

OREGON CONSTRUCTION LIEN CHECKLIST

75th Day: _____, 20__ (#16) 120th Day: _____, 20__ (#24)

TO DO	CONSIDER
<p>1. Claimant's name:</p>	<p>Research names using on-line records of Secretary of State and Construction Contractors Board ("CCB").</p> <p>Also, consider whether a license, endorsement, or registration is required for remedy. See e.g. ORS 701.131 (contractor license and endorsements); ORS 479.670 (electrical contractor licensure); ORS 447.070 (plumbing contractor licensure); ORS 480.640 (boiler/pressure vessel licensure); ORS 671.220(3) (architects registration); and ORS 671.575 (Landscape contracting business licensure). Information may be found online (e.g. websites of CCB, Building Codes Division, and Board of Architect Examiners).</p> <p>Also, consider basis of claim of lien under ORS 87.010.</p>
<p>2. Name of person/entity that employed claimant:</p>	<p>Research name (see 1 above) found on contracts, invoices, credit applications, and payments.</p> <p>Also, if the person/entity that employed claimant is an "unlicensed" contractor and the project is an "owner-occupied residence," review whether lien prohibition of ORS 87.036 applies.</p>

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<p>3. Name of owner(s):</p>	<p>See 1 above. Also review lien notices and title information. Consider obtaining title guaranty for assurance that all owners of record are included in lien (ORS 87.035(3)(b)) and receive post-lien notices (see 9 through 12 below).</p> <p>Review ORS 87.005 definition of "owner." If some owners did not request construction (such as landlord-tenant or vendee-vendor), review ORS 87.030 and <i>Miller v. Ogden</i>, 134 Or App 589 (1995).</p> <p>Investigate occupant of improvement for owners who are not "of record." <i>HGC Limited v. Cascade Pension Trust</i>, 174 Or. App. 464 (2001) (lien foreclosure judgment failed to adjudicate correct owner due to error in original property deeds).</p>
<p>4. Name of mortgagee(s):</p>	<p>See 1 above. Also review lien notices and title information. Consider obtaining title guaranty so all mortgagees receive post-lien notices (see 28 below). See ORS 87.005 definition of "mortgage."</p>

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<p>5. Type of construction (check all that apply):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Preparation of land for construction <input type="checkbox"/> Single family dwelling <input type="checkbox"/> Single dwelling unit(s) in building <input type="checkbox"/> Multi-unit residential building <input type="checkbox"/> Some or all of building for rental <input type="checkbox"/> Business structure on residential lot <input type="checkbox"/> Shopping mall or strip mall <input type="checkbox"/> Business tenant improvement <input type="checkbox"/> Commercial manufacturing <input type="checkbox"/> Commercial/residential mix <input type="checkbox"/> Other (explain) 	<p>If claimant is a contractor under ORS Chapter 701, research CCB online records to confirm whether claimant has correct license and endorsement under ORS 701.021 as is required for remedy under ORS 701.131. See definitions of “residential structure,” “small commercial structure” and “large commercial structure” under ORS 701.005.</p> <p>Consider basis for claim of lien under ORS 87.010.</p> <p>Consider ability to claim lien against interests of owners who did not request construction under ORS 87.030 (notice of non-responsibility) (3 above).</p> <p>Also, consider pre-lien notice requirements and exceptions (9-12 below).</p>
<p>6. If a residential dwelling, did owner reside in dwelling during construction/renovation?</p>	<p>See 2 above regarding ORS 87.036. Also see ORS 87.021(1) (liens by architect, landscape architect, land surveyor or registered engineer and persons pursuant to ORS 87.010(5) and (6) may not be available).</p>
<p>7. Claimant provided:</p> <ul style="list-style-type: none"> <li style="margin-left: 100px;">Labor <input type="checkbox"/> <li style="margin-left: 100px;">Materials <input type="checkbox"/> <li style="margin-left: 100px;">Rental Equipment <input type="checkbox"/> <li style="margin-left: 100px;">Professional Services <input type="checkbox"/> 	<p>Consider license and endorsement requirements for on-site labor or other professional services. See 1 above.</p> <p>Consider basis for claim of lien under ORS 87.010. Note “services” described in ORS 87.010(5) and (6) by architects, registered engineers, surveyors, etc.</p> <p>Consider pre-lien notice requirements (9-12 below).</p>

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<p>8. Date of claimant's bid/contract: _____ Date claimant started working: _____</p>	<p>See 1 and 5 above to confirm no license, registration and endorsement issues at bid, contract or performance of work.</p> <p>Review pre-lien notice timing issues (9, 10 11, 12).</p> <p>If the project is a "residential structure" project for more than \$2,000 and the contract is not in writing, an "original contractor" may not be able to claim a lien. See ORS 87.005 (original contractor); ORS 87.037 and ORS 701.305 (written contract requirement).</p> <p>Landscape contractor claimants review ORS 671.625 (Minimum standards for contracts and billings).</p>
<p>9. Information Notice to Owner required: Yes <input type="checkbox"/> No <input type="checkbox"/></p>	<p>Review ORS 87.093 and <i>Calapooia Pole Structures, Inc. v. Moulder</i>, 128 Or App 190 (1994) (Look to nature of contract not simply location of structure). See 2, 3, and 5 above.</p>
<p>10. If 9 is yes, date and manner of delivery of Information Notice to Owner: _____</p>	<p>Review ORS 87.093.</p>
<p>11. Notice of Right to Lien Required: Yes <input type="checkbox"/> No <input type="checkbox"/> To Owner(s) <input type="checkbox"/> To Mortgagee(s) <input type="checkbox"/></p>	<p>Review ORS 87.021(1-2) requirement to provide notice to the owner of the site for lien validity and (3) for limited exception related to "commercial improvement." See ORS 87.005 definition of "owner."</p> <p>Review ORS 87.025(3) requirement to provide notice to mortgagee to preserve potential priority of materials portion of lien. See 2, 3, 5, and 7 above.</p>

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<p>12. Date of mailing Notice of Right to Lien: _____ Date received: _____:</p>	<p>See 8 above. Review ORS 87.021 (time to provide notice to owner of the site to record valid lien) and <i>Teeny v. Haertl Constructors, Inc.</i>, 314 Or 688 (1992) (Labor exception is subcontractor oriented).</p> <p>Also review ORS 87.025(3) (requirement of notice to preserve potential priority of materials over mortgagee).</p>
<p>13. Has claimant received any requests under ORS 87.025 or 87.027: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, when: Has claimant responded: Yes <input type="checkbox"/> No <input type="checkbox"/> Date response is due: _____ To whom: _____</p>	<p>Review ORS 87.025(4) and 87.027 (requests for information).</p>
<p>14. Date project completed: _____</p>	<p>Review ORS 87.035(1) and 87.045 (substantial completion, notice of completion and notice of abandonment). Consider owner's occupancy of improvement for its intended purpose.</p>
<p>15. Claimant's last day of work on or delivery to the project:</p>	<p>Look for substantial work or delivery; generally do not use repair, warranty or insignificant work. Recommend use of date that can be established by claimant's business records.</p>
<p>16. 75 days* from project's completion: _____ 75 days* from claimant's last day: _____ *If labor, materials, or equipment, use <u>earlier</u> of above dates as the last day to record lien. If services claimed under ORS 87.010(5 or 6), use last day from project completion under ORS 87.045.</p>	<p>Deadline to record a lien is determined by ORS 87.035(1). Do not extend by agreement. Review ORS 87.010. For more information, see OSB CLE CONSTRUCTION LAW (2011 REV.) CHAPTER 15, CONSTRUCTION LIENS (WHEN TO FILE). Avoid waiting until the last day to record due to potential unexpected difficulties (e.g. rejection by recording office for non-compliance with recording requirements, weather or office closures).</p>

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<p>17. Original Contract Amount: \$ _____</p> <p>Less payments of: _____</p> <p>Change order(s): _____</p> <p>Back charges: _____</p> <p>Extra Work Order: _____</p>	<p>Review dates, amounts, and applications of payments and wording of waivers/releases. Review ORS 87.035(3)(a).</p>
<p>18. Total remaining owing: \$ _____ including</p> <p>\$ _____ for labor</p> <p>\$ _____ for materials</p> <p>\$ _____ for rental equipment</p> <p>\$ _____ for professional services</p>	<p>Review ORS 87.035(3)(a) (true statement of demand requirement for lien). Confirm basis for claim of lien under ORS 87.010.</p> <p>Segregate charges (avoid lien that includes a single lump sum). Consider using exhibits that list invoices or original contract and change order/ additions/ subtractions, etc. Avoid non-segregated liens, and do not overstate the amount that may be claimed in lien. See e.g. <i>A-C Construction, Inc. v. Bakke Corp.</i>, 153 Or App 41, 47–51 (1998) (overstatement); For general discussion of lienable and non-lienable charges, see OSB CLE CONSTRUCTION LAW (2011 REV.) CHAPTER 15, CONSTRUCTION LIENS (LIENABLE ITEMS).</p> <p>Segregate materials for other charges to avoid loss of potential priority over mortgagee. See ORS 87.025(3); See e.g. <i>Benj. Franklin S&L v. Hallmark</i>, 257 Or 436, 442 (1971); <i>Safeport, Inc. v. Equipment Roundup & Manufacturing</i>, 184 Or App 690 (2002).</p> <p>Review any lien waivers and releases and segregate charges if portions may later be deemed waived.</p>
<p>19. Claimant is entitled to interest of _____ per annum beginning: _____</p>	<p>Review ORS 701.420 and ORS 82.010 (statutory interest). Review contract terms. <i>P & C Construction Company v. American Diversified</i>, 101 Or App 51, 60 (1990) (contract rate of interest is lienable).</p>

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20. Property address:	Review ORS 87.035(3)(d) and notices, title information, and building permits.
21. Property description: County: _____	Review ORS 87.035(3)(d) and notices, title information, and building permits. Consider obtaining title report for accurate legal description when preparing lien.
22. Who will sign lien: _____ Title: _____	Review ORS 87.035(4) for specific verification under oath requirements (before a notary public, see ORS 194.230). Signer may be a witness in litigation; thus, attorney should not sign absent extraordinary circumstances.
23. Date lien recorded: _____ Document No.: _____	See 16 above. Review ORS 87.035. Make a copy of lien after signing but before recording in order to include with notice of filing in case recorded lien is not immediately returned.
24. 120 days from recording date is: _____	Review ORS 87.055. Calendar last day to file foreclosure action. See also steps in 25 through 29. Do not extend foreclosure deadline by agreement. Review contract and allow time to satisfy any pre-litigation mediation or other contractual notice or dispute resolution requirements before expiration of lien under ORS 87.055.
25. Not later than 20 days after recording the lien, Claimant shall mail notice of recording lien, including copy of lien, by certified or registered mail, to owners and mortgagees in compliance with ORS 87.039 and 87.018. 20 days from recording date is: _____	Review ORS 87.039 and 87.018. Review definition of “owners” and “mortgagees” under ORS 87.005. See 3 and 4 above. If debt secured by lien arises out of a consumer transaction (see definition of “debt” under 15 USC §1692a(5)), an attorney should comply with Fair Debt Collection Practices Act 15 USC §§1692–1692p, including complying with requirement to provide 30 day validation notice. See generally OSB CLE CONSUMER LAW IN OREGON (2013 REV.) CHAPTER 22, FAIR DEBT COLLECTION PRACTICES ACT and Appendix for sample notice.

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<p>26. Not later than 10 days prior to commencement of the suit to foreclose the lien, Claimant shall <i>deliver</i> to owners and mortgagees, as required by ORS 87.057, written notice of claimant's intent to foreclose the lien. See 87.018 (delivery of notices in person or by registered or certified mail).</p> <p>Date Notice of Filing/Foreclosure sent: _____</p> <p>Date received: _____</p> <p>Was Notice of Intent to Foreclose included?</p> <p style="text-align: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If no, date Notice of Intent to Foreclose was delivered: _____</p> <p>Date received: _____</p>	<p>See 25 above. Review ORS 87.057 (notice of intent to foreclose) and ORS 87.018 (manner of delivery of notice). Such notice may be required even if party is not named in the foreclosure. See <i>e.g. Molalla Pump v. Chaney</i>, 42 Or. App. 789 (1979) (but see ORS 87.057(1) regarding mortgagees).</p> <p>Consider combining with 25 notice (but see ORS 87.057(2) and 27 below).</p> <p>Also consider potential application of FDCPA (see 25 above), including prohibition on demands inconsistent with 30 day validation and dispute rights (see OSB CLE CONSUMER LAW IN OREGON (2013 rev.), §22.3-6(b)(2))</p> <p>Consider obtaining a foreclosure/litigation guaranty to assure all owners and mortgagees are timely identified. See 28 below.</p>
<p>27. Has claimant received any requests under ORS 87.057? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, when: _____</p> <p>Has claimant responded? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Date response is due: _____</p>	<p>Review ORS 87.057.</p>
<p>28. Date Foreclosure/Litigation Guaranty ordered: _____</p> <p>From: _____</p> <p>Order No. _____</p>	<p>Recommended to order foreclosure/litigation guaranty at least thirty (30) days prior to 120 day deadline to foreclose under 24 above to identify and deliver any additional foreclosure notices to owners or mortgagees under 26 above. If consumer validation notice required, consider ordering foreclosure/litigation guaranty forty-five (45) days prior to the 120 day deadline to foreclose.</p>

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29. Additional notices required: <input type="checkbox"/> Yes <input type="checkbox"/> No Date sent: _____	Review ORS 87.057. See 26 above. Obtain "date down" (or update) of foreclosure/litigation guaranty prior to filing suit to identify and deliver additional notices (see 26 above) to any new owners or mortgagees.
30. Cash deposit or bond made: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was affidavit filed: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was notice received: <input type="checkbox"/> Yes <input type="checkbox"/> No	Review ORS 87.076 - 87.088. Do not record a lien release (see ORS 87.083(1))
31. Date notice of cash deposit or bond received: _____ Due date for petition to determine adequacy: _____	Review ORS 87.078(2), ORS 87.086.
32. Release Demand received: <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, date received: _____ Date response due: _____	Review ORS 87.076(4) (10 day period to release lien or if lien is not foreclosed, claimant is subject to claim for greater sum of \$500 or the actual costs of bond or cash deposit, and potentially attorney fees).
33. Date complaint filed: _____ Case No. _____ Filed in _____ County, Oregon	Review ORS 87.055. See 24 above. Complaint also refers to cross-claim, counterclaim, <i>i.e.</i> , any claim foreclosing the lien. If cash deposit, do not name County Treasurer as a party.
34. Date Pendency of an Action Notice recorded: _____ Recording No.: _____	See ORS 93.740.
35. 60 days from filing date of complaint is: _____	Review ORS 87.055, ORS 12.020.
36. Date all service completed: _____	See 35 above.
37. One year anniversary from date foreclosure suit filed: _____	See UTCR 7.020(5) (2017) some courts may dismiss a case if trial is not scheduled within one year of the filing of the complaint).

