction Contractors Board must adopt rules together to carry out ORS 670.600. ORS 670.600 defines “independent contractor” for purposes of the programs administered by these agencies. This rule is intended to ensure that all five agencies apply and interpret ORS 670.600 in a consistent manner; to clarify the meaning of terms used in ORS 670.600; and, to the extent possible, to enable interested persons to understand how all five agencies will apply ORS 670.600.

(2) Statutory Context.

(a) ORS 670.600 generally establishes three requirements for “independent contractors”. One requirement is that an “independent contractor” must be engaged in an “independently established business.” Another requirement is related to licenses and certificates that are required for an “independent contractor” to provide services. A third requirement is that an “independent contractor” must be “free from direction and control over the means and manner” of providing services to others.

(b) The specific focus of this rule is the “direction and control” requirement. See ORS 670.600 for the requirements of the “independently established business” test and for licensing and certification requirements.

(3) Direction and Control Test.

(a) ORS 670.600 states that an "independent contractor" must be "free from direction and control over the means and manner" of providing services to others. The agencies that have adopted this rule will use the following definitions in their interpretation and application of the "direction and control" test:

(A) "Means" are resources used or needed in performing services. To be free from direction and control over the means of providing services an independent contractor must determine which resources to use in order to perform the work, and how to use those resources. Depending upon the nature of the business, examples of the "means" used in performing services include such things as tools or equipment, labor, devices, plans, materials, licenses, property, work location, and assets, among other things.

(B) "Manner" is the method by which services are performed. To be free from direction and control over the manner of providing services an independent contractor must determine how to perform the work. Depending upon the nature of the business, examples of the "manner" by which services are performed include such things as work schedules, and work processes and procedures, among other things.

(C) "Free from direction and control" means that the independent contractor is free from the right of another person to control the means or manner by which the independent contractor provides services. If the person for whom services are provided has the right to control the means or manner of providing the services, it does not matter whether that person actually exercises the right of control.

(b) Right to specify results to be achieved. Specifying the final desired results of the contractor's services does not constitute direction and control over the means or manner of providing those services.

(4) Application of "direction and control" test in construction and landscape industries.

(a) The provisions of this section apply to:

(A) Architects licensed under ORS 671.010 to 671.220;

(B) Landscape architects licensed under ORS 671.310 to 671.479;

(C) Landscape contracting businesses licensed under ORS 671.510 to 671.710;

(D) Engineers licensed under ORS 672.002 to 672.325; and

(E) Construction contractors licensed under ORS chapter 701.

(b) A licensee described in (4)(a), that is paying for the services of a subcontractor in connection with a construction or landscape project, will not be considered to be exercising direction or control over the means or manner by which the subcontractor is performing work when the following circumstances apply:

(A) The licensee specifies the desired results of the subcontractor's services by providing plans, drawings, or specifications that are necessary for the project to be completed.

(B) The licensee specifies the desired results of the subcontractor's services by specifying the materials, appliances or plants by type, size, color, quality, manufacturer, grower, or price, which materials, appliances or plants are necessary for the project to be completed.

(C) When specified by the licensee's customer or in a general contract, plans, or drawings and in order to specify the desired results of the subcontractor's services, the licensee provides materials, appliances, or plants, including, but not limited to, roofing materials, framing materials, finishing materials, stoves, ovens, refrigerators, dishwashers, air conditioning units, heating units, sod and seed for lawns, shrubs, vines, trees, or nursery stock, which are to be installed by subcontractors in the performance of their work, and which are necessary for the project to be completed.

(D) The licensee provides, but does not require the use of, equipment (such as scaffolding or fork lifts) at the job site, which equipment is available for use on that job site only, by all or a significant number of subcontractors requiring such equipment.

(E) The licensee has the right to determine, or does determine, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(F) The licensee reserves the right to change, or does change, in what sequence subcontractors will work on a project, the total amount of time available for performing the work, or the start or end dates for subcontractors working on a project.

(5) As used in ORS chapters 316, 656, 657, 671 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of ORS 670.600 are met.

(6) The Construction Contractors Board, Employment Department, Landscape Contractors Board, Workers Compensation Division, and Department of Revenue of the State of Oregon, under authority of ORS 670.605, will cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600.

(7) The Board adopts the form "Independent Contractor Certification Statement" as revised January 17, 2006. An applicant must use this form to meet the requirements of ORS ~~[701.075(1)(j)]~~ **701.046(1)(k)**.

Stat. Auth.: ORS 670.310, 670.605 & 701.235

Stats. Implemented: ORS 670.600, 670.605, 701.005 & ~~[701.075]~~ **701.046**

(12/04, 12/05, temp. 1/06, 3/06, 1/07, 12/07, 6/08)

### **812-003-0250**

#### **Exempt and Nonexempt Class of Independent Contractor Licenses**

Contractors shall license as either nonexempt or exempt as provided in ORS 701.035.

(1) The nonexempt class is composed of the following entities:

- (a) Sole proprietorships with one or more employees;
- (b) Partnerships or limited liability partnerships with one or more employees;
- (c) Partnerships or limited liability partnerships with more than two partners if any of the partners are not family members;
- (d) Joint ventures with one or more employees;
- (e) Joint ventures with more than two joint venturers if any of the joint venturers are not family members;
- (f) Limited partnerships with one or more employees;
- (g) Limited partnerships with more than two general partners if any of the general partners are not family members;
- (h) Corporations with one or more employees;
- (i) Corporations with more than two corporate officers if any of the corporate officers are not family members;
- (j) Trusts with one or more employees;
- (k) Trusts with more than two trustees if any of the trustees are not family members.
- (l) Limited liability companies with one or more employees; or
- (m) Limited liability companies with more than two members if any of the members are not family members.

(2) The exempt class is composed of sole proprietors, partnerships, joint ventures, limited liability partnerships, limited partnerships, corporations, trusts, and limited liability companies that do not qualify as nonexempt.

(3) An exempt contractor may work with the assistance of individuals who are employees of a nonexempt contractor as long as the nonexempt contractor:

(a) Is in compliance with ORS chapters 316, 656, and 657 and is providing the employees with workers' compensation insurance; and

(b) Does the payroll and pays all its employees, including those employees who assist an exempt contractor.

(4) Except as provided in section (5) and (6) of this rule, entities shall supply the following employer account numbers as required under ORS ~~[701.075]~~ **701.046**:

(a) Workers' Compensation Division 7-digit compliance number or workers' compensation insurance carrier name and policy or binder number;

(b) Oregon Employment Department and Oregon Department of Revenue combined business identification number; and

(c) Internal Revenue Service employer identification number or federal identification number.

(5) Exempt entities are not required to supply employer account numbers under section (4) of this rule except as follows:

(a) Partnerships, joint ventures, limited liability partnerships, and limited partnerships that have no employees and are not directly involved in construction work may be classed as exempt when the entity certifies that all partners or joint venturers qualify as nonsubject workers under ORS 656.027. Such partnerships or joint ventures must supply the Internal Revenue Service employer identification number or federal identification number.

(b) Corporations qualifying as exempt under ORS 656.027(10) must supply the Oregon Employment Department and Oregon Department of Revenue combined business identification number unless the corporation certifies that corporate officers receive no compensation (salary or profit) from the corporation.

(c) Corporations qualifying as exempt must supply the Internal Revenue Service employer identification number or federal identification number.

(d) Limited liability companies must supply the Internal Revenue Service employer identification number or federal identification number unless the limited liability company has only one member and has no employees.

(6) Nonexempt entities that qualify under ORS 656.027 (20) need not supply an Oregon workers' compensation account number or workers' compensation insurance carrier name and policy or binder number.

(7) Out-of-state applicants with no Oregon subject workers as provided in ORS 656.126 and OAR 436-050-0055 must supply their home state account numbers, and need not supply an Oregon workers' compensation account number.

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

Stats. Implemented: ORS 701.035 & ~~[701.135]~~ **701.098**

(1/89, 11/89, 3/91, 9/91, 5/92, 7/92, 8/92, 12/92, 4/93, 8/93, 1/94, 6/94, 7/94, 9/95, 5/97, 6/97, 4/98, 9/98, 6/99, 6/03, 12/04, 8/05, 5/06, 12/07, 6/08)

(Amended and renumbered from 812-003-0002, 12/04)

## **812-003-0310**

### **License Cards**

(1) The agency shall issue a license and pocket card effective on the date on which the license becomes effective under OAR 812-003-0270 or 812-003-0290.

(2) A license and pocket card is valid for the term for which it is issued only if all of the following conditions are met throughout the license period:

(a) The surety bond, letter of credit or cash deposit remains in effect and undiminished by payment of Construction Contractors Board final orders.

(b) The insurance required by ORS ~~[701.105]~~ **701.073** remains in effect.

(c) If the licensee is a sole proprietorship, the sole proprietorship survives.

(d) If the licensee is a partnership or limited liability partnership, the composition of the partnership remains unchanged, by death or otherwise.

(e) If the licensee is a corporation, trust, or limited liability company, the corporation, trust or limited liability company survives and complies with all applicable laws governing corporations, trusts or limited liability companies.

(3) If the licensee's bond is cancelled, the license will lapse 30 days from the date the cancellation is received by the agency.

(4) If a license becomes invalid, the agency may require the return of the license and pocket card.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS ~~[701.115 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)]~~ **701.063 & 701.088**

(12/04, 12/07, 6/08)

## **812-003-0320**

### **Record Changes**

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

(2) 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) No charge will be made for an address change on the record.

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

Stat. Auth.: ORS 670.310, [~~701.130~~] 701.235 **& 701.238**

Stats. Implemented: ORS [~~701.085, 701.125 & 701.130~~] **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)

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

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

(b) 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;

(c) The licensee must submit a request to convert to inactive status on forms provided by the agency; and

(d) 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 [~~701.115 & 701.125~~] **701.056 & 701.063**

(12/04, 6/08)

## **812-003-0350**

### **Inactive Status Request at Interim Renewal Period**

(1) A request to convert a license to inactive status made prior to the expiration date of the license, but at a time other than the time of renewal of the license, will be accepted only if the licensee making the request has paid all applicable fees required under OAR 812-003-0140 and 812-003-0320.

(2) If a license is converted to inactive status prior to the expiration date of the license but at a time other than the time of renewal of the license, the effective dates of the license will remain unchanged and the license will expire at the upcoming expiration date.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.115 & 701.125~~] **701.063**

(12/04, 6/05, 6/08)

### **812-003-0370**

#### **Renewal of Inactive Status**

To renew an inactive license in an inactive status:

- (1) 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;
- (2) The licensee must submit the request to renew the license in inactive status on forms provided by the agency; and
- (3) The licensee must submit the fees required under OAR 812-003-0140.  
Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS [~~701.115 & 701.125~~] **701.056 & 701.063**  
(12/04, 6/08)

### **812-003-0380**

#### **Converting From Inactive Back to Active Status**

- (1) To convert from an inactive status to an active status, the licensee must:
  - (a) Submit a request to convert to an active status on forms provided by the agency; and
  - (b) Comply with section (3), (4) or (5) of this rule as applicable.
- (2) A licensee requesting conversion from an inactive status to an active status at the time of renewal must:
  - (a) Submit the fees required under OAR 812-003-0140;
  - (b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and
  - (c) Comply with all other licensing requirements prescribed by the Board.
- (3) A licensee requesting conversion from an inactive status to an active status at a time other than renewal and prior to the expiration date of the license must:
  - (a) Submit all fees to date as required by OAR 812-003-0140 and 812-003-0320;
  - (b) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and
  - (d) Comply with all other licensing requirements prescribed by the Board.
- (4) A licensee requesting conversion from an inactive status to an active status during a lapse due to the expiration of the license must:
  - (a) Request the conversion within two years from the date of lapse;
  - (b) Comply with all licensing requirements prescribed by the Board;
  - (c) Submit the required surety bond, or letter of credit, or cash deposit, and general liability insurance for the category requested; and
  - (d) Submit all fees required under OAR 812-003-0140.
- (5) If a license is converted from an inactive to an active status, the agency shall establish the effective date of the license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.115, 701.125 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

#### **701.056, 701.063 & 701.088**

(12/04, 6/05, 12/07, 6/08)

### **812-003-0390**

#### **Revocation or Suspension of License**

- (1) Except as provided in section (2) of this rule, if the agency issues a final order or arbitration award ordering a licensee to pay monetary damages and the licensee or the licensee's surety fails to pay the order or award in full, the agency will revoke, suspend, or refuse to issue or reissue a license.
- (2) Section (1) of this rule shall not apply if the licensee submits proof to the agency that:
  - (a) A United States Bankruptcy Court issued an automatic stay under Title 11 of the United States Bankruptcy Code and that stay is currently in force; or

(b) The order or award described in section (1) of this rule arises from a debt that:  
(A) Is included in an order of discharge issued by a United States Bankruptcy Court; or  
(B) Is included in a Chapter 11 plan and order conforming the plan issued by a United States Bankruptcy Court that prohibits the agency from revoking, suspending, or refusing to issue or reissue the licensee's contractor's license and the licensee is in compliance with the terms of the plan and order.

(3) The agency shall revoke, suspend, or refuse to issue or reissue a license under section (1) of this rule if:

(a) The agency previously was prevented from revoking or suspending a license or was required to issue or reissue a license under section (2) of this rule; and

(b) The licensee's bankruptcy discharge is revoked or the bankruptcy stay is lifted.

Stat. Auth.: ORS 183.310 to 183.545, 670.310, 701.235 & 701.280

Stats. Implemented: ORS 701.100 & [701.135] **701.098**

(6/76, 7/76, 1/78, 5/78, 6/80, 11/80, 5/81, 12/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 10/83, 3/84, 5/84, 3/87, 12/87, 1/88, 2/95, 6/00, 5/02, 12/04, 6/08)

(Amended and renumbered from 812-003-0030, 12/04)

### **812-003-0400**

#### **Restoration of Bond, Letter of Credit or Cash Deposit after Payment on Complaint**

If a surety company or financial institution pays all or part of a complaint against a licensed contractor from the contractor's surety bond, letter of credit or cash deposit, the agency must suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond, letter of credit or cash deposit in the amount required under ORS 701.085(2) through (5) (**2005**), **701.068** or **701.088** unless the agency requires a higher amount under ORS 701.085(7) or (8) (**2005**) or **701.068**; or

(2) A certificate from the contractor's surety company or financial institution that the surety company or financial institution remains liable for the full original penal sum of the bond, letter of credit or cash deposit, notwithstanding the payment from the surety bond letter of credit or cash deposit.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085(**2005**), **701.068** or **701.088** [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(5/02, 12/04, 12/06, 12/07, 6/08)

(Amended and renumbered from 812-003-0040, 12/04)

### **812-003-0410**

#### **Social Security Number**

(1) The agency will not issue or renew a license issued to a sole proprietorship unless the owner provides his or her social security number on the application or renewal form. The owner need not provide the social security number on the application for renewal, if the owner's social security number has previously been provided to the agency and is in the record.

(2) If the owner of a sole proprietorship has not been issued a social security number by the United States Social Security Administration, the agency will accept a written statement from the owner to fulfill the requirements of section (1) of this rule. The owner may submit the written statement on a specified agency form with the requisite information. Any written statement must:

(a) Be signed by the owner;

(b) Attest to the fact that no social security number has been issued to the owner by the United States Social Security Administration; and

(c) Acknowledge that knowingly supplying false information under this rule is a Class A misdemeanor, punishable by imprisonment of up to one year and a fine of up to \$6,250.

Stat. Auth.: ORS 25.990, 183.310, 670.310 & 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 183.310 & [701.075] **701.046**

(12/04, 9/06, 6/08)

### **812-003-0430**

#### **Time Period for Perfecting a Lien or Complaint**

For liens perfected and claims or complaints commenced on or after January 1, 1998:

(1) The time period under ORS ~~[701.065]~~ **701.131**(2)(a)(A) and ORS ~~[701.065]~~ **701.131**(2)(c)(B) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(2) The time period under ORS ~~[701.065]~~ **701.131**(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS ~~[701.065]~~ **701.131**

(12/04, 12/06, 6/08)

### **812-004-0110**

#### **Complaint Processing Fee; Waiver of Fee**

(1) The complaint processing fee authorized under ORS ~~[701.147]~~ **701.133** is \$50 for a complaint filed under ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 701.146.

(2) The agency must collect the processing fee under OAR 812-004-0400.

(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:

(a) The complainant is an individual;

(b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and

(c) The complainant's gross income does not exceed the 2007 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 72, No. 15, January 24, 2007, pp. 3147-3148.

(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the complainant pay a complaint processing fee of \$97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS **701.133 &** 701.146 [~~& 701.147~~]

(12/03, temp. 12/03, 2/04, 5/04, 12/06, 6/07, 6/08)

### **812-004-0120**

#### **Liability of Licensee**

A licensee, as defined in OAR 812-002-0620, participating in a corporation wholly-owned by the licensee, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held individually liable for complaints brought under ORS ~~[701.139]~~ **701.131** to 701.180, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership, or partnership was licensed as required by ORS chapter 701.

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

Stats. Implemented: ORS 701.102, 701.139, 701.140 & 701.145.

(10/98, 6/00, 12/01, 8/05, 12/06, 6/08)

### **812-004-0210**

#### **Address of Complainant and Respondent**

(1) Initial notice of a contested case or of arbitration conducted by the agency directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 10 days of any change in the party's address, withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the complaint and until 90 days after the date the agency notifies the parties that the complaint is closed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.080~~] **701.117**

(12/03, 12/06, 6/08)

### **812-004-0240**

#### **Exhaustion of Surety Bond, Letter of Credit or Cash Deposit**

The agency may continue processing a complaint even though the surety bond, letter of credit or cash deposit related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.085 **(2005), 701.068, 701.088**, 701.145 & 701.150 [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(10/98, 12/04, 12/05, 12/06, 12/07, 6/08)

### **812-004-0250**

#### **Award of Complaint Processing Fee, Attorney Fees, Interest and Other Costs**

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a complaint that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 **(2005), 701.068 or 701.088**, including, but not limited to an order of the board arising from a judgment, award or decision by a court, arbitrator or other entity may not include an award for:

(a) Attorney fees;

(b) Court costs;

(c) Interest;

(d) Costs to pursue litigation or the complaint;

(e) Service charges or fees; or

(f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the complaint.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 **(2005), 701.068 or 701.088** may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien complaint may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

(b) An order or arbitration award in an owner complaint may include interest expressly allowed as damages under a contract that is the basis of the complaint.

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a complaint processing fee paid by the complainant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court, arbitrator or other entity that are related to the portion of the order or award of the court, arbitrator or other entity that is within the jurisdiction of the board if the order

or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

(A) That was initiated by the respondent; or

(B) That the agency required the complainant to initiate under ORS 701.145 because of the nature or complexity of the complaint.

(3) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.068, 701.088, 701.145, 701.146 [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(10/98, 4/01, 12/01, 8/03, temp. 12/03, 2/04, 10/04, 8/05, 12/05, 12/06, 12/07, 6/08)

## **812-004-0300**

### **Filing Date of Complaint**

(1) Except as provided under section (3) of this rule, a complaint submitted to the agency for processing under ORS 701.145 is deemed to have been filed when a Breach of Contract Complaint is received by the agency that:

(a) Meets the requirements of OAR 812-004-0340(1) and (2)(m); and

(b) Contains information sufficient to identify the complainant and respondent.

(2) The agency must return a Breach of Contract Complaint that does not meet the requirements of section (1) of this rule to the person who submitted the complaint.

(3) If the agency returns a Breach of Contract Complaint to a person under section (2) of this rule because the person did not meet the requirements of OAR 812-004-0340(2)(m) related to pre-complaint notice, that person may resubmit the Breach of Contract Complaint with the required evidence. If the resubmitted Breach of Contract Complaint satisfies the agency that the person met the requirements under OAR 812-004-0340(2)(m.) before the agency received the original Breach of Contract Complaint, the complaint is deemed to have been filed on the date the Breach of Contract Complaint was first received by the agency.

(4) A Breach of Contract Complaint that does not fully comply with the requirements of OAR 812-004-0340 is subject to OAR 812-004-0350.

(5) The date of filing of a complaint submitted to the agency for processing under ORS 701.146 is the date when the complainant complies with ORS 701.133(1) and 701.146(2) [~~and 701.147(1)~~].

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.143, 701.145 & 701.146

(10/98, 3/03, 10/04, 12/05, 12/06, 6/08)

## **812-004-0340**

### **Form of Complaints, Pre-Complaint Notice**

(1) A complaint must be submitted on a complaint form provided by the agency. The complaint form shall be entitled "Breach of Contract Complaint." The agency may require the use of the most recent revision of the complaint form.

(2) The complainant must submit the following information on or with the complaint form required under section (1) of this rule if applicable:

(a) The name, address and telephone number of the complainant;

(b) The name, address, telephone number and license number of the licensee;

(c) The amount, if known at the time the complaint is filed, that the complainant alleges is due from the licensee after crediting payments, offsets and counterclaims in favor of the licensee to which the complainant agrees;

(d) Identification of the type of complaint;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

- (g) The location of the work at issue in the complaint, described by a postal address or other description sufficient to locate the work site on a map and on the ground;
  - (h) The beginning and ending date of the work or invoices;
  - (i) Payments, offsets and counterclaims of the contractor, if known;
  - (j) Whether the project involves work on a residential, small commercial or large commercial structure;
  - (k) A certification by the complainant that the information provided on the complaint form is true;
  - (l) If a court judgment or arbitration award is the basis for the complaint, a copy of the judgment or award, the original complaint and any answers or counter-suits related to the parties to the complaint filed in the court action or arbitration;
  - (m) Documents described in section (9) of this rule that are related to the pre-complaint notice requirement in ORS [~~701.147~~] **701.133**.
  - (n) Additional information required under sections (3) through (8) of this rule.
- (3) A subcontractor complaint must include copies of each original invoice relating to the complaint.
- (4) An employee complaint must include copies of time cards or other evidence of the amount of wages or benefits requested.
- (5) An employee trust complaint must include the name of each employee that is the subject of the complaint, the dates that employee worked without payment of employee benefits and the following information for each date and employee:
- (a) The hours worked without payment of employee benefits;
  - (b) The amount of the unpaid benefits;
  - (c) The address of the job site where the employee worked; and
  - (d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.
- (6) A construction lien complaint must include evidence that the complainant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lienor, if applicable, and any foreclosure documents.
- (7) A material complaint must include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the complaint.
- (8) A complaint involving negligent or improper work must include a list of the alleged negligent or improper work. A complaint involving a breach of contract must describe the nature of the breach of contract.
- (9) A complaint must include one of the following:
- (a) A copy of the pre-complaint notice required under ORS [~~701.147~~] **701.133** and of the certified or registered mail receipt for the pre-complaint notice; or
  - (b) Written evidence that the respondent had actual notice of the dispute that is the subject of the complaint at least 30 days before the complainant filed the complaint. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:
    - (A) A return receipt signed by the respondent indicating receipt of a notice of intent to file a complaint sent to the respondent by the complainant; or
    - (B) A letter signed by the respondent acknowledging receipt of a notice of intent to file a complaint.
  - (c) Written evidence that the complainant and the respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the complaint. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:
    - (A) Copies of a complaint or answer in the court action; or
    - (B) Copies of a document that initiated the mediation or arbitration.
  - (d) Evidence that the complainant and the respondent are parties to another complaint filed with the agency arising from the same contract or issues that are the subject of the complaint.

(10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by the complainant alleging that the respondent had actual knowledge of the dispute as written evidence required under section (9) of this rule.

(11) The completed complaint form must be signed by the complainant or an agent of the complainant.

(12) A complaint form submitted to the agency that does not comply with the requirements of this rule is subject to OAR 812-004-0350.

Stat. Auth.: ORS 670.310 & 701.235

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

(10/98, 6/00, 4/01, 12/01, 5/02, 3/03, 12/03, 12/05, 12/06, 6/08)

### **812-004-0400**

#### **Initial Administrative Processing of Complaints; Collection of Fee**

(1) Upon receipt of a complaint, the agency must:

(a) Send a copy of the complaint to the respondent;

(b) Verify that the complainant has provided information required under OAR 812-004-0340 and request additional information from the complainant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the complaint based on the information provided by the complainant;

(d) If the agency makes a preliminary determination that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee. Except as provided in section (2) of this rule, the agency may suspend processing of the complaint until complainant pays this fee.

(e) If the agency determines that the complaint should be dismissed based on the information submitted by complainant, the agency must issue a proposed order to dismiss under OAR 812-004-0550. If the complainant requests a hearing on the dismissal and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee and may not transmit the complaint to the Office of Administrative Hearings for a hearing until the fee is paid.

(f) If the complainant does not pay the fee required under OAR 812-004-0110 within 60 days of written notification that the fee is due, the agency may close the complaint. The request for payment and closure must comply with OAR 812-004-0260.

(2) The agency may initiate an investigation to determine the validity of the complaint. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a complaint even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, **701.133**, 701.140, 701.145 & 701.146 [~~701.147~~]

(10/98, 6/00, 12/01, 6/03, 12/03, 12/06, 6/08)

### **812-004-0440**

#### **Contracts With Arbitration Agreements**

(1) If a complaint is based on a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as set forth in ORS 701.180. Unless the contract requires mediation or arbitration by the agency, the agency must take the following action:

(a) The agency must inform the complainant by written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the complaint unless the agency receives within 30 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the complainant; or

(B) Evidence that the complainant or respondent initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the complaint.

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (1)(a) of this rule from the complainant within 30 days from the date of the written notice described in subsection (1)(a) of this rule, the agency may close the complaint under OAR 812-004-0260. The agency may not close the complaint under section (1) of this rule if the respondent initiates mediation or arbitration under the contract before the expiration of the 30-day period for providing the waiver or evidence that mediation or arbitration was initiated.

(c) The agency must inform the respondent by written notice that:

(A) If the respondent wants the issues in the complaint mediated or arbitrated under the contract, respondent must initiate the mediation or arbitration process under the contract within the time allowed under ORS 701.180 and submit evidence to the agency within 40 days from the date of the agency's written notice that the respondent initiated mediation or arbitration under the contract.

(B) If the respondent does not initiate mediation or arbitration and submit evidence within the time provided in paragraph (1)(c)(A) of this subsection, the respondent waives the right to mediation or arbitration under the contract;

(C) The agency will continue to process the complaint until the agency receives the evidence required under paragraphs (1)(c)(A) and (B) of this subsection; and

If the respondent submits timely evidence that the respondent began mediation or arbitration within the time allowed under ORS 701.180, the agency will suspend processing of the complaint pending the outcome of the mediation or arbitration under the contract.

(d) If mediation or arbitration under the contract is properly commenced under this section (1) of this rule, the agency must suspend processing the complaint until the mediation or arbitration is complete.

(2) If a complaint is based on a contract that contains an agreement by the parties to mediate and arbitrate disputes arising out of the contract, the complaint must be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and arbitration within the time allowed under ORS 701.180 if:

(a) The respondent commences mediation within the time allowed under ORS 701.180; and

(b) If the complaint is not resolved in mediation, the respondent submits to arbitration within 30 days of the completion of mediation, unless the parties to the complaint mutually agree on a different schedule.

(3) Notwithstanding receipt of a notice of intent to file a complaint under ORS ~~[701.147]~~ **701.133** or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under subsection (1)(c) of this rule.

(4) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the complaint as a contested case.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.180

(6/80, 11/80, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 3/84, 5/84, 2/85, 3/85, 4/85, 2/87, 3/87, 7/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 10/98, 4/01, 12/01, temp. 12/03, 2/04, 10/04, 12/05, 12/06, 6/08)

## **812-004-0470**

### **Challenge to Investigation Report**

The complainant or respondent may challenge and offer evidence to disprove the agency's investigation report, if any, at an arbitration or contested case hearing.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145 [~~& 701.147]~~

(10/98, 6/00, 12/01, 5/02, 12/04, 12/05, 12/06, 6/08)

(Amended and renumbered from 812-004-0580, 12/01)

## **812-004-0520**

### **Processing of Complaint Submitted to Court, Arbitrator or Other Entity**

(1) "Court, arbitrator or other entity" has the meaning given that phrase in division 2 of this chapter.

(2) The agency may suspend processing a complaint if:

(a) The respondent submits a complaint against the complainant to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against the respondent, including but not limited to a breach of contract complaint or a suit to foreclose a lien involving the same contract at issue in the complaint;

(b) The complainant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against respondent; or

(c) The agency requires the complainant to submit the complaint to a court because the agency determined that a court is the appropriate forum for the adjudication of the complaint because of the nature or complexity of the complaint.

(d) The complainant in an owner complaint involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(3) If the agency suspends processing a complaint under section (2) of this rule, the agency must notify the complainant on the date it suspends processing the complaint that processing has been suspended. The following provisions apply to the agency and the complainant if processing is suspended:

(a) The notice of suspension of processing must include notice of the requirements contained in subsections (3)(b) and (d) of this rule and must comply with the requirements of OAR 812-004-0260.

(b) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect.

(c) The agency may, at any time, demand from the complainant a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect. The demand must be in writing and must comply with the requirements of OAR 812-004-0260. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(d) Within 30 days from the date of final action by the court, arbitrator or other entity, the complainant must deliver to the agency a certified copy of the final judgment; a copy of the arbitration award or decision by another entity and a copy of the complaint or other pleadings on which the judgment, award or decision is based.

(e) If the complainant complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the complaint. If the complainant does not comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the complaint under OAR 812-004-0260.

(4) If the agency suspends processing a complaint under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant that the complainant must file the complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the complainant has done so within 30 days from mailing of the notice. The notice must comply with the requirements of OAR 812-004-0260.

(b) If the complainant does not submit the evidence as required under subsection (4)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(5) If the agency suspends processing a complaint under subsection (2)(c) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant, in a notice that complies with the requirements of OAR 812-004-0260, that agency has suspended processing the complaint and that the complainant must:

(A) File the complaint as a complaint in a court of competent jurisdiction within 90 days from notice that the agency has suspended processing the complaint; and

(B) Submit evidence, including a copy of the complaint, to the agency that the complainant complied with paragraph (5)(a)(A) of this rule within 21 days of filing the complaint.

(b) If the complainant does not submit the evidence as required under subsection (5)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(6) If the agency resumes processing a complaint under section (3) of this rule:

(a) The agency must accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the complaint.

(b) Based on the judgment, award or decision, the agency must issue a proposed default order to pay damages or to dismiss or refer the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection (6)(b) of this rule:

(A) The provisions of OAR 812-004-0560 and 812-004-0590 apply to a proposed default order or a referral to the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under section (6) of this rule must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge must determine the portion of the final judgment, award or decision, if any, that is within the jurisdiction of the agency.

(7) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-0450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, **701.133**, 701.145, 701.146 [~~& 701.147~~]  
(10/98, 6/00, 4/01, 5/02, 3/03, 8/03, 10/04, 8/05, 12/06, 6/07, 6/08)

## **812-004-0535**

### **Elements of Complaint That Must Be Proved**

The following provisions apply to OAR 812-004-0540(5) and (6), 812-004-0550(2), 812-009-0100 and 812-009-0120:

(1) Except as provided in section (3) of this rule, in order for the agency to award damages to the complainant the record of the complaint must contain evidence that persuades the agency, arbitrator or administrative law judge that:

(a) The complainant suffered damages;

(b) The respondent caused those damages by acts or omissions within the scope of ORS 701.140; and

(c) The monetary value of those damages is substantiated on the record.

(2) The agency must dismiss the complaint if the evidence in the record of the complaint does not persuade the agency, arbitrator or administrative law judge of the existence of the facts described in section (1) of this rule.

(3) Notwithstanding the presence of evidence described in section (1) of this rule, a complaint for damages must be dismissed if the record of the complaint contains evidence that persuades the agency, arbitrator or administrative law judge that the complainant is not entitled to recover the damages. Evidence that the complainant may not be entitled to recover all or part of the damages alleged includes, but is not limited to a valid release of liability or a valid limitation of damages.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS **701.133**, 701.139, 701.140, 701.143, 701.145, 701.146 [~~& 701.147~~]  
(3/03, 8/03, 12/03, 2/04, 8/05, 12/06, 6/08)

## 812-004-0540

### Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

- (1) A complainant may seek monetary damages if the agency has not closed the complaint and:
  - (a) The complainant disagrees with the resolution recommended by the agency;
  - (b) The respondent cannot or will not comply with the recommended resolution; or
  - (c) The parties signed a settlement agreement but, through no fault of the complainant, the respondent failed to satisfy one or more terms of the settlement agreement, and the complainant so advises the agency in writing within 30 days from the date the settlement agreement was to have been completed.
- (2) If the complainant seeks monetary damages or the agency so requests, the complainant must file a statement of damages stating the amount the complainant alleges the respondent owes the complainant, limited to complaint items listed in the Breach of Contract Complaint and those complaint items added up to and through any initial on-site meeting. The agency may require the complainant to submit, in support of the amount alleged:
  - (a) One or more estimates from licensed contractors for the cost to correct the complaint items; or
  - (b) Other bases for a monetary award.
- (3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the complaint for an arbitration or contested case hearing under section (4) of this rule after each party to the complaint has had an opportunity to provide evidence supporting its position with regard to the complaint. The agency may require that the complainant file a statement of damages and supporting evidence described under section (2) of this rule, except that the statement of damages must be limited to complaint items listed in the Breach of Contract Complaint.
- (4) After the agency receives documents required under sections (2) or (3) of this rule, the agency may:
  - (a) Issue a proposed default order proposing dismissal of the complaint under OAR 812-004-0550(2) or payment of an amount by the respondent to the complainant; or
  - (b) Refer the complaint to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the complaint and whether the amount of damages alleged, or some lesser amount is proper.
- (5)(a) The agency may issue a proposed default order that the respondent pay damages to the complainant only if the record of the complaint supports an award of damages under OAR 812-004-0535.
- (b) The agency may issue a proposed default order that is not described in subsections (5)(a) or (6)(a) of this rule only if the record of the complaint contains evidence that persuades the agency of the existence of facts necessary to support the order.
- (6)(a) If the record of a complaint supports an award of damages to the complainant under OAR 812-004-0535 and the respondent pays the complainant the amount of those damages after the complainant submits to the agency the complaint processing fee required under OAR 812-004-0110, the agency may issue a proposed default order proposing that the respondent reimburse the complainant the amount of the processing fee paid.
  - (b) Subsection (6)(a) of this rule does not apply if the respondent paid damages to the complainant to satisfy a written settlement agreement that the complainant signed.
  - (c) Before issuing a proposed default order under subsection (6)(a) of this rule, the agency must notify the respondent of the agency's intent to issue the proposed order and allow the respondent 30 days to submit written evidence that the respondent reimbursed the complaint processing fee to the complainant.
- (7) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, **701.133 &** 701.145 [~~& 701.147~~]  
(10/98, temp. 1/00, 5/00, 4/01, 5/02, 11/02, 3/03, 8/03, 2/04, 12/04, 8/05, 12/06, 6/07, 6/08)

## **812-004-0550**

### **Proposed Default Order to Dismiss, Other Resolution of Complaint by Proposed Default Order**

(1) The agency may issue a proposed default order proposing dismissal of a complaint if the evidence in the complaint record persuades the agency that one of the following grounds for dismissal exists:

(a) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140.

(b) The complaint was not filed within the time limit specified under ORS 701.143.

(c) The complainant did not permit the respondent to comply with agency recommendations under ORS 701.145(3)(b).

(d) The complaint must be dismissed for lack of jurisdiction under OAR 812-004-0320(4) or (5).

(e) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the complainant is less than an amount due to the respondent from the complainant under the terms of the contract.

(f) The complainant contends that the respondent did not fulfill the terms of a settlement that resolved the complaint but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a complaint if the agency investigates the complaint and finds that the record of the complaint supports dismissal under OAR 812-004-0535.

(3) If the complainant makes a timely request for a hearing after the agency issued a proposed default order under section (1) or (2) of this rule, the agency may:

(a) Refer the complaint for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the complainant file a statement of damages stating an amount the complainant alleges the respondent owes the complainant and refer the complaint for arbitration or a contested case hearing to determine if the complaint should be dismissed and if not, the validity of the complaint and whether the amount alleged, or some lesser amount is proper.

(4) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, **701.133 &** 701.145 [~~& 701.147~~]

(temp. 1/00, temp. 3/00, 5/00, 4/01, 5/02, 3/03, 8/03, 2/04, 12/06, 6/08)

## **812-004-0560**

### **General Requirements for Proposed Default Order or Referral to Office of Administrative Hearings, Hearing Request**

(1) A proposed default order on a complaint issued by the agency must include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for arbitration or a contested case hearing must:

(a) Comply with 812-004-0590, which regulates whether the complaint will be arbitrated or heard as a contested case hearing.

(b) Comply with OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) Include a contested case notice if the agency did not issue a contested case notice under OAR 137-003-0505 before the agency's referral of the complaint to the Office of Administrative Hearings.

(3) If the agency refers a complaint to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the complainant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings must identify by date the statement of damages or the Breach of Contract Complaint that limits the amount that the respondent may be ordered

to pay the complainant and state the amount that the order is limited to under OAR 812-009-0160 and OAR 812-010-0420.

(b) The agency must serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a complainant under OAR 812-009-0160 and OAR 812-010-0420; and

(B) The procedure to file a new statement of damages under OAR 812-009-0020 and OAR 812-010-0110.

(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date the agency mails a proposed default order.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6) A contested case notice issued under this rule must include a statement that the agency's file on the complaint is designated as the record for purposes of a default order under this rule and for purposes of a contested case hearing or arbitration on the complaint. For purposes of this rule, the agency's file consists of all documents submitted by parties, all agency correspondence with the parties and any other material designated by the agency as part of the record.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, **183.417**, 183.460, 183.470, **701.133 &** 701.145 [~~701.147 &~~; ~~section 4, chapter 288, Oregon Laws 2007 (HB 2423)~~]

(1/86, 5/86, 11/89, 11/97, 10/98, temp. 1/00, temp. 3/00, 5/00, 4/01, 6/02, temp. 9/02, 11/02, 3/03, 8/03, 12/04, 12/06, 12/07, 6/08)

## **812-004-0590**

### **Referral of Complaint to Arbitration or Contested Case Hearing or Removal to Court**

(1) If the Office of Administrative Hearings conducts a hearing on a complaint:

(a) The hearing must be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing must be held as a contested case hearing under OAR 137-003-0501 to OAR 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the complaint makes a timely written request under section (4) of this rule that the complaint be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the complaint be heard as a contested case.

(2) Subject to section (3) of this rule, a complaint must be decided in court if:

(a) The complainant files a complaint in court that alleges the elements of the complaint in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the complaint and that allows the complainant to file a response alleging the elements of the complaint.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limit in this rule constitutes waiver of the right to have the complaint decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a complaint be heard as a contested case filed under subsection (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(b) A referral of a complaint to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that the complaint be heard as a contested case under subsection (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the complaint.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the complaint being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the complainant in a complaint does not seek \$1,000 or more, a hearing on the complaint may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the complaint under ORS [~~701.139~~] **701.131** to 701.180 is at issue;

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the complaint; or

(c) The agency determines, in its discretion, that a contested case hearing is in the interest of one or more of the parties or of the agency.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS **701.133 &** 701.145 [~~& 701.147~~]

(9/99, temp. 1/00, 5/00, 6/02, 9/02, 8/03, 12/04, 8/05, 12/05, 12/06, 12/07, 6/08)

## **812-005-0100**

### **Notice of Intent to Take Action**

Except as provided under authority of ORS [~~701.135(2)~~] **701.098(4)**, if the agency intends to revoke or suspend a license, or assess a civil penalty, it shall issue and serve on the respondent a notice of intent to take an action, giving the opportunity for hearing. The notice may include the statement that an answer to the assertions or charges will be required.

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

Stats. Implemented: ORS 183.413, 183.415, 183.470 & 701.102

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08)

## **812-005-0140**

### **Emergency Suspension**

The Administrator of the Board may immediately suspend or refuse to renew a license without a prior hearing, in accordance with ORS [~~701.135(2)~~] **701.098(4)**, in cases where the Administrator of the Board has in its possession a prima facie case of a wrongful act as described in ORS [~~701.135(2)(a)(A)(D)~~] **701.098(4)(a)(A)-(D)** having been committed by a contractor and upon a finding by the Administrator that the contractor is a serious danger to the public welfare. The respondent shall be entitled to a hearing on the Administrator's action if the respondent requests such a hearing within 90 days after the date of the notice to the respondent, as provided in ORS [~~701.135(2)~~] **701.098(4)**.

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

Stats. Implemented: ORS **701.098 &** 701.102 [~~701.135~~]

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08)

### **812-005-0160**

#### **Failure to Pay a Civil Penalty**

The agency may revoke, suspend, or refuse to issue or reissue the license of any contractor who fails to pay on demand a civil penalty which has become due and payable.

Stat. Auth.: ORS 670.310, 701.235 & 701.992

Stats. Implemented: ORS **701.098 &** 701.102 [~~701.135~~]

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08)

### **812-005-0170**

#### **Status of Backdated License**

Notwithstanding any back-dating of a renewal, a person shall be in violation of ORS [~~701.055(4)~~] **701.026** if, at the time a person undertakes, offers to undertake, or submits a bid to do work as a contractor, the person is not actively licensed with the Board.

Stat. Auth.: ORS 670.310, 701.235 & 701.992

Stats. Implemented: ORS [~~701.055~~] **701.026** & 701.102

(7/80, 8/80, 11/80, 12/80, 2/81, 6/81, 1/82, 3/82, 4/82, 10/82, 1/83, 3/83, 4/85, 12/85, 3/87, 12/87, 1/88, 1/89, 11/89, 2/90, 5/90, 6/90, 2/91, 3/91, 6/91, 7/91, 9/91, 2/92, 4/92, 7/92, 12/92, 5/93, 12/93, 1/94, 6/94, 7/94, 10/95, 11/97, 10/98, 6/00, 12/05, 6/08)

### **812-005-0200**

#### **Unpaid Final Orders that Exceed the Contractor's Bond, Letter of Credit or Cash Deposit**

(1) Under ORS 701.085(7) **(2005) or 701.068**, the agency must suspend the license of a licensee if the agency issues a final order on a complaint that exceeds the amount of the bond, letter of credit or cash deposit available to pay the order.

(2) A suspension issued under section (1) of this rule must remain in effect until the unpaid amount of the order is paid or until the license of the licensee expires.

(3) The agency may not reinstate or renew a license suspended under section (1) of this rule until the final order described in section (1) of this rule and any subsequently issued order that is unpaid, is paid, or discharged in bankruptcy.

(4) As a condition of ending a suspension or renewing a license that was suspended under ORS 701.085(7) **(2005) or 701.068**, and section (1) of this rule, the agency may require a licensee to file a bond, letter of credit or cash deposit up to five times as much as the amount required of a licensee under ORS 701.085(2) to (5) **(2005) or 701.0688**. The amount of the increased bond, letter or credit or cash deposit required must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

(b) If the sum of the unpaid final orders described in section (4) of this rule exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

Stat. Auth.: ORS 670.310, 701.085 **(2005), 701.068 or 701.088** & 701.235

Stats. Implemented: ORS 701.085 **(2005), 701.068 & 701.088** [~~and section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(12/04, 6/05, 12/05, 12/06, 12/07, 6/08)

## **812-005-0210**

### **Conditions to Require an Increased Bond, Letter of Credit or Cash Deposit**

(1) Under ORS 701.085(8) **(2005) or 701.068**, the agency may require a bond, letter of credit or cash deposit of up to five times the normally required amount, if it determines that a current or previous license of an owner or officer, as those terms are defined in division 2 of these rules, has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance.

(b) Five or more breach of contract complaints filed under ORS [~~701.139~~] **701.131** to 701.180 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint.

(c) An unpaid construction debt as defined in ORS 701.005(2) that exceeds the amount of the bond, letter of credit or cash deposit.

(2) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(a) of this rule must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

(b) If the sum of the unpaid final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit in the amount of five times the normal amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

(3) The amount of increased bond, letter of credit or cash deposit the agency may require under subsection (1)(b) of this rule will be based on the number of complaints filed and the time period that the complaints were received as follows:

(a) Two times the bond, letter of credit or cash deposit amount required under ORS 701.085 if five or more complaints are received in any twelve-month period.

(b) Three times the bond, letter of credit or cash deposit amount required under ORS 701.085 **(2005), 701.068 or 701.088** if five or more complaints are received in any six-month period.

(c) Five times the bond, letter of credit or cash deposit amount required under ORS 701.085 **(2005), 701.068 or 701.088** if five or more complaints are received in any three-month period.

(4) The amount of the increased bond, letter of credit or cash deposit required under subsection (1)(c) of this rule must conform to the following schedule:

(a) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by less than 50 percent, the agency may require a bond, letter of credit or cash deposit two times the bond amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

(b) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by 50 percent or more, but less than 100 percent, the agency may require a bond, letter of

credit or cash deposit three times the bond, letter of credit or cash deposit amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

(c) If the sum of the unpaid construction debt exceeds the licensee's most recent bond, letter of credit or cash deposit by 100 percent or more, the agency may require a bond, letter of credit or cash deposit five times the bond, letter of credit or cash deposit amount required under ORS 701.085 **(2005), 701.068 or 701.088**.

Stat. Auth.: ORS 670.310, 701.085 **(2005), 701.068 or 701.088** & 701.235

Stats. Implemented: ORS 701.005, [~~701.077, 701.085 & section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~] **701.085 (2005), 701.068, 701.088 & 701.094**  
(12/04, 6/05, 12/05, 9/06, 12/06, 8/07, 12/07, 6/08)

## **812-005-0250**

### **Repeal of Increased Bond, Letter of Credit or Cash Deposit Requirement**

(1) Under ORS 701.085(7) or (8) **(2005) or 701.068** after two years of operating under the increased bond, letter of credit or cash deposit, an applicant or licensee may submit a written request to the Board appealing the agency's determination requiring an increased bond, letter of credit or cash deposit amount.

(2) A licensee required to file a bond, letter of credit or cash deposit of up to five times the normal amount may petition the agency to be relieved of that obligation after demonstrating to the agency two full years of acceptable business practices while having posted the increased bond, letter of credit or cash deposit.

(3) Petitions for return to normal bond, letter of credit or cash deposit requirements under ORS 701.085 **(2005), 701.068 or 701.088** must be made in writing and delivered to the agency. Such petitions must provide a full explanation why the licensee no longer poses an increased risk to the public and should be granted a license at the regular bond, letter of credit or cash deposit amount.

(4) The agency shall consider the following factors while considering the licensee's petition:

(a) After the increased bond, letter of credit or cash deposit requirement, whether the petitioner has:

(A) A history of paying Dispute Resolution Services complaints within ten (10) days of the order becoming final; or

(B) Incurred any unpaid court judgments;

(b) A review of the petitioner's CCB enforcement/discipline history; and

(c) A criminal history background check.

(5) The agency shall notify the licensee or applicant in writing within 30 days of the agency's decision regarding the petition. If the agency proposes to deny the petition, the agency shall notify the licensee or applicant of the basis for its proposed denial and provide notice and an opportunity for hearing, as provided for in ORS 183.415.

Stat. Auth.: ORS 670.310, 701.085 **(2005), 701.068, 701.088** & 701.235

Stats. Implemented: ORS 701.085 **(2005), 701.068 or 701.088** [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]  
(9/06, 12/07, 6/08)

## **812-006-0100**

### **Responsible Managing Individual**

(1) As used in these rules, a responsible managing individual (RMI) has that meaning as provided in ORS [~~701.078(4)~~] **701.005(15)**.

(2) Upon initial application, an applicant for a contractor's license shall designate at least one individual as the applicant's RMI and;

(a) Provide evidence that the applicant's RMI has completed the training and passed the test, as provided for in ORS [~~701.072~~] **701.122**, OAR 812-006-0150 and 812-006-0300; or

(b) Document that the applicant's RMI has experience as required by OAR 812-006-0450.

(3) An individual who is not an owner may not be designated as the RMI of more than one licensee.

(4) When an RMI leaves a business, the business shall:

- (a) Immediately appoint another RMI; and
- (b) Immediately notify the agency in writing of the name of the individual and the date the individual joined the business.

(5) An RMI appointed under section (4) of this rule must:

(a) Document completion of the training and testing requirements under ORS [~~701.072~~] **701.122**, OAR 812-006-0150 and 812-006-0300; or

(b) Document that the RMI has experience as required by OAR 812-006-0450.

Stat. Auth.: ORS 670.310, [~~701.072~~] **701.122** & 701.235

Stats. Implemented: ORS [~~701.072 & 701.078~~] **701.005, 701.091 & 701.122**

(12/01, 8/05, 5/06, 9/06, 6/08)

(Amended and renumbered from 812-006-0011, 9/06)

## **812-006-0150**

### **Training Requirements**

(1) The training required in ORS [~~701.072~~] **701.122** shall cover the subjects listed in OAR 812-006-0250.

(2) Training shall consist of 16 hours.

(3) Training must be provided by a provider approved by the agency as provided in OAR 812-006-0200.

(4) A person seeking to take the training shall:

(a) Pay any fees required by the training provider; and

(b) Provide approved government-issued picture identification to the training provider.

Stat. Auth.: ORS 670.310, [~~701.072~~] **701.122** & 701.235

Stats. Implemented: ORS [~~701.072 & 701.078~~] **701.122**

(9/06, 6/08)

## **812-006-0200**

### **Training Provider Approval**

(1) No training shall meet the requirements of ORS [~~701.072~~] **701.122** unless it is offered by a provider approved by the agency.

(2) To receive agency approval, individuals and organizations shall make application and sign an agreement with the agency prior to offering the training.

(3) The provider application shall include, but will not be limited to, provisions for:

(a) Recording the name, address, contact information, and name of responsible administrator of the provider.

(b) Submitting trainer resumes or work summaries that demonstrate that all its trainers have at least two years experience either teaching adults or working in subject areas outlined in the Oregon Contractors Reference Manual.

(4) No provider may offer or provide any training until there is a fully executed agreement between the provider and the agency.

(5) A provider must comply at all times with the following requirements:

(a) The provider will provide 16-hours of training under OAR 812-006-0150.

(b) The provider will verify that each student taking the training has a current agency-approved manual.

(c) The provider will use agency-approved curriculum and the agency-approved training manual.

(d) The provider will send electronic records of completion to the agency in a format approved by the agency and keep records of completion for a minimum of five years.

(e) The provider will communicate law changes and program procedural changes received from the agency to the provider's trainers and will implement these changes within 30 business days.

(f) The provider will use only approved trainers who have at least two years' total experience either teaching adults or working in the trainer's subject area or a combination of the two.

(g) The provider will request and receive, in writing, agency approval of all trainers at least 10 business days before trainers are scheduled to teach.

(h) The provider will provide a mechanism for students to contact their trainer(s) outside of class for a minimum of one hour per week for 90 days from date of enrollment.

(i) The provider will give all students information about how to contact trainers and hours of availability before the end of the training.

(j) The provider will comply with all applicable federal and state laws.

(6) The agency may publicize a provider's test passage rate for its students.

(7) The agency may revoke a provider's right to offer training and terminate the agreement of a provider at any time the provider fails to:

(a) Meet any requirement of the agreement; or

(b) Comply with these rules.

(8) The agency may revoke a provider's right to offer training and terminate the agreement of a provider:

(a) Whose students do not pass the agency test on their first attempt at least 70 percent of the time after the provider has provided training for at least three months, or whose students fail to maintain the 70 percent first attempt test passing rate during the remaining period of the agreement; or

(b) Who acquires or attempts to acquire agency test questions by unauthorized means, including but not limited to, photographing, photocopying or videotaping any part of the agency's test or paying or offering incentives to individuals or business entities to write down, photograph or videotape any part of the agency's test.

Stat. Auth.: ORS 670.310, [~~701.072~~] **701.122** & 701.235

Stats. Implemented: ORS [~~701.072~~] **701.122**

(1/92, 2/92, 5/00, 12/01, 5/02, 6/03, temp. 1/05, 6/05, 8/05, 12/05, 9/06, 6/08)

(Amended and renumbered from 812-006-0030, 9/06)

## **812-006-0250**

### **Training Subjects**

(1) The agency may evaluate and approve training based on written evaluation criteria approved by the Training and Education Committee and made available to providers. The agency may revoke a provider's right to offer training if a provider's training does not meet the approved criteria.

(2) The hours of training required under OAR 812-006-0150 shall consist of the following topics:

(a) Construction Contractors Board:

(A) Role and authority, licensing requirements, application procedures and major divisions and functions;

(B) Dispute resolution processes;

(C) Business entities;

(D) Mandatory consumer notices;

(E) Rights and responsibilities of consumers and contractors;

(F) Address change notification;

(G) Enforcement program; and

(H) Statutes and rules that govern contractors.

(b) Employer requirements and employee's rights:

(A) State agencies that regulate workplace issues;

(B) Information and resources on employer requirements, employee's rights, workers' compensation insurance, and required workplace postings;

(C) Civil rights;

(D) Title VII, child labor, and important state and federal wage and hour laws;

(E) Current minimum wage rate requirements;

(F) Prevailing wage rate law; and

(G) Employees and independent contractors.

- (c) Taxes, record keeping and business practices:
  - (A) Required employment forms;
  - (B) Identification numbers;
  - (C) Cost of employees;
  - (D) Importance of good record keeping;
  - (E) Ways to organize records;
  - (F) Required tax forms and reporting times;
  - (G) Professional help;
  - (H) Profit and cash flow; and
  - (I) Requirements for business licenses.
- (d) Building codes:
  - (A) Applicable codes;
  - (B) Building codes books;
  - (C) Code revisions;
  - (D) Specialty licenses and inspections;
  - (E) Required and exempt permit work;
  - (F) Permit applications permit violation penalties;
  - (G) Required inspections;
  - (H) Inspection procedures;
  - (I) Final inspections and occupancy permits; and
  - (J) Red tag/stop work orders.
- (e) Oregon Occupational Safety and Health Division:
  - (A) OR-OSHA regulations, job site inspections and resources;
  - (B) Equipment basics and maintenance;
  - (C) Job site record keeping;
  - (D) General safety practices; and
  - (E) Responsibilities and relationships among contractors and subcontractors on a job site.
- (f) Sound environmental practices and laws:
  - (A) Environmental friendly materials;
  - (B) Good recycling, reduction and reuse methods;
  - (C) Hazardous waste and special waste found in new and old construction;
  - (D) Laws and regulations governing environmental hazards, proper handling and disposal methods of environmental hazards and job site debris;
  - (E) Governmental agencies that regulate environmental conditions at a job site;
  - (F) Environmental violation penalties;
  - (G) Site preparation including construction activities that impact rivers;
  - (H) Soil erosion; and
  - (I) Wetlands, water quality, sewage and underground storage/heating oil tanks.
- (g) Contract law:
  - (A) Clear and concise contracts;
  - (B) Four elements of contract law;
  - (C) Three elements of a construction contract;
  - (D) Breach of contract;
  - (E) Minor and major breach of contract;
  - (F) Written and verbal contracts and change orders;
  - (G) Contractor responsibilities for work of self and others;
  - (H) Partnering, negotiation, mediation, arbitration and litigation; and
  - (I) Buyer's Right to Cancel.
- (h) Oregon construction lien law:
  - (A) Purpose;
  - (B) Required notices;

- (C) Lien law procedures;
- (D) Steps and timelines to perfect a lien and foreclose; and
- (E) Important lien law differences of other states.
- (i) Project management, estimating and scheduling:
  - (A) Importance of project management and consequences for failing to do so;
  - (B) Simple written budgets that include cost, overhead and profit; and
  - (C) Simple project schedules and consequences of improper job scheduling.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS [~~701.072~~] **701.122**

(1/92, 2/92, 4/92, 1/93, 2/93, 4/93, 5/93, 8/93, 12/93, 1/94, 6/94, 7/94, 1/95, 6/95, 10/97, 2/98, 5/00, 6/00, 4/01, 12/01, 3/03, 8/04, 5/06, 9/06, 6/08)

(Amended and renumbered from 812-006-0050, 9/06)

### **812-006-0300**

#### **Testing Requirements**

- (1) The test required in ORS [~~701.072~~] **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 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.
    - (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 [~~701.072~~] **701.122**  
 (5/00, 12/01, 3/03, 8/03, 12/05, 9/06, 3/07, 6/08)  
 (Amended and renumbered from 812-006-0012, 9/06)

### **812-006-0350**

#### **Testing Subversion**

- (1) Testing subversion is the use of any means to alter the results of a test to cause the results to inaccurately represent the competency of an examinee. Testing subversion includes, but is not limited to:
  - (a) Communication between examinees inside the testing room;
  - (b) Giving or receiving any unauthorized assistance on the test while the test is in process;
  - (c) Having any printed or written matter or other devices in the examinee's possession during the test except:
    - (A) The Oregon Construction Contractor's Reference Manual; and
    - (B) One language translation book.
  - (d) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured test questions or other secured examination material prior to, during or after the administration of the examination;
  - (e) Copying another examinee's answers or looking at another examinee's materials while a test is in process;
  - (f) Permitting anyone to copy answers to the test;
  - (g) Copying or removing any test questions from the testing area;
  - (h) Allowing another person to take the test in the examinee's place;

(i) Writing notes or questions in the Oregon Construction Contractor's Reference Manual or language translation book during the test; or

(j) Leaving the room during the test.

(2) At the discretion of the agency or its designees, if there is evidence of testing subversion by an examinee prior to, during, or after the administration of the test, one or more of the following may occur:

(a) The examinee may be denied the privilege of taking the test if testing subversion is detected before the administration of the test;

(b) If the testing subversion detected has not yet compromised the integrity of the test, such steps as are necessary to prevent further testing subversion shall be taken, and the examinee may be permitted to continue with the test;

(c) The examinee may be requested to leave the testing facility if testing subversion is detected during the test. If the examinee does not leave the facility, the examinee will be deemed a trespasser;

(d) The examinee's test results may be invalidated and the application fee forfeited; or

(e) The examinee may not be allowed to sit for an examination for up to one year.

(3) If testing subversion is detected after the administration of the test, the agency or its designee shall make appropriate inquiry to determine the facts concerning the testing subversion and the agency or its designee may take any of the actions described in this rule.

Stat. Auth.: ORS 670.310, [701.072] 701.122 & 701.235

Stats. Implemented: ORS [701.072] 701.122

(12/05, 9/06, 6/08)

(Amended and renumbered from 812-006-0015, 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 [701.072] 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 [701.078(1)(b)(A)] 701.091.

(2) In lieu of complying with section (1) of this rule, an RMI may satisfy the requirements of ORS [701.078(1)(b)(A)] 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, [701.072] 701.122 & 701.235

Stats. Implemented: ORS [701.072] 701.122

(9/06, temp. 11/06, 3/07, 6/08)

#### **812-009-0020**

##### **Amendment to Statement of Damages**

(1) If the agency refers a complaint to the Office of Administrative Hearings for a hearing on the amount the respondent owes the complainant, the complainant may amend the amount the complainant alleges the respondent owes the complainant by filing an amended statement of damages. An amended statement of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and OAR 812-009-0085. An amended statement of damages filed under this section must be received by the administrative law judge or the Office of Administrative Hearings no later than 14 days before the scheduled date of a hearing on the matter.

(2) An amended statement of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended statement of damages must state the amount alleged to be owed by the respondent, limited to items of complaint in the Breach of Contract Complaint and complaint items added up to and through the initial on-site meeting. The amended statement of damages must be signed by the complainant.

(3) An amended statement of damages making a significant change in the amount the complainant alleges that the respondent owes the complainant may be good cause to postpone the scheduled hearing under OAR 137-003-0525 if the time left before the hearing is insufficient to prepare for a hearing on the amended amount.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413, 183.415, 701.145 [~~& 701.147~~]

(10/98, temp. 1/00, temp. 3/00, 5/00, 11/02, 8/03, 12/06, 6/08)

Attorney General noted that rule is authorized under OAR 137-003-0501(2) and does not require Attorney General approval in letter dated 2/24/00

### **812-009-0050**

#### **Providing Required Information to Parties**

The agency delegates to the Office of Administrative Hearings or the administrative law judge assigned to hear a complaint the responsibility to provide the information required to be given to each party under ORS 183.413(2) and OAR 137-003-0510(1).

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.413, 183.415, **701.133**, 701.145 [~~& 701.147~~]

(temp. 3/00, 5/00, 8/03, 12/06, 6/08)

Authorized by Attorney General order dated 2/24/00

### **812-009-0070**

#### **Suspending Processing**

(1) An administrative law judge may suspend or cancel a hearing at any time if the administrative law judge finds that the nature or complexity of the issues is such that a court is a more appropriate forum for adjudication. If an administrative law judge suspends or cancels a hearing under this rule, the administrative law judge must refer the complaint to the agency with a memorandum recommending that processing of the complaint be suspended under ORS 701.145 and OAR 812-004-0520 and stating the basis of the recommendation. A copy of this memorandum must be served on the parties.

(2) If a complaint is referred to the agency under section (1) of this rule, the agency may:

(a) Suspend processing the complaint; or

(b) Refer the complaint back to the administrative law judge with instructions to resume the hearing.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS **701.133 &** 701.145 [~~& 701.147~~]

(temp. 1/00, 5/00, 4/01, 3/03, 8/03, 12/06, 6/08)

Authorized by Attorney General order dated 1/27/00

### **812-009-0090**

#### **Discovery and Subpoenas**

(1) The agency delegates to the administrative law judge assigned to hear a complaint the authority to:

(a) Order and control discovery under OAR 137-003-0570 related to the hearing on the complaint, except an administrative law judge may not authorize a party to take a deposition that must be paid for by the agency.

(b) Issue subpoenas under OAR 137-003-0585 that are related to the hearing on the complaint.

(2) The agency waives receipt of notice that a party seeks to take the testimony of a witness by deposition under OAR 137-003-0570.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8  
Stats. Implemented: ORS 183.425, 183.440, 183.445, 183.450, 701.145 & [701.147] **701.149**  
(temp. 1/00, temp. 3/00, 5/00, 8/03, 12/06, 6/08)  
Authorized by Attorney General order dated 1/27/00

### **812-009-0140**

#### **Failure to Appear**

(1) "Order" as used in this rule means a proposed and final order an administrative law judge is authorized to issue under OAR 812-009-0160 or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) If the administrative law judge notified the parties to a complaint of the time and place of a hearing on the complaint and a party did not appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3).

(3) If a complainant does not appear at a hearing, an administrative law judge may dismiss a complaint under section (2) of this rule if the administrative law judge finds that the record does not contain sufficient evidence to support the complaint.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.415, **183.417**, 183.450, 183.460, 183.464, 183.470, 701.145 & [701.147, section 4, chapter 288, Oregon Laws 2007 (HB 2423)] **701.149**  
(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 4/01, 9/01, 5/02, 8/03, 12/06, 12/07, 6/08)

### **812-009-0160**

#### **Order Based on Hearing, Limitation on Order**

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) Subject to sections (7) and (8) of this rule, if a complaint is referred for a hearing to determine the amount, if any, that a respondent owes a complainant, the administrative law judge may not issue an order in an amount greater than the total amount the complainant alleges the respondent owes the complainant in:

(a) The most recent statement of damages or amended statement of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The Breach of Contract Complaint filed under OAR 812-004-0340, if no statement of damages was filed.

(3) If a complaint is referred for a hearing to determine whether any portion of a judgment is within the agency's jurisdiction, the administrative law judge may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the complainant or dismiss the complaint.

(5) An administrative law judge must consider any amounts due to the respondent from the complainant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in section (8) of this rule and OAR 812-009-0200, an administrative law judge must issue a proposed and final order under OAR 137-003-0645(4) that must automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 812-009-0400;

(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR [137-033-0655 (1)] **137-003-0655(1)**;

(c) The administrative law judge withdraws and corrects the order under OAR 137-003-0655(1);

(d) The agency issues an amended proposed order under OAR 137-003-0655 (3); or

(e) The agency notifies the parties and the administrative law judge that the agency will issue the final order.

(7) If a limitation on damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(8) If a limitation of damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that does not include a request for an award of the complaint processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the complaint processing fee paid by the complainant under OAR 812-004-0110 and 812-004-0400.

(9) If a complaint is referred for a hearing solely to determine if the Board has jurisdiction over the complaint and the administrative law judge finds that the Board has jurisdiction over the complaint, the administrative law judge must issue an intermediate order that the Board resume processing the complaint. The Board may accept the order to resume processing or issue a proposed and final order under OAR 137-003-0060 to dismiss the complaint for lack of jurisdiction.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & ~~701.147~~

**701.146**

(10/98, temp. 1/00, temp. 3/00, 5/00, temp. 7/00, 8/00, 5/02, 11/02, 8/03, 10/04, 12/05, 12/06, 6/07, 6/08)

Authorized by Attorney General order dated 07/11/00

**812-009-0200**

**Final Order Without a Proposed Order**

(1) Notwithstanding OAR 812-009-0160 (6), an administrative law judge must issue a final order under OAR 137-003-0665 in a contested case without issuing a proposed order if:

(a) The total amount alleged to be due to any complainant in a hearing does not exceed \$2,500;

(b) The parties voluntarily agree to a settlement of a complaint in accordance with ORS ~~[183.415(5)]~~ **183.417(11)**, except as provided in section (2) of this rule; or

(c) The hearing was requested by the respondent after the parties voluntarily agreed to a settlement of a complaint and the following conditions exist:

(A) The settlement's essential terms are limited to the respondent's agreement to pay money to the complainant in exchange for the complainant's release of the complaint; and

(B) The amount of the final order does not exceed the amount the respondent agreed to pay under the settlement agreement.

(2) If the parties voluntarily agree to a settlement of a complaint in accordance with ORS ~~[183.415(5)]~~ **183.417(11)** and the settlement agreement includes an agreement for future performance, the administrative law judge must issue an intermediate order containing any necessary findings of fact and return the complaint to the agency for further processing and issuance of the final order.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & 1999 Or. Laws, ch. 849, sect. 8

Stats. Implemented: ORS 183.415, **183.417**, 183.450, 183.460, 183.464, 183.470 & 701.145 [~~701.147~~]

(10/98, temp. 1/00, temp. 3/00, 5/00, 6/02, 8/03, 12/06, 6/08)

Authorized by Attorney General order dated 1/27/00

**812-009-0220**

**Petition for Reconsideration or Rehearing; Request for Stay**

A petition for reconsideration or rehearing under OAR 137-003-0675 or a request for a stay under OAR 137-003-0690 of a final order on a complaint issued by an administrative law judge under this division must be filed with the agency.

Stat. Auth.: ORS 670.310, 701.235 & 1999 Or. Laws, ch. 849, sect. 8  
Stats. Implemented: ORS 183.482, **701.133 &** 701.145 [~~701.147~~]  
(temp. 1/00, temp. 3/00, 5/00, 8/03, 12/06, 6/08)  
Authorized by Attorney General order dated 1/27/00

### **812-009-0320**

#### **Entry of Agency Evidence**

Contested case enforcement hearings may be held before an administrative law judge. The agency's evidence may be entered into the record by the administrative law judge, or by another representative of the agency.

Stat. Auth.: ORS 670.310 & 701.235  
Stats. Implemented: ORS **701.133 &** 701.145 [~~701.147~~]  
(10/98, temp. 3/00, 5/00, 8/03, 12/05, 6/08)

### **812-009-0340**

#### **Agency Representation by Officer or Employee**

(1) As authorized by the Attorney General as provided in ORS [~~183.450(7)(a)~~] **183.452**, agency officers and employees may appear, but not make legal argument, on behalf of the agency in compliance hearings involving:

- (a) Imposition of civil penalties; and
- (b) Refusals to reissue and suspensions in the following classes of hearings:
  - (A) Failure of a licensee to pay a final order of the Board;
  - (B) Violations of employer status regulations, including violations of ORS chapters 656, 657, and 316, in accordance with ORS [~~701.109~~] **701.106**; and
- (c) Other compliance and claims hearings as approved in writing by the Attorney General on an individual case basis.

(2) Legal argument as used in ORS [~~183.450(8)~~] **183.457** has the same meaning as in OAR 137-003-0008.

Stat. Auth.: ORS 183.310 to 183.550, 670.310 & 701.235  
Stats. Implemented: ORS [~~183.450~~] **183.452 & 183.457**  
(3/87, 12/87, 1/88, 5/93, 12/93, 1/94, 6/94, 7.94, 10/98, 6/00, 6/08)

### **812-009-0430**

#### **Form of Exceptions to Agency Order in a Complaint**

(1) Exceptions to an agency order filed by a party to a complaint under OAR 812-009-0400 or a respondent under 812-009-0420 must conform to the following requirements:

- (a) Exceptions must be typed or legibly printed on 8-1/2 by 11" sheets of paper.
- (b) The first page of the exceptions must be titled "Exceptions to Proposed Order." If the exceptions are filed in a complaint, the first page must show the file number, the names of the parties to the complaint and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page must show the name of the respondent at the top of the page.
- (c) Each page of the exceptions must be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information must be included in the exceptions:

- (A) The pages on which the finding of fact appear and the number, if any, of the finding of fact;
- (B) The text of the finding of fact; and
- (C) An explanation or argument supporting the party's contention that the finding of fact is not supported by the evidence in the record.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information must be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information must be included in the exceptions:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony must be included in the exceptions.

(h) The party submitting the exceptions must sign and date the exceptions.

(2) The Appeal Committee may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS ch. 183, 701.145 & **701.260** [701.147]

(4/01, 8/03, 12/05, 12/06, 6/08)

#### **812-010-0020**

##### **Applicability of Rules; Application of ORS 36.600-36.740**

(1) The rules in division 10 of this chapter apply when:

(a) A complaint is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely complaint is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board must arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 10 of this chapter, an arbitration conducted under this division is governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

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

Stats. Implemented: ORS 36.600 to 36.740, ch. 183, **701.133**, 701.139, [701.147,] & 701.148

(10/98, 9/99, 12/01, 6/02, 9/02, 8/03, 12/03, 5/04, 10/04, 12/06, 6/08)

#### **812-010-0060**

##### **Appointment of Arbitrator**

Assignment of arbitrator shall be as provided in ORS [701.147] **701.149** and shall be subject to a request for a different administrative law judge to act as arbitrator under ORS 183.645 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310, 701.148 & 701.235

Stats. Implemented: ORS 183.645, [701.147 &] 701.148 & **701.149**

(10/98, 9/99, temp. 1/00, 5/00, 5/02, 8/03, 12/03, 5/04, 10/04, 6/08)

## **812-010-0080**

### **Delegation of Duties**

If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the duties of the agency under these rules may be carried out through representatives as directed by the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge, except that the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may not perform the duties of the agency under OAR 812-010-0040, 812-010-0100 or 812-010-0470.

Stat. Auth.: 670.310, 701.148 & 701.235

Stats. Implemented: ORS [~~701.147 &~~] 701.148 **& 701.149**  
(10/98, 9/99, temp. 1/00, 5/00, 5/02, 8/03, 6/05, 6/08)

## **812-010-0090**

### **Request for Contested Case Hearing or Removal to Court**

(1) If the Office of Administrative Hearings receives a request under OAR 812-004-0590 to conduct the hearing on a complaint as a contested case, the Office of Administrative Hearings must retain jurisdiction over the complaint. The Office of Administrative Hearings must hold the contested case hearing at the time scheduled for the arbitration unless good cause exists to reschedule the hearing date and time.

(2) If the Office of Administrative Hearings receives notice under OAR 812-004-0590 that a party to the complaint filed a court complaint and OAR 812-004-0590 requires that the complaint be decided in court, the Office of Administrative Hearings must return the complaint to the agency.

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

Stats. Implemented: ORS ch. 183, [~~701.147 & 701.148~~] **701.145 & 701.146**  
(6/02, 8/03, 12/06, 6/08)

## **812-010-0100**

### **On-Site Investigation, Settlement Discussions**

(1) At the discretion of the agency, arbitration may be preceded by an on-site investigation or settlement discussions.

(2) At the discretion of the arbitrator, the arbitration may be preceded by settlement discussions.

(3) The arbitrator may request that the agency conduct an on-site investigation before arbitration. The agency may grant or deny the request at its discretion.

(4) If the parties to an arbitration settle a complaint referred to arbitration under OAR 812-004-0560, the parties may agree that the arbitrator may issue a final order under ORS [~~183.415(5)~~] **183.417(11)**.

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

Stats. Implemented: ORS 701.148

(10/98, 9/99, 12/01, temp. 9/02, 11/02, 8/03, 12/06, 6/08)

## **812-010-0120**

### **Time and Place of Arbitration Hearing; Notice**

The Office of Administrative Hearings must fix a time and place for the arbitration hearing. The Office of Administrative Hearings must mail notice of the time and place of the arbitration at least 21 days before the arbitration, unless otherwise agreed to by the parties.

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

Stats. Implemented: ORS [~~701.147 &~~] 701.148 **& 701.149**

(10/98, 9/99, temp. 7/00, 8/00, 12/01, 5/02, temp. 9/02, 11/02, 8/03, 12/06, 6/08)

## **812-010-0160**

### **Substitution of Arbitrator**

(1) The agency administrator or a person designated by the agency administrator may substitute another arbitrator at any time before the arbitration hearing begins.

(2) If the agency refers a dispute to the Office of Administrative Hearings for arbitration under these rules, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may substitute another arbitrator at any time before the arbitration hearing begins.

Stat. Auth.: ORS 670.310, 701.148 & 701.235

Stats. Implemented: ORS [~~701.147 &~~] 701.148 **& 701.149**

(10/98, 9/99, temp. 1/00, 5/00, 8/03, 6/08)

## **812-010-0400**

### **Service of Notices and Other Communications**

(1) Communication including, but not limited to the initial notice of an arbitration hearing directed by the arbitrator, Office of Administrative Hearings, or agency to the last-known address of record shall be considered delivered when deposited in the United States mail.

(2) If the agency did not serve a contested case notice, referral to the Office of Administrative Hearings or other notice of the dispute by registered, certified or post office receipt secured mail prior to the initial notice of the arbitration hearing, the notice of hearing shall be sent by registered, certified or post office receipt secured mail.

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

Stats. Implemented: ORS [~~701.080, 701.147~~] **701.117, 701.133** & 701.148

(10/98, 5/02, 8/03, 12/03, 6/08)

## **812-010-0420**

### **Time, Form, and Scope of Award; Limitation on Award**

(1) An award must be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award must be in writing and must be signed or otherwise authenticated by the arbitrator.

(4) The award must fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award must contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition to modify or correct the award would be appropriate.

(5) An arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent statement of damages or amended statement of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Breach of Contract Complaint filed by the party under OAR 812-004-0340, if no statement of damages was filed.

(6) When a complainant makes a complaint against a respondent's surety bond, letter of credit or cash deposit required under ORS 701.085 (**2005**) or **701.068** or **701.088** and the parties to the complaint have not agreed that the arbitration will bind the complainant, only the complainant may assert damages. The arbitrator may award damages to the complainant, but not to the respondent. The respondent may assert amounts owed to it as an offset under section (7) of this rule.

(7) An arbitrator must consider any amounts owed by a party alleging damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party alleging the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a statement of damages as to the offset. If the party asserting the

offset did not file a statement of damages, the amount of the offset may not exceed the amount of the award.

(8) After an award has been issued, a party to the arbitration may:

(a) File a request to modify or correct the award under ORS 36.690.

(b) File the award with the court with a petition to confirm the award under ORS 36.700.

(c) File a petition with the court to vacate, modify or correct the award under ORS 36.705 and 36.710.

(9)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a complaint or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond, letter of credit or cash deposit required under ORS 701.085 **(2005) or 701.068 or 701.088** and other amounts that are not payable from the bond, letter of credit or cash deposit under OAR 812-004-0250 or any other law, the award must segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract at issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

(10) If a limitation on damages under section (4) is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

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

Stats. Implemented: ORS 36.690, 36.700, 36.705, 36.710, **701.088**, 701.145, 701.148 [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]  
(10/98, 6/02, 9/02, 11/02, 8/03, 12/03, 12/04, 6/05, 12/06, 12/07, 6/08)

## **812-010-0425**

### **Petition to Modify or Correct an Award**

(1) A party to arbitration or the agency may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 812-010-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator no later than 21 days after the proposed award was mailed to the parties.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator must mail copies of the petition to the other parties to the arbitration and to the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension. If the arbitrator waives or extends the time limitations in sections (3) and (5), the arbitrator must notify the agency of the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a complaint not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the complaints submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the complaints submitted;

(d) Because the arbitrator has not made a final and definite award upon a complaint submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator must consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator must issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) If the arbitrator who prepared the award is not available to consider a petition modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

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

Stats. Implemented: ORS [~~183, 701.147~~] **183.482** & 701.148

(6/02, 9/02, 8/03, 12/03, 10/04, 6/05, 12/06, 6/08)

#### **812-010-0470**

##### **Payments from Licensee's Bond, Letter of Credit or Cash Deposit**

(1) If an award or amended award requires payment by a licensee and the licensee does not pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond, letter of credit or cash deposit to the extent payment is authorized under ORS 701.150. Payment from the bond, letter of credit or cash deposit is subject to the laws in ORS chapter 701 and rules in division 4 of this chapter, including but not limited to OAR 812-004-0600.

(2) For purposes of OAR 812-004-0600, an award or amended award is ready for payment by a party ordered to pay damages if 21 days have elapsed after the award was issued, and:

(a) The arbitrator has not received a petition to modify or correct the award; and

(b) The agency has not received a copy of a petition to modify, correct or vacate the award filed with the circuit court.

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

Stats. Implemented: ORS 701.143, **701.088** & 701.150 [~~& section 2, chapter 203, Oregon Laws 2007 (HB 2309)~~]

(10/98, /600, 12/01, 5/02, temp. 9/02, 11/02, 12/03, 5/04, 10/04, 6/05, 12/06, 12/07, 6/08)

(Amended and renumbered from 812-010-0440, 6/29/05)

#### **812-012-0110**

##### **Terms of Written Contract**

(1) If a contractor is required to have a written contract under [~~section 7, chapter 648, Oregon Laws 2007 (HB 2654)~~] **ORS 701.305**, the written contract or attached addendum to the written contract must contain the following:

(a) A statement that the contractor is licensed by the Construction Contractors Board.

(b) The contractor's name, address, phone number and license number issued by the board as shown on board records.

(c) Effective July 1, 2008, an acknowledgment of a written offer of a warranty, if an offer is required by [~~section 11, chapter 648 Oregon Laws 2007 (HB 2654)~~] **ORS 701.320**, and indication of the acceptance or rejection of the offered warranty;

(d) A summary of the notices required under ORS 87.093, **701.330** or under rules adopted under [~~sections 13 (2) and 14 of chapter 648, Oregon Laws 2007 (HB 2654)~~] **ORS 701.335(2)**.

(e) Effective July 1, 2008, acknowledgment of the receipt of the maintenance information required by the board under [~~section 13 of chapter 648, Oregon Laws 2007 (HB 2654)~~] **ORS 701.335**;

(f) An explanation of the property owner's rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule.

(g) Customer's name and address;

(h) Address where the work is to be performed;

(i) A description of the work to be performed;

(j) Price and payment terms;

(2) The information described in section (1) of this rule must be legible and in dark ink.

Stat. Auth.: ORS 670.310, 701.235, [~~Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)~~] **701.305, 701.315, 701.320, 701.330 & 701.335**

Stats. Implemented: [~~Sections 7, 13 & 14, chapter 648, Oregon Laws 2007 (HB 2654)~~] **ORS 701.305, 701.330 & 701.335**

(12/07, 6/08)