

RESOLVING DISPUTES WITH YOUR CONTRACTOR

Information for Filing a Complaint

Oregon Construction Contractors Board
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www.oregon.gov/CCB



DISCLAIMER: This booklet is not meant to be a complete analysis of the Construction Contractor Board's laws and rules. This is general information and is not legal advice. If you have questions about how the law applies to your particular situation, you should talk to an attorney.

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INTRODUCTION

If you are a customer of a contractor, a primary (prime) contractor, a subcontractor, an employee, or a material supplier, you may file a complaint against a licensed contractor .

This booklet contains:

- Steps you must take before you file a complaint.
- How to file a complaint.
- What to do after filing the complaint.

Additional information is available on the CCB website at www.oregon.gov/CCB. You may contact the Dispute Resolution Section of the CCB at 503-934-2247.

GENERAL INSTRUCTIONS

These instructions apply to all complaints. Specific instructions are included for each type of complaint. The types of complaints are:

- Residential owner complaints
- Non-residential owner complaints: small commercial structure
- Non-residential owner complaints: large commercial structure
- Construction lien complaints
- Primary contractor complaints
- Subcontractor complaints
- Employee complaints
- Material supplier and equipment rental complaints

If the work is performed on an accessory (such as a sidewalk, patio, out building, etc) to a structure, the “structure type” (residential, small commercial, or large commercial) is based on the main structure located on the property. For example, work on a patio or sidewalk that is on property where a residential structure exists is considered to be work on the residential structure.

Before You File the Complaint



Pre-Complaint Notice: Before you file a complaint you must file a pre-complaint notice.

You must send a *written pre-complaint notice* to the contractor **AT LEAST 30 DAYS BEFORE** filing your complaint with the CCB.

The notice gives you and the contractor an opportunity to resolve the dispute. The CCB website can generate a pre-complaint notice at:

http://cbed.ccb.state.or.us/new_web/asp/preclaim_notice.htm.

The pre-complaint notice must include all of the following: (1) date; (2) contractor's name; (3) contractor's address; (4) a statement that you plan to file a complaint with the CCB; and (5) your name.

This is a sample of what your letter must say:

| |
|--|
| Date |
| Contractor's name |
| Contractor's address |
| Dear _____: |
| I intend to file a complaint with the Construction Contractors Board thirty days after I mail this letter. |
| Your name |

You must send the pre-complaint notice to the contractor's *name and address listed in CCB records*, even if you have been using another address for the contractor. To find this address, go to the "Contractor Search" link at www.oregon.gov/CCB.

BE CAREFUL TO USE THE CORRECT NAME OF THE CONTRACTOR WHEN SEARCHING. SOME NAMES ARE SIMILAR.



You must send the pre-complaint notice by *certified mail*. Keep the certified mail receipt from the post office to show the address you mailed to and that you mailed the notice.

This is a sample of a properly completed post office receipt with postmark.

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com
OFFICIAL USE

| | |
|---|----------------|
| Postage | \$.37 |
| Certified Fee | 2.30 |
| Return Receipt Fee (Endorsement Required) | 1.75 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 4.42 |

Postmark Here
 PORTLAND, OREGON STA. 97117
 MAR 20 2004
 USPS

Sent To
 Contractor's Name
 Street, Apt. No., or PO Box No. Contractor's Address of record
 City, State, ZIP+4 city, state zipcode

PS Form 3800, June 2002 See Reverse for Instructions

Be sure the respondent's name and address show here.

Be sure the post office date-stamp is here and you can read the date

Time Limits for Filing a Complaint:



There are *strict time limits* for filing complaints. You must file your complaint within the time limit allowed for your type of complaint.

If the CCB complaint involves:

- **A NEW STRUCTURE**, the owner must file the complaint so that the CCB receives it within *one year* from the date it was *first occupied*, or *two years* from the date it was *substantially completed* and ready for occupancy, whichever comes first. (Repair work does not extend the date the work was substantially completed). **Note:** Only newly built homes or commercial structures are considered new. Any work on out buildings, sidewalks, patios, or other structures on the property of an existing structure is considered to be work on the existing structure.
 - If a prime contractor files against a subcontractor, the *one-year* period is extended to **14 months**.
- **AN EXISTING STRUCTURE**, the owner must file the complaint so that the CCB receives it within *one year* from the date the contractor *substantially completed* the work. (Repair work does not extend the date the work was substantially completed).
 - If a prime contractor files against a subcontractor, the *one-year* period is extended to **14 months**.

- A **NEW OR EXISTING STRUCTURE** and the contractor ***abandoned*** the work, the owner must file the complaint so that the CCB receives it within ***one year*** from the date the contractor ***last performed*** work on the job.
 - If a prime contractor files against a subcontractor, the ***one-year*** period is extended to ***14 months***.
- A **NEW OR EXISTING STRUCTURE** and the contractor ***did not perform*** any work, an owner must file the complaint so that the CCB receives it within ***one year*** from the date you ***entered into the contract***.
- ***ANY STRUCTURE***, a subcontractor, employee, or material or equipment supplier must file the complaint no later than one year after the date the contractor entered into the debt.

There are no exceptions to the time limits.

Miscellaneous Instructions



Notify the CCB **in writing** if you change your address or if you hire an attorney. The CCB will communicate with you by mail.

Do ***not*** send original documents. Instead, send legible copies. Do ***not*** send photos, videotapes, or audiotapes. Keep this information for possible use in court or arbitration.



The CCB must send a copy of all information we receive from you to the person against whom you are filing the complaint. Similarly, the CCB will send you a copy of all information we receive from that person.

You may wish to talk to an attorney about your complaint. The CCB staff cannot provide you with legal advice.



If acting for an ***incapacitated person*** by a legal guardianship, power of attorney, or other legal status, you may file a complaint on behalf of the owner. A ***property manager*** may also file on behalf of the owner. An owner may authorize a person to act as their ***agent***. You may appear at the on-site meeting as the owner's agent if you have authority to settle the matter.

How Long Does the Process Take?

Each complaint is different. If it can be resolved at an on-site meeting or by our mediator, it may be completed within a couple of months. If it must go to court and is appealed, it could take several years.

RESIDENTIAL COMPLAINTS

OWNER COMPLAINTS

Some common residential structures are:



- ❖ A house
- ❖ A building no more than four stories with living units only, such as an apartment building, as long as there are no businesses also located in the building.
- ❖ A condominium or other dwelling unit
- ❖ A modular home
- ❖ A manufactured dwelling
- ❖ A floating home (for example, a houseboat)
- ❖ Note: Mixed-use structures that contain both shops or offices and dwelling units are commercial, not residential, structures.

What Type of Complaint Can Be Filed?

The complaint must be for breach of contract or negligent or improper work.

Who Can File a Residential Owner Complaint?

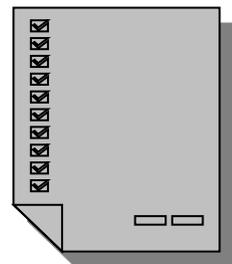
You may file a residential owner complaint if:

- ❖ You had a licensed contractor build a residential structure or work on property used or zoned as residential, or
- ❖ You purchased, or agreed to purchase, a residential structure from a licensed contractor or developer, or
- ❖ You owned, leased, or rented a residential structure and had a licensed contractor perform construction work on the structure.

If you were required to have a CCB license for your work or involvement in the project, you must file a ***primary contractor complaint***, unless you performed the work on your own property and do not intend to sell the property.

Complaint Form

Use the complaint form: “Breach of Contract Complaint Form for Owners and Prime Contractors.” FILL IN THE ENTIRE FORM.



Include the following with the complaint form:

- ◆ A copy of the *pre-complaint notice* and the *certified mail receipt* for the notice.
- ◆ A copy of the written contract. If you purchased a home, the agreement may be the Sales Agreement, Receipt for Earnest Money, or similar document.
- ◆ If there was no written contract, include copies of proposals, bids, work orders, invoices, billings, or both sides of canceled checks.
- ◆ If there is a pending or resolved court action or arbitration, a copy of the court complaint or arbitration request or demand.

Complaint Processing Fee



After the CCB reviews your complaint and determines that it has the authority to process the complaint, the CCB will notify you to pay a \$50 processing fee. ***Do not pay the fee until the CCB asks you for it.***

After Filing the Complaint

Wait until you hear from the CCB. The next steps may be:

- A determination that the CCB cannot process your complaint and is closing the matter. You will not need to pay the \$50 fee.
- An on-site meeting involving you, the contractor and a CCB representative.

CONSTRUCTION LIEN COMPLAINTS

A Construction Lien is:

- ◆ A security interest in real property that secures the payment of a debt due to a person who provided labor, materials or equipment in the construction of a structure or improvement.



Who Can File a Construction Lien Complaint?

You may file a construction lien complaint if you are an owner

AND

- ❖ You had a licensed contractor build a structure or improve property for you, or
- ❖ You purchased, or agreed to purchase, a structure from a licensed contractor or a developer, or
- ❖ You owned, leased, or rented a structure and had a licensed contractor perform construction work on the structure,

AND

- ❖ You paid your contractor for the work but the contractor did not pay its subcontractors or employees or for materials or equipment,

AND

- ❖ The material supplier, equipment provider, subcontractor or employee filed a lien on your property.

If the *contractor that you hired* filed a lien on your property, you cannot file a construction lien complaint. Instead, you may file an *owner complaint*.

Special Requirements for Construction Lien Complaints

Do not file a construction lien complaint if you received only a Notice of Right to a Lien. That document simply tells you that the person who delivered the notice has a right to file a lien if they are not paid. You must wait until the person files the lien with the court before filing a complaint with the CCB.

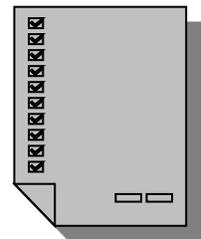
Include the following with the complaint form:

- ◆ A copy of any *Notice of Right to Lien* that you received.
- ◆ A copy of the court-recorded construction lien (showing the county recorder's stamp and date of filing).
- ◆ A copy of any lien foreclosure documents.
- ◆ Proof that you paid the primary contractor for the work performed.
- ◆ If you paid the lien, documents showing the amounts paid.
- ◆ If the person filing the lien filed a foreclosure action, a copy of the foreclosure action documents.

Complaint Form

Use the complaint form:

“Breach of Contract Complaint Form for Owners and Prime Contractors.”



PRIMARY CONTRACTOR COMPLAINTS

A primary contractor is an individual or business that:



- ◆ Has a contract with an owner of a structure to perform construction work, or
- ◆ Is building or remodeling a structure with the intent to sell it, and
- ◆ Hires one or more subcontractors to perform construction work.

What Type of Complaints Can Be Filed?

The complaint must be for breach of contract or negligent or improper work.

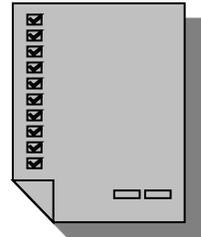
Who Can File a Primary Contractor Complaint?

A licensed primary contractor may file a complaint against a licensed subcontractor that the primary contractor hired to perform construction work.

Complaint Form

Use the complaint form:

“Breach of Contract Complaint Form for Owners and Prime Contractors.”



SUBCONTRACTOR COMPLAINTS

A subcontractor is an individual or business that:

- ◆ Has a contract with the primary contractor, and
- ◆ Does not have a contract with the owner of a structure, and
- ◆ Is responsible for a specific portion of the construction project.



What Type of Complaint Can Be Filed?

The complaint must be for unpaid labor or for unpaid labor and materials. If the complaint is for unpaid materials only, it must be filed as a material supplier complaint. Usually, there is no on-site meeting for subcontractor complaints.

Who Can File a Subcontractor Complaint?

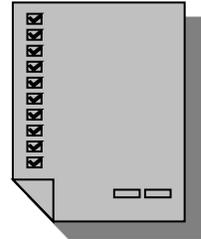
A subcontractor may file a complaint against a licensed primary contractor that hired the subcontractor to perform construction work.

Complaint Form

Use the complaint form:

“Breach of Contract Complaint Form for Subcontractors.”

Note: You may include claims involving more than one job site on this form.



FILL IN THE ENTIRE FORM.



In addition to the completed complaint form, you must also send:

- ◆ A copy of your pre-complaint notice letter and certified mail receipt.
- ◆ A copy of each invoice billing the primary contractor for work.
- ◆ If the contract was in writing, a copy of the entire contract.

EMPLOYEE COMPLAINTS



An employee is an individual who:

- Works for wages
- Works for a licensed contractor.

What Type of Complaint Can Be Filed?

The complaint must be for unpaid wages or benefits.

Who Can File an Employee Complaint?

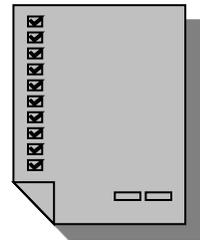
An employee of a licensed contractor may file a complaint.

Complaint Form

Use the complaint form:

“Breach of Contract Complaint Form for Employees.”

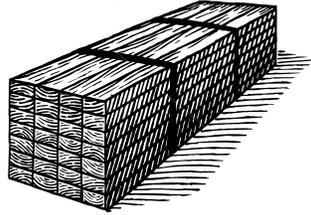
Fill in the entire form!



In addition to the completed complaint form, you must also send or provide:

- ◆ A copy of your pre-complaint notice letter and certified mail receipt.
- ◆ Evidence to prove that you worked as an employee of the contractor. This may include copies of time cards, paycheck stubs, or W-4 forms. If not available, you may submit a notarized affidavit from a person not related to you stating facts indicating that you worked for the contractor.
- ◆ You must list on the complaint form the *specific job site addresses* (including street, city and state) for each job site where you performed work.

MATERIAL SUPPLIER OR EQUIPMENT RENTAL COMPLAINTS



- ◆ A material supplier is a business that supplied materials to a contractor for use in construction but did not install the materials.
- ◆ An equipment rental company is a business that rented equipment to a contractor for use in construction.

What Type of Complaint Can Be Filed?

The complaint must be for the cost of materials or equipment rental.

Who Can File a Material Supplier or Equipment Rental Complaint?

A person that supplied materials to a contractor on credit and has not received payment may file a complaint. A person that rented equipment to a contractor on credit and has not received payment may file a complaint.

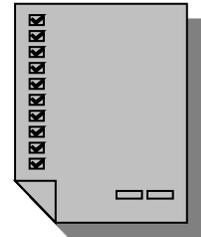
Note: If you supplied materials *and* installed the materials, you must file a *Subcontractor Complaint*.

Complaint Form

Use the complaint form:

“Breach of Contract Complaint Form for Material/Equipment”

Fill in the entire form!



In addition to the completed complaint form, you must also send or provide:

- ◆ A copy of your pre-complaint notice letter and certified mail receipt.
- ◆ A copy of each invoice.
- ◆ For each invoice, list the *specific job site address* (including street, city, and state) where the materials were installed or the equipment used.

COMMERCIAL COMPLAINTS

SMALL COMMERCIAL VS LARGE COMMERCIAL

Any of the types of complaints described in the residential complaint section can also be filed regarding a commercial structure. The time limits and information required for each type of residential complaint also apply to commercial complaints.

In order for us to be able to process a complaint regarding a commercial structure, the contractor must have a commercial bond, and there are some additional requirements for filing against commercial bonds. No on-site meetings or mediations can be held by the CCB on complaints against commercial bonds.



TWO TYPES OF COMMERCIAL STRUCTURES

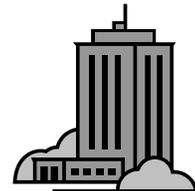
There are two classifications of commercial structures, *small commercial* and *large commercial*.

A small commercial structure is a structure that is *not a residential structure* and is one of the following:

- A structure with no more than 10,000 square feet and not more than 20 feet tall
- A unit (including one rented or leased) that is part of a larger structure if the *unit* is no more than 12,000 square feet and not more than 20 feet tall
- A structure of any size for which the contract price for *all construction* on the structure is \$250,000 or less.

A large commercial structure is:

- ◆ Any structure that is not a residential structure or a small commercial structure.
- ◆ Most public works projects fall within this classification.



Complaints Involving Small Commercial Structures

If the work was performed on a small commercial structure, you may be able to file the complaint against the residential bond rather than the commercial bond.

- ❖ If the contractor had only a residential bond in place, you must file the complaint as if the structure were residential.
- ❖ If the contractor had only a commercial bond in place, you must file the complaint as a commercial complaint.
- ❖ If the contractor had both a residential and a commercial bond, you have the choice of which bond you want to file against.

Complaints Involving Large Commercial Structures

You must file your complaint against the contractor's commercial bond. If the contractor had no commercial bond in effect, then there will be no bond access for you.

REQUIREMENTS FOR FILING AGAINST A COMMERCIAL BOND

In addition to the requirements for each type of complaint described in the residential section, you must also take the following steps:

File Your Complaint in Court or Begin Arbitration



Before you can file a CCB complaint against a commercial bond, you must first file a complaint in court or begin arbitration. However, you must file with the CCB before the trial or arbitration begins or before a judgment is entered.

File the Complaint and Notify the Bonding Company



As soon as you file in court or arbitration, you must send a copy of the court complaint or a copy of the demand or request for arbitration and a completed CCB complaint form to both the CCB and the contractor's bonding company by ***certified mail, return receipt requested***.

Delivery to the CCB and the bonding company must be no later than the earlier of:

- ◆ 90 calendar days after you file a court complaint or demand or request for arbitration, or
- ◆ 14 calendar days before the first day of trial or arbitration, or
- ◆ 30 calendar days before the court issued a judgment or the arbitrator issues an award.

You can call the Dispute Resolution Section of the CCB to determine the correct bonding company to notify and its address. If you call for this information you must know the date the contract was entered into or the work began, whichever was first, and the date the work ended.

NOTES: