



# CONSTRUCTION CONTRACTORS BULLETIN BOARD

HELPING TO PREVENT AND RESOLVE PROBLEMS IN THE CONSTRUCTION INDUSTRY

January 2006

**Inside:**

- ▶ New Public Works project requirements (1)
- ▶ Independent Contractor law (5)
- ▶ Lead Based Paint: Regulations for Remodeling (6)

**How to reach us:**

**Oregon Construction Contractors Board**

**Physical Location:**

- 700 Summer St NE, Suite 300

**Mailing Address:**

- PO Box 14140  
Salem, OR  
97309-5052

- Phone: 503-378-4621
- Fax: 503-373-2007
- Web: [www.ccb.state.or.us](http://www.ccb.state.or.us)

**CCB Management Team:**

Administrator: Craig P. Smith  
(Administrative Assistant: ext. 4077)

Education Manager/Public Information  
Officer: Gina Fox

Licensing Manager: Kristie Patton

Dispute Resolution Manager: Bill Boyd

Enforcement Manager: Richard Blank

Administrative Services Manager:  
Linda Teet

Information Technology Manager:  
Shelly Wiles

## Happy New Year: Greetings from the Chair

*By Cliff Harkins, CCB Policy Board Chair*

January is often the time we reflect on the past year, and to look forward to the new one. There is no denying 2005 ended on a difficult note. But challenges continue to remind us of our mission:

*"The Construction Contractors Board protects the public's interest relating to improvements to real property. The Board regulates construction contractors and promote a competitive business environment through education, contractor licensing, dispute resolution and law enforcement."*

We will continue to improve.

In December, the policy board adopted rules that help strengthen the work of the agency. We will strive to build consumer confidence

## Public Works Projects: Two New Requirements

### **Bond for Public Works Projects Required: SB 477 (2005)**

Effective January 1, 2006, all contractors working on qualifying public works projects must obtain a Bureau of Labor and Industries (BOLI) \$30,000 public works bond issued by a corporate surety authorized to do business in Oregon.

in the professional industry we regulate.

Another part of that improvement includes changes to the CCB website and a new consumer help page. It is more user-friendly in the layout and continues to offer helpful tips and information. Checking a contractor's license provides seven years of contractor information over the internet instead of only by mail or in person.

This month many of the laws from the 2005 Oregon Legislature become effective. This issue includes articles that summarize the changes in law affecting the construction industry.

It will be a big, new year. The CCB policy board wishes you a happy and prosperous one!

*Continued on page 3*

## Building Accessible Homes:

### Model Features List Available: HB 2525 (2005)

During the 2005 Legislative session, Oregon lawmakers passed House Bill 2525 which mandated the Construction Contractors Board (CCB) to develop a list of features that may make residential housing more accessible to a person with disabilities.

The *Model Features List* includes construction options that make it possible for the elderly or the disabled to “age in place,” or for designing homes with features that makes the home more accessible to older or disabled residents, their family or friends.

Gina Fox, manager of the CCB Education Department, whose responsibility it was to oversee the

development of the list, said, “Though it is not required that new home developers to offer their clients this list, nor does it obligate the developer in



any way to supply a given feature, we hope that it will be used by developers, remodelers and homeowners during their home construction projects.”

The CCB invited members of the community that have disabilities, advocates for the disabled, architects, builders and other government agencies involved with housing issues to help develop the list. The CCB Board adopted the list at its December meeting.

The list includes options for both inside and outside the home and was developed with specific living spaces in mind.

The list is available to download from the CCB web site at [www.ccb.state.or.us](http://www.ccb.state.or.us). It is located in the contractor section under the “Publications/Forms” link in the middle of the screen. Once in the publications section scroll to “Miscellaneous.” “Model Features for Accessible Homes” can be printed and used in the planning of a construction project.

### Board Member News

Board member Tom Skaar was installed as Vice President Secretary for the Home Builders Association’s 2006 Board of Directors during their December meeting.

## Changes from HB 2200

HB 2200 was a streamline and rewrite of the agency statutes designed to enhance readability and organization of the Construction Contractors Board Act—Oregon Revised Statutes.

Effective January 1, 2006, some of the noticeable changes include:

- Allows licensed Manufactured Dwelling Installers (MDI) a CCB license without having to take the education and test. (They were only required to take the test)
- Replaces license fee with application fee.
- At the recommendation of legislative council, the law has changed the referenced word of education to training.
- Separated in statute construction contractor education and certified home inspector education requirements to eliminate confusion.

It also increased the agency’s ability to hold individuals accountable for the acts of their construction business by strengthening the provision to suspend or refuse to issue a license based on past activities of owners and others.

For full text of HB 2200, visit [www.leg.state.or.us/bills\\_laws](http://www.leg.state.or.us/bills_laws)

### Put it in Writing SB 1002: Reminder

All construction agreements must be put in writing if the contract price exceeds \$2000.

The CCB recommends a written contract for all jobs.

#### Construction Contractors Bulletin Board, Issue #63

This newsletter, an official publication of the Oregon Construction Contractors Board, gives Oregon contractors information on laws, policies and activities of the CCB and better business practices.

CCB mission:

*The CCB protects the public’s interest relating to improvements to real property. The Board regulates construction contractors and promotes a competitive business environment through education, contractor licensing, dispute resolution and law enforcement.*

Board members:

\*Cliff Harkins, Canby  
 \*\*Walt Gamble, West Linn  
 Chuck Crump, Salem  
 Gwen Elster, Redmond  
 Jim Fairchild, Dallas  
 Dennis Schad, Coos Bay  
 Tom Skaar, Portland  
 Sandy Trainor, Sherwood  
 \*Chair, \*\*Vice-chair

Editor:

Gina Fox  
 503-378-4621, ext. 4016  
[gina.m.fox@state.or.us](mailto:gina.m.fox@state.or.us)

In compliance with the Americans with Disabilities Act, this publication is available in alternative formats by contacting the editor.

Continued from page 1

This bond will be used solely in the event of prevailing wages determined to be due by BOLI. This bond is separate and is required in addition to any other bond a contractor or subcontractor is required to obtain.

You may be exempt for any of the following:

- If you are not required to pay prevailing wages under ORS 279C.800 to 279C.870.
- Bonding requirements may be exempt in cases of emergency as declared under ORS 279A.065.
- If the business is certified by the Office of Minority, Women and Emerging Small Business (OMWESB) the business may elect to be exempt from the bond requirement during the first year of initial certification only. After the one year expiration, a public works bond must be filed with the CCB before starting or continuing work.

If you are a licensed CCB contractor you will be required to sign the bond supplied by your bonding company. Once signed, submit the original bond

directly to the CCB by mail or in person. There are no additional forms required.

If you are not required under ORS 701 to be licensed by the CCB and will be working on a qualifying public works project you will be required to sign the bond supplied by your bonding company and submit the original bond along with the completed form Non-Construction Company Filing STATUTORY PUBLIC WORKS BOND with CCB to the CCB by mail or in person.

If your business has elected to utilize the OMWESB exemption for the public works bond, you must submit the form, Disadvantaged, Minority, Women, or Emerging Small Business Enterprise Exemption from \$30,000 Public Works Bond along with the supporting OMWESB certification to the CCB office either by mail or in person.

Forms for businesses not required to be licensed under ORS 701 or businesses electing to utilize the OMWESB exemption are available

## Bond Questions

Call the CCB's  
Customer Service Unit at  
**503-378-4621**

from the CCB website:

[www.ccb.state.or.us](http://www.ccb.state.or.us) under "What's New".

Your bonding company may download the bond form from the BOLI website: [http://egov.oregon.gov/BOLI/WHDPWR/docs/public\\_works\\_bond.pdf](http://egov.oregon.gov/BOLI/WHDPWR/docs/public_works_bond.pdf). The bond form must be filled out, signed and sealed by the bonding company.

Forms and original surety bond may be mailed to the CCB at PO Box 14140 Salem, OR 97309-5052. In person, our office is located in Salem at 700 Summer St NE Suite 300 (Veteran's Building)

For more information, call the CCB Customer Service Unit at 503-378-4621.

## Public Works: Responsible Bidder Determination Forms: SB 1006 (2005)

Beginning January 1, 2006, all public entities awarding public improvement contracts to the lowest responsible bidder must complete a Responsible Bidder Determination form and submit the form to the Construction Contractors Board (CCB) within 30 days of the award. (2005 Oregon Legislature Senate Bill 1006)

The CCB has developed a web-based entry system that includes the Responsible Bidder Determination form; the ability to search previously entered determination forms and a frequently asked questions (FAQ) help area.

Public entities awarding public improvement projects will be required to register their user information to complete a determination form. The search function is accessible to anyone and does not require registration.

Current ORS 279C.375 states, "After bids are opened and a determination is made that a public improvement contract is to be awarded, the contracting agency shall award the contract to the lowest responsible bidder."

The CCB web-based determination form provides the checklist of

requirements mandated by SB 1006 that is needed to determine responsibility. If the lowest bidder is determined not responsible, documentation will be required as to the reason for the not responsible determination and the location where this supporting documentation can be found.

Public entities may register their user information at [www.ccb.state.or.us](http://www.ccb.state.or.us) and clicking on Public Contracts Responsible Bidder Determination.

# Independent Contractors: Web site aimed at informing about independent contractor law (SB 323)

When you hear the term “independent contractor,” what comes to mind? Is it an insurance agent? A tradesperson? A private consultant?

Truth is, independent contractor means different things to different people, which is fine when talking to friends or co-workers, but can be problematic in the business world.

Independent contractor laws are established in Oregon to protect both workers and business, and they could be about the most misunderstood on the books. This is understandable when multiple state agencies have responsibility for enforcing independent contractor law, and each has a slightly different slant on how the law is applied.

## Different situations, different applications

Agencies that enforce employment laws do not rely on the term “independent



contractor,” but instead take a close look at the relationship between the business and the one performing the work.

Some agencies such as the Bureau of Labor and Industries, the U.S. Department of Labor, and the courts use criteria commonly referred to as the economic realities test.

The economic reality test consist of the following criteria:

- The degree of control exercised by the alleged employer.
- The extent of the relative investments of the worker and the alleged employer.
- The degree to which the workers’ opportunity for profit and loss is determined by the employer.
- The skill and initiative required in performing the job.
- The permanency of the relationship.

In addition to the economic realities test, state and federal agencies have further requirements. For example, Oregon law defines the term independent contractor for several state agencies including the Oregon Department of Revenue, the Employment Department, the Construction Contractors Board, and the Workers’ Compensation Division.

For the most part, each of these state agencies enforce independent contractor law the same in the area of direction and control. What is direction and control? In a contract of service for pay, direction and control means regulating or directing another’s activities, or having the right or power to direct another’s activities. Control exists when the contract (written or verbal) specifies when, where and how a service is to be performed even when there are acceptable alternatives that will produce a satisfactory contracted outcome. When someone contracts for a service but maintains control or sets themselves up to

have the right of control, the relationship is one of employer-employee rather than one of independence.

Where differences in states agencies occur is in the area of the establishment on independent businesses found under ORS 670.600. In addition, the Internal Revenue Service has developed a 20-factor control test to determine if an individual is an employee or an independent contractor.

## Cut through the confusion

Understandably, with so many interpretations and definitions of the same law and terms, business owners and workers can become confused. It is important to understand the independent contractor laws, and business owners and workers need to take the time to become familiar with each agency’s application of the law.

## But where to start?

Recognizing the need for a single source of information on independent contractor law, Governor Ted Kulongoski ordered agencies to work together to produce a website for business owners and workers. The Web site, [www.OregonIndependentContractors.com](http://www.OregonIndependentContractors.com), is the result of that effort. On this site readers will find a list of resources and agencies, definitions, frequently asked questions and more. The site will also guide the reader to the appropriate agency given their situation.

Incorrectly applying independent contractor law can be costly. Be informed, go on-line and get the facts from the agencies who enforce this law.

# News You Can Use: Preventing Construction Disputes

Every year the Oregon Construction Contractors Board (CCB) processes thousands of claims against contractors. Many of these claims could have been avoided. The following are just a few suggestions that may help you avoid problems with your customers.

**1. Only take jobs you know how to do.** If the job is outside your area of expertise, get educated or walk away from it.

**2. Pay attention to your gut instincts.** If you get the feeling that this job is going to be more trouble than it's worth, don't do it. Contractors sometimes intuitively know from the very beginning there will be problems, but they accept the job anyway. Use foresight rather than hindsight.

**3. Start with a clear understanding of the scope and quality of work to be performed and what your client's expectations are.**

- Spend time at the front end of a job to work out the gray areas. Too often contractors work out points A and B and decide to handle C later. Work out *all* the details—work to be performed, payment schedule, etc. Get a *complete* meeting of the minds.
- Don't perform work for customers with whom you simply cannot communicate. Some jobs are better left for your competitors.
- Don't avoid conversations about potential problems at the risk of losing the job. Better to lose the job up front than take it and lose money. If you're remodeling, who pays if there's dry rot? If you're excavating, what about an unexpected spring or rock? If the cost of materials goes up while financing is being arranged, what happens? Explain the effect of any delays to homeowners and

agree (in writing) which of you is to be at risk.

#### **4. Use a written contract. Get everything in writing!**

- Use drawings and specs. Have your customers sign them. The more complete your contract documents, the less likely you'll have a disagreement over what was agreed to.
- If both sides agree that the contractor will do something other than standard construction practice, write it down. Will you use lower grade materials and not finish the job to cut the owner's costs? Will the client be responsible for cleaning up the jobsite? Put these kinds of items in a written contract.
- Any foreseeable risks should be allocated. If a risk isn't otherwise assigned to the owner, it may be on your shoulders.

*Continued on page 7*

## Construction Claims Task Force Update

The nine-member Construction Claims Task Force (CCTF) mandated by HB 2078 (2005) to study the relationship between construction liability claims and construction industry practices, construction defects, consumer protection, and state-mandated liability insurance requirements for contractors have held three meetings in September, November and December.

September's kickoff meeting included the election of Chairperson, Eric Grasberger and Vice Chairperson

Laura Schauer, identification of the task force scope of work and public comment.

November and December meetings included invited testimony from industry experts as well as agency overviews.

Agenda and full meeting minutes are available on-line at:

<http://egov.oregon.gov/DCBS/CCTF/index.shtml>

### **Upcoming CCTF Meetings:**

January 25, 2006  
8:30 am - 12:30 pm

February 15, 2006  
1:30 pm - 7:00 pm

April 26, 2006  
1:30 pm - 5:00 pm

Meetings are located in Room 260 at the Labor and Industries Bldg. in Salem

# Lead-Based Paint: Regulations for Remodeling and Renovation

By Shannon Levitt, M.A. Public Health Educator

Environmental Toxicology Programs Oregon Department of Human Services

Lead poisoning can affect anyone, but young children and pregnant women are especially at risk because lead can slow growth and development. Lead poisoning in children can cause reading and learning problems, brain damage, behavior problems, and kidney and liver damage. In adults, high lead levels can cause high blood pressure, digestive and reproductive problems, nerve disorders and kidney damage. Both proposed regulations from the Environmental Protection Agency (EPA) and existing regulations in Oregon aim to prevent these poisonings from occurring.

## Proposed EPA Regulations

The EPA has announced that it will be presenting its final recommendations for a comprehensive renovation and remodeling program by the end of 2005. EPA has determined that a combination program that includes regulation, training, education and outreach would provide the most effective approach to address the risks of lead-based paint in renovation, repair and painting activities.

## Lead-Based Paint Regulations

Traditional paint prep, such as dry scraping and power sanding, create and spread large amounts of paint dust and debris. Children and people living in older

homes can be easily poisoned during remodeling. Nearly half of the childhood lead poisoning cases in Oregon are related to remodeling. Contractors can also be exposed to lead and bring it home to their families. Painters and contractors should learn about lead-safe work practices to protect themselves, their customers and their families.



In 2003, the Department of Human Services (DHS) adopted new lead-based paint regulations [Oregon Administrative Rule (OAR) 333-069] to prevent humans and pets from being exposed to lead-based paint dust and debris, which can cause lead poisoning. Oregon Administrative Rule (OAR) 333-069 requires that any person removing or stabilizing paint on housing or child care settings built before 1978 must obtain a Permit from the Department of Human Services. The permit fee is \$5. Permits expire on June 30. "Lead Paint Safety: A Field Guide for Painting and Renovation Work" is available from the Housing and Urban Development (HUD) website [www.hud.gov/lead](http://www.hud.gov/lead) or by calling the Lead-Based Paint Program at (971) 673-0440.

## Notification of Possible Lead Hazards

Federal law requires that painters or contractors distribute the pamphlet, "Protect Your Family From Lead In Your Home", before beginning work on pre-1978 housing. This pamphlet is available from the National Lead Info Line at (800-424-LEAD) or on the web at [www.epa.gov/lead](http://www.epa.gov/lead).

## Warning Signs

When disturbing or removing paint on pre-1978 housing or child care settings, painters and contractors must post a sign, visible from 30 feet, warning the public of POSSIBLE LEAD-BASED PAINT HAZARDS. For a single copy of the warning sign call the Lead-Based Paint Program at (971) 673-0440.

## For More Information

For a Permit application, schedule of training sessions or more information about working lead-safe call the Lead-Based Paint Program at (971) 673-0440 or the LeadLine at (503) 988-4000 (Portland Metro) or (800) 368-5060 (Statewide toll-free) or visit [www.oregon.gov/dhs/ph/leadpaint](http://www.oregon.gov/dhs/ph/leadpaint).

## Building Codes Division: Building Permits Surcharge Added

**Beginning Jan. 1, 2006, the state surcharge on all permit fees and hourly inspection rates is 8 percent. \***

With the passage of SB 421, ORS 455.210, 455.220, 455.842 and 455.844 were amended to require an 8 percent state surcharge on all construction permits and hourly inspection charges (including amusement ride, boiler, elevator, manufactured dwelling, prefabricated structure, and recreational vehicle permits and hourly inspection rates).

The 8 percent surcharge includes:

- 4 percent to defray state administrative costs. ORS 455.210 (4)
- 2 percent to defray state inspection costs. ORS 455.210 (5)
- 1 percent to defray state administrative costs for administering and enforcing the state code. ORS 455.210 (6)

- 1 percent to defray the costs of training and other educational programs administered by the division. ORS 455.220 (1)

\*This law change does not affect the current 8 percent surcharge for permit fees and hourly inspection rates in the tri-county area.

*Continued from page 5*

- Specify who will do what and how disputes will be resolved.
- Be sure an attorney reviews any contract form you plan to use (including store-bought forms). If possible, find an attorney who specializes in construction.

**5. Put all change orders, no matter how small, in writing.** Make sure they are signed by both sides. During a conversation, if you agree to make a change, make notes and have your notes signed.

**6. Leave a paper trail.** Grab a pen and paper whenever you get a phone call. Take notes of any transaction with a customer. Keep a job journal. Virtually every contact with a client should be recorded, especially dates. In a hearing or courtroom, complete documentation can be critical. It makes you look more competent, professional and credible.

**7. Stay legal with the CCB.**

## Asbestos Abatement for Contractors

Do you perform remodeling, renovation, repair or demolition activities? If so, you need to be aware of several rules that may affect your ability to perform these activities. Depending on the type, amount, and condition of the asbestos containing materials (ACM), you may be subject to some or all of the asbestos rules.

The Department of Environmental Quality (DEQ) and Lane Regional Air Pollution Authority (LRAPA) have specific rules regarding the handling and disposal of ACM. DEQ/LRAPA regulates the removal and disposal of ACM from any public or private building to prevent asbestos fiber release and exposure. Asbestos fibers in the air pose a significant

- Be sure to maintain an active CCB license and work in the right license category. To do remodeling or home construction, you must be licensed as a General Contractor.
- If you have employees, you must be licensed as non-exempt with the CCB. Or you can use temporary workers from a CCB-licensed business.
- Give the *Consumer Notification* form and *Owner's Duty to Contractor* notice to all prospective residential customers. Give the *Information Notice to Owners about Construction Liens* if you contract directly with a residential owner.

**8. Talk to your customers throughout the project.** Maintain good communications. Return their phone calls. Although it may be tempting to ignore a call from an angry customer, return it anyway. If they have to keep calling you, it only gets worse and the problem won't go away.

health threat to employees, the public, and the environment. If you encounter ACM in the process of performing construction activities, you must follow all DEQ/LRAPA asbestos program rules.

The DEQ requires that an asbestos survey be performed by an accredited inspector to determine the presence of ACM in or on all public or private commercial buildings, or in or on any residential structure that has more than four dwelling units before any renovation or demolition activities. Asbestos hazard consultants and many of the licensed asbestos abatement contractors can provide this service. There is a Fact Sheet specific to the building survey

**9. Do what you agreed to do.** It's your duty to do exactly what you said you'd do, even if you lose money. It is not uncommon for inexperienced contractors to discover they have underbid a project and then try to adjust the rest of the job to salvage a profit. This compounds the problem. They will lose customers as well as money and may pay an expensive claim.

**10. General contractors: when you find good subcontractors, stay with them.** Don't necessarily take the lowest bid from a sub; it may cost you considerably if the sub doesn't perform. General contractors should not suggest that the homeowner deal with subs. A general contractor is responsible to correct any problems created by subs.

Find these and other suggestions in the CCB publication "*Preventing and Resolving Construction Disputes*".

requirement available that is outlined in a question/answer format.

If you disturb or mishandle ACM and cause tenants, customers, employees, the public or the environment to be potentially exposed to asbestos fibers, you can be liable for clean-up costs and an enforcement action for rule violations. An enforcement action may include a civil penalty assessment.

Copies of the guidance document, building survey Fact Sheet, consultant, laboratory, abatement contractor and landfill lists, project notification and waste shipment report can also be found on the DEQ web page at [www.deq.state.or.us/aq/asbestos](http://www.deq.state.or.us/aq/asbestos).

Oregon Construction Contractors Board  
PO Box 14140  
700 Summer St. NE, Suite 300  
Salem, OR 97309-5052

PRSRT STD  
U.S. POSTAGE  
**PAID**  
SALEM, OR  
PERMIT #81

## Address Change Requirements

A contractor must notify the CCB of any address change while licensed and **for one year** following the license expiration or becoming inactive. The notification must be within 10 days of the change. Consumers may file complaints with the CCB within one year, and in certain circumstances, up to two years after substantial completion of the structure. If the CCB sends notifications to your last known address, by law it is considered delivered.

See **ORS 701.080**.

## What's the buzz?

### News you can use from the CCBee



#### *The CCB Responds to Craig's List*

Many CCB licensed contractors work hard to have a successful business. There are customers to satisfy, skills to keep up, and regulations to follow. You work hard and it costs you money. You do it because you're a law abiding contractor and it's the right thing to do.

But it's frustrating when unlicensed and illegal construction activity puts consumers at risk, undermines the success of the construction industry, erodes consumer confidence and takes business away from legitimate contractors.

The Construction Contractors Board (CCB) receives complaints about unlicensed and illegal construction activity and more recently, unlicensed and illegal activity that is posted on ***Craig's list***, an internet-based goods and services board.

CCB compliance officers have searched ***Craig's list*** for unlicensed activity. They have issued civil penalties against unlicensed contractors offering to do work in Oregon that requires licensing through ORS 701. The penalty for working without a license can be as high as \$5000 per occurrence. CCB compliance officers continue to search ***Craig's list*** for unlicensed activity as resources allow.

Unlicensed activity hurts everyone—consumers, the industry as a whole and the professionals that make up the industry. You can report unlicensed or illegal activity by calling the CCB at 503-378-4621 or on the web at [www.ccb.state.or.us](http://www.ccb.state.or.us) under Enforcement in the program section.