

## OREGON LIEN LAW REQUIREMENTS

### 1. Work that is Covered

Any person “performing labor upon, transporting or furnishing any material to be used in, or renting equipment used in the construction of any improvement” shall be entitled to record a lien against the owner. ORS 87.010(1).

As it pertains to design professionals, an “architect, landscape architect, land surveyor or registered engineer who, at the request of the owner or an agent of the owner, prepares plans, drawings or specifications that are intended for use in or to facilitate the construction of an improvement or who supervises the construction” shall be entitled to record a lien upon the property. ORS 87.010(5).

Any work subject to a written contract – must also provide evidence of written contract to sustain lien. ORS 87.037.

### 2. Notice to Owner Requirements

Notice to the owner of the site is required if work is not being done directly for the owner under a direct contractual relationship.<sup>1</sup> The notice to owner may be provided at any time during the construction/work performed. However, only work performed ***within 8 days of the notice*** is subject to lien. ORS 87.021. The form of notice is outlined in ORS 87.023.

If contractor is working on residential project (sale price of \$50,000 or more, four units or less), it must also provide owner with a disclosure statement. ORS 87.007.

### 3. Perfecting the Lien

A notice of claim of lien must be recorded ***within 75 days after you have ceased providing professional services***. ORS 87.035(1). Generally, the deadline ***will not*** be extended while the contractor performs “Punch List” work after the initial contract work is completed. *Bethlehem Constr., Inc. v. Portland Gen. Elec. Co.*, 298 Or. App. 348, 355, 447 P.3d 18, 22 (2019) (Only work that is “of a significant nature and in furtherance of the contract” will extend any deadlines).

*Statutory form is required for filing.* ORS 87.035(3)

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<sup>1</sup> In Oregon, the courts have refused to strictly enforce notice provisions, and hold that actual notice (*i.e.* making the owner aware of the issue by any form of communication) is sufficient when written notice would be an “empty formality.” *E. Carl Schiewe, Inc. v. Brady*, 46 Or. App. 441, 448, 611 P.2d 1184, 1188 (1980), *quoting* holding in *Brownson v. Lewis and Bunnell*, 233 Or. 152, 157-58, 377 P.2d 327, 330 (1962).

A copy of the claim of lien must be provided to the owner *within 20 days of the time the claim of lien is filed*. Failure to provide this notice means that you cannot recover attorney's fees and costs. ORS 87.039(1) – (2).

Oregon law is presently ambiguous on whether an architect or engineer can perfect a lien when a project is abandoned and visible preparations for construction are not undertaken. On the one hand, ORS 87.010(5) grants architects liens for plans “intended for use” in an improvement, which strongly suggests that architects and engineers are entitled to liens even if their plans are not actually used. On the other hand, ORS 87.025(7) asserts that the perfection of an architect or engineer's lien “relates to” the date of “commencement of the improvement,” which is defined in ORS 87.005(1) as “the first actual preparation or construction upon the site or the first delivery to the site of materials of such substantial character as to notify interested persons that preparation or construction upon the site has begun or is about to begin.”<sup>2</sup>

#### **4. Duration of Lien—When to Start a Lawsuit**

An action to foreclose a lien must first be preceded by a notice of intent to foreclose, which must be served to the owner or its representative 10 days before filing of lawsuit. ORS 87.057.

A lawsuit must be commenced *within 120 days from the date that the lien was recorded*. ORS 87.055. If notice provisions are met, reasonable attorney's fees may be awarded to the prevailing party. ORS 87.060.

#### **5. Priority of Liens upon Foreclosure**

A lien created under ORS 87.010 (5) “and perfected under ORS 87.035 upon any lot or parcel of land shall be preferred to all prior liens, mortgages or other encumbrances upon the land upon which the improvement was constructed.” ORS 87.025(2).

No lien for materials or supplies shall have priority if the notice requirements of ORS 87.010, 87.021 and 87.023 are met.

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<sup>2</sup> See Steven J. Kuhn, The Noble Architect, the Heartless Landowner and an Ambiguity in Oregon's Construction Lien Statute, 41 Willamette L. Rev. 95, 104–05 (2005).