



**STATE OF OREGON
LANDSCAPE CONTRACTORS BOARD**

OWNER/MANAGING EMPLOYEE

**STUDY GUIDE
&
MANUAL**

EXAMINATION MATERIAL



2111 Front St, NE, Ste 2-101
Salem, OR 97301
(503) 378-5909
Web: www.lcb.state.or.us

TABLE OF CONTENTS

PREFACE	7
Oregon Revised Statutes (ORS).....	9
Oregon Administrative Rules (OAR).....	10
LICENSING	10
Two License Requirement.....	10
LANDSCAPE CONSTRUCTION PROFESSIONAL	11
License Phases.....	12
A Probationary License.....	12
Responsibilities.....	13
Continued Education (January 1, 2008).....	13
LANDSCAPE CONTRACTING BUSINESS	13
Application.....	14
Common Business Structures.....	15
Sole Proprietor.....	15
General Partnership.....	15
Corporation.....	15
Limited Liability Company (LLC).....	19
Limited Liability Partnership.....	24
Supervision Requirements.....	25
What is Direct Supervision.....	26
Other Requirements.....	27
Local Business Licenses.....	27
Permits.....	27
Employee vs. Independent Contractor.....	27
CONTRACT REQUIREMENTS (ORS 671.625)	31
BILLING REQUIREMENTS (ORS 671.625)	31
IS YOUR CONTRACT ENFORCEABLE UNDER LAW	32
BUSINESS PRACTICES	34
Communication.....	34
Leadership.....	38
TIME MANAGEMENT	39
PRICING FOR PROFIT	40
Steps for Pricing.....	42
Set up a specific and unique chart of accounts.....	42
Budget.....	43
Price.....	45
LIENS	46
Pre-Claim Notices.....	47
The Claim.....	48
Post-Claim Notices.....	48
The Action.....	48
Considerations.....	49
BANKRUPTCY	50
Types of Bankruptcy.....	51
Chapter 7 Bankruptcy.....	51

Chapter 13 Bankruptcy	51
Some Frequently Asked Questions about Bankruptcy.....	52
ADA - American Disabilities Act	53
UTPA - Unlawful Trade Practices Act (FROM THE OREGON STATE BAR)	56
CDL - Commercial Drivers License	58
WATER RIGHTS - OREGON WATER LAWS.....	60
Water & Air Quality	62
SAFETY- (OR-OSHA)	62
HAZARD COMMUNICATION.....	66
Steps in the hazard communication process	68
What is a hazardous chemical.....	68
How to determine if a chemical is hazardous	69
Preparing a written hazard communication plan.....	69
Using material safety data sheets.....	70
Using container warning labels.....	72
Training employees	72
CALL BEFORE YOU DIG.....	73
LCB PROGRAMS.....	75
Dispute Resolution Program (Claims).....	75
Enforcement	78
SPECIFIC LAWS*.....	81
ORS 671.525 Applicant for landscape contracting business license required to be an independent contractor; classes of licensure.....	81
ORS 671.530 (6): Landscape Construction Professional or landscape contracting business license required; use of title; scope of landscape construction professional license.	81
ORS 671.540(15)(16): Application of ORS 671.510 to 671.760. ORS 671.510 to 671.760 and 671.990 (2) do not apply to:	82
ORS 671.550: Authority of board to investigate; confidentiality of information	82
ORS 671.555 Investigation of person engaged in landscape contracting business; procedures; orders to stop work.	82
ORS 671.563 Applicant notice of unpaid judgments, awards and orders; rules.	83
ORS 671.565 (1) (b): Landscape contracting business license requirements; fees; employees; filing of security; insurance; basis for independent contractor status.....	84
ORS 671.575(3): License required to obtain judicial or administrative remedy; exception.	84
ORS 671.578: Suit for damages for misrepresentation; attorney fees.	85
ORS 671.580 Landscape construction professional license not transferable.	85
ORS 671.600: New license required upon change of ownership; notification of change of address.	85
ORS 671.603(1): Persons required to give notification of change of address; communications delivered to last-known address.	85
ORS 671.610(1) (o) (p): Grounds for sanctions against license; suspension or refusal of license without prior hearing; hearing; effect of revocation; civil penalty.....	86
ORS 671.613: Sanction for failure to comply with certain laws.....	86
ORS 671.625: Minimum standards for contracts and billings; rules; compliance; effect of noncompliance.....	87

OAR 808-003-0010: Advertising	87
OAR 808-003-0018: Employment, Change of License Phase, Supervisory Responsibilities	88
ORS 447: Plumbing 447.060 Engaging in certain plumbing work .	89
ORS 479.940: Electrical Activities not subject to licensure; dentification cards	89
ORS 571: Nursery License	90
ORS 656: Workers Compensation	91
ORS 279C: Contract Issues unique to public entities	92
PREVAILING WAGE	98
DISTINCTION BETWEEN AGENTS AND INDEPENDENT CONTRACTORS	99
APPENDIX A	101
FINANCIAL HEALTH	101
Financial Ratios	101
Production Ratios.	102
Profitability Ratios.	103
APPENDIX B	105
SAMPLE CHART OF ACCOUNTS	105

PREFACE

Landscape contracting in Oregon is a growing and viable industry. The amount of money that is being spent on enhancing a consumer's property to make the property aesthetically pleasing in an environmentally responsible and sustainable fashion has grown enormously since the inception of the licensing of landscape construction work in 1971.

However, this profession is not for everyone. There are significant regulations that govern this profession and though many people confuse landscape maintenance with landscape construction, the differences are substantial and must not be ignored or misunderstood.

This manual was prepared specifically for those who desire to start a landscape contracting business in Oregon. The laws that govern a landscape contracting business are different from other types of businesses, and though businesses in general share some similarities there are some very distinct differences that can create significant and costly issues for your business if you are not aware of them. It is the intent of the State Landscape Contractors Board of Oregon to help guide you in the starting and running of your landscape contracting business and hopefully help you avoid problems that could potentially destroy that which you have worked so hard to create.

The examination that you are required to take to become the owner or managing employee of a landscape contracting business is based upon the material that is in this manual and in other materials that the board has designated which deal mainly with the laws, the financial analysis, and safety issues of a landscape contracting business. To be successful in a landscape contracting business means you need to understand the various forms of business as well as the planning, organizing and control of the business' activities. There are many elements of a business that will be addressed in this manual many of which are unique to a landscape contracting business in Oregon.

Please understand, you may not find all the answers to every question on the exam in this manual, but by studying the contents of this manual and other materials available from the board you will successfully be able to acquire those answers.

We wish you all the best in your new business venture and feel free to contact us if there are questions that you have about the licensing process for performing landscape construction work in Oregon.

Respectfully,

The State Landscape Contractors Board
2111 Front St. NE, STE 2-101
Salem, OR 97301
(503) 378-5909
Web: www.lcb.state.or.us



THE STATE LANDSCAPE CONTRACTORS BOARD

MISSION:

To promote consumer protection, contractor competency and fair competition in Oregon's landscape construction industry.

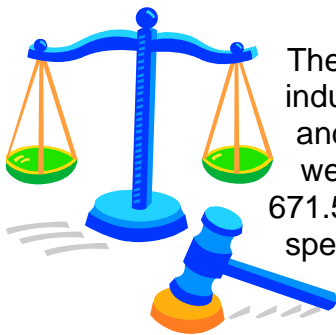
BOARD HISTORY

The State Landscape Contractors Board (LCB) has its origin in Oregon Law back in 1971. The beginnings of the present board were implemented by creating an advisory board that was to advise the Governor about how the landscape construction industry was to be regulated. The landscape industry was behind the creation of this regulation and has been supportive of the law ever since. Through many years of changes in the statutes and rules, the present board consists of seven (7) volunteers, five (5) of whom are industry members; the other two (2) are public members who have an interest in the landscape industry. These members apply to the Governor's office to be appointed to the board and then are approved by the Governor. Each member serves a three (3) year term and may serve two consecutive terms before they are replaced.



The State Landscape Contractors Board is currently a semi-independent agency. A change that occurred on July 1, 2002, which means the board is not required to go through the legislative process to have the budget approved and consequently does not have access to public tax dollars to implement the functions of the board. There are other differences in terms of business practices from other state agencies, but the Landscape Contractors Board is still a state agency with all the powers of a regular state agency as the statutes allow. No tax dollars are used to operate this agency, and all monies received are from the fees collected from licensing activities and from fines imposed in civil actions.

LAWS



The laws that govern and regulate the landscape construction industry in Oregon are found in the Oregon Revised Statutes (ORS) and in the Oregon Administrative Rules (OAR). The statutes that were written specifically for the landscape industry are found in ORS 671.510 to 671.997 and the Administrative Rules that were written specifically for the industry are found in OAR 808.

OREGON REVISED STATUTES (ORS)

The legislative process is governed by rules, laws and procedures, making it somewhat mechanical in nature. Although the legislative process is long and complex, all laws begin as ideas. An idea for a law can come from anyone; an individual or group of citizens, a legislator or legislative committee, the executive or judicial branch, a state

agency, or a lobbyist. These ideas are called “legislative concepts” and by statute state agencies such as The State Landscape Contractors Board must file concepts for new laws before the legislative session begins in order for the Governor to approve or reject the concept. Legislators or legislative committees may file an unlimited number of measures within established timelines set by rule. There are many detours that a bill can take and many times that a bill can be stalled or ‘killed’ during the legislative process.

Once the concept is introduced or approved (in the case of the agency) the concept is drafted by legislative counsel into a “bill” and assigned a bill number according to whether it is going to first be introduced on the House side or Senate side of the legislature. The leaders of House and Senate then assign the bill to the appropriate committee who will hold public hearings on the bill to determine what the public and other interested parties feel about the bill. Once a committee finishes hearing the bill, they will make a recommendation on the bill and either decide to move or not move the bill to the floor for a vote. If the bill passes out of one side of the legislature (Senate or House) then the bill must go through the same procedure on the other side of the legislature. Once it passes through both sides of the legislature the bill can be signed (or vetoed) by the Governor to enact the bill into law known as a statute.

OREGON ADMINISTRATIVE RULES (OAR)

Once a bill becomes a statute, the agency that regulates an industry or is responsible for the implementation of the law can, if they have the statutory authority, administratively create rules to further define the intended meaning of the statute. This must be done transparently through a specified process of holding public hearings designed to engage those who are affected by the rule and to refine the definition of the statute. This process can also involve notifying the legislators who were engaged in the discussions of the bill in committee during the legislative process. After sufficient notice and public testimony is heard the board can adopt the rule which is called an Administrative Rule and has the full effect of a law in Oregon. The licensees of the State Landscape Contractors Board are a major stakeholder in the creation of these rules; however, it is the responsibility of the members of the board to implement rules that create good public policy and promote the mission of the board, even if that means the board disagrees with the industry.

Rules periodically change and it is important to you as an owner/managing employee to be abreast of these changes when they occur. All changes to rules and the current set of rule are on the LCB website: www.lcb.state.or.us.

LICENSING

TWO LICENSE REQUIREMENT

As you may already know, Oregon is a highly regulated state. There are many professions that are licensed with various requirements to obtain the license. In order to bid on, advertise for or perform landscape work (ORS 671.520) in Oregon two licenses are required; the individual



landscape construction professional license and the landscape contracting business license. It is important to remember that the landscape contracting business license is issued to a business “entity” and not to an individual, even when the business is a sole proprietorship. A further requirement for the landscape contracting business is that every business must have a designated person who has taken a course on business practices and laws and passed an examination demonstrating the person is at least minimally competent to manage a landscape contracting business. This person does not obtain a license but every business must meet this requirement before obtaining the landscape contracting business license. A designated licensed landscape construction professional will also meet the requirement for the managing owner or designated managing employee for the landscape contracting business.

The two license requirement is very similar to what is required by other competency tested professions in Oregon such as plumbing and electrical. There is an individual who has demonstrated a minimum level of competency through experience and testing to perform the work and then there is a business entity that the individual either owns or is employed by that is also licensed. This business entity carries the bonding, insurance and worker compensation (if required) providing consumer protection when working for and on the property of a consumer. Contracts are to be written between the landscape contracting business and the consumer, not between an individual and a consumer even if the individual works as a sole proprietor. The sole proprietorship (business) must also be licensed and provide the consumer protection afforded through the insurance and bonding requirements.

LANDSCAPE CONSTRUCTION PROFESSIONAL

This is an individual. To become a licensed landscape construction professional in Oregon, an individual must apply for and pass an examination to demonstrate a minimum level of competency in supervising and performing the functions that are outlined in statute for landscaping work. There are no standards or codes for most landscape contracting work done in Oregon so the examination is imposed to provide a certain level of assurance to the public that the work is being done or supervised by someone who has demonstrated some competency in the field. ORS 671.520(1) defines this work as the art, ability, experience, knowledge, science and skill to:

- (a) Plan or install lawns, shrubs, vines, trees or nursery stock;
- (b) Prepare property on which lawns, shrubs, vines, trees or nursery stock is to be installed;
- (c) Construct or repair ornamental water features, drainage systems or irrigation systems; or
- (d) Plan or install fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls.

The amount of knowledge, skill, experience and creativity needed to supervise and perform this work in a correct manner is extensive and cannot be encompassed in one book or manual. Consequently the board recommends that an individual that desires to obtain this individual license spend a significant amount of time [two (2) years or the equivalent] in the landscape field working for a licensed landscape contracting business

where the licensed individual supervising the applicant spends quality time mentoring the applicant in landscaping work. If that is not possible then the individual can gain the education and experience needed through numerous educational facilities and association programs that provide a work experience component as a part of the education process.

LICENSE PHASES

Currently there are three phases of license that can be obtained by an individual that allow the person to supervise and perform different types of landscape work. To receive one of these licenses the individual must first make an application to the board and pay the required application fee. The current application fee is \$60. The person must then pass the required sections of the examination to obtain the desired phase of license. The current cost of the examination is \$15 for the 1st section and \$10 for each additional section at each sitting. The licenses available are:

1. Standard Phase: all aspects of landscape construction EXCLUDING irrigation and backflow (5 sections of the exam)
2. Irrigation only plus backflow: Irrigation and backflow installation for irrigation and water features only (3 sections of the exam).
3. All phases plus backflow: all aspects of landscape construction (7 sections of the exam).

Passing score is 75% on each section of the exam. Once a section is passed the score is good for one year, after which the individual must retake the section if a license has not been obtained. The minimum wait period between sittings of the exam is 2 weeks after a sitting or review of the exam. An individual currently pays a \$75 annual fee to obtain and maintain the individual landscape construction professional license.

A PROBATIONARY LICENSE

As of January 1, 2008 the board is offering a probationary license. This license is an All phase plus backflow license that can be obtained by an individual who has not met the experience and education requirements of the board for licensure that are currently in place. However the individual must pass all seven (7) sections of the exam within one year of taking the first section of the exam. In order for the probationary status to be removed the individual must be:

- a. Employed by a licensed landscape contracting business for 24 months under the direct supervision of a non-probationary landscape construction professional; or
- b. Employed by a licensed landscape contracting business and is supervising the landscape operations of the business but the business only contracts for landscape work in the amount of \$15,000 or less and carries a \$15,000 bond for a 24 month period; or
- c. The owner of a landscape contracting business but the business only contracts for landscape work in the amount of \$15,000 or less and carries a \$15,000 bond for a 24 month period, or
- d. Actively licensed as a construction contractor under ORS 701 for a period of at least 24 months.

RESPONSIBILITIES

Once an individual obtains the landscape construction professional license this individual plays a very significant role in the landscape contracting business that they own or are employed by. The statutory responsibility is found in ORS 671.565(1) (b) which states the individual is to supervise the landscape operations of the business. One of the major supervisory responsibilities of this licensed individual is to directly supervise all un-licensed employees employed by the licensed landscape contracting business. This requirement is outlined in OAR 808-003-0018 and in performing this supervision an exemption is allowed for unlicensed individuals to perform landscape work in Oregon. This is an important function of the licensed landscape construction professional and in doing so maintains the integrity of the competency examination and provides the consumer some assurance that the work is being properly performed. Failure to directly supervise unlicensed employees properly puts the unlicensed employee inadvertently in violation of Oregon law for the performance of landscape work, specifically ORS 671.540(15) or (16).

CONTINUED EDUCATION (JANUARY 1, 2008)

In the 2007 legislative session, the legislature imposed a required continued education component to the license renewal for individual landscape construction professionals. The new statute mandates that up to 10 hours per year can be required for a licensed landscape construction professional to renew his/her individual license. The board adopted rules to implement this requirement and though they are subject to change, a summary of the current process is:

1. 20 Continuing Education Hours (CEH) will be required every two years to renew the individual landscape construction professional license.
2. Audits will be performed on a randomly selected number of even numbered licensees in even numbered years and on odd numbered licensees in odd numbered years.
3. 4 CEH must be in business related subjects, 8 hours in technical related subject(s), and the remaining 8 may be in business or technical subjects or in community service, teaching, volunteering or other areas the board determines acceptable.
4. The licensed individual landscape construction professional must keep certificates of attendance provided by the course providers to submit in the event he/she is audited.
5. The audit will only consider education for the 2 years prior to the audit date.
6. If an individual does not meet the continuing education requirement, the individual will have 30 days to complete the requirement or the license will be subject to suspension, refusal to renew or termination. The board may also assess civil penalties for failure to comply with the requirements.

LANDSCAPE CONTRACTING BUSINESS

This is an entity that is separate from the individual landscape construction professional even if a Sole Proprietorship (one owner). Every business has an owner or owners, and even if the business is a Sole Proprietorship the business has different requirements than the individual landscape construction professional and is treated differently by the board. Depending on how the business is structured the liabilities and assets of the

business are owned by the owner(s) of the business, and the profits of the business are distributed to the owner(s) in different ways. How the taxes are assessed is dependent on the business structure, and it is very important that any owner who decides to start a landscape contracting business carefully assess the business structure that best fits his or her needs.* Consequently no matter what type of business structure you are considering: e.g. sole proprietorship, partnership, Limited Liability Company, Corporation (S or C), or other entity type, each business type has different formation requirements and each create(s) a different relationship with you, the owner. This decision has a “long term” consequence and a decision that you must take under great consideration.

***The LCB advises you consult an attorney when making the decision about the type of business entity to choose. It is an important one and a small amount spent for this consultation may save you thousands or more in later years.**



APPLICATION

Every person applying for a landscape contracting business license must submit a completed application that includes:

1. The application fee
2. The License fee
3. The business name registration (if required – see below)*
4. An original copy of the surety bond or assignment of savings, certificate of deposit or letter of credit in the amount of:
 - a. \$3,000 if the business performs landscape work on any one project up to \$10,000
 - b. \$10,000 if the business performs landscape work on any one project up to \$25,000
 - c. \$15,000 if the business performs landscape work on any one project above \$25,000
5. Verification the business will be operating as an independent contractor and meets the requirements of such status found in ORS 670.600.
6. Certificate of insurance in the minimum amount of \$100,000 naming the Landscape Contractors Board as a certificate holder.
7. Verification of Workers Compensation coverage if there are employees
8. Designation of the managing owner or managing employee who has completed the course and examination requirements for this role in the business (see below) **
9. List of all licensed individual landscape construction professionals who are owners or employed by the business and the phase of license each individual supervises.
10. A notarized verification of employment for each supervising landscape construction professional. (This is a one time requirement, unless the supervising employee or owner changes in the future, then a new verification of employment is required).
11. List of all unpaid arbitration awards or judgments in Oregon or any other state as a result of the performance of landscape work.
12. Signature of owner/officer/member

The landscape contracting business’s phase of license is based upon the phase of license or combination of the owner(s) or employee(s) of the business. If the owner or employee holds a probationary license then the business is also considered probationary and is required to obtain a minimum \$15,000 surety and is restricted to

performing projects that do not exceed \$15,000 for a period of 24 months. If any part of the business license is based upon a probationary individual landscape construction professional, the business is considered probationary and must carry the \$15,000 and comply with the project cost restrictions.

COMMON BUSINESS STRUCTURES

Sole Proprietor

- a. A **sole proprietorship** is the simplest form of business in which one individual conducts the business. The business owner is personally liable for the obligations of the business.
- b. A sole proprietorship does not have to be registered with Business Registry unless the business is using an assumed business name. If the name of the business does not include the full legal name of the business owner, the business name must be registered as an assumed business name with Business Registry. The registration allows the public to identify who is transacting business under that business name. This business cannot be transferred to another owner without starting a new business with the new owner. For a landscape contracting business a new owner means a new business license.

General Partnership

- a. A **general partnership** is an association of two or more persons doing business. All partners are personally liable for the obligations of the business.
- b. A general partnership does not have to be registered with Business Registry unless it uses an assumed business name. If the name of each general partner is not conspicuously disclosed to the public in the business name, it must be registered with Business Registry. The registration allows the public to identify who is transacting business under that business name.
- c. This business cannot be transferred to another owner without starting a new business with the new owner. For a landscape contracting business a new owner means a new business license

Corporation

When a small business incorporates, it is automatically considered a **C corporation**, also known as a regular corporation. The most basic characteristic of the corporation is that it is legally viewed as an individual entity, separate from its owners, who are now shareholders. This means that when the corporation is sued, shareholders are only liable to the extent of their investments in the corporation. Their personal assets are not on the line, as they would be if the business was a partnership or sole proprietorship (unless the owners sign a guarantee for the debts of the corporation, which is commonly required). Any debts that the corporation may acquire are also viewed as the corporation's responsibility. In other words, once the business is incorporated, shareholders are protected by the corporate veil, or limited liability.

Because the corporation is a separate entity, it is also viewed as an individual **taxpayer** by the Internal Revenue Service. As a result, corporations are subject to double taxation, which means that the profits are taxed once on the corporate level and a second time when they are distributed as dividends to the shareholders. (If a

business is eligible, it may elect **S corporation** status to avoid this negative characteristic of C corporations.)

a. Advantages

- Limited Liability. Most small businesses that consider incorporating do so for the limited liability that corporate status affords. The greatest fear of the sole proprietor or partner—that their life's savings could be jeopardized by a law suit against their business or by sudden overwhelming debts—disappears once the business becomes a corporation. Although the shareholders are liable up to the amount they have invested in the corporation, their personal assets cannot be touched. Rather than purchase expensive liability insurance, then, many small business owners choose to incorporate to protect themselves.
- Raising Capital. It can be much easier for a corporation to raise capital than it is for a partnership or sole proprietorship, because the corporation has stocks to sell. Investors can be lured with the prospect of dividends if the corporation makes a profit, avoiding the necessity of taking out loans and paying high interest rates in order to secure capital.
- Attracting top-notch employees. Corporations may find it easier to attract the best employees, who may be lured by stock options and fringe benefits.
- Fringe benefits. One advantage C corporations have over unincorporated businesses and S corporations is that they may deduct fringe benefits (such as group term life insurance, health and disability insurance, death benefits payments to \$5,000, and employee medical expenses not paid by insurance) from their taxes as a business expense. In addition, shareholder-employees are also exempt from paying taxes on the fringe benefits they receive. To be eligible for this tax break, though, the corporation must not design a plan that benefits only the shareholders/owners. A good portion of the employees (usually 70 percent) must also be able to take advantage of the benefits. For many small businesses, the expense of providing fringe benefits for all employees is too expensive, so the tax break may not be considered an advantage.
- Continuance of existence. Transfer of stock or death of an owner does not alter the corporation, which exists perpetually, regardless of owners, until it is dissolved.

b. Disadvantages

- Double taxation. After they deduct all business expenses, such as salaries, fringe benefits, and interest payments, C corporations pay a tax on their profits at the corporate level. If any of those profits are then distributed as dividends to the shareholders, those individuals must also pay a tax on the money when they file their personal tax returns. For companies that expect to reinvest much of the profits back into the business, double taxation may not affect them enough to be a serious drawback. In the case of the small business, most if not all of the company's profits are used to pay salaries and fringe benefits, which are deductible, and double taxation may be avoided because no money is left over for distributing dividends

- Bureaucracy and expense. Corporations are governed by state and federal statutes, which mean that they have to abide by sometimes intricate corporate laws. Therefore, lawyers and tax preparers will need to be hired, and regular stockholder and board of directors meetings will have to be held, and detailed minutes of those meetings must be taken. All of the corporation's actions must be approved by the directors, who can limit the ability of the corporation to take quick action on pressing matters. Corporations have to pay fees, which vary by state, when they file the articles of incorporation. And in order to bring up a case in small claims court, the corporation is required to be represented by a lawyer, whereas sole proprietors or partners can represent themselves. In addition, if the corporation does interstate business, it is subject to taxes in other states.
- Rules governing dividend distribution. A corporation's profits are divided on the basis of stockholdings, whereas a partnership may divide its profits on the basis of capital investment or employment in the firm. In other words, if a stockholder owns 10 percent of the corporation's stock, she may only receive 10 percent of the profits. However, if that same person was a partner in an unincorporated firm to which she had contributed 10 percent of the company's capital, she might be eligible to receive more than 10 percent of the business's profits if such an agreement had been made with the other partners. Strict rules, though, govern the way corporations divide their profits, even to the point, in some states, of determining how much can be distributed in dividends. Usually, all past operations must be paid for before a dividend can be declared by the corporation's directors. If this is not done, and the corporation's financial stability is put in jeopardy by the payment of dividends, the directors can, in most states, be held personally liable to creditors.

c. Structure of a Corporation:

In small businesses, the owners often hold more than one or all of the following positions, which are required of all corporations:

- Shareholders: They own the company's stock and are responsible for electing the directors, amending the bylaws and articles of incorporation, and approving major actions taken by the corporation like mergers and the sale of corporate assets. They alone are allowed to dissolve the corporation.
- Directors: They manage the corporation and are responsible for issuing stock, electing officers, and making the corporation's major decisions.
- Officers: The Corporation must have a president, secretary, and treasurer. These officers are responsible for making the day-to-day decisions that govern the corporation's operation.
- Employees: They receive a salary in return for their work for the corporation.

d. Financing a Corporation:

Financing the operations of a corporation may involve selling stock (**equity financing**), taking out loans (**debt financing**), or reinvesting profits for growth.

- Equity. This is cash, property, or services exchanged for stock in the company. Generally, each stock is equivalent to one dollar of investment. If the small business owner is planning to exchange property to the corporation

for stock, then a tax advisor should be consulted; if the property has appreciated, taxes may be due on the exchange.

- Debt. This is money lent by banks or shareholders. In the former case, a personal guarantee by the corporation's principals is usually required, which makes an exception to the limited liability rule. The owner of a corporation who personally guarantees a loan is also personally responsible for paying it back if the corporation goes under. Many corporations have preferred to fund the corporation with shareholder money in exchange for promissory notes because unlike dividends, the repayment of debts is not taxable. The Internal Revenue Service monitors such debt closely, though, to make sure it is not excessive and that adequate interest is paid.

e. Paying C Corporation Taxes:

- After the C Corporation deducts all business expenses, such as salaries, fringe benefits, and interest payments; it pays a tax on its profits at the corporate level. Then dividends may be distributed to the shareholders, who must pay a tax on the money when they file their personal tax returns. In the case of the small business, though, double taxation may not be a consideration, because most, if not all of the company's profits are reinvested in the business or go to pay salaries and fringe benefits, which are deductible, and no money is left over for distributing dividends. To avoid double taxation, corporations sometimes pay their shareholder-employees higher salaries instead of distributing income as dividends. But the IRS looks out for this trick and often audits corporations, claiming that executive salaries are not "reasonable" compensation. To prevent this charge, then, the corporation should consider the duties performed, the experience and/or special abilities of the employee, and how much other corporations pay for similar positions before determining "reasonable" compensation. In *How to Run a Small Business*, the J.K. Lasser Institute also advises that a corporation keep salaries somewhat consistent: "Fluctuating salaries, high salaries in high earning years and low salaries in lean years, will attract a review of salary payments by the Internal Revenue Service. A charge might be made, for example, that the high salary payments were in fact dividend payments."

f. Running a Corporation:

- Once a small business has been incorporated, the day-to-day management of business affairs should not be that much different than it was beforehand. It is important, though, that the business is treated like a corporation. The courts have been known on occasion to overlook a business's corporate status and find the shareholders/owners liable because the business was run as if it were still a sole proprietorship or partnership. Simply filing the articles of incorporation does not guarantee limited liability. In order to maintain corporate status in the law's eyes, these guidelines should be followed:
- Act like a corporation. Before doing business, stock certificates should be issued to all stockholders, and a corporate record book should be established to hold the articles of incorporation, records of stock holdings, the corporation's bylaws, and the minutes of board and shareholder meetings. In

addition, such meetings should be held regularly (once a year is the minimum requirement). In this way, the corporation can record all important actions taken and show that such actions were approved by a vote. It is also important to treat the corporation like the separate entity it is by keeping personal and corporate accounts separate. Whereas a small business owner may have previously used one account to pay the company's accounts and personal expenses, as a corporate shareholder, he now needs to receive a regular salary from the corporation, deposit it in a separate account, and pay his personal expenses from that account. In all respects, the corporation and owner must be treated as distinct individuals. Fred Steingold advises: "document all transactions as if you were strangers. If the corporation leases property to you, sign a lease." In addition, the corporation's full name (which should indicate the company's corporate status through use of "Inc." or an equivalent) must be used on all correspondence, stationary, advertising, phone listings, and signs.

- Act like a corporate officer. When the corporation's owner signs her name to checks, contracts, or correspondence for the corporation, she must always indicate that she is the president to show that she is not acting on her own but as an agent of the corporation.
- Adequate capital investment and insurance coverage. It is important to protect the corporation against failure due to debts and lawsuits. In other words, simply trying to protect the owners' assets by becoming a corporation and neglecting to fortify the business can be viewed as reason to disregard a business's corporate status in a lawsuit. Therefore, enough capital should be invested in the corporation to handle all business activities. Likewise, if business activities pose a risk to employees or customers and reasonably priced insurance is available to protect against such risks purchasing such insurance is strongly advised.

Limited Liability Company (LLC):

An **LLC** is company in which shareholders limit their liability exposure to their percentage of ownership or equity interest in the company. Shareholders' personal assets are protected in the event of business-related lawsuits. The tax situation for this type of company is much like that of the partnership in that it acts as a pass-through tax entity. A tax return for a partnership is filed with the IRS for information purposes only. All income and expenses are attributed to the stockholders of the LLC. According to the LLC agreement, the stockholders can allocate income and its resultant tax liability the same way as partners in a partnership.

The LLC has advantages over the subchapter "S" corporation to include the following: (1) LLC has no restriction on number of persons who may be stockholders; "S" corporations are limited to 35 stockholders; (2) LLC may have multiple classes of stock; an "S" corporation can have only one issue of stock; and (3) LLC may own subsidiaries; an "S" corporation cannot own subsidiaries. The Limited Liability Company (LLC), a hybrid of the partnership and the corporation, has become a popular legal alternative for business owners. Now available in almost all states, the LLC combines the benefits of limited liability and

pass through taxation, much like an S corporation. But the LLC's legal structure is much looser, allowing many companies that find S corporation status too restrictive to take advantage of its benefits. Small business owners are taking advantage of the LLC because it is easier to set up and maintain than a corporation.

Because the LLC is a fairly new option in the United States (it first became available in Wyoming in 1977, but most other states did not follow suit until the 1990s), the laws governing this business form are largely un-interpreted by court cases. In addition, each state has its own statutes concerning LLC's. Therefore, learning and keeping up with the laws that govern LLC's, which are still being fine-tuned, can be a tricky business. When considering the LLC option, consulting knowledgeable and up-to-date legal and tax advisors is a must.

a. Advantages of Forming an LLC

- Limited Liability. Like corporations, the LLC provides its members (owners) with protection from being personally responsible for the debt liabilities of the company. Members are only liable to the extent of their investments in the company. If a customer slips and is injured on company property, a law suit may still bankrupt the business, but it cannot touch the personal assets of the LLC's members. This limited liability, then, is a great advantage over partnerships. In general partnerships, all members are liable for the company's debts, and in a limited partnership, at least one member must still be liable.
- Avoiding Double Taxation. Like S corporations, LLC's enjoy exemption from the double taxation required of C corporations. In other words, the LLC's profits pass through to the company's members, who report their share of the profits on their personal federal tax returns. The company itself does not pay a federal tax before the money is distributed to the members, as in the case of C corporations. But state and local taxes may still be levied against the LLC.
- Flexibility of Income Distribution. One of the biggest benefits that small businesses enjoy when choosing LLC status, according to Fred Steingold, author of *The Legal Guide for Starting and Running a Small Business*, is that it is "easier to allocate profits and losses for tax purposes." Whereas the amount of profits the S corporation's shareholders report on their federal tax returns must be proportional to their share of stock, an LLC's members can determine amongst themselves how to divide their income as long as they follow the Internal Revenue Service's rules on partnership income distribution.
- Simplicity. Another great advantage of LLC's over corporations is the ease of setting up and running one. Whereas incorporation can be an involved and costly process, all that is required to start an LLC is the filing of an Articles of Organization and the drafting of an Operating Agreement defining the company's policies and procedures (a filing fee, though, will still be required of LLC's). And whereas a corporation requires a board of directors, officers, and regular shareholders' and directors' meetings, an LLC is not required to observe such formalities in its operation. An LLC can be run from day to day essentially as if it were a partnership.

- No Ownership Restrictions. The biggest drawback of forming an S corporation—the restrictions on the type and number of shareholders the corporation may have—is avoided by forming an LLC. The members of an LLC may be foreign nationals or other companies, both of which are prohibited from owning stock in an S corporation. In addition, there is no limit on the number of members an LLC may have, as there is with an S corporation.
 - Member Involvement in the Company. One problem with limited partnerships is that those partners who wish to protect themselves with limited liability (which may be all but one of the members) are prohibited from direct involvement in running the company. These partners may have only a financial investment in the firm. All members of an LLC may be directly involved in the company’s management without jeopardizing their limited liability.
 - Attractive to Foreign Investors. Because LLC’s have been in existence in Europe and Latin America for over a century, investors from those parts of the world are particularly knowledgeable about this business form. According to *The Essential Limited Liability Handbook*, “LLC’s often prove to be the most familiar and least imposing business structure for foreign entrepreneurs who wish to enter the American market.”
- b. Disadvantages of Forming an LLC
- Newness. LLC’s are still a very new option in most states (only Wyoming and Florida had LLC statutes on the books prior to the 1990s). This means that the statutes governing the establishment of LLC’s are still evolving. And there is virtually no case history in the courts to indicate how these laws will be interpreted. The Internal Revenue Service is also still working out its position concerning LLC’s, so it will be imperative for small business owners to solicit legal and tax advice on the current laws before making a decision about whether or not to form an LLC. And because the laws may change while the LLC is in existence, it will be important to keep on top of the developments in LLC statutes to determine whether it remains in the company’s best interests to operate as an LLC.
 - Interstate Business More Complicated. Laws governing LLC’s can vary widely from state to state, complicating the conduct of business across state lines. There are, as of yet, no uniform laws concerning LLC’s, so an even greater knowledge of the state laws will be required of the company that does business in more than one state.
 - No Perpetual Existence. Most states require that an LLC’s Operating Agreement set a limit to the company’s existence (usually 30 years), Oregon does not but it must be stated as perpetual in the Articles of Incorporation. In the absence of a clause in the Operating Agreement providing for the continuance of the LLC in the event of the death or withdrawal of a member, the LLC will cease to exist when such events occur. The transfer of ownership is also more restricted for an LLC (like a partnership) than for a corporation.

- c. **Creating an LLC.** It is important that the organizer(s) of a prospective LLC follow the “enabling statutes” or formation laws of the state in which the company will be formed in order to be designated as an LLC. Without this designation, the company will lack the protection of limited liability and will be treated as a general partnership. Therefore, the first step in creating an LLC is to find out Oregon’s specific enabling statutes.

The organizer does not have to be one of the company’s members. The organizer’s function is to file the articles of organization, a task which can be accomplished by a lawyer, a hired agent from a service company specializing in such business, or a manager of the prospective company.

- **Naming an LLC.** Before forming an LLC, the company name must be reserved with the secretary of state. The name must contain, as the last words of the name, “limited liability company” or “LLC” or “L.L.C.”. In all states, though, the name of the LLC must not resemble the name of any other corporation, LLC, partnership, or sole proprietorship that is registered with the state.
- **The Articles of Organization.** This form, called the articles of organization or certificate of formation, must be obtained from the secretary of state’s office or its equivalent, filled out by the organizer(s), and filed with the same office. A filing fee, which varies from state to state, will also be charged. This simple document requires, at minimum a \$50 filing fee in the state of Oregon. Oregon law requires that the following information be included in your articles of organization:
 - The LLC name
 - The street address and mailing address, if different, of the LLC’s initial registered office
 - The name of its initial registered agent at that office
 - A mailing address to which notices may be mailed until an address has been designated by the LLC in its annual report
 - A statement as to whether the LLC is to be manager-managed
 - The name and address of each organizer
 - The period of the LLC’s duration (this period may be perpetual or for a set amount of time)
 - Any other provisions for internal regulations which the members elect to set out

It is important that the articles describe the business in a way that will allow the Internal Revenue Service to designate the company a partnership for tax purposes, and not a corporation. In order for the I.R.S. to do so, the articles must show that the company possesses no more than two of the following four characteristics (which describe a corporation):

- Perpetual existence
- Centralized management
- Free transferability of ownership interest
- Limited liability

One of the easiest ways to show that the LLC is not a corporation is to limit its existence. In fact, most states require that a dissolution date be determined in the articles of organization. On this date the LLC's assets will be liquidated and its business will cease (occurrences such as the mutual written agreement of the members or the death or retirement of a member may also terminate the LLC's existence before the dissolution date). If no date is specified, a default period of usually 30 years will be enacted. However, the members may decide to continue the LLC's existence at a later date.

- Fees. Filing fees vary from state to state, from \$50 to \$500, currently in Oregon the fee is \$50.
- The Operating Agreement. At the first meeting of the members, called the organizational meeting, an operating agreement should be drafted. Although each state has laws governing how LLC's should be operated, the members should create their own operating agreement to document that all members agree on how the company should be run. It should be carefully constructed with an eye to preventing future disagreements and deadlocks. Most basically, the agreement should address the division of profits, members' voting rights, and company management. A good operating agreement will address the following issues:
 - Who the members are and how they will be elected in the future.
 - Grounds on which members may be terminated, and procedures to execute such terminations.
 - Stipulations regarding allocation of business shares after the death of a member.
 - If a member becomes disabled, how will the company provide for him/her (with disability insurance or out of its own funds)?
 - How managers will be selected and what their duties, salaries, and grounds for dismissal will be.
 - How major decisions will be made. (Which decisions will require unanimous approval of the members and which a simple majority vote? Which decisions can be delegated to the manager in charge of daily affairs?)
 - How often meetings will be held and how much notice members must receive.
 - Who will keep records and how they will be kept.
 - How members will invest in the LLC: will only cash contributions be allowed, or can members contribute services as well? If so, which services will be accepted and how will they be valued?
 - How profits and losses will be allocated to members.
 - How compensation (salary) for actively participating members will be determined.
 - How new capital should be acquired should the company need it.
 - What procedures must be followed to transfer interests in the company.
 - What banking procedures should be followed.

- Penalties, if any, if members or managers fail to act in accordance with the operating agreement.

Limited Liability Partnership

- a. A limited liability partnership is an association of two or more persons doing business. It is restricted to partnerships that render a professional service as defined by ORS Chapter 67, and include: Accountants, Architects, Attorneys, Chiropractors, Dentists, Landscape architects, Naturopaths, Nurse practitioners, Psychologists, Physicians, Podiatrists, Radiologic technologists, Real estate appraisers, and other persons providing to the public types of personal services substantially similar that may be lawfully rendered only pursuant to a license, or partnerships that are affiliated with a limited liability partnership and render a complementary service or provide services or facilities to the limited liability partnership. The State Landscape Contractors Board does recognize this form of business organization.
- b. Limited liability partnerships formed under Oregon statute are “domestic” limited liability partnerships. Limited liability partnerships formed under the laws of other states, but transacting business in Oregon, are “foreign” limited liability partnerships.

*Assumed Business Name Registration

The main reason to register your business name is to tell the public (and other businesses) who is doing business under that name.

- A business name must be registered with the Corporation Division as an assumed business name if the “real and true” name of each person who is carrying on the business is not conspicuously disclosed to the public in the business name. Each person’s “real and true” name must include first name, middle initial and last name. Nicknames are not ‘real and true’ names and must be registered as assumed business names. If there are words that suggest additional owners, such as “company” or “associates”, the business name must be registered.
- A business name that includes the “real and true” names of all owners’ may also be registered, but the registration is optional. A corporation, limited liability company, limited liability partnership or limited partnership does not need to register its name as an assumed business name, unless the entity wants to use the name without the entity type designation.

If a person transacts business with an unregistered assumed business name, he or she may not have standing in court to pursue or defend legal actions, and may find it difficult to do business, for example, getting licenses, opening bank accounts, and entering into contracts.

**Managing Owner or Managing Employee

In the 2007 legislative session the board introduced legislation that was approved and signed by the Governor to require every landscape contracting business formed after January 1, 2008 to have an owner or a managing employee that is designated on the application that has completed a required

course and passed an examination to manage the business. The designated person can be a licensed landscape construction professional but this person must be designated as fulfilling this role on the application. The course is available through approved providers, and the examination is administered by the board on a regular basis. This manual is part of the study material for this course.

(1) **An owner** is defined in Administrative Rule, OAR 808-002-0734 and means:

- (a) The individual has an ownership interest in the landscape contracting business;
- (b) A general partner in a limited partnership;
- (c) A majority stockholder in a limited partnership;
- (d) A manager in a manager-managed limited liability company;
- (e) A member in a member-managed limited liability company; or
- (f) A person who has a financial interest in a business and manages or shares in the management of the business.

(2) **Manages or shares in the management** means to have a position in the business that is accountable for exercising delegated authority over the human and financial resources to accomplish the objectives of the business which may include, but is not limited to, the performance of the planning, directing, implement, organizing, evaluation, supervising or administering the operations of the business.

(3) A **Managing Employee** is defined in Administrative rule, OAR 808-002-0630, as any individual, including a general manager, business manager, or administrator, employed full time by a landscape contracting business who manages or shares in the management of the landscape contracting business. An individual can only be a managing employee of one landscape contracting business at a time.

What does it mean to manage a landscape contracting business? Management is the function that “makes or breaks” a business. Failure to properly manage the human resources, the equipment, work processes and financial aspects of your business will most definitely lead your business down a road to disaster. The statement “what you don’t track you can’t measure” is a very important aspect of business management. Having a business specific chart of accounts and a record keeping system that allows the business to track and monitor those areas of the business that normally get overlooked is a vital business practice. Part of the course the LCB is approving will cover these aspects of business practice to provide you some knowledge and skill in this area. Whether you practice them or not is up to you, but the board is providing some instruction in this area as part of the exam so there is minimal knowledge in these business practices that may help you as a manager of a business to avoid some of the pitfalls that commonly affect landscape contracting businesses in Oregon.

Supervision Requirements:

The supervision requirement is the element that provides some assurance to the consumer that the person who has demonstrated competence in performing landscape work is directly involved in the project that is being performed by the landscape contracting business.

As a managing owner or managing employee of a landscape contracting business there are some requirements for supervision of the technical aspects of the

landscape activities of the business by a licensed landscape construction professional that you need to understand to make sure any unlicensed employees are not in violation of the landscape laws and then subject to civil penalties. Failure to require proper direct supervision of unlicensed employees has severe consequences for the landscape contracting business and the employees of the business.

- **If an individual employee is licensed**, then the person can perform work within the phase of license that he or she is licensed in provided that the person is an owner of, or employed by, a licensed landscape contracting business.
Performing work outside the scope of the individual license requires another individual licensed landscape construction professional holding a license in that phase of license to directly supervise the work.

Note: The installation of a backflow assembly for irrigation and water features must be done by an individual landscape construction professional holding the Irrigation plus backflow or All phase plus backflow phase of license, OR by a licensed plumber. NO UNLICENSED EMPLOYEE may install a backflow assembly without being in violation of ORS 447 (plumber's law). Also, any employee of a licensed landscape contracting business installing low voltage wiring must carry a card provided by the LCB (see www.lcb.state.or.us) that indicates the employee is authorized by the business to install the low voltage wiring on class II or class III electrical installations (ORS 479.940)

- **If an individual employee is not licensed**, then all landscaping work performed by this person must be done under the direct supervision of an individual landscape construction professional licensed in the phase of work being performed that is an owner of or employed by the landscape contracting business.

Failure to comply with these requirements can result in maximum civil penalties for the individual performing the work and serious consequences for the business that allowed the situation to happen.

What is Direct Supervision?

The word “direct” has implications that are not easily adhered to in the landscape construction industry. The board by rule has adopted a definition of this, and it can be found in OAR 808-002-0328:

Direct supervision means that a licensed landscape construction professional supervises another person who performs landscaping work such that:

- (1) The other person works under the instruction of the licensed landscape construction professional; and
- (2) The licensed landscape construction professional is reasonably available to the other person such that, even if not physically on the job site, the licensed landscape construction professional can be contacted and is available for consultation and able to provide direction during the time the landscaping work is being performed by such other person.

This means that there are no intermediate people between the licensed individual supervising the work and the unlicensed employee being supervised. Failure of a

landscape contracting business to require this type of supervision will result in stiff penalties for the business and could result in additional penalties for the unsuspecting employee for not meeting the exemption in ORS 671.540 (15) or (16).

OTHER REQUIREMENTS

Local Business Licenses

The business license with The State Landscape Contractors Board (LCB) allows the business to perform anywhere within the state of Oregon; however, inquire with the local government (city, county) to see if they require a business license to perform landscape construction in the city, or county or both. For example if the business is in Portland, the City of Portland has specific requirements and Multnomah County which contains Portland also has requirements. Check with the local jurisdictions to see what is required of the business to perform landscape construction in the area or in the areas the business wants to contract for work. This is an additional license fee which can vary from municipality to municipality.

Permits

The state as well as most local jurisdictions have permit requirements for some of the work landscape contracting businesses perform. As a business owner you will need to make sure the required permits are obtained before the work is performed and have the work inspected after the work is completed. Some of the permits required are (but not limited to):

- **Backflow Assembly** for Irrigation Systems and Water features. These plumbing fixtures can also be required to be tested after installation and inspection before the permit is finalized.
- **Retaining Walls**. Depending on the requirements of the jurisdiction the business is performing work in, a retaining wall above a certain height (measured from the bottom of the base to the top of the wall) may require a permit, engineering and inspection.
- **Driveways**. Entering from a street onto a property may require a permit.
- **Decks**. Decks that are a certain height off the ground or attached to a structure may require a permit.
- **Low Voltage**. Low voltage wiring for irrigation systems and low voltage lighting is a state mandate and may require a permit in many local areas.

NOTE: Do Not Assume a Permit is not required.

Check with your local building codes official BEFORE installing any of these items in a landscape. Failure to comply with permit requirements may result in civil penalties, loss of revenue and revocation of your individual and business landscaping license.

Employee vs. Independent Contractor

In the landscape construction industry there is a lot of confusion around what it means to be “employed by” as worded in the statute. However, the laws are very specific in the meaning, and a misinterpretation of the law can result in significant and costly consequences to both the landscape contracting business and to any person who is supposed to be an employee. If during an investigation a determination is made that

the individual working is not a true employee and is being treated as an independent contractor but does not meet the independent contractor requirements, the landscape contracting business “hiring” this person may be subject to harsh penalties plus back payments for taxes and employment costs for acting in this manner.

To employ a person means: to hire an employee [”Employee” means any individual working for remuneration who does not meet the requirements of an independent contractor in ORS 670.600], and thereafter be subject to ORS Chapters 654 (Oregon Safety Laws), 656 (Workers Compensation Laws), 657 (Unemployment Laws) and state and federal wage and hour laws. [see OAR 808-002-0340 & 0360].

These requirements are in place to protect the consumer and the employee in the instance when an individual is working on the consumer’s property and is injured on the job. If properly employed the responsibility for the injury or accident does not fall back onto the consumer but is assumed by the landscape contracting business. There is also added protection for the working individual in that they are assured medical care and maintain a certain level of income when working (minimum wage requirements) even if injured or unemployed for specific reasons.

So what is an independent contractor? This is defined in ORS 670.600 and means the person is:

- Free from direction and control;
- Engaged in an independently established business;
- Licensed under ORS 671 or 701 (State Landscape Architect Board, State Landscape Contractors Board, State Board of Architect Examiners, or Construction Contractors Board) if required for the service;
- Responsible for other licenses or certificates needed to do the work.

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 happens when the client sets conditions about how the worker conducts himself or does the work. This is called “narrowly set” conditions. Some examples of “narrowly set” conditions are:

- Telling the worker how to dress or act on the job.
- Saying the worker can only work on the job when the client is there.
- Approving workers hired by an independent contractor.
- Saying the worker must be trained by the client.

Sometimes work needs to be done when a business is closed or during off-hours. The employer has control when they can tell the worker when, where, and how to do the job, even when there might be other ways to do the work. When an employer has the right to tell the worker how to do the job, the worker is an employee.

What is an independently established business?

By Oregon law [ORS 670.600](#), the business is an independently established business if the business meets three out of the five standards below:

1. Maintain a business location that is:
 - a. Separate from the business or work location of the person getting the service; or
 - b. In a part of your home that is used mainly for business.
2. Bear the risk of loss, for example, the business
 - a. Enters into fixed price contracts;
 - b. Correct(s) poor work;
 - c. Warrant the service; or
 - d. Negotiate indemnification agreements or buy liability insurance, performance bonds, or errors-and-omissions insurance.
 - e. Provide services on contract for two or more people within 12 months, or advertise or promote the business to get new contracts so you can do the same work for others.
3. Invest in the business by:
 - a. Buying tools or equipment you need to provide the services;
 - b. Paying for the premises or facilities where the services are provided; or
 - c. Paying for licenses, certificates, or special training.
4. Have the right to hire and fire others.

Note: If you file tax returns with a Schedule F and also do agricultural work that you report on a Schedule C, you do not have to meet the independently established business requirements.

What does this mean for any person performing landscape construction work for compensation? If any person is going to have an unlicensed individual perform landscape work for them in return for any form of compensation, this person must be employed by a licensed landscape contracting business or be employed by a licensed temporary labor provider which supplies labor for the licensed landscape contracting business; be under the direct supervision of a licensed landscape construction professional; have the federal and state taxes withheld; be paid at least minimum wage (or meet the salary test for salaried employees)*; be covered by workers compensation and be paid by the landscape contracting business, not directly by the consumer. If any other condition exists for payment, the person is either working as an independent contractor, thus needs to be licensed and have his/her business licensed, or is an employee of the consumer which has significant ramifications for unsuspecting consumers in Oregon.

**The salary test generally requires that an employee receive a predetermined amount each pay check, and that the amount is not subject to reduction due to variations in the quality or quantity of work performed. The salary test also requires that the employee be paid a full week's salary for any week in which he or she does any work. Because of this regulatory framework, reductions in pay for increments of an entire week do not affect an employee's salary status, provided no work is done that week. Additionally, the regulations contain exceptions that allow deductions from the weekly salary under certain limited circumstances. For example, employees can be docked pay for major safety violations without losing their exempt status, even if the result is a partial pay week.*

CONTRACT REQUIREMENTS (ORS 671.625)

Contracts are the way a business communicates with a client (consumer). Detailing “what, when, how and for how much” to a client protects both the consumer and the landscape contracting business. In the event there is a claim (complaint) filed against a landscape contracting business the determination of whether there is a breach of contract or negligent work goes back to the terms of the contract. Having a well written and understood contract is imperative in performing landscape work and for both consumer and landscape contracting business protection. Therefore the legislature has stipulated:

All landscape construction work (landscaping work) performed in Oregon, **no matter how much it costs**, is to be done with a written contract (ORS 671.625), and is to contain certain elements that The State Landscape Contractors Board (LCB) has stipulated by rule. The contract is also to be reviewed and initialed by the licensed individual landscape construction professional who is either the owner or an employee of the business. Currently there are ten (10) elements that need to be included in the contract (see OAR 808-002-0020):

1. Landscape contracting business name, license number, business address and telephone number;
2. Consumer’s name and address;
3. Address or location of work to be performed if different from the consumer’s address;
4. A list of plant materials, if any, together with the size and quantity;
5. General description of the work to be performed;
6. Estimated time for completion or estimated completion date;
7. Price and payment schedule;
8. Description of guarantee; if no guarantee such a statement shall be included;
9. Signatures of the business licensee and consumer;
10. Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

Note: *Though these elements do not constitute a complete contract, these elements need to be included. Failure to include any one of these elements may lead to the inability for the landscape contracting business to collect on the work performed because the contract is deemed unenforceable in a court of law in Oregon (ORS 671.625) and will result in a civil penalty issued by the State Landscape Contractors Board.*

BILLING REQUIREMENTS (ORS 671.625)

ORS 671.625 gave the LCB authority to make requirements on billings (invoices) for landscaping work performed in Oregon to help consumers know what they are paying for and the cost associated with the billed work. All billings by a licensed landscape contracting business shall include the following [OAR 808-002-0020]:

1. Name, address and telephone number of the licensed landscape contracting business;

2. Name and address of the consumer;
3. Total contract price and amount paid to date;
4. The amount now due and the work performed for the amount due.

IS YOUR CONTRACT ENFORCEABLE UNDER LAW?

If your landscape contracting business is involved in a business agreement, one of the first things to determine is whether the promise or agreement at issue will be considered an enforceable contract under the law. While contracts usually involve promises to do something (or refrain from doing something), not all promises are contracts. How does the law determine which promises are enforceable contracts and which are not?

Is the Agreement a Contract?

Courts look at a number of factors to determine whether an agreement should be enforced. The court must initially determine whether the agreement constitutes a contract or not. In order for an agreement to be considered a valid contract, it must satisfy certain requirements. One party must make an offer and the other party must accept it. There must be a bargain for exchange of promises, meaning that something of value must be given in return for a promise. In addition, the terms of a contract must be sufficiently definite for a court to enforce them.

Enforcement and Contract Defenses

If a court determines that a contract exists, it next must decide whether that contract should be enforced. There are a number of reasons why a court might not enforce a contract. These are called *defenses* to the contract. Contract defenses are designed to protect people from unfairness in the bargaining process, or in the substance of the contract itself. If there is a valid defense to a contract, the contract may be *voidable*, meaning the party to the contract who was the victim of the unfairness may be able to cancel or revoke the contract. In some instances, the unfairness is so extreme that the contract is considered *void*, in other words, a court will declare that no contract was ever formed. What are some of the reasons a court might refuse to enforce a contract?

- **Statutory Defense: ORS 671.625:** The contract for landscape construction work was not written nor did it meet the conditions set forth in rule by the LCB. The law is very specific about whether a contract for landscape construction work is enforceable in a court of law in Oregon and this is spelled out in ORS 671.625 and in OAR 808-002-0020 (discussed earlier in this manual)
- **Capacity to Contract:** In order to be bound by a contract, a person must have the legal ability to form a contract in the first place. This legal ability is called *capacity to contract*. A person who is unable, due to age or mental impairment, to understand what she is doing when she signs a contract may lack capacity to contract. For example, a person under legal guardianship due to a mental defect completely lacks the **capacity** to contract. Any contract signed by that person is void. In other situations, a person may not completely lack the capacity to contract. The contract would then be rendered void at the option of the party claiming incapacity, if he or she is able to prove the incapacity. A **minor** generally cannot form an enforceable contract. A contract entered into by a minor may be canceled by the minor or by his or her guardian. After reaching the age of majority (18 in most states), a person still has a reasonable period of time to cancel a contract entered into as a minor. If, however, he or she does not cancel the contract within a reasonable period of time, the contract will be considered ratified, making it binding and enforceable. If a

person signs a contract while drunk or under the influence of drugs, can that contract be enforced? Courts are usually not very sympathetic to people who claim they were intoxicated when they signed a contract. Generally a court will only allow the contract to be rendered void if the other party to the contract knew about the intoxication and took advantage of the intoxicated person, or if the person was somehow involuntarily intoxicated (e.g. someone spiked the punch).

- **Undue Influence, Duress, Misrepresentation:** Coercion, threats, false statements, or improper persuasion by one party to a contract can void the contract. The defenses of *duress*, *misrepresentation*, and *undue influence* address these situations:
 - To claim the defense of *duress*, a party must show that assent or agreement to the contract was induced by a serious threat of unlawful or wrongful action, and that she had no reasonable alternative but to agree to the contract. Blackmail is an example of duress.
 - *Undue influence* is a type of improper persuasion that causes a person to enter an unfair transaction. Undue influence is often defined as unfair persuasion by a person who, because of his or her relation to the victim, is justifiably assumed by the victim to be one who will not act in a manner that is inconsistent with the victim's welfare.
 - The defense of *misrepresentation* focuses on dishonesty in bargaining. A misrepresentation may be: 1) a false statement of fact, 2) the deliberate withholding of information which a party has a duty to disclose, or 3) an action that conceals a fact (for example, painting over water damage when selling a house).
- **Unconscionability:** The *unconscionability* defense is concerned with the fairness of both the process of contract formation and the substantive terms of the contract. When the terms of a contract are oppressive or when the bargaining process or resulting terms shock the conscience of the court, the court may strike down the contract as unconscionable. The unconscionability defense applies to a wide variety of types of conduct, so a court will look at a number of factors in determining if a contract is unconscionable. If there is a gross inequality of bargaining power, so the weaker party to the contract has no meaningful choice as to the terms, and the resulting contract is unreasonably favorable to the stronger party, there may be a valid claim of unconscionability. A court will also look at whether one party is uneducated or illiterate, whether that party had the opportunity to ask questions or consult an attorney, and whether the price of the goods or services under the contract is excessive.
- **Public Policy and Illegality:** Rather than protecting the parties to a contract as other contract defenses do, the defenses of illegality and violation of public policy seek to protect the public welfare and the integrity of the courts by refusing to enforce certain types of contracts. Contracts to engage in illegal or immoral conduct would not be enforced by the courts.
- **Mistake:** A contract can be canceled on the grounds of mutual mistake of fact. In order to cancel a contract for mistake, both parties must have made a mistake as to a basic assumption on which the contract was based, and the mistake must have a material effect upon the agreed exchange. The mistake must relate to facts existing at the time the contract is made. In addition, the party seeking to avoid the contract

must not have contractually assumed the risk of mistake. Parties sometimes attempt to claim mistake as a defense to a contract when they have failed to read the contract and later become aware of terms they dislike. Failure to read the contract is not a defense. A person who signs a contract is presumed to know what it says, and is bound to the terms she would have known about, had she read the contract.

BUSINESS PRACTICES

1. COMMUNICATION

Managers and landscape construction professionals (LCP) need to use written and oral communication daily. These communications include but are not limited to writing documents for internal use, for clients and for supply representatives. Oral communications may include giving instructions to a crew, placing orders with a supply company, and fielding complaints from a homeowner, property manager, landscape architect or project manager.

In all these situations the professional needs to organize and articulate their thoughts in order to communicate effectively. **Effective communication** occurs only if the person listening understands the exact information or idea that the speaker is intending to transmit.



Studying and learning the communication process is important because you coach, coordinate, counsel, evaluate, and supervise through this process. A manager or LCP may be required to negotiate, administer and communicate the terms of a contract to a client. Learning good communication skills is essential to a successful project and a satisfied client. It is also the chain of understanding that integrates the members of an organization from top to bottom, bottom to top, and side to side.

A. Hearing vs. Listening.

Hearing and listening is not the same thing. **Hearing** is the act of perceiving sound. It is involuntary and simply refers to the reception of aural stimuli. **Listening** is a selective activity which involves the reception and the interpretation of auditory stimuli. It involves decoding the sound into meaning.

Listening is divided into two main categories: passive and active. **Passive** listening is little more than hearing. It occurs when the listener has little motivation to listen carefully, such as music, story telling, television, or being polite.

People speak at 100 to 175 words per minute, but they can listen intelligently at 600 to 800 words per minute. Since only a part of our mind is paying attention, it is easy to think about other things while listening to someone. The cure for this is **active** listening which involves listening with a purpose. It may be to gain information, obtain directions, understand others, solve problems, share interest, see how another person feels, show support, etc. It requires that the listener focuses on the words and the feelings of the speaker for understanding.

Active listening takes the same amount or more energy than speaking.



It requires the listener to hear the various messages, understand the meaning, and then verify the meaning by offering feedback. The following are a few traits of an active listener:

- Spends more time listening than talking.
- Does not finish the sentence of others.
- Does not answer questions with questions.
- Is aware of biases. We all have them, we need to control them and be transparent about them. Put them on the table so all can see them.
- Does not daydream or become preoccupied with his/her thoughts when others talk.
- Lets the other person talk. Does not dominate the conversation.
- Plans responses after the other person has finished speaking...NOT while they are speaking.
- Provides feedback, but does not interrupt incessantly.
- Analyzes by looking at all the relevant factors and asking open-ended questions. Walks the person through the analysis (summarize).
- Keeps the conversation on what the speaker says; NOT on what interests them.
- Takes brief notes. This forces him/her to concentrate on what is being said.

B. Communicating through Contracts

This outline is provided to show the different stages of the contract process. The purpose of a contract is to protect the consumer and also protect the landscape contracting business by making issues clear and defined before work commences. Remember, “What is said today may be forgotten tomorrow.” Review this outline carefully. It will help you as a business owner/managing employee circumvent many unpleasant encounters with clients.

1. Pre Contract Phase

- a. Determine who is the client
 - (1) Individual
 - (2) Corporation
 - (3) General Contractor
 - (4) Property Manager
 - (5) Architect
- b. Determine the objectives of the client
- c. Determine the budget
- d. Make sure business has proper bonding
 - (1) \$3000 (< \$10,000 project)
 - (2) \$10,000 (< \$25,000 project)
 - (3) \$15,000 (> \$25,000 project)
- e. Prepare the plans for the work
 - (1) Who does this?
- f. Determine the capacity and man power to do work (skill & man hours)
- g. Discuss
 - (1) Time Expectations
 - (2) Payment Schedule
 - (3) The Landscape Construction Professional who is supervising the project

- (4) Client communication procedures
- (5) Decision process
- (6) Change Orders
- (7) Quality and standard of work
- (8) Post installation and maintenance responsibility
- h. Prepare an accurate “take off” from the plan
- i. Carefully check for discrepancies
 - (1) Contact the proper person to resolve any discrepancy
 - (2) Architect, designer, owner
- j. Determine availability of materials for the project
- k. Contact any subcontractors required and get firm bids for the work to be performed.

2. Contract Phase

- a. Make an offer
- b. Make sure the acceptance is voluntary
 - (1) Provide time for review
- c. Both parties must give consideration
 - (1) Business is to provide service/product
 - (2) Client to provide money/payment
- d. Both parties must be competent
 - (1) Make sure elderly people are properly represented if there are any issues of understanding.
 - (2) If there is any doubt of competency, STOP!
- e. Use a written contract
 - (1) Does it contain the ten (10) elements required by OAR 808-002-0020?
 - (2) Is it in the proper format?
- f. Review contract with client
- g. Give Information Notice of Right To Lien (CCB form) and have client initial for receipt of form if you want lien rights for work performed and
- h. Get down payment
- i. Introduce landscape construction professional that will supervise the work
- j. Review plans with client
- k. Confirm time expectations
- l. Firm up subcontracts

3. Performance Phase

- a. Obtain all required permits
- b. Order materials and supplies
- c. Coordinate subcontractors
 - (1) Make sure proper licensing is in place
 - (2) Make sure insurance needs are covered
 - (3) Make sure there is bonding
- d. Review plans and contract with LCP and crew
- e. Lay out job and review with client
- f. Start project

- g. Review plant and other major construction material with client on site. If selection is made by client make sure material is approved in writing.
- h. Monitor the project daily. Make notes on progress
 - (1) When unknowns arise, address immediately
 - (a) request addendum if necessary to clarify
 - (b) obtain change orders before any changes made
- i. Follow the plans
- j. Send progress billings
 - (1) Do the billings follow the requirements of OAR 808-002-0020?
 - (2) Are payment terms clearly listed on the billing?
 - (3) Have regular meetings with client and supervising landscape construction professional

4. Follow Through Phase

- a. Do final walk through with client
- b. Develop written punch list
- c. Make sure everything is in working order
- d. Prepare and deliver written post construction drawings
- e. Prepare written maintenance instructions
- f. Have client sign acceptance and completion statement
- g. Collect unpaid monies
- h. Visit the site one week after completion
- i. Take photographs
- j. Perform all warranty work and work covered under guarantees
- k. Check periodically to see if the project is being maintained

C. Communicating with Consumers and their agents

Communication becomes even more vital when the landscape contracting business is working with an agent for the consumer, such as a project manager, landscape architect or other design professional. This is called a **third party** arrangement in a contract and usually refers to the **owner's agent**. Maintaining written, chronological documentation of the communication between the landscape contracting business and these people can create a viable working relationship where misunderstandings and miscommunications over expectations and contract issues are minimized. During litigation, accurate documentation is invaluable in settling disputes and understanding the process for managing a contract with a third party is significant to contract and project success.

When working with third party agents, **contract documents** are usually prepared by the landscape architects or another owner's agent for the project that an owner wants to complete. These documents can include but are not limited to a set of drawings, specifications and construction details, explanatory addendums and conditions that explain the bid process and acceptance requirements.

Once a landscape contracting business has received an invitation to bid or request for proposal it is imperative that the business be able to read and understand the documents that are presented and be able to foresee any problems or conditions that

may exist that could affect the outcome and cost of the project. Being thorough in this initial review can help avoid problems later on during the project, if contract is awarded to the landscape contracting business. If during the review the landscape contracting business determines there are issues or questions, then it is appropriate to **request clarification** from the agent which will be returned in writing to all bidders in the form of an **addendum**. It is customary for an owner's agent to issue **revisions to the drawings** along with the addendum when necessary. These addendums can be issued either before the contract is awarded (during the bidding process) or after the award of the contract which then could create the need for a **request for quotation for a change in contract price** which could lead to a potential change order for the contract.

Change orders are a major component of contract management that many businesses overlook or don't think are necessary. One thing that the LCB wants you to remember is: *"what is said today may be forgotten tomorrow"* and *"what is written is hard to rebut"*. **Change orders** are written documents that describe the change in the scope of work outlined in the contract whether it be an addition or deletions to the contract time period and amount or to approve material substitutions that occur during the course of work along with the associated cost, if any, and must be signed by both parties of the contract in order to be valid. The change order then becomes a binding legal document supplemental to the actual base contract and assures the change is clearly understood by both parties and fair compensation is provided in fulfilling the change. Failure to do change orders will most certainly create communication issues and even possibly an inability for the landscape contracting business to be compensated for performing the additional work even if it was discussed verbally.

When the owner's agent is a landscape architect, the landscape architect performs corrective **site observations** to insure the quality and quantity of work being installed. Having regular meetings with the agent of the project reviewing what has been done, any problems, any change orders and any foreseeable conditions will greatly enhance the landscape contracting business's ability to collect for the work performed. After the observation a **site observation report** should be distributed and may include corrective measures for the landscape contracting business to take as well as to confirm compliance with the contract.

Progress invoicing on the project is equally important to maintain control of the project in terms of cost and that is one reason why the LCB laws require invoices to show the total contract amount, a description of the work performed for the amount billed and the total amount paid to date (OAR 808-002-0020).

2. LEADERSHIP.

Know yourself and seek self-improvement. There are four major factors in leadership:

- a. **Styles.** Different people require different styles of leadership. For example, a new hire requires more supervision than an experienced employee. A person who lacks motivation requires a different approach than one with a high degree of motivation. You must know your people! The fundamental starting point is having a good understanding of human nature, such as needs, emotions, and

motivation. You must come to know your employees' *be*, *know*, and *do* attributes.



- b. **Understanding.** You must have an honest understanding of who you are, what you know, and what you can do. Also, note that it is the followers, not the leader who determines if a leader is successful. If they do not trust or lack confidence in their leader, then they will be uninspired. To be successful you have to convince your followers, not yourself or your superiors, that you are worthy of being followed. If you are a leader who can be trusted, then those around you will grow to respect you.
- c. **Communication.** You lead through two-way communication. Much of it is nonverbal. For instance, when you “set the example,” that communicates to your people that you would not ask them to perform anything that you would not be willing to do. What and how you communicate either builds or harms the relationship between you and your employees.
- d. **Situations.** All are different. What you do in one situation will not always work in another. You must use your judgment to decide the best course of action and the leadership style needed for each situation. For example, you may need to confront an employee for inappropriate behavior, but if the confrontation is too late or too early, too harsh or too weak, then the results may prove ineffective. Various forces will affect these factors. Examples of these forces are your relationship with your seniors, the skill of your people, the informal leaders within your organization, and how your company is organized.

TIME MANAGEMENT



Effective time management is crucial to accomplishing organization tasks as well as to avoiding wasting valuable organizational assets.

The following nine rules ([Butler & Hope 1996](#)) will aid you:

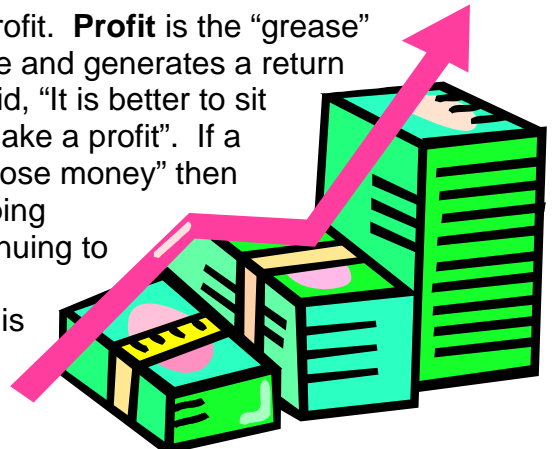
- **Get Started** - This is one of the all time classic time wasters. Often, as much time is wasted avoiding a project, as actually accomplishing the project. A survey showed that the main difference between good students and average students was the ability to start their homework quickly.
- **Get into a routine** - Mindless routines may curb your creativity, but when used properly, they can release time and energy. Choose a time to get certain tasks accomplished, such as answering email, working on a project, completing paper work; and then sticking to it every day. Use a day planning calendar. There are a variety of formats on the market. Find one that fits your needs.
- **Do not say yes to too many things** - Saying yes can lead to unexpected treasures, but the mistake we often make is to say yes to too many things. This causes us to live to the priorities of others, rather than according to our own. Every time you agree to do something else, something else will not get done. You become overcommitted and your clients will soon be

neglected. It is better to say no, than to fear that you will not have work in the future. Having a clear understanding of the amount of work your business can perform and then being honest with your clients will generate much more business for your company. Learn how to say no.

- **Do not commit your self to unimportant activities, no matter how far ahead they are** - Even if a commitment is a year ahead, it is still a commitment. Often we agree to do something that is far ahead, when we would not normally do it today because we think it is not important. No matter how far ahead it is, it will still take the same amount of your time.
- **Divide large tasks** - Large tasks should be broken up into a series of small tasks. By creating small manageable tasks, the entire task will eventually be accomplished. Also, by using a piecemeal approach, you will be able to fit it into your hectic schedule.
- **Do not put unneeded effort into a project** - There is a place for perfectionism, but for most activities, there comes a stage when there is not much to be gained from putting extra effort into it. Save perfectionism for the tasks that need it.
- **Deal with it for once and for all** - We often start a task, think about it, and then lay it aside. This gets repeated over and over. Either deal with the task right away or decide when to deal with it. Prioritize tasks and deal with the top ones until they are accomplished.
- **Set start and stop times** - When arranging start times, also arrange stop times. This will call for some estimating, but your estimates will improve with practice. This will allow you and others to better schedule activities. Also, challenge the theory, "Work expands to fill the allotted time." See if you can shave some time off your deadlines to make it more efficient.
- **Plan your activities** - Schedule a regular time to plan your activities. If time management is important to you, then allow the time to plan it wisely. Just because you may be the main "technician" for your business you are also the main "manager" and you must make time to plan and strategize. That is part of your job.

PRICING FOR PROFIT

The main purpose of having a business is to create profit. **Profit** is the "grease" that allows a business to grow, continue into the future and generates a return on investment for the owners of the business. It is said, "It is better to sit home by the fire than to work in a business and not make a profit". If a business continues to work and just "break even" or "lose money" then this business is either pricing the work it performs hoping nothing disastrous will happen in the future or is continuing to borrow money or spend its cash reserves all of which lead to a potential financial crisis for the business. This is why seven out of ten business fail within the first 5 years of existence and even those that are well capitalized initially may last a little longer but will not succeed in the "long run".



Without profit there is really no reason to go into business and making a profit in the landscape construction industry is not easy.

Determining a price for selling labor and materials in any business is a bit more involved than one would think. Lots of landscape contracting businesses have very little idea of what it really costs to provide the service and materials that they place on a job. Many business owners start in this industry as wonderful technicians that have a passion and love for creating wonderful landscapes yet lack the business experience and knowledge that will build the business into a profitable and viable business.

Experience in this industry has shown the means many managers use to determine selling price can vary, some unreliable examples are: “what do other businesses charge”; “multiple of materials” or a “multiple of labor”; or “drive by and take a guess”.

There is no faster way to lose a business than to price without knowing what it costs to do business for the business you are managing.

There are some very important factors that every landscape contracting business owner/manager should and must look at in order to price profitably even though that price may not be competitive. It is essential to be able to determine a true price to cover the cost of services the business provides including overhead and profit even if that price is seen as non-competitive. If the determined price is truly non-competitive then the business owner/manager will need to make some informed decisions about how to reduce costs and overhead to create a competitive price. To “not know” what the true costs are for a specific landscape construction business and determine a price other than based upon these costs will create almost certain financial disaster for the business.

An owner or managing employee’s biggest job and most important job is determining these costs and then determining the correct selling price to create a profit for the business. How you do this is to “track” the costs. When a person starts a new business or manages a new business there is really no “past” experience for the business to draw upon so a person either has to draw upon past personal experience or use information that one can get from other businesses in the area. However, in any new business this is information that can be used for a very short period of time and within the timeframe of completing the first job, the business you are managing has “experience” and this needs to be analyzed and used.

Whether a business stays in business or not is dependent primarily upon the **cash flow** of the business. Cash flow is the amount of revenue a business receives for landscape work in relation to the amount of money the business expends in paying the expenses to generate that revenue. Simply put, it is the difference between income and expenses. **Positive cash flow** occurs when the amount of cash revenue exceeds the amount of cash expenditures, and **negative cash flow** occurs when the amount of cash expenditures exceeds the amount of cash revenue. It is obvious that if negative cash flow occurs over any extended period of time, the business is using up any cash reserves it may have had or is extending its credit limit possibly to a point of no return. Managing this situation is entirely dependent upon a comprehensive accounting system that will track the revenues and the associated costs in detail to generate those revenues. This system cannot be emphasized enough.

STEPS FOR PRICING

Accounting Program: Every landscape contracting business must set up an accounting system as the first step in determining price. There are many programs available for businesses to use, but determining which is best for you will take research and practice on your part. Which ever you choose, make sure it is flexible enough so you are able to track what you want to track. Remember, “if you can’t track it, you can’t control it”. The accounting system should include the ability to:

1. Set up a specific and unique chart of accounts.

A **chart of accounts** is the beginning point of the pricing method and the entire chart of accounts include accounts for the **Balance Sheet** and the **Income Statement** which is also known as a Profit and Loss Statement (P&L).

Since the pricing process deals primarily with the Income Statement the main accounts for this are:

- a. **Revenue accounts.** If the business has several different profit centers, make sure there are multiple revenue accounts; such as
 - i. Design Revenue
 - ii. Planting Revenue
 - iii. Irrigation Revenue
 - iv. Hard-Scape Revenue
 - v. Maintenance Revenue
- b. **Direct cost accounts.** These are expenses that are “directly” related to the production of revenue, such as:
 - i. Production Labor
 - ii. Labor Burden (payroll taxes)
 - iii. Materials (Plants, Fertilizer, Concrete, etc)
 - iv. Equipment
 - v. Subcontractors
- c. **Indirect cost accounts.** These are expenses that are related to the production of revenue and though cannot be assigned to each individual job, they have a close relationship to the production of the revenue and don’t occur unless work is being performed. Some managers consider these costs overhead, but this is an area where “tracking” will create “control” and are areas that can make or break a business, such as (not inclusive):
 - i. Travel time
 - ii. Warranty expense
 - iii. Small tools & supplies
 - iv. Fuel
 - v. Equipment rent
 - vi. Break time
 - vii. Shop time (preparing to leave in the morning, unloading at night, etc.)
 - viii. Equipment repair
 - ix. Cell phone for production employees (could be Overhead)
- d. **Administrative & General Overhead cost accounts.** These are expenses that continue no matter if there is work being performed or not, such as:
 - i. Rent
 - ii. Utilities (water, gas, electric)

- iii. Salary-Owner
- iv. Salary- Administrative
- v. Salary- Sales/design
- vi. Insurance-liability
- vii. Insurance- medical
- viii. Insurance-worker's comp
- ix. Office supply
- x. Telephone
- xi. Office Equipment repair
- xii. Licenses
- xiii. Subscriptions
- xiv. Vacation Time (could be an indirect cost for production employees)
- xv. Sick Time (could be an indirect cost for production employees)
- xvi. Facility maintenance
- xvii. Advertising
- xviii. Depreciation
- xix. Other

e. **Net Profit.** Subtract direct costs, plus indirect costs, plus overhead costs from the total revenue

Making sure the chart of accounts is detailed enough to show every aspect of what the business brings in (revenue) and what it spends (expense and overhead) is vital to determining the correct pricing for the business. (See the appendix for a fairly typical chart of accounts for an income statement for a landscape contracting business).

The **Balance Sheet** includes accounts for: Current Assets, Fixed Assets, Current Liabilities, Long Term Liabilities, Other Liabilities and Equity Accounts. See **APPENDIX B** for a typical chart of accounts for a balance sheet and income statement for a landscape contracting business.

2. Budget.

A **budget** is based upon the Profit and Loss statement and is an estimation of what the dollar amount in each account of the profit and loss statement will have as an ending figure for the fiscal year. In the beginning of a business, there is really not accurate history for the business and unless the manager has managed another landscape contracting business the manager needs to project what the business will produce in revenues and expenses during the year. This is called budgeting and “**zero based**” budgeting is the best process to use. What is zero based budgeting; it is determining a budget without relying on past numbers but through analyzing each process that affects the specific account what each account will have as a final number at the end of the year. You start with “zero” and build each account. To make a budget you work the income statement portion of the chart of accounts “from bottom up”; that is, you determine what the business needs to make for profit in order to guarantee continuation into the future, return on investment and capital expenditures for growth. If the business is a sole proprietorship, then the profit can also be interpreted as “what does the owner earn” during the year. This is an important determination since the owner’s standard of living is based significantly upon what the profit is for the business. So, start with the

“profit” line and work yourself back up the chart of accounts. Don’t start with “revenue”; start with profit and when you are done, the sum of all the accounts below the revenue line will tell you what the revenue has to be in order to make the profit the business desires. A small example of an abbreviated budget will look like this (bottom up):

	Profit	\$ 100,000.00	←	What does the business need to have to grow the business, pay off debt, have a reserve, and have a return on investment? For a sole proprietor this number would include the salary for the owner plus taxes which determine the standard of living for this person if not covered in the overhead section. Take ample time to determine this and build from this number.
	Total General & Administration (G & A) Overhead	\$ 334,450.00		
↓	Other	\$ 10,000		
	Utilities	\$ 3,000		
	Telephone	\$ 4,500		
	Salaries – sales	\$ 35,000		
	Salaries – Admin	\$ 36,000		
	Salaries – Owner	\$ 72,000		
	Rent – facility	\$ 24,000		
	Payroll Taxes (burden)	\$ 21,450		
	Office Supply	\$ 3,500		
	Insurance – W/C	\$ 18,000		
	Insurance – Liability/vehicle	\$ 20,000		
	Insurance – Medical	\$ 50,000		
	Depreciation	\$ 21,000		
	Facility Maintenance	\$ 6,000		
	Advertising	\$ 10,000		
	Total Indirect Expenses	\$ 101,500.00		
	Fuel/Oil	\$ 25,000		
	Equipment Rental	\$ 15,000		
	Small Tools/supplies	\$ 6,000		
	Equipment Repair	\$ 12,000		
	Shop Time (unbilled)	\$ 14,000		
	Travel Time (unbilled)	\$ 15,000		
	Warranty Expense	\$ 10,000		
	Cell Phones	\$ 4,500		
	<i>Gross Margin</i>	<i>\$ 535,950.00</i>		
	Total Direct Expenses	\$ 258,000.00		
	Subcontractors	\$ 35,000		
	Material Costs	\$ 95,000		
	Direct Labor Burden	\$ 28,000		
	Direct Labor (production)	\$ 100,000		
↓	Total Revenue (Construction)	\$ 793,950.00		

What does the business need to have to grow the business, pay off debt, have a reserve, and have a return on investment? For a sole proprietor this number would include the salary for the owner plus taxes which determine the standard of living for this person if not covered in the overhead section. Take ample time to determine this and build from this number.

Anytime a business can convert an indirect expense into a direct expense (that is bill for the time and materials) it makes the business more profitable

Direct expenses are the expenses you can markup to bill the client since they are expenses used directly on the project.

Doing a budget in this manner shows you that if all the expenses that have been projected are as estimated then the business will need to do almost \$794,000 in sales to make a \$100,000 profit. Again remember these numbers are an estimate for a new business but as the weeks and months go on and jobs get completed (if each job is accounted for in a similar manner) the information can become more accurate and be predicted with greater certainty. Constantly comparing a business’s actual expenses to what is budgeted will provide the manager with a factual sense of how the initial budget numbers are relating to what is actually happening in the field and adjustments can be made. Questions that need to be asked are: How many man hours will it take to generate this amount of revenue (dependent on price of labor)? Does \$100,000 of

direct labor generate this much revenue? What does the business pay per hour for labor? Is this a realistic budget? Can the business be competitive?

3. Price.

From the budget, then a person can determine the price for labor and materials which are being supplied on the job. As you may realize, the labor and materials referenced here are the **direct labor** and **direct material** costs listed in the chart of accounts. Direct labor and material is what is “marked up” to cover all the other expenses and generate the profit in the business. In a landscape contracting business some jobs may have more materials than labor, or visa versa. Doing independent job accounting will give more detailed information about this, but as a company on the whole, the material and labor costs are an accumulation of all these individual job material and labor costs.

- a. **Break Even Point.** This is the price that is set on material and labor that reflects where the business will not lose money and not have a profit. The markup on labor and materials to create the break even point is found by dividing the total overhead plus indirect costs by the direct costs. In the example above the mark up would be $\$435,950/\$258,000 = 169\%$. So if the direct costs of a job were \$10,000 then the price that would be appropriate to “break even” would be \$16,900.
- b. **Profit.** In our example of a budget above, the business desires \$100,000 profit with \$793,950 in sales (revenue). This represents a desired percentage profit of 13%. How does this affect the price? **WARNING:** do not mark up the breakeven point by 13% (does $\$16,900 \times 13\%$ give a 13% profit?). Please do the math: $\$16,900 \times .13 = \2197.00 this implies a selling price of \$19,097. To calculate the real percentage profit on this job, divide the profit (\$2197) by the selling price (\$19,097) which equals 11.5% (percent profit). This is not the 13 percent profit that the business desired.

Remember profit is a percentage of selling price not a percentage of costs.

- c. **Selling Price.** To determine the selling price to get the desired amount of profit a person must understand algebra (you thought you would never use it). **Always remember percentage profit is calculated as a percentage of the selling price.** Therefore to determine selling price (which is unknown at this point) let it be represented by “sp” (algebra, remember) and the percent profit is 13% (our budgeted desired profit). Therefore:

- ⇒ sp (selling price) = break even point + **.13(sp)[profit]**
- ⇒ $sp = \$16,900 + .13sp$
- ⇒ **Subtract (.13sp) from both sides of the equation (algebra!)**
- ⇒ $.87sp = \$16,900$
- ⇒ $sp = \$16,900/.87$ (divide by .87 [algebra])
- ⇒ **sp = \$19,425.00 (selling price)**

Check the profit percentage:

The profit on this job is: $\$19,425 - \$16,900$ (break even) = \$2525 (profit).

⇒ Percent profit = $\$2525/\$19,425 = .13 = 13\%$ (the desired profit percentage).

The cost of the job should be \$19,425 not \$19,097 (earlier calculation) which may not be significant for this size of job, but if the same mistake is made over the course of \$794,000 in sales; it will make a significant difference to the bottom line (profit). If a manager decides to sell the job for less, at least the manager

knows how much lower the price can go before the job is done at a loss, considering all goes well on the project. As can be expected, there are unforeseen variables that affect a job and as experience in the business grows they will show up in the costs of the project and this information can help determine more accurate selling prices for a particular business.

Frank Ross of Ross & Payne Associates has studied the landscape construction industry in depth and pointed out the fact that the landscape construction industry is heavily dependent upon both labor and materials and that the markup on each of these areas may need to be different depending on the ratio of materials to labor on a project. A “Dual Overhead” method was created by Mr. Ross and if this is of interest to you as an owner/ managing employee take time to contact the Professional Landcare Network (PLANET) for information about this method, <http://www.landcarenetwork.org/cms/home.html>. The method can also be found, with other details on accounting and specific landscape construction business practices in the book: *Business Principles of Landscape Contracting* by Steven Cohan.

There are indicators that help determine the financial health of a landscape construction business such as financial ratios that are derived from the balance sheet and profit and loss sheets of the business. These indicators can give a business owner and manager a quick analysis of how the business is doing in comparison to other similar businesses in the landscape construction industry. A summary of these indicators is found in **Appendix A** of this manual.

LIENS

Note: Though the Landscape Contractors Board does not have statutory authority over landscape contracting businesses in how a lien is filed, ORS 87 has definite requirements if any business wants to file a lien for work performed. It is with this understanding we present the following information. The administration of the lien process is shouldered by the Construction Contractors Board and forms for information and notification for consumers are found on their website: www.ccb.state.or.us.

A construction lien is a claim upon property for money owed to a contractor, material supplier or anyone who supplied labor or materials for improvements to the property.

One of the ways a business in Oregon can create some assurance for collecting money owed for the performance of work on a consumers property is to perfect (file) a lien on the property. In order to do this the business must follow some very specific and exact steps otherwise the lien is not legal, and the business’s efforts will be in vain. The statute that governs liens for construction work is ORS 87 and the procedures and notices for the lien process are monitored and governed by the Construction Contractors Board (CBB) and their forms must be used. The State Landscape Contractors Board is not mentioned in the statute and has no jurisdiction or authority over the filing of a lien; however, if a landscape contracting business wants to have lien rights, then there are strict requirements that need to be met (see summary below).

SUMMARY OF STEPS TO PERFECT A LIEN

NOTE: CONSULT AN ATTORNEY WHEN DEALING WITH LIEN LAW

1. PRE-CLAIM NOTICES

When	Who	Action Required
On date Contract is signed (or within 5 days of agreement)	All original contractors engaged in residential construction that exceeds \$1,000. (If original contract does not exceed \$1,000, but subsequent negotiations result in contract being amended to exceed \$1,000, original contractor must then send notice.) Original Contractor is defined at ORS 87.005(7).	Provide Information Notice to Owner to all owners. Must use the form provided by the Oregon Construction Contractors Board. (ORS 87.093)
Should be sent within 8 business days of first delivery of material or performance of labor.	All original contractors, subcontractors, and suppliers who are required to give this notice. (See below for chart as to who is required to give this notice.)	Provide Notice of Right to a Lien to all owners (ORS 87.021) and mortgagees (ORS 87.025).
Within 15 business days after receipt of written demand from owner or mortgagee (for demands received before claim of lien is recorded).	All original contractors, subcontractors, and suppliers.	Send to owner or mortgagee a list of materials or labor, etc. with statement of charges and unpaid balance. The owner may, in the alternative, be provided with a statement of the contractual basis for supplying the materials, equipment, services or labor, including the percentage of the contract completed, and the charge therefore to the date of the demand. (ORS 87.027 (owners) & ORS 87.025 (mortgagees))

2. THE CLAIM

When	Who	Action Required
Within 75 days after last substantial performance of labor, delivery of materials, or rental of equipment or 75 days after completion of construction, whichever is earlier.	All original contractors, subcontractors, and suppliers.	Record Claim of Lien in county where real property is located. (ORS 87.035)

3. POST-CLAIM NOTICES

When	Who	Action Required
Within 20 days after the Claim of Lien is recorded.	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	Provide a Notice of Filing Claim of Lien to all owners and mortgagees with a copy of recorded Claim of Lien attached. (ORS 87.039)
Within 5 days after receipt of written demand from owner (for demands received after Claim of Lien is recorded).	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	Provide to owner a list of the materials and supplies with the charge therefore, or a statement of a contractual basis for the owner's obligation, with statement of charges and unpaid balance. (ORS 87.057)
Not less than 10 days before filing suit to foreclose Claim of Lien.	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	Provide Notice of Intent to Foreclose Claim of Lien to all owners and mortgagees. (ORS 87.057)

4. THE ACTION

When	Who	Action Required
Within 120 days after Claim of Lien is Recorded.	All original contractors, subcontractors, and suppliers who have recorded a Claim of Lien.	File suit to foreclose lien. (ORS 87.055)

WHEN TO SEND A NOTICE OF RIGHT TO A LIEN TO OWNER(S) AND MORTGAGEE(S)/LENDER(S)

If you provide:	And your contract is with all owner(s)		And you do not have a contract with all owner(s)	
	Send to owner(s)?	Send to lender(s)?	Send to owner(s)?	Send to lender(s)?
MATERIAL ONLY				
To a residential improvement	NO	YES	YES	YES
To a commercial improvement	NO	YES	YES	YES
ON SITE LABOR AND MATERIAL				
To a residential improvement	NO#	YES*	YES	YES*
To a commercial improvement	NO	YES*	NO	YES*
ON SITE LABOR ONLY				
To a residential improvement	NO#	NO	YES	NO
To a commercial improvement	NO	NO	NO	NO
RENTAL EQUIPMENT				
To a residential improvement	NO	NO	YES	NO
To a commercial improvement	NO	NO	NO	NO

Information Notice to Owners may be required.

* Notice is given to protect material portion of claim. See ORS 87.025.

CONSIDERATIONS:

1. There can be more than one owner or mortgagee on any given property. Your landscape contracting business may have a contract with one owner and not another, so as the owner/managing employee you may have to look at the above chart two or three times, depending on the number of owners! The term "owner" may include lessees. See ORS 87.005(8) (c).
2. If your landscape contracting business contracts directly with any owner, the business may or may not have to provide the Notice of Right to a Lien to the owners, but the business may be required to provide the "Information Notice to Owner." See ORS 87.093.
3. The above "when to send" chart does not discuss "services." Services may include architectural, engineering, and land surveying services.
4. Consider whether to provide the notice in order to start the time periods for a notice of non-responsibility. The Court of Appeals noted that the improvement must be built with owner's actual or imputed knowledge.
5. The Notice of Right to a Lien may be given at any time during the progress of the improvement, but the notice only protects the right to perfect a claim of lien for materials, equipment, labor or services provided after a date which is eight (8) days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, before the notice is delivered or mailed.

6. The content of a construction lien claim is very important and is outlined in ORS 87.035. A lien claim must include at least:
 - a. A true statement of demand, after deducting all just credits and offsets;
 - b. The name of the owner(s) or reputed owner(s);
 - c. The name of the person who employed the claimant or to whom the claimant furnished the materials or rented the equipment;
 - d. A description of the property to be charged with the claim of lien sufficient for identification, including the address if known;
 - e. The claim shall be verified by the oath of the person filing or of some other person having knowledge of the facts (i.e. the claimant's signature must be notarized).
7. There are two separate definitions of "residential" in the Oregon construction lien statutes. ORS 87.021 defines "residential building" for purposes of Notices of Right to a Lien and ORS 87.093 defines "residential construction or improvement" for purposes of Information Notices to Owners.
8. Generally, persons or entities are entitled to perfect a lien only if they perform labor upon, furnish materials to or rent equipment to be used in the preparation of the land or the construction of the improvement at the request of an owner of the improvement or an owner's construction agent and the labor, materials or equipment were used or consumed in the construction of the improvement. Thus, to determine whether you are entitled to claim a construction lien, you must first ask if the landscape contracting business contract is with an owner or with an owner's construction agent. "Owner" is defined at ORS 87.005 (5) and "Construction Agent" is defined at ORS 87.005(3). A construction agent can be a contractor or an "other person having charge of construction or preparation." "Contractor" is defined at ORS 87.005(4); the courts have tried to define "other person."
9. Oregon's construction lien law requires that certain notices be given before a claimant may perfect a claim of lien. For instance, the Notice of Right to a Lien must be in writing, delivered in person or delivered by registered or certified mail. The "Information Notice to Owner" may also be proved by a United States Postal Service Certificate of Mailing.
10. The Oregon Construction Contractors Board (CCB) publishes a form of the "Information Notice to Owner." Because ORS 87.093 refers to the CCB's form for this notice, it is suggested that this form must be used in order to comply with the statute. While the statute does not require that the owner sign this form, the CCB's form includes a signature line for the owner. Thus, it is suggested that a contractor obtain the owner's signature and keep a copy of the form signed by the owner.

BANKRUPTCY

This information is provided so you are familiar with the laws that surround bankruptcy in Oregon. These laws can affect you as a business owner/managing employee in dealing with clients that file for bankruptcy and can also affect you personally and as a business if you decide you need to file under this protection when things are not going well for you or your business. Understand that personal bankruptcy is different than filing for a business unless you are operating a sole proprietorship or partnership. Filing

personal bankruptcy does not deal with the debts of a corporation automatically or other business entities that have their own tax structure.

Bankruptcy does not get rid of all debts. You are still responsible for:

- Alimony
 - Child support
- Most recent back taxes
- Most student loans
 - Recent large purchases of more than \$550 for luxury goods bought within 90 days of filing
 - Fines or penalties of government agencies
 - Fraudulent debts
 - Cash advances of \$825 within 70 days of filing

As a consumer, you can file for bankruptcy in Oregon under either:

- Chapter 7 (Straight Bankruptcy) to wipe out all debts except those listed and get an immediate fresh start or
- Chapter 13 (Wage Earner Bankruptcy) to set up a repayment plan to pay back your debts over several years' time.

Bankruptcy Abuse Prevention and Consumer Protection Act

On April 20, 2005, the President signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act, which limits individual access to US bankruptcy courts. Some of the changes, which were effective October 17, 2005, included:

- New bans on Chapter 7
- Increased Chapter 13 payments
- New presumptions against debtors with increased penalties
- The reduction of judicial discretion to balance competing interests

TYPES OF BANKRUPTCY

Chapter 7 Bankruptcy

Chapter 7, otherwise known as "liquidation," is generally the simplest and quickest form of bankruptcy and is available to individuals, married couples, corporations and partnerships. A trustee (appointed by the court) gathers and sells your non-exempt property and uses the proceeds from the sale to pay your creditors. Most chapter 7 cases are "no-asset" cases which simply means that you do not have any non-exempt property for the trustee to sell.

Chapter 13 Bankruptcy

If you are an individual or a sole proprietor, you can file a Chapter 13 bankruptcy to pay off all or part of your debts over three to five years. Rather than wiping out debts immediately, this option allows you to reorganize them so you have time to pay.

Many people who file Chapter 13 bankruptcies have:

- Mortgages or other loans they would like to bring current, so they do not lose their homes or other property
- Taxes, child support or student loans that can't be wiped out by Chapter 7 bankruptcy

- Moral convictions that debts should be paid no matter how long it takes

For a Chapter 13 bankruptcy, you will need a stable income with disposable income (income left over after you pay the bare necessities of life such as shelter, food and utilities). You must have no more than \$1,010,650 in secured debt (debt involving property that your creditor might take if you do not make your payments) and \$336,900 in unsecured debt.

Personal Bankruptcy and affect on a Corporation owned by the individual:

Since the corporation is a legal entity different and distinct from its shareholders, the bankruptcy of a shareholder does not affect the corporation. The bankrupt shareholder's shares in the corporation are an asset of his bankruptcy estate. The value of the shares in the hands of the bankruptcy estate is a function of the share's marketability, the percentage interest they represent of the corporation, and the net value of the corporation's assets.

Corporate Bankruptcy and affect on individual owner

A corporate bankruptcy likewise does not directly affect the shareholders. If the officers or shareholders are personally liable for the debts of the business, an automatic stay in the corporation's case does not prevent creditors from seeking to collect from others who may be liable.

SOME FREQUENTLY ASKED QUESTIONS ABOUT BANKRUPTCY

My business was formed as a Sub S corporation: does that affect the available bankruptcy remedies?

Designation as a Sub chapter S corporation or a Chapter C corporation is a matter of tax law, rather than anything to do with the kind of legal entity the corporation is. For the purposes of the bankruptcy code, both are simply corporations.

Be careful if your sub Chapter S corporation files bankruptcy. Any taxable income generated after bankruptcy may still be taxable to the shareholders, since the corporation is not a tax paying entity.

Can I file bankruptcy only on my personal debts? Only on business debts?

No, a bankruptcy filing must include all of the debtor entity's debts, regardless of how or why incurred. You might, however, be able to separately classify business debts and pay them in full in a Chapter 13 if necessary to continue to utilize vendors. An individual debtor can also reaffirm debts.

Can I continue self employment such as consulting if I file bankruptcy?

This question is tricky: nothing about filing bankruptcy prohibits you from earning a living utilizing your skills. However, the assets of a sole proprietorship, like business equipment or receivables, are property of the bankruptcy estate which you can only use in your self employment if they are claimed exempt or abandoned by the trustee in a Chapter 7.

What if I incorporate before I file?

Incorporating a proprietorship creates a legal entity separate from the debtor. Most trustees will not interfere in the business operations of a corporation that is owned by a

debtor. If the corporation has value that is greater than any exemption claimed in the stock, the trustee may insist that the debtor either buys the stock back from the estate or that the corporation is dissolved and any value distributed to the bankruptcy estate.

ADA - American Disabilities Act

Please note, the information can change and this information is in no way legal advice or taken as such. If you are faced with ADA issues, it is advised you contact a lawyer versed in this area.

As an employer or if your business is installing landscape work which needs to be accessible by a person with disabilities the following information is important to you.

The following information regarding **what employers and businesses need to know about people with disabilities** is brought to you as a public service by the lawyers of the State of Oregon. The material presented is intended to alert you to possible legal problems and solutions. The federal Americans with Disabilities Act (ADA), as well as Oregon law, prohibit employers from discriminating against disabled job applicants and employees. The federal ADA applies to employers with 15 or more employees; the Oregon law applies to employers with six or more employees.

Under both laws, mentally and physically disabled people are protected from discrimination. Employers may not discriminate against people who have impairments like depression, just as they may not discriminate against people with physical disabilities such as people in wheel chairs.

As an employer, you must be careful not to **discriminate** against any applicants who apply for positions at your landscape contracting business, whether they have disabilities or not. This means you may not ask questions during an interview about an applicant's physical or mental state or any past medical problems, or include these kinds of questions on applications. If it is obvious that an applicant has a physical or mental disability that might affect his or her ability to do the job, you may ask the person to describe or demonstrate how they would perform the job. You may ask applicants about their attendance rate at previous jobs, but may not ask about how often they took sick leave, or about injuries or illnesses.

Once you have offered the job and before the worker actually begins the position, you may require a physical abilities test to make sure he or she can perform the job duties—only if you require the same test of everyone in that job category. When determining if a disabled person can perform the essential functions of a job, you have a duty to find out if a **reasonable accommodation** would help them perform the job. This could mean that you would take away minor or incidental duties from a job, but it does not mean that you need to change the essential functions of the job. For example, if an office clerk position requires that most of the work time is spent filing but occasionally requires driving a car to make deliveries; you might need to assign the driving function to someone else to accommodate an employee whose disability prevents driving. But a delivery service would not be required to accommodate a disabled person who cannot

drive if the job requires that most of the work time involves driving. If a person to whom you have extended a job offer cannot perform the **essential functions** of the job with or without reasonable accommodation of any disability they may have, you may rescind the job offer before the person actually starts.

You do not have an **obligation** to hire people with disabilities if they lack the skills and experience to perform the essential functions of a job. You should develop **job descriptions** for each position in your company that clearly state the duties performed in each position. This way, if you need to rescind a job offer or fire an employee, you can show that your reason for making this decision was based on the person's failure to perform the duties that all employees in the position are required to perform.

Once an employee has begun working for your landscape contracting business you may request information about his or her physical or mental health only if the reason is job related and consistent with business necessity. For example, if you notice an employee has developed a limp in his or her walk, but the essential functions of their position do not require a lot of walking, you may not ask him or her for medical information about the condition.

If an employee approaches you about a physical or mental impairment that is affecting his or her job performance, you have a duty to reasonably accommodate that employee if the impairment substantially limits any major life activities. The key to the accommodation process is **open communication** with your employee. Ask specifically about the impairment and how this impairment is affecting their job. Then talk with the employee about steps you can take to help them perform the job. This could mean changing the physical environment in your workplace. Examples are providing a chair with more back support for an employee with a back disability or providing a magnified viewing screen on a computer monitor for an employee with a vision problem. This could also mean relaxing or changing company policies. For instance, you might let a person take more breaks during the day if the worker has a mental disability that affects concentration.

If **employers** have questions about their obligations under the Oregon or federal disability law or any other employment laws, they may call the Technical Assistance for Employers Program at the Oregon Bureau of Labor and Industries at 503-731-4200 in Portland. Technical Assistance offers a telephone information line, materials and seminars.

If you have questions about reasonable accommodations you may call the Job Accommodation Network at 800-ADA-WORK. This is a confidential service provided by the federal government. Employers can call this number and get expert advice about certain jobs and disabilities.

Building Accessibility

The ADA and Oregon law also prohibit discrimination against disabled people in places of **public accommodation**. All businesses are required to ensure that their public areas are accessible for disabled customers. This requirement affects all businesses that serve the public. Examples of such businesses are: restaurants, movie theaters, hotels,

grocery stores, gift shops, coffee houses, doctor's offices, stadiums and arenas, and bookstores.

All new public facilities that were built after January 26, 1993 must comply with the ADA Accessibility Guidelines. In Oregon, all new public facilities and all those that undergo major renovations that change the usability of a building also need to comply with the Uniform Building Code. Renovations do not include normal maintenance, painting or other superficial changes. This law is enforced by the Building Codes Division of the Oregon Department of Consumer and Business Services, which can be contacted at 503-378-4133 in Salem.

The ADA and Oregon law also require that buildings built before 1993 also be accessible to the disabled. Architectural barriers must be removed if this can be done without significant difficulty or expense. For example wheelchair ramps must be made available for customers, aisle ways must be made wide enough for wheelchairs, and bathrooms must have grab bars and door hardware. The Oregon Building Codes Division also enforces this law.

For **walkways** the ADA has specific guidelines, please keep these in mind for the work you may perform:

- **1:12 SLOPE (5 Degrees):** This is the ADA recommended slope for commercial or public access ramps. This 5 degree angle is the best solution for manual wheelchair users who will be propelling themselves up the ramp and for users of electric wheelchairs and scooters.
- **2:12 SLOPE (9.5 Degrees):** This Slope is not recommended for commercial use by ADA standards, but can be used in **residential** applications. This slope usually works with an able assistant to push the mobility equipment from behind (or walk along-side while powering the equipment up with no rider) for those unable to power themselves up the ramp. For those powering themselves up the ramp with manual wheelchair (strong users only), electric scooters or electric wheelchairs, please check the manufacturers specifications for the safe climbing grade of the equipment.
- **3:12 SLOPE (14.5 Degrees):** At this angle, stability and use become a concern for mid-wheel drive electric wheelchairs and ground clearance of most 3 and 4 wheel scooters. Use this only for residential use for loading unoccupied electric wheelchairs and scooters that have the ground clearance to clear this steep angle. Long ramps should have a maximum gradient of 1:14, with a landing every 8 m.

The Building Code Division enforces this regulation as well as other mandated regulations involved with construction. The federal Architectural and Transportation Barriers Access Board can also answer questions you may have about these requirements. It can be reached at 800-USA-ABLE.

UTPA - Unlawful Trade Practices Act (FROM THE OREGON STATE BAR)

Please note, the information can change and this information is in no way legal advice or taken as such. If you are faced with UTPA issues, it is advised you contact a lawyer versed in this area.

The LCB includes this information in this manual so landscape contracting business owners/managing employees understand the laws that consumers can access if a landscape contracting business operates in a manner that would induce the filing of a UTPA complaint against the business. This is a serious matter and every landscape contracting business needs to operate in a manner that will avoid this situation at all costs.

The following information regarding **consumer law** is brought to you as a public service by the lawyers of the State of Oregon. The material presented is general legal information intended to alert you to possible legal problems and solutions.

Oregon has a law called the Unlawful Trade Practices Act. This law applies when a consumer purchases real estate, goods or services for personal or household use from a seller who regularly engages in that business or occupation. This law also applies to healthcare professionals who commit practices prohibited by this law in the course of providing professional services. In general, most purchases or leases, including those involving used goods, like cars, are covered by this law. However, keep in mind that this law does not apply to the purchase of insurance, a loan of money, extension of credit or Landlord-Tenant disputes. Moreover, this law does not create a cause of action for personal injury.

The Unlawful Trade Practices Act prohibits many practices, most of them involving some form of deception or misrepresentation by the seller. You may want to obtain a copy of the Act from the Oregon Attorney General's Office of Consumer Protection/Financial Fraud, located in the Justice Building, 1162 Court Street, Salem, Oregon 97301, telephone (877) 877-9392 between 8:30 a.m. and 4:30 p.m. You also may register a complaint about an unlawful trade practice with this agency, which was created to enforce this law. In addition to phoning the office, consumer complaints may now be made online at www.doj.state.or.us and clicking the "consumer complaint form" link. While The Attorney General's Office of Consumer Protection/Financial Fraud does not represent individual consumers, it can sometimes help individual injured consumers resolve their complaints with businesses by mediating and helping them get their money back.

There are also many other places than the Attorney General's office where consumers may turn for help. The first thing a consumer should do is to properly classify their complaint; the second is to know where to take it.

For complaints about landscape construction work performed by unlicensed persons, the consumer may want to contact the Landscape Contractors Board for help in dealing with this issue. The Landscape Contractors Board works in cooperation with the Department of Justice on such cases and pursues cases with diligence when violations of the UTPA are evident and verified.

If efforts you make to resolve your complaint are not successful - either by dealing directly with the business or through one of the agencies just described - you may wish to file an action in small claims court, or consult a lawyer. If you can prove that you have suffered any actual loss as a result of an unlawful trade practice and that the business knew or should have known that its conduct or that of its agents violated the law, then you may be awarded the amount of your loss, or \$200, whichever is greater. You may also ask to be compensated for your attorney's fees. And, if the conduct was intentional and malicious, you may ask for punitive damages that may be greater than your actual loss.

If the business wins the case, however, the consumer faces having to pay the defendant's attorneys fees. This is true even if the case was involuntarily dismissed because the consumer ran out of funds to keep the lawsuit going.

Here's a list of the most common violations of the Unlawful Trade Practices Act:

- a. misrepresenting the characteristics, benefits and qualities of the product or services offered;
- b. making false or misleading statements about prices, including price reductions;
- c. causing confusion about important aspects of a transaction, such as the approval, sponsorship or certification of the product by others;
- d. representing that used or altered goods are new;
- e. discrediting another's products or services by false or misleading representations about them;
- f. false advertising; false representations about the availability of credit;
- g. false representations that goods are available for sale when in fact the goods are not available, or available in only a very limited quantity;
- h. false or misleading representations about prizes, contests or promotions used to publicize a product, business or service;
- i. promises to deliver by a certain time with intent not to deliver as promised;
- j. unauthorized service or dismantling of goods or real estate; and
- k. telephone or door-to-door solicitation without proper identification.

The misrepresentations covered by this law can come in many forms, and can be either spoken or written. An unlawful practice may be committed even by the failure to disclose an important fact. In addition, the Act requires that certain disclosures be made when the seller knows that there are material defects in real estate, goods or services.

If you feel you have been victimized, you should keep all your contracts, canceled checks and any other documents pertaining to the transaction. If you wish to file a court action concerning an Unlawful Trade Practice, you must file it within one year from the date the seller committed the violation, or the date you reasonably should have discovered the violation of the act.

CDL - Commercial Drivers License

Many landscape contracting businesses may find themselves in a situation where a person driving for them may be required to have a Commercial Drivers License. Carrying heavy loads or operating vehicles that have a gross vehicle weight beyond a certain limit or exceed a certain restriction could jeopardize the business's ability transport materials to a job site if the driver does not have the CDL. It is imperative the manager of the business makes sure the people who are driving certain vehicles are legally licensed to do so.

What is a CDL?

A "CDL" is a Commercial Drivers License. It meets certain "standards" that are the same for every state. It differs from the Oregon "operator's" or "chauffeur's" licenses. It is required if you drive certain kinds of commercial vehicles.

What is the COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986 (CMVSA/86)?

It is a law passed by the United States Congress which requires ALL the individual states to comply with certain standards in regards to the licensing of commercial motor vehicle (CMV) drivers. Oregon driver licensing standards comply with the law, requiring CMV drivers to obtain an Oregon Commercial Driver's License (CDL) when driving applicable vehicles. A CDL license can ONLY be issued in the driver's STATE OF LEGAL RESIDENCE, and if you have a CDL, you can have NO OTHER DRIVER'S LICENSE in ANY other state.

When do I need an Oregon CDL instead of my regular Oregon Drivers License?

An Oregon CDL is required if you operate any of the following Commercial Motor Vehicles

1. A vehicle with a manufacturer's gross vehicle weight rating (GVWR) of more than 26,000 lbs.
2. A vehicle towing a unit with a manufacturer's GVWR of more than 10,000 lbs. when the GVWR **exceeds** 26,000 lbs.
3. A vehicle used to: (a.) carry 15 or more passengers (excluding the driver), or (b.) carry (15) or less people (including the driver) when carrying children to or from school and home regularly for compensation.
4. A vehicle carrying hazardous materials in amounts requiring placarding.

What are the eligibility requirements to obtain an Oregon CDL?

1. You must be 21 years old. (18 years if all commercial driving is done within Oregon and if no hazardous materials requiring placarding are transported and if you do not drive double or triple trailer rigs).
2. You must be physically capable of obtaining a valid medical examiner's card (**before** taking any CDL *skills* test).
3. You must otherwise qualify for the license based on your driving record. Any of the following will disqualify you from obtaining an Oregon CDL:
 - a. If you possess a license from any state other than Oregon.
 - b. If you are currently subject to any disqualification of your commercial driving privilege from Oregon or any other state.

- c. If your license is currently suspended, revoked, denied, or cancelled.
- d. If you have a conviction for operating a commercial motor vehicle while impaired in the 24 months immediately preceding application.

How do I obtain an Oregon CDL?

1. Show your Oregon driver license.
2. You must take and pass all Oregon examinations that apply to your license class and endorsement requirements.
3. Show proof of social security number.
4. Meet Oregon driver record eligibility requirements as determined by the State.
5. Fill out an application including certifications.
6. Pass the required knowledge and vision tests (BEFORE a CDL Temporary Instruction Permit will be issued).
7. Pay the Oregon CDL fees.
8. Schedule, take, and pass your Oregon CDL skills test.

What is a “Skills Test” and how do I take it?

A “skills” test is the practical portion of the exam and includes :

1. A vehicle inspection test to measure your ability to perform a vehicle safety check.
2. A basic control skills test.
3. A driving test.

The skills test is normally given at an approved third party testing site in your area. This can vary and the latest procedures are indicated in the Oregon CDL Course.

So let’s say I get a Oregon CDL. Can I use it Out-of-State?

Yes! It is good throughout the entire United States.

Can my Oregon CDL be suspended or revoked?

Yes, there are MANY reasons that your Oregon CDL can be suspended or revoked. Improper use of alcohol or drugs, traffic violations, and failure to notify, top the list. The Course details ALL of the rules regarding suspension or revocation. The point to remember is that ALCOHOL OR DRUG USE IS NOT TOLERATED AND YOUR RECORD WILL FOLLOW YOU THROUGHOUT THE UNITED STATES FOREVER!

So let’s say that my Oregon CDL is revoked. Can’t I just apply for a CDL in another State?

No! Those days are gone.

Are there any exemptions to being required to have Oregon CDL?

Yes, a few:

1. Active Duty Military . . . with military licenses operating military vehicles.
2. Firefighters -meeting approved training standards and operating authorized emergency vehicles.
3. Farmers - in certain cases.
4. Individuals -operating motor homes or other vehicles used exclusively to transport personal possessions or family members, for non business purposes.

What do the terms Class A, Class B, and Class C mean on my Oregon CDL?

It refers to the type of vehicle that you may operate:

CLASS A: allows you to operate vehicles which tow trailers or other vehicles with a GVWR over 10,000 pounds. A Class “A” license also allows you to operate Class B and C vehicles.

CLASS B: allows you to operate single vehicles with a GVWR of 26,001 lbs or more OR a gross combination weight rating (GCWR) of 26,001 lbs. or more, towing trailers/vehicles rated at 10,000 pounds GVWR or less. A Class “B” license also allows you to operate Class C vehicles.

CLASS C: allows you to operate vehicles under 26,001 lbs. GVWR; that are designed to transport 16 or more persons including the driver; or that carry 15 or less people (including the driver) transporting children to or from school and home regularly for compensation, or carry hazardous materials in amounts requiring placarding.

What are Endorsement Codes and when do I need them on my Oregon CDL?

Endorsements are necessary for certain commercial driving requirements as follows:

(T) DOUBLE or TRIPLE TRAILERS.

(P) PASSENGER: For vehicles which are designed to carry 16 or more people (including the driver); or those which carry 15 or less people (including the driver) transporting children to or from school and home regularly for compensation.

(N) TANK VEHICLES.: For vehicles designed to haul liquids or liquefied gases in bulk in permanently mounted tanks or portable tanks rated at 1,000 gallons or more.

(H) HAZARDOUS MATERIALS: To carry hazardous materials in amounts requiring placards.

(X) Endorsement: Designating a Tank (N) vehicle that carries Hazardous Materials (H).

I'm over 18 years old, but not 21 years old yet. Can I get a Oregon CDL license?

Yes, with restrictions. You cannot drive a commercial vehicle out of Oregon. You cannot drive a vehicle requiring HAZ MAT placarding and cannot drive double or triple trailer rigs.

WATER RIGHTS - OREGON WATER LAWS

The Water Code

Under Oregon law, all water is publicly owned. With some exceptions, cities, farmers, factory owners, and other water users must obtain a permit or water right from the Water Resources Department to use water from any source— whether it is underground, or from lakes or streams. Generally speaking, landowners with water flowing past, through, or under their property do not automatically have the right to use that water without a permit from the Department.

Prior Appropriation

Oregon's water laws are based on the principle of prior appropriation. This means the first person to obtain a water right on a stream is the last to be shut off in times of low stream flows. In water-short times, the water right holder with the oldest date of priority can demand the water specified in their water right regardless of the needs of junior users. If there is a surplus beyond the needs of the senior right holder, the water right holder with the next oldest priority date can take as much as necessary to satisfy needs

under their right and so on down the line until there is no surplus or until all rights are satisfied. The date of application for a permit to use water usually becomes the priority date of the right.

Four fundamental provisions

1. Beneficial purpose without waste

Surface or ground water may be legally diverted for use only if it is used for a beneficial purpose without waste.

2. Priority

The water right priority date determines who gets water in a time of shortage. The more senior the water right, the longer water is available in a time of shortage.

3. Appurtenancy

Generally, a water right is attached to the land described in the right, as long as the water is used. If the land is sold, the water right goes with the land to the new owner.

4. Must be used

Once established, a water right must be used as provided in the right at least once every five years. With some exceptions established in law, after five consecutive years of non-use, the right is considered forfeited and is subject to cancellation.

Generally, Oregon law does not provide a preference for one kind of use over another. If there is a conflict between users, the date of priority determines who may use the available water. If the rights in conflict have the same date of priority, then the law indicates domestic use and livestock watering have preference over all other uses. However, if a drought is declared by the Governor, the Department can give preference to stock watering and household consumptive purposes, regardless of the priority dates of the other users. Ground water rights for geothermal uses, such as heating or air conditioning, are always junior in priority to other uses of water unless the water is also used for another purpose, such as irrigation, or injected back into the ground water reservoir.

Some uses of water are exempt from the requirement to obtain a permit. These are called "exempt" uses.

Exempt uses of surface water include:

- 1. Natural springs:** use of a spring that, under natural conditions, does not form a natural channel and flow off the property where it originates at any time of the year.
- 2. Stock watering:** where stock drink directly from a surface water source and there is no diversion or other modification to the source. Also, use of water for stock watering from a permitted reservoir to a tank or trough, and, under certain conditions, use of water piped from a surface source to an off-stream livestock watering tank or trough.
- 3. Salmon:** egg incubation projects under the Salmon and Trout Enhancement Program (STEP) are exempt. Also, water used for fish screens, fish ways, and bypass structures.
- 4. Fire control:** the withdrawal of water for emergency fire fighting or certain non-emergency fire fighting training.
- 5. Forest management:** certain activities such as slash burning and mixing pesticides. To be eligible, a user must notify the Department and the Oregon Department of Fish and Wildlife and must comply with any restrictions imposed by the Department relating to the source of water that may be used.

6. Certain land management practices: where water use is not the primary intended activity.

7. Rainwater: collection and use of rainwater from an artificial impervious surface (like a parking lot or a building's roof).

Ground water (well water) exempt uses include:

1. Stock watering.

2. Lawn or noncommercial garden: watering of not more than one-half acre in area.

3. Single or group domestic purposes: not exceeding 15,000 gallons per day.

4. Single industrial or commercial purposes: not exceeding 5,000 gallons per day.

5. Down-hole heat exchange uses.

6. Watering school grounds: ten acres or less, of schools located within a critical ground water area.

Note: While these water uses do not require a permit, the use is only allowed if the water is used for a "beneficial purpose without waste" and may be subject to regulation in times of water shortage. Wells supplying water for exempt ground water uses must comply with Oregon's minimum well construction standards for the construction, maintenance, and abandonment of any well.

For more information about water rights in Oregon go to:

<http://www1.wrd.state.or.us/pdfs/aquabook.pdf>

Water & Air Quality

Water and Air quality in Oregon is governed by the Oregon Department of Environmental Quality and is delegated authority from the Federal Environmental Protection Agency to administer federal programs that affect air and water quality in the state. This agency is responsible for controlling the discharge of pollutants into all public water and air which includes but is not limited to noise; erosion control; garbage; water and air pollutants discharged from factories, buildings or other potential pollutant source; pesticide disposal; sewage; storm water; wet lands and any other source that could potentially affect Oregon's water, air and environment adversely.

SAFETY- (OR-OSHA)

Safety is the responsibility of the employer and though a business may think they have "told" their employees how to be safe, the employer's actions and enforcement procedures are vital in maintaining a safe work place and jobsite

Oregon OSHA governs workplace safety in Oregon and there are many areas of concern that a landscape contracting business must pay attention to in order to be in compliance with the laws that govern workplace safety. OR-OSHA has publicized a pamphlet entitled *Information for the Landscaping Professional* which outlines many of the rules for working in the landscape profession including construction and maintenance. As an owner/managing employee you need to read this document and it can be ordered through OR-OSHA by ordering publication #2942 @ <http://www.orosha.org/publications/treepubs.html>. The LCB also carries this publication and you may request a copy from the LCB office.

Some areas of safety the board feels are vital are “briefly” covered in the publication and though your business is required to comply with all laws governing workplace safety, the board has chosen to include some specific safety information in this manual.

First Aid:

Medical Services and First Aid.

- (a) The employer shall insure the availability of medical personnel for advice and consultation on matters of occupational health.
- (b) Provisions shall be made prior to commencement of the project for prompt medical attention in case of serious injury.
- (c) In the absence of an infirmary, clinic, hospital, or physician, that is reasonably accessible in terms of time and distance to the worksite, which is available for the treatment of injured employees, a person who has a valid certificate in first aid training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid.
 - (1) First aid supplies shall be easily accessible when required.
 - (2) The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.
- (d) Proper equipment for prompt transportation of the injured person to a physician or hospital, or a communication system for contacting necessary ambulance service, shall be provided.

Noise

General Requirements

An employer must have in place an effective hearing conservation program whenever employee noise exposures equal or exceed an 8-hour Time Weighted Average (TWA) of 85 decibels measured on the A-scale (85 dBA). A TWA of 85 dBA corresponds to a noise dose of 50%, also called the action level.

Employers must provide protection against the harmful effects of noise when employees are exposed to excessive noise levels (exceeding a TWA of 85 dBA) on the job. If you must raise your voice or shout to be heard above the noise in the workplace, this rule may apply. The following is a summary of the major sections of the rules.

Noise Monitoring

Conduct noise monitoring; include all employees affected by noise exceeding 85 dBA, TWA. Noise dosimetry is a method used to measure noise exposure. Not all employees need to be sampled; however, the noise monitoring must be representative of each affected employee's job. The monitoring should be designed to identify employees for inclusion in a Hearing Conservation Program. All employees must be notified of noise monitoring results that exceed 85 dBA, TWA.

Noise Controls

If noise levels exceed a TWA of 90 dBA, all feasible measures must be taken to reduce the noise exposure of employees to below 90 dBA. Whenever feasible engineering, administrative, or work-practice controls can be instituted, although insufficient to reduce exposure below the PEL, they shall be required in conjunction with personal protective equipment (PPE) to reduce exposure to the lowest practical level.

A Hearing Conservation Program

A hearing conservation program must be implemented for all employees exposed to noise levels above a TWA of 85 dBA. These five basic components comprise an effective Hearing Conservation Program:

- Exposure Monitoring
- Audiometric Testing
- Hearing Protection
- Employee Training
- Recordkeeping

Audiometric Testing

Establish and maintain an annual testing program if results from the initial monitoring equal or exceed a TWA of 85 dBA.

Baseline audiograms are required within six months from the date of an employee's first exposure to noise above 85 dBA. Subsequent audiograms are compared to the baseline audiogram to determine hearing loss. Audiometric tests must be performed and the audiogram evaluated by a licensed or certified audiologist, otolaryngologist, or other physician, or by a certified CAOHC technician.

Before testing employees, advise them to avoid activities that expose them to high levels of noise and to avoid non-occupational exposure (or use hearing protection) within the 14 hours prior to the test.

Compare the employee's annual audiogram to the baseline audiogram. If the comparison shows a standard threshold shift, the employer must either accept the results or retest the employee within 30 days.

Repeat the hearing test annually for all employee exposures over 85 dBA.

Follow-up Procedures

Within 21 days of receiving the report, notify, in writing, each employee whose audiogram shows a **standard threshold shift (STS)**. Employees with a documented hearing loss must be fitted with hearing protectors, trained in their use and care, and required to use them. Employees who were already using hearing protectors must be refitted and retrained. Some employees may need to be referred to a qualified specialist for additional evaluation.

Standard Threshold Shift (STS)

A STS is a change in hearing, or loss, compared to the baseline of an average of 10 dB or more at 2000, 3000, and 4000 Hertz in either ear.

Employees who show an STS and are exposed to a TWA of 85 dBA or above, and employees exposed above 90 dBA, must wear protectors on the job.

Recordkeeping and Reporting

See OAR 437-001-0700(11), Recordkeeping and Reporting, for occupational hearing loss recording criteria (OSHA 300 log).

Hearing Protectors

Provide a variety of hearing protectors at no cost to the employees. Ensure proper initial fitting and correct use of all hearing-protection devices.

Hearing Protector Attenuation

Hearing protectors must attenuate (reduce) noise levels to a TWA of 90 dBA, or to 85 dBA for employees who have had a STS.

Training Program

Annually train employees in the Hearing Conservation Program on the following:

1. The effects of noise on hearing.
2. The purpose of hearing protection.
3. The advantages and disadvantages of various types of hearing protection.
4. Selection, use, and care of hearing protection.
5. The purpose of audiometric testing.

Equipment

Rollover Protective Structures (ROPS) For Material Handling Equipment.

(a) Coverage.

(1) This section applies to the following types of material handling equipment: To all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in construction work. This requirement does not apply to side-boom pipe-laying tractors.

(2) The promulgation of specific standards for rollover protective structures for compactors and rubber-tired skid-steer equipment is reserved pending consideration of standards currently being developed.

(b) Equipment manufactured on or after September 1, 1972. Material handling machinery described in paragraph (a) of this section and manufactured on or after September 1, 1972, shall be equipped with rollover protective structures which meet the minimum performance standards prescribed in §§1926.1001 and 1926.1002, as applicable.

(c) Equipment manufactured before September 1, 1972.

(1) All material handling equipment described in paragraph (a) of this section and manufactured or placed in service (owned or operated by the employer) prior to September 1, 1972, shall be fitted with rollover protective structures no later than the dates listed below:

(i) Machines manufactured on or after January 1, 1972, shall be fitted no later than April 1, 1973.

(ii) Machines manufactured between July 1, 1971, and December 31, 1971, shall be fitted no later than July 1, 1973.

- (iii) Machines manufactured between July 1, 1970, and June 30, 1971, shall be fitted no later than January 1, 1974.
- (iv) Machines manufactured between July 1, 1969, and June 30, 1970, shall be fitted no later than July 1, 1974.
- (v) Machines manufactured before July 1, 1969: Reserved pending further study, development, and review.
- (2) Rollover protective structures and supporting attachment shall meet the minimum performance criteria detailed in §§1926.1001 and 1926.1002, as applicable or shall be designed, fabricated, and installed in a manner which will support, based on the ultimate strength of the metal, at least two times the weight of the prime mover applied at the point of impact.
 - (i) The design objective shall be to minimize the likelihood of a complete overturn and thereby minimize the possibility of the operator being crushed as a result of a rollover or upset.
 - (ii) The design shall provide a vertical clearance of at least 52 inches from the work deck to the ROPS at the point of ingress or egress.
- (d) Remounting. ROPS removed for any reason, shall be remounted with equal quality, or better, bolts or welding are required for the original mounting.
- (e) Labeling. Each ROPS shall have the following information permanently affixed to the structure:
 - (1) Manufacturer or fabricator's name and address;
 - (2) ROPS model number, if any;
 - (3) Machine make, model, or series number that the structure is designed to fit.
- (f) Machines meeting certain existing governmental requirements. Any machine in use, equipped with rollover protective structures, shall be deemed in compliance with this section if it meets the rollover protective structure requirements of the State of California, the U.S. Army Corps of Engineers, or the Bureau of Reclamation of the U.S. Department of the Interior in effect on April 5, 1972. The requirements in effect are:
 - (1) State of California: Construction Safety Orders, issued by the Department of Industrial Relations pursuant to Division 5, Labor Code, §6312, State of California.
 - (2) U.S. Army Corps of Engineers: General Safety Requirements, EM-385-1-1 (March 1967).
 - (3) Bureau of Reclamation, U.S. Department of the Interior: Safety and Health Regulations for Construction. Part II (September 1971).

HAZARD COMMUNICATION

The use of chemicals and pesticides which includes but is not limited to insecticides, miticides, fungicides, herbicides, and rodenticides is a disputed topic in the landscape industry. Some choose to not use them, others do and their use continues to play a significant role in the preparation for, installation of and maintenance of landscape work in Oregon. Whether the landscape contracting business uses fertilizers, low hazard chemicals or those that are considered "dangerous" it is vital that the business know how to properly use and store these chemicals. Training of employees and obtaining the proper Oregon license for the application of these chemicals is the responsibility of the business owner or management of the business. The pesticide division of the

Department of Agriculture along with the Occupational Safety and Health Administration regulates the use and application of chemicals for the landscape industry and other chemical users. If the landscape construction business that you own or manage stores or applies pesticides makes sure the proper licensing for pesticide application is obtained for the business through the Oregon Department of Agriculture: Pesticides Division 635 Capitol Street, Salem, OR 97301; pestx@oda.state.or.us.

The essence of hazard communication

The essence of hazard communication is a warning. We use thousands of chemical products throughout our lives, at home and at work. But most of us would be hard-pressed to distinguish safe products from hazardous ones without a warning – the familiar skull and crossbones, for example. The warning tells us the product is hazardous, that it can harm us if we use it improperly.

Hazard communication in the workplace

In the workplace, hazard communication ensures that workers who may be exposed to hazardous chemicals know about the chemicals' hazards and understand how to protect themselves from exposure.

The hazard communication process

Hazard communication begins when chemical manufacturers and importers evaluate their products to determine each product's chemical hazards.

Next, they prepare a *material safety data sheet* – known by the abbreviation MSDS – for each product. An MSDS includes detailed information about the product's hazards.

Manufacturers and importers must include an MSDS and a warning label with each container of product that they ship to a customer.

The part of the process that affects your workplace is the *written hazard communication plan*. The plan, which you produce, must identify hazardous chemicals at your workplace and describe how you will use material safety data sheets, warning labels, and training to protect employees and keep them informed about the product's chemical hazards.

Hazard communication rules

OR-OSHA's hazard communication rules affect all Oregon workplaces that have employees who may be exposed to hazardous chemicals. The purpose of these rules is to ensure that workers who use hazardous chemicals know *why* the chemicals can harm them and *how* to handle the chemicals safely. (For more information, see Pages 24-25.)

Hazard communication warns us that a chemical product is hazardous and tells us how the product can harm us if we use it improperly.

STEPS IN THE HAZARD COMMUNICATION PROCESS

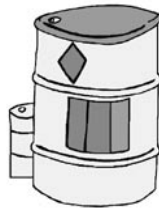
1 Chemical manufacturers or importers determine if the chemicals they produce are hazardous.

MSDS



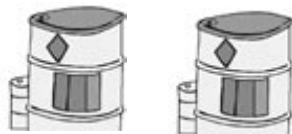
2 The manufacturers or importers document the chemical's hazards on material safety data sheets (MSDS's).

3. Each hazardous chemical an MSDS and a warning label of its hazards.

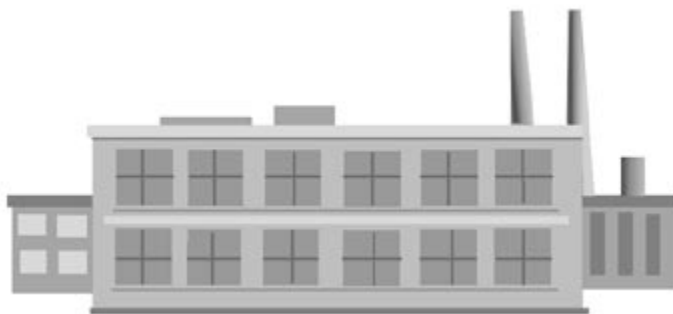


Warning label

that is sold to a customer must include that identifies the chemical and warns



4. Your workplace purchases hazardous chemical products from a manufacturer, distributor, or importer.



5 You prepare a written hazard communication plan that identifies the hazardous chemicals your employees may be exposed to and describes how you will use MSDS's, container warning labels, and training to keep them informed.

WHAT IS A HAZARDOUS CHEMICAL?

OR-OSHA's definition of a hazardous chemical

OR-OSHA's hazard communication rule, 1910.1200, defines a hazardous chemical as "any element, chemical compound, or mixture that is a physical hazard or a health hazard."

Chemicals that are physical hazards

Chemicals that are physical hazards are unstable and, when handled improperly, can cause fires or explosions. A chemical that is a physical hazard has one of the following characteristics:

- It's a combustible liquid.
- It's a compressed gas.

- It's explosive.
- It's flammable.
- It's water-reactive.
- It starts or promotes combustion in other materials.
- It can ignite spontaneously in air.

Chemicals that are health hazards

Chemicals that are health hazards can damage an exposed person's tissue, vital organs, or internal systems. Generally, the higher the chemical's toxicity the lower the amount or dose necessary for it to have harmful effects. The effects vary from person to person, ranging from temporary discomfort to permanent damage, depending on the dose, the toxicity, and the duration of exposure to the chemical.

Health effects range from short-duration symptoms that often appear immediately (acute effects) to persistent symptoms that usually appear after longer exposures (chronic effects). Health effects can be classified by how they affect tissue, vital organs, or internal systems:

- Carcinogens cause cancer.
- Corrosives damage living tissue.
- Hematopoietic agents affect the blood system.
- Hepatotoxins cause liver damage.
- Irritants cause inflammation of living tissue.
- Nephrotoxins damage cells or tissues of the kidneys.
- Neurotoxins damage tissues of the nervous system.
- Reproductive toxins damage reproductive systems, endocrine systems or a developing fetus.
- Sensitizers cause allergic reactions.

HOW TO DETERMINE IF A CHEMICAL IS HAZARDOUS

A chemical is hazardous if it is listed in one of the following documents:

- OR-OSHA Division 2, Subdivision Z safety and health rules, *Toxic and Hazardous Substances*; Division 3, Subdivision Z, *Toxic and Hazardous Substances* (Construction); Division 4, Subdivision Z, *Chemical/Toxins* (Agriculture)
- *Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment* (latest edition). Published by the American Conference of Industrial Hygienists (ACGIH)
- *The Registry of Toxic Effects of Chemical Substances*, published by the National Institute for Occupational Safety and Health (NIOSH)

The key to handling a hazardous chemical safely is to know its properties:

- **Is it explosive or toxic?**
- **What kinds of clothing or equipment can protect employees from it?**
- **What should employees do if it's on fire?**

For comprehensive summaries about most hazardous substances, see:

www.atsdr.cdc.gov.10

PREPARING A WRITTEN HAZARD COMMUNICATION PLAN

A hazard communication plan identifies the hazardous chemicals at your workplace and describes how you will use material safety data sheets, container warning labels, and training to inform employees.

Do you need to prepare a written plan?

You must prepare a written hazard communication plan if employees at your workplace use or may be exposed to hazardous chemicals.

Essential parts of a written plan

The plan must be specific to your workplace and include the following parts:

Essential parts of a written plan	
The part	What to do
Hazardous chemical list	<ul style="list-style-type: none">• List the hazardous chemicals to which employees may be exposed in your workplace. The list must include hazardous chemicals in all forms – liquids, solids, gases, vapors, fumes, and mists. If the chemical is hazardous and an employee could be exposed to it, include it on the list.• Match each chemical on the list with its material safety data sheet.• Update the list to keep it current.
Labels and other forms of warning	Describe how you will ensure that each hazardous chemical container has a label that identifies the chemical and has an appropriate hazard warning.
Material safety data sheets	Describe where you will keep material safety data sheets and whom to contact if one is missing or incomplete.
Employee training	Describe how you will train employees about chemical hazards to which they may be exposed; include how employees can protect themselves, how to read warning labels and material safety data sheets, and where employees can review material safety data sheets.
Hazardous non-routine tasks	Describe how you will inform employees about hazardous chemicals to which they may be exposed during non-routine tasks; identify the tasks and the information that you will provide.
Hazardous chemicals in pipes	Describe how you will inform employees about hazardous chemicals in pipes that run through their work areas.
Information for contractors	Describe how you will inform contractors' employees about hazardous chemicals to which they may be exposed at your workplace and what they can do to protect themselves.

USING MATERIAL SAFETY DATA SHEETS

A material safety data sheet contains detailed information about a hazardous chemical product's health effects and physical and chemical characteristics and safe practices for using it.

Responsibilities of chemical manufacturers, importers, and distributors

Chemical manufacturers and importers must prepare a material safety data sheet for each hazardous chemical product they produce. Distributors are responsible for

ensuring that you have a material safety data sheet for each hazardous chemical product they sell to you.

What to do if you use hazardous chemical products at your workplace

You must have a current material safety data sheet for each product. Employees must be able to review material safety data sheets in their work area at any time. You can keep material safety data sheets in a notebook or on a computer; however, employees must be able to obtain the information immediately in an emergency.

One person should be responsible for managing all the material safety data sheets at your workplace. The person should ensure that the list of hazardous chemicals is current, that the identity of each chemical on the list matches its identity on its material safety data sheet, and that incoming hazardous-chemical containers have material safety data sheets.

What to do when you no longer use a hazardous chemical at your workplace

When you no longer use a hazardous chemical, you don't need to keep its material safety data sheet. However, you do need to keep a record for at least 30 years of the chemical's identity, locations, and the years in which it was used in your workplace. For more information about record-keeping requirements, see 1910.1020(d)(ii)(B), "Access to employee exposure and medical records."

Information required on material safety data sheets

Chemical manufacturers and importers must prepare a material safety data sheet for each hazardous chemical product they ship to you. The following information must appear on each sheet.

Required information	Description
Identity of the chemical	Typically, a common chemical name. (The identity of the chemical on a material safety data sheet must match its identity on the container label.)
Physical and chemical characteristics	For example: vapor pressure, flashpoint, and solubility
Physical hazards	For example: potential for fire, explosion, or reaction with water or other chemicals.
Health hazards	For example: signs and symptoms of exposure, and medical conditions that might be aggravated by exposure
Primary routes of chemical entry	How the chemical enters the body
Permissible exposure limit (PEL)	The maximum amount of the chemical that one can be exposed to during an eight-hour work shift.
Carcinogenicity	Based on findings in the National Toxicology Program Annual Report on Carcinogens or the International Agency for Research on Cancer Monographs (latest editions).
Precautions for safe use	Precautions for safe use How to handle the chemical safely, hygiene and protective practices, and cleanup procedures for spills and leaks
Control measures	The engineering controls, safe work

	practices, and personal protective equipment necessary to control exposure
Emergency and first-aid procedures	How to respond to spills, leaks, contamination, and overexposure
Preparation date	The date the material safety data sheet was prepared or updated.
Name, address and phone number	Whom to contact for more information on the chemical's hazards and emergency-response procedures

USING CONTAINER WARNING LABELS

The purpose of a container warning label is to warn employees about the container's contents and to refer employees to an appropriate material safety data sheet for more information about the chemical's physical and health hazards. Manufacturers, importers, and distributors must ensure that each hazardous chemical product sold to you has a label that includes the chemical's identity, a hazard warning, and a name and address for additional information about the product.

If you use hazardous chemicals at your workplace, you must ensure that each hazardous chemical container has a legible label, in English, that identifies the chemical and warns of its hazards.

Containers that must be labeled

Original containers of hazardous chemicals from a manufacturer, importer, or distributor must have warning labels. Don't remove or deface them.

If you transfer a hazardous chemical from a labeled container to an unlabeled container, label the container.

An exception for portable containers

You don't need to put a *warning* label on a portable container if you use it to transfer a hazardous chemical from a labeled container. However, the chemical in the container must be for immediate use. This means *"the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred."* See 1910.1200 ©, *Definitions*.

Content of a warning label

A warning label must identify the chemical – a common chemical name or a code name is acceptable – and displays a hazard warning such as **DANGER** or the familiar skull and crossbones.

- The identity of the chemical on the label, on its material safety data sheet, and on your hazardous chemical list must match.
- If you're not sure that a hazardous chemical container is properly labeled, contact the manufacturer or supplier.
- Make someone at your workplace responsible for ensuring that all hazardous chemical containers are properly labeled.

TRAINING EMPLOYEES

Required hazard communication training

If you have employees who may be exposed to hazardous chemicals, you must inform them about the chemicals and train them when they are hired and whenever they are exposed to a new chemical hazard or a process change. Required employee training:

- Where to find and how to read the hazard communication plan, the list of hazardous chemicals, and material safety data sheets.
- The operations in which hazardous chemicals are used.
- The physical and health hazards of hazardous chemicals used by employees.
- The meaning of warning labels on hazardous chemical containers and on pipes that contain hazardous substances.
- How to recognize emergencies involving hazardous chemicals.
- How to use personal protective equipment.

Who can train employees?

Choose a person who understands the above topics and has the skills to conduct the training. It's important that employees are taught which hazardous chemicals they may be exposed to and understand how to use the information on container warning labels and material safety data sheets to protect them.

EXAMPLE OF A HAZARD COMMUNICATION TRAINING FORM

Use a form such as this one to document that an employee has been trained about hazardous chemicals used in the workplace as required by OR-OSHA hazard communication rules.

I have been informed about the hazardous chemicals that I may be exposed to during my work and I have received training on the following topics:

- An overview of the requirements in OR-OSHA's hazard communication rules.
- Hazardous chemicals present in the workplace.
- The written hazard communication plan.
- Physical and health effects of the hazardous chemicals.
- Methods to determine the presence or release of hazardous chemicals in the work area.
- How to reduce or prevent exposure to these hazardous chemicals through use of exposure controls/work practices and personal protective equipment.
- Steps we have taken to reduce or prevent exposure to these chemicals.
- Emergency procedures to follow if exposed to these chemicals.
- How to read labels and review material safety data sheets.

Note to employee: This form becomes part of your personnel file; read and understand it before signing.

Employee: _____ Date: _____

Trainer: _____ Date: _____

CALL BEFORE YOU DIG

When excavation is to be performed on a person's property, the landscape contracting business my request a "locate" to determine where the utilities are located; some of the most common questions are:

1. It is my understanding that I only have to call for locates if I dig more than 12 inches deep. Is that correct?

No. The definition of excavation is very clear: any operation in which earth, rock or other material is moved or displaced by any means. That definition includes backhoes, trenchers, augers, drilling machines, blasting, graders, bulldozers, etc. There are a few, very limited exemptions to this rule. Responding to an emergency, road or ditch

maintenance less than 12 inches in depth that does not lower the original grade or original ditch flow line and tilling of the soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right-of-way or easement for underground facilities. If those exact conditions cannot be met, then a locate request must be made.

The confusion about the less than 12 inch depth for a locate request comes from the exemption for homeowners. However, even a homeowner must meet four specific requirements to get the exemption. The four requirements are:

1. The Excavator is a tenant or an owner of private property,
2. The excavation is on private property of that owner or tenant,
3. The excavation is less than 12inches deep, and
4. The excavation is not within an established easement.

All four of these conditions must be met or the homeowner or tenant must call for locates.

Other than the exemptions discussed above, any person performing excavation activities must call for locates, regardless of depth.

2. Do I need to call for a locate even if I am digging in private property?

Yes. Even tenants or owners of private property planning to dig, must call for locates as required by Oregon law. These laws can be found in ORS 757.542 - 562 and 757.993 and in Oregon Administrative Rules, Chapter 952.

3. You mean, even if I am planting a rose bush I have to call?

Yes. Buried facilities are located everywhere and they may run right through your yard even though you are not aware of it. Make the free call. Its good insurance and you will feel better knowing what may be buried on the property.

i. What is the penalty if I don't call for a locate?

757.993 Penalty for violation of utility excavation notification provisions.

(1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.

(2) In addition to all other penalties provided by law, every person who intentionally violates or who intentionally procures aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than \$5,000 for the first violation and not more than \$10,000 for each subsequent violation.

LCB PROGRAMS

DISPUTE RESOLUTION PROGRAM (CLAIMS)

As part of the services offered by the LCB for **consumer protection** the board provides a unique process for resolving disputes between licensed landscape contracting businesses and consumers. This process is **free to the consumer** and is paid from the licensing and examination fees collected by the board. There are a set of laws that govern this process and they are found in ORS 671.690 through 671.760 and further clarified in Administrative Rules in OAR 808- division 4 and 8.

A full understanding of this process is vital to the landscape contracting business and to the licensed individual landscape construction professional who supervises the landscape activities of the business.

Every licensed landscape contracting business must have on file with the board a **surety bond, irrevocable letter of credit or assignment of savings** in the proper amount (\$3,000, \$10,000 or \$15,000) depending on the total contract amount of any landscape project performed by the landscape contracting business. This bond amount is held by the board in case the business breaches a contract, performs negligent work, fails to pay taxes, fails to pay employees or fails to pay a supplier of materials or labor. The consumer (person who entered into the contract with the landscape contracting business) can file a claim (complaint) with the board which then starts a legal process in dealing with the resolution of the problem called dispute resolution. The board has the ability to use different forms of dispute resolution from mediation to binding arbitration to help resolve complaints without compelling the parties to go to court, though the court process still remains an option for all parties to the dispute.

CLAIM PROCESS FOR HOMEOWNERS

A claim is filed when a Statement of Claim form is received by the LCB that contains all the required information. This includes the claim items, dates of work performed, date of completion of work, contracts submitted and signature by claimant. This claim stays open until the issue is resolved; the claimant fails to respond, or fails to cooperate. Sometimes claims can be suspended due to bankruptcy or court issues, but once those issues are settled the claim process will continue. Sometimes a claim remains open for years!

The claim form is on the web or will be sent directly to the claimant upon request.

CONDITIONS FOR ACCEPTANCE OF CLAIMS BY THE LCB:

- OAR 671.700(3) states a bond shall not be used to satisfy claims filed more than one year following the date the work was completed.
- OAR 808-004-0320 states the LCB will only process a claim that is filed for negligent or improper work within one year following the date the work was completed.
 - OAR 808-002-0280 defines “Date work completed” as the date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or the date the landscape contracting business ceased

work, if the business failed to substantially fulfill the provisions of the contract.

- The landscape contracting business against which the claim is filed must have been licensed during all or part of the work period. OAR 808-004-0320
- A direct contractual relationship based on a contract must exist between the claimant and the licensed landscape contracting business. OAR 808-004-0320
- The landscape contracting work must have been performed within the boundaries of the State of Oregon.
- The work has to be work subject to ORS 671.510 through ORS 671.760, which only deals with landscape construction, not landscape maintenance.

WHAT THE LCB DOES WHEN IT RECEIVES A CLAIM:

- The LCB must determine if the Board has **jurisdiction** over the claim based on the above information and information provided by the claimant.
- If the LCB determines they do not have jurisdiction, the LCB should dismiss the claim by issuing a proposed order to dismiss.
- If the LCB determines they do have jurisdiction, the LCB will furnish the landscape contracting business with a copy of the claim and request the landscape contracting business respond to the items stated in the claim so both sides of the story can be heard by the board, usually within 14 days.

CONTRACTUAL ELEMENTS THAT AFFECT THE PROCESSING OF A CLAIM:

- **Mediation** or Arbitration in the Contract.
 - If the contract contains an agreement to mediate or arbitrate disputes arising out of the contract, the terms of the agreement supersede LCB rules.
 - The LCB shall inform both parties that the LCB will close the claim in 60 days unless a written waiver of mediation or arbitration is signed by both parties or receives evidence that mediation or arbitration have been initiated.
 - If mediation or arbitration is initiated by either party the LCB will suspend processing of the claim until the mediation or arbitration is complete.
 - **If the claimant does not respond** and mediation or arbitration is not initiated, the LCB will close the claim.
 - If the landscape contracting business does not respond, the LCB will continue to process the claim.
- Once the claim is opened and information is received from both parties then the board keeps the claim open until resolution is achieved either through:
 - An On-Site Meeting.
 - The LCB may schedule an on-site meeting to **mediate** the dispute at the job site.
 - The claimant or an agent of the claimant must attend this meeting. If an agent attends, they must have the authority to enter into a settlement.
 - **The claimant must allow access to the property** that is the subject of the claim and allow the landscape contracting business to be present **or the claim will be closed.**
 - If both parties agree to a settlement, the mediator/investigator will prepare the settlement for both signatures on site. This settlement agreement may

- be considered to be a **substituted contract** replacing all previous agreements and is binding upon each party.
- If respondent (authorized representative from the licensed landscape contracting business) does not attend the on-site meeting or a settlement agreement by both parties is not reached, the mediator/investigator will review the claim items and make a recommendation (called an investigation report).
 - Either party may challenge the LCB's investigation report at a contested case hearing.
- A Proposed Default Order for Damages
 - A claimant may seek monetary damages if it disagrees with the recommendation proposed by the investigator or if the landscape contracting business cannot or will not comply.
 - The claimant must submit one or more estimates from a licensed landscape contracting business for the cost of correction of each claim item and a Monetary Damages Sought form listing each item.
 - The LCB may issue a proposed default order proposing dismissal if the claimant did not suffer damages, respondent did not cause damages, the claim is not the type the LCB has jurisdiction over, the claim was not filed within the time limit, the claimant did not permit the landscape contracting business to comply with the agency recommendations or the monetary value of the damages sustained is less than an amount due to the respondent from the claimant under the of the contract.
 - The LCB may issue a proposed default order for payment if the LCB determines the claimant suffered damages caused by respondent and the monetary value of those damages is substantiated on the record.
 - The LCB may also refer the claim to the **Office of Administrative Hearings** for a hearing to determine the validity of the claim and whether the amount claimed is proper.
- Referral to Office of Administrative Hearings/Hearing Requests
 - The LCB may refer a file to the Office of Administrative Hearings (OAH) where the claim process is transferred to the OAH and handled by this agency.
 - Either party to the claim may request a hearing within certain time limits (21 days after the proposed order is issued).
 - All hearings for dismissal are held as contested case hearings.
 - All other hearings shall be held as arbitration unless a party requests it be held as a contested case or files the dispute in court within specific time limits.
 - **Final Order** for Damages
 - Once a determination is made and the time to request a hearing has passed and the order becomes final, the landscape contracting business has 30 days to pay the claimant the amount due.
 - If the amount due is not paid by the landscape contracting business, the LCB will request the amount be paid by the bond company.
 - Determining how the bond company pays for multiple claims against the same business within 90 day increments is a process

the bonding company deals with when distributing the bond to the claimants.

Many times when a consumer files a claim with the board the communication between the landscape contracting business and the consumer has deteriorated to the point where they really don't want to talk to each other. The trust level has fallen, many times to a point of no return. Something that started out rather minor can turn into something that is way out of proportion due to a lack of communication and reluctance to trust anyone who is a party to the dispute. Constant attention to keeping the communication pathways open along with a willingness to see the "other side" of the issue will most surely result in fewer claims being filed against a landscape contracting business. Yes, it is common sense, but very difficult to do when conflict arises between parties in a dispute. Though not always successful, the claim process is the board's attempt to keep both parties out of court and having to pay for the legal costs associated with that process.

Other Types of Claims: The LCB will accept claims:

- from employees of a licensed landscape contracting business for non-payment of wages;
- from subcontractors providing services to a licensed landscape contracting business;
- from suppliers of materials or equipment for failure to pay for their products or equipment if used on a landscaping project; and
- from the Oregon Department of Revenue for the non-payment of taxes or contributions owed to the state.

ENFORCEMENT

The licensing regulations with the LCB dictate that each landscape contracting business be licensed, and that each business either employ or be owned by at least one licensed landscape construction professional who has passed the competency exam to supervise the landscape operations of the business. The laws and rules [Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR)] pertain only to a person who is involved in "landscaping work" as defined in ORS 671.520 and they **do not** apply to a person who is involved in landscaping maintenance, such as routine lawn mowing, planting annual type flowers and small shrub or tree pruning (less than 15 ft in height) as part of a regularly scheduled maintenance program. There is also some statutory over-lap between the LCB and the Construction Contractors Board (CCB) in regard to the installation of fences, decks, arbors, driveways, walkways, patios, landscape edging or retaining walls. These specific items can be constructed with a license from either of the Boards.

The Oregon Revised Statutes that regulate the landscape industry are ORS. 671.510 to 671.760 and ORS 671.990 to 671.997, with ORS 671.530 being the statute that specifically deals with the licensing requirement. This is the most commonly violated statute that the LCB deals with and a violation of this statute is a **Class "A" misdemeanor** [ORS 671.990 (2)]. The penalty that can be imposed by an Oregon court for violating ORS 671.530 is up to 1 year of imprisonment and a fine of \$5000. The LCB occasionally encounters violations that are much more serious than just the mere

licensing violations including, but not limited to: fraud; theft; theft by deception and deceptive business practices.

Normally, violations are handled on a civil basis and are investigated by the LCB's internal investigators. These civil sanctions include, but are not limited to fines, license suspensions and/or revocation. The maximum fine the LCB can assess for each violation of the LCB laws is \$2000 per occurrence. On occasion, the LCB encounters a violator that has little regard for the civil sanctions that are imposed and continues to violate the law. In these instances, the LCB aggressively pursues criminal sanctions and enhanced civil sanctions. The civil sanctions include the civil penalty fines and/or license suspensions, and may also include an Assurance of Voluntary Compliance (AVC), which is the civil equivalent of a plea agreement; a Notice of Unlawful Trade Practices and Proposed Resolution, which states that the Oregon Attorney General's office may file a civil lawsuit against the person; and a court ordered injunction prohibiting work in the industry for a specified term. All of these civil sanctions are recorded in the appropriate court of jurisdiction and a violation of these sanctions may result in a contempt of court order.

The LCB will also pursue having criminal charges filed in the appropriate jurisdiction for the specific violations of the applicable Oregon Revised Statute(s). As stated, normally these investigations are handled by the LCB's internal investigators, however occasionally; law enforcement assistance may be requested.

The statutes that are most commonly violated are:

ORS 671.530 Landscape construction professional or landscape contracting business license required; use of title; scope of landscape construction professional's license.
(1) A person may not operate as a landscape construction professional in this state without a valid landscape construction professional license issued pursuant to ORS 671.560

ORS 164.015 "Theft" described. A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person:

- (1) Takes, appropriates, obtains or withholds such property from an owner thereof; or
- (2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065; or
- (3) Commits theft by extortion as provided in ORS 164.075; or
- (4) Commits theft by deception as provided in ORS 164.085; or
- (5) Commits theft by receiving as provided in ORS 164.095. [1971 c.743 §123]

When the public deals with a properly licensed landscape contracting business, they are dealing with a company that is insured and bonded. The insurances that a company carries protect the consumer from any liability issues that may arise, such as damage to property or a personal injury. The bond that a company is required to have protects the consumer against negligent work or against contractual issues that occasionally arise. Many times, negligent work or contractual problems are resolved through a mediation program of the LCB, after the consumer filing a formal claim with the board.

When the public deals with an unlicensed person or business, they do not have the protections that the insurance and bonding afford them; they may be placing themselves in a position of substantial liability risk should another's property get damaged, or the person(s) doing the work become injured in the course of the work. The consumer's only recourse to negligent work or contractual problems is to file their own civil suit against the person or business in a court of law and in many cases the amount of money in question makes the legal fees a deterrent to filing. Many homeowners feel that their homeowner's insurance will cover property damage or personal injury; however, in most situations where the homeowner hires someone to work on their property, the homeowner's insurance carrier will not accept this responsibility since the person usually represents themselves as an independent contractor. This situation also begs the question as to whether the person performing the work is an independent contractor or employee of the consumer, which raises many issues that consumers may not be prepared to deal with. The mission statement of the LCB addresses this consumer protection as its primary concern.

SPECIFIC LAWS*

There are some specific laws that the LCB wants to address in this manual that are often overlooked and not complied with by many landscape contracting businesses in Oregon. The LCB brings them to your attention to help decrease the unpleasant encounters between the landscape contracting business and the board.

ORS 671.525 APPLICANT FOR LANDSCAPE CONTRACTING BUSINESS LICENSE REQUIRED TO BE AN INDEPENDENT CONTRACTOR; CLASSES OF LICENSURE.

- (1) An applicant for a landscape contracting business license must qualify as an independent contractor, under ORS 670.600, to be licensed with the State Landscape Contractors Board.
- (2) The board shall establish two classes of independent contractor licensees:
 - (a) The nonexempt class is composed of the following entities:
 - (A) Sole proprietorships, partnerships, corporations and limited liability companies with one or more employees; and
 - (B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members if any of the partners, officers or members are not part of the same family and related as parents, spouses, siblings, children, grandchildren, sons-in-law or daughters-in-law.
 - (b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt.
- (3) All partnerships, corporations and limited liability companies applying for a landscape contracting business license must have a federal tax identification number.
- (4) If a licensee who qualifies under subsection (2)(b) of this section hires one or more employees, or falls into any of the categories set out in subsection (2)(a)(B) of this section, the licensee is subject to penalties under ORS 671.997 and must submit proof that the licensee qualifies under subsection (2)(a) of this subsection.
- (5) The decision of the board that a licensee is an independent contractor applies only when the licensee is performing work of the nature described in ORS 671.520 and 671.530.

Meaning: In order for a landscape contracting business to be granted a license with the LCB, the business must operate as an independent contractor. This means that the business must meet the conditions set out in ORS 670.600 which is discussed earlier in the manual.

ORS 671.530 (6): LANDSCAPE CONSTRUCTION PROFESSIONAL OR LANDSCAPE CONTRACTING BUSINESS LICENSE REQUIRED; USE OF TITLE; SCOPE OF LANDSCAPE CONSTRUCTION PROFESSIONAL LICENSE.

- (6) A landscape construction professional is authorized to perform landscaping work only while in the employ of a landscape contracting business licensed and bonded as required by ORS 671.510 to 671.760. If the landscape construction professional is the sole proprietor, the landscape construction professional must also obtain a license as a landscape contracting business.

Meaning: an individual who has passed the examination to become a licensed landscape construction professional must either own or be employed by a licensed landscape contracting business before this person can perform landscape work. The individual is not the contractor, the business is.

ORS 671.540(15)(16): APPLICATION OF ORS 671.510 TO 671.760. ORS 671.510 TO 671.760 AND 671.990 (2) DO NOT APPLY TO:

(15) An employee of a licensed landscape contracting business when performing work for the business under the direct supervision of a licensed landscape construction professional.

(16) An employee of a worker leasing company or temporary service provider, both as defined in ORS 656.850, when performing work for a licensed landscape contracting business under the direct supervision of a licensed landscape construction professional

Meaning: any unlicensed person performing landscape work as an employee of a licensed landscape contracting business is only exempt from being licensed with the LCB if they are under the “direct” supervision of a licensed landscape construction professional. Even when the individual is employed by the business if the condition of being directly supervised by a licensed landscape construction professional is not met, the employee could be cited for not being licensed (the exemption is not met) and face civil penalties. It is the responsibility of the business to require direct supervision and the LCB has made a rule to this effect in **OAR 808-003-0018**

ORS 671.550: AUTHORITY OF BOARD TO INVESTIGATE; CONFIDENTIALITY OF INFORMATION

(1) The State Landscape Contractors Board may inquire into and inspect:

(a) Any services performed or materials furnished by a licensee under ORS 671.510 to 671.710.

(b) The financial records of a person who it reasonably believes is operating in violation of ORS 671.530.

(c) The services performed or materials furnished by a person who it reasonably believes is operating in violation of ORS 671.530.

(2) Except when used for legal action or to determine negligent or improper work under ORS 671.703, the information obtained by an inspection authorized by this section is confidential. However, the board shall furnish copies of any inspection to the licensee or other person that is subjected to an inspection.

Meaning: This statute give the board authority to investigate the work a licensee performs and the material the licensee supplies on a project. It also gives the board authority to investigate the services and financial records of any person who the board believes is operating as a landscape contracting business without being properly licensed.

ORS 671.555 INVESTIGATION OF PERSON ENGAGED IN LANDSCAPE CONTRACTING BUSINESS; PROCEDURES; ORDERS TO STOP WORK.

(1) The State Landscape Contractors Board may investigate the activities of any person engaged in the landscape contracting business to determine compliance with ORS 671.510 to 671.710.

(2) With the approval of the city or county, the board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the board for the costs of such investigations.

(3) Any inspector authorized by the board to determine compliance with the provisions of ORS 671.510 to 671.710 is authorized to require any person who is engaged in any activity regulated by ORS 671.510 to 671.710 to demonstrate proof of compliance with the licensing requirements of ORS 671.510 to 671.710. If a person who is contracting directly with the owner of the property does not demonstrate proof of compliance with the license requirements of ORS 671.510 to 671.710, the inspector shall give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the licensing requirements of ORS 671.510 to 671.710 and shall provide that unless the person demonstrates proof of compliance within two days of the date of the notice, the inspector may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each property upon which the person is then performing work under contract. If more than one person is the owner of any such property, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the two-day period specified in the notice to demonstrate proof of compliance with the registration requirements of ORS 671.510 to 671.710, the inspector is authorized to order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector may not order the work stopped until at least two days after the copies of the notice of noncompliance have been served upon or delivered to the owners.

(4) Notwithstanding subsection (3) of this section, the board may order work stopped immediately if the landscape contracting business working on a worksite cannot demonstrate that the business has been licensed by the board at any time within the two years immediately preceding work on the worksite.

(5) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under ORS 671.510 to 671.710.

(6) If any person fails to comply with a subpoena issued under subsection (5) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

Meaning: This statute gives the board the authority to investigate any activity of any person, licensee or not, engaged in landscape contracting work in Oregon and to subpoena witnesses and compel attendance at hearing and administer oaths. If a person fails to comply with a subpoena the board can take legal action against the person in court. This statute also allows the board to work in conjunction with other law enforcement agencies to compel compliance and allows the LCB to issue stop work orders under certain conditions.

ORS 671.563 APPLICANT NOTICE OF UNPAID JUDGMENTS, AWARDS AND ORDERS; RULES.

An applicant for the renewal of a landscape construction professional license or landscape contracting business license shall include in the application to the State Landscape Contractors Board notice of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any jurisdiction that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work. The board may adopt rules that require an applicant to provide additional information regarding a judgment, arbitration award or agency final order described in this section and the status of any appeal or exceptions.

Meaning: Every licensee (individual or business) must at the time of renewal provide the board with information about any court decision that has been levied against the licensee for the performance of landscape work (no matter where) and inform the board how the issue is being resolved before the board decides to issue or not issue a new license to the licensee.

ORS 671.565 (1) (B): LANDSCAPE CONTRACTING BUSINESS LICENSE REQUIREMENTS; FEES; EMPLOYEES; FILING OF SECURITY; INSURANCE; BASIS FOR INDEPENDENT CONTRACTOR STATUS.

(1) Each person applying for a landscape contracting business license shall: (b) Employ at least one person with a landscape construction professional license to supervise the landscaping operation of the business.

Meaning: Every landscape contracting business must have at least one owner or employee who has obtained the landscape construction professional license to supervise the landscape operations of the business. This includes the direct supervision of unlicensed employees of the business. Direct supervision is defined in rule: **OAR 808-002-0328.**

ORS 671.575(3): LICENSE REQUIRED TO OBTAIN JUDICIAL OR ADMINISTRATIVE REMEDY; EXCEPTION.

(3) If a landscape contracting business falsely swears to information provided under ORS 671.560 or 671.565 or knowingly violates the provisions of ORS 656.029, 670.600, 671.560 or 671.565, the landscape contracting business may not file a lien, file a claim with the State Landscape Contractors Board or bring or maintain in any court of this state a suit or action for compensation for the performance of any work or for the breach of any contract for work which is subject to ORS 671.510 to 671.760 and 671.997

Meaning: If a landscape contracting business makes false statements on the application; has employees when they state they are exempt and knowingly attempts to not pay worker's compensation; or fails to meet the qualifications for an independent contractor then that business cannot collect for work they have performed nor can they file suit or file a claim against another business for breach of contract or negligent work. If the business wants to get paid then the business needs to make sure there is no fraudulent conduct associated with obtaining the business license or unethical employment activities associated with the business.

ORS 671.578: SUIT FOR DAMAGES FOR MISREPRESENTATION; ATTORNEY FEES.

If any person suffered costs or damages as a result of an individual providing a false or invalid State Landscape Contractors Board number or otherwise misleading a person with respect to licensing with the board, that person may bring suit in a court of competent jurisdiction to recover damages. The court may award reasonable attorney fees to the prevailing party in an action under this section.

Meaning: If any consumer or other person was damaged because the business falsely represented that the business was licensed by the LCB, court costs and reasonable attorney fees can be awarded to the prevailing party in a court action.

ORS 671.580 LANDSCAPE CONSTRUCTION PROFESSIONAL LICENSE NOT TRANSFERABLE.

A landscape construction professional license issued pursuant to ORS 671.560 is a personal privilege and is not transferable

Meaning: A licensed landscape construction professional cannot allow another person to use or buy the individual license.

ORS 671.600: NEW LICENSE REQUIRED UPON CHANGE OF OWNERSHIP; NOTIFICATION OF CHANGE OF ADDRESS.

(1) A new landscape contracting business license shall be required whenever there is a change in ownership, irrespective of whether the business name is changed. As used in this subsection, “change in ownership” does not include a change in the holders of corporate stock.

(2) If a licensee moves to another location, re-licensing is not required but the licensee must notify the State Landscape Contractors Board promptly of the new address.

ORS 671.605 Effect of change in partners or corporate officers.

A partnership or corporation licensed as a landscape contracting business shall notify the State Landscape Contractors Board immediately upon any change in partners or corporate owners or in the percentage of an ownership interest in the landscape contracting business. Upon a change in partners, a licensed partnership immediately shall apply for a new license and pay to the board the fee required by ORS 671.650 for an original license.

Meaning: If a business entity changes ownership, except for corporations, then the business must apply for a new business license. The effect of a business changing from a sole proprietor to a corporation means there is a change in the ownership of the business and a new “baby” is born and a new license is required. The notification of address change is addressed more specifically in ORS 671.603 below.

ORS 671.603(1): PERSONS REQUIRED TO GIVE NOTIFICATION OF CHANGE OF ADDRESS; COMMUNICATIONS DELIVERED TO LAST-KNOWN ADDRESS.

(1) A landscape construction professional or person operating as a landscape contracting business shall notify the State Landscape Contractors Board of a change of address for the professional or business that occurs while the professional or business

is licensed by the board or within one year after a license expires. The landscape construction professional or landscape contracting business shall ensure that the board receives notice of the change of address no later than the 10th day after the change of address occurs.

Meaning: Licensees, both individual and business, must notify the board within 10 calendar days after the change of address occurs. Failure to do so can result in a civil penalty in the amount of \$200 for the individual licensee and \$500 for the landscape contracting business [OAR 808-005-0020].

ORS 671.610(1) (O) (P): GROUNDS FOR SANCTIONS AGAINST LICENSE; SUSPENSION OR REFUSAL OF LICENSE WITHOUT PRIOR HEARING; HEARING; EFFECT OF REVOCATION; CIVIL PENALTY.

(1) In addition to any civil penalty assessed under ORS 671.997, the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of a landscape construction professional or landscape contracting business that does any of the following:

(o) Engages in conduct as a landscape construction professional or landscape contracting business that is dishonest or fraudulent or that the board finds injurious to the welfare of the public.

(p) Fails to comply with the requirements of ORS 652.120.

Meaning: For paragraph (1) (o) above, if the board determines that an individual licensee or licensed business entity is falsely advertising, is taking money without performing work, fails to pay suppliers when the money has been received by the business, fails to pay minimum wages or overtime wages, fails to comply with employment laws, fails to pay a fine issued by another state agency or the federal government, writes bad checks, etc., [see OAR 808-002-0330] the board can suspend the license and issue civil penalties.

For paragraph (1) (p) above, if the board determines that a landscape contracting business has employees and does not establish regular payday; pay intervals; or an agreement to pay wages at future date the board can suspend the license and issue civil penalties.

ORS 671.613: SANCTION FOR FAILURE TO COMPLY WITH CERTAIN LAWS.

(1) The failure of a landscape contracting business to comply with the provisions of this section and ORS 279C.800 to 279C.870, 656.021, 657.665, 670.600, 671.520, 671.525, 671.530 and 671.575 or to be in conformance with the provisions of ORS 279.835 to 279.855 or ORS chapter 279A, 279B, 279C, 316, 571, 656 or 657 is a basis for suspension of the landscape contracting business license, revocation of the landscape contracting business license, refusal to issue or reissue a landscape contracting business license, assessment of a civil penalty as set forth in ORS 671.997 or a combination of these sanctions.

Meaning: Failure of the landscape contracting business to properly follow the laws surrounding public contracts (prevailing wage) and to abide by the employment laws,

specifically workers compensation, unemployment tax, and payroll tax requirements can result in the suspension of the landscape contracting business license and the assessment of a civil penalty.

ORS 671.625: MINIMUM STANDARDS FOR CONTRACTS AND BILLINGS; RULES; COMPLIANCE; EFFECT OF NONCOMPLIANCE.

(1) The State Landscape Contractors Board shall by rule adopt minimum standards for written contracts and billings of the landscape contracting businesses. The standards shall set forth requirements for information that must be contained in contracts and billings. The information required shall be any information the board determines is necessary to provide protection for consumers of the services and materials provided by landscape contracting businesses.

(2) Work by a landscape contracting business subject to ORS 671.510 to 671.710 shall only be performed subject to a written contract. Any contract or billing for such work must conform to the standards adopted under subsection (1) of this section.

(3) A contract that does not substantially comply with this section may not be enforced by a landscape contracting business in any court or other proceedings within this state

Meaning: If landscaping work is done by a landscape contracting business without a written contract or if the written contract does not substantially meet the standards as set forth **in OAR 808-002-0020** the business cannot collect from the consumer, nor can the landscape contracting business enforce the contract in any court within the state of Oregon. This doesn't mean that the consumer can't enforce the contract; it is purely a consequence for the landscape contracting business. This is a very rigid requirement for landscape contracting businesses.

OAR 808-003-0010 ADVERTISING

(1) All written advertising, except telephone and internet directory line listings, shall include the landscape contracting business license number.

(2) Advertising shall include, but not be limited to:

(a) Newsprint classified advertising and newsprint display advertising for work subject to ORS 671.510 through 671.710;

(b) Telephone or internet directory space ads, display ads and line listings;

(c) Business cards;

(d) Business flyers;

(e) Business letterhead;

(f) Business signs at construction sites; and

(g) Websites.

(3) No person shall advertise under the heading of "landscape contractor" or any other heading that would lead any person to believe the business is a landscape contracting business in any advertising media unless the person holds an active landscape contracting business license.

Meaning: All written advertisement must include the 4 digit landscape contracting business number in the advertisement. The law allows for an exception from this requirement in telephone and internet directory line listings where no other information about the business is given. The law also specifies that the heading of "landscape

contractor” or any other heading that indicates the business is a landscape contracting business requires an active landscape contracting business license with the LCB. Failure by a landscape contracting business to include this 4 digit number can result in civil penalties up to \$500.

OAR 808-003-0018: EMPLOYMENT, CHANGE OF LICENSE PHASE, SUPERVISORY RESPONSIBILITIES

(1) If a landscape contracting business employs only one licensed landscape construction professional, that licensed landscape construction professional must hold a license covering each phase of landscaping work that the business offers and must be on the payroll each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscape work related to the landscape construction professional's phase of license.

(2) If a landscape contracting business employs more than one licensed landscape construction professional the combined licenses must cover each phase of landscape contracting that the business offers and the licensed landscape construction professionals must be on the payroll each hour or meet the salary test for salaried, exempt employees during the time the landscape contracting business is performing landscape work related to each landscape construction professional's phase of license.

In conjunction with the above rule, see:

OAR 808-003-0040: Limitation of Service by License

(1) A licensed landscape contracting business shall perform only those phases of landscape work for which its owners or employees who are landscape construction professionals are licensed.

(2) The landscape work a licensed landscape contracting business offers to perform shall be limited to the following:

(a) An all phase license holder is entitled to perform all areas of landscape work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape contractor has signed an agreement with the Board prior to April 30, 1996 stating that the contractor will not perform Backflow Prevention work;

(b) An irrigation; no backflow limited license holder may only perform irrigation functions;

(c) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(d) A tree limited license holder may only install new or transplant trees;

(e) A standard limited license holder may perform all areas of landscape work except irrigation and the installation of backflow assemblies;

(f) An irrigation plus backflow license holder may perform only irrigation and the installation of backflow assemblies.

(g) A probationary All Phase Plus Backflow license holder may perform all areas of landscape contracting, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000,

(h) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscape contracting business within a 12 month period the owner or employee who holds the probationary license and is providing supervision as described in ORS 671.540(15) and (16) or 671.565(1)(b) may be required to take specific continued education hours (CEH) as required by the board that are related to the claim issues. Failure to complete the required CEH within the specified time frame

may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.

Meaning: A landscape contracting business can only advertise for and/or perform the phase of landscape work for which it is licensed based upon the phase of license of the licensed landscape construction professional(s) that either own or are employed by the landscape contracting business. OAR 808-003-0200 allows a landscape contracting business to bid on a contract that is outside the phase of its license if it enters into a subcontract with a landscape contracting business that is licensed in that phase of work.

Working outside the scope of a license can result in civil penalties and suspension of license.

ORS 447: PLUMBING 447.060 ENGAGING IN CERTAIN PLUMBING WORK NOT AFFECTED.

(1) ORS 447.010 to 447.156 do not apply to a person:

(2) A landscape contracting business licensed under ORS 671.560 is not required to be licensed under ORS 447.010 to 447.156 to install, repair or maintain backflow assemblies for irrigation systems and ornamental water features if the work is performed by an individual who is licensed as required by ORS 671.615 and is an owner or employee of the landscape contracting business. The repair and maintenance of the backflow assembly must be performed by a tester certified under ORS 448.279. The registration exemption established under this subsection does not exempt the landscape contracting business from the inspection and permit requirements of ORS 447.010 to 447.156.

Meaning: A landscape contracting business licensed through the LCB can perform the installation, repair and maintenance on backflow assemblies for irrigation systems and ornamental water features only if the work is performed by a person who has passed the backflow section of the LCB irrigation exam. The repair and maintenance of the backflow assembly however can only be done by a person who has the tester certification under the Oregon Health Department.

ORS 479.940 ELECTRICAL ACTIVITIES NOT SUBJECT TO LICENSURE UNDER ORS 479.510 TO 479.945; IDENTIFICATION CARDS.

(1) The licensure provisions of ORS 479.510 to 479.945 do not apply to the following activity on Class II and III systems in one and two family dwellings regulated under the Low-Rise Residential Dwelling Code:

- (a) Prewiring of cable television and telephone systems owned by the owner of the residence;
- (b) Garage door openers;
- (c) Vacuum systems;
- (d) Audio and stereo systems;
- (e) HVAC;
- (f) Landscape sprinkler controls;
- (g) Landscape lighting; and
- (h) Doorbells.

(2) The provisions of subsection (1) of this section apply only to persons or businesses licensed and in good standing with the Construction Contractors Board.

(3)(a) The licensure provisions of ORS 479.510 to 479.945 do not apply to a business licensed under ORS 671.510 to 671.710 when making installations of landscape irrigation control wiring and outdoor landscape lighting involving a Class II or Class III system that does not exceed 30 volts and 750 volt-amperes.

(b) A business exempt from licensing under this section shall issue an identification card to its landscape irrigation control wiring or outdoor landscape lighting installer. The form for the identification card shall be provided by the State Landscape Contractors Board. The identification card shall include the name of the installer, the name and State Landscape Contractors Board identification number of the landscape contracting business and the date of issue of the identification card. The card shall be carried by the installer at the job site when performing the allowed electric installations.

Meaning: A landscape contracting business that is licensed with the LCB can install irrigation control wiring and outdoor landscape lighting for systems that do not exceed 30 volts and 750 volt-amperes. However, each individual of the business that is installing this wiring must carry an identification card that is supplied by the LCB. This card is on the LCB website:

<http://www.lcb.state.or.us/LCB/docs/LowvoltageIDCard.instructions.pdf>

ORS 571: NURSERY LICENSE

571.045 Exemption from licensing requirements. ORS 571.055 (1) and 571.057 do not apply to:

(2) A person licensed as a landscape contracting business under ORS 671.560 and 671.565 who does not grow plants, does not store plants except as provided by the State Department of Agriculture by rule, and acquires all plants from a nursery licensed under this chapter.

In conjunction with this statute, the following Administrative rule applies:

OAR 603-054-0080 License Requirement for Persons Doing landscape contracting business

The Department, as required by ORS 571.045(2), hereby establishes that any person doing landscape contracting business that stores plants for more than one year, operates as a grower, dealer or agent, keeps plants for propagation, advertises nursery stock for sale, or sells nursery stock, must obtain a nursery license.

ORS 571.135 Shipping permits, shipping invoices and bills of lading accompanying shipments and deliveries; retention; exceptions.

(3) A shipping invoice or bill of lading shall accompany a commercial shipment or delivery of nursery stock to be offered for sale. If a shipping invoice accompanies the shipment or delivery, the shipping invoice shall include the following:

- (a) The name and address of the owner of the nursery stock.
- (b) The nursery license number of the owner of the nursery stock.
- (c) The point of origin of the nursery stock.
- (d) The specific destination to which the nursery stock is being shipped or delivered.

- (e) A description or inventory of the nursery stock in sufficient detail to allow identification of the nursery stock being shipped or delivered. The description or inventory shall include, at a minimum, the numbers, sizes and varieties of plants included in the shipment or delivery.
- (f) The signature of the nursery stock carrier or the carrier's agent.
- 5) Each of the following persons shall retain a copy of the signed shipping invoice or the bill of lading for a commercial shipment or delivery of nursery stock to be offered for sale:
 - (a) The owner of the nursery stock.
 - (b) The carrier or carrier's agent transporting the nursery stock.
 - (c) The person taking delivery of the nursery stock at the shipment or delivery destination.
- (6) Subsections (3) and (5) of this section do not apply to:
 - (b) A commercial shipment or delivery of nursery stock in the possession of a business licensed by the State Landscape Contractors Board.

Meaning: A landscape contracting business does not have to have a nursery license to procure and sell nursery stock if the business does not store the plants for more than one year and acquires the plants from a licensed nursery. Also, if the landscape contracting business is transporting plants from one place to another, the business does not have to have a shipping invoice or bill of lading. (This is a law to try to stop illegal transport of nursery stock and the stealing of nursery stock in Oregon).

ORS 656: WORKERS COMPENSATION

656.027 Who are subject workers. All workers are subject to this chapter except those non-subject workers described in the following subsections:

(7)(a) Sole proprietors, except those described in paragraph (b) of this subsection.

When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively registered under ORS 671.525 or licensed under ORS

701.035. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(23)(a) Partners who are actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be non-subject workers. For all other partnerships registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt partners shall be whichever is the greater of the following:

(A) Two partners; or

(B) One partner for each 10 partnership employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership registered under ORS 671.525 or licensed under ORS

701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be non-subject workers. For all other corporations registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be non-subject workers. For all other companies registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt company members shall be whichever is the greater of the following:

(A) Two company members; or

(B) One company member for each 10 company employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

Meaning: All employees of a landscape contracting business must be covered with worker's compensation but there are some exceptions if the business entity is different than a sole proprietor. Any business licensed with the LCB is presumed to be an independent contractor and subject to ORS 670.600.

ORS 279C CONTRACT ISSUES UNIQUE TO PUBLIC ENTITIES

Public contracting laws (ORS 279A, 279B and 279C) and their associated rules published by the Attorney General (OAR 137, divisions 46, 47, 48 and 49 – the “Model Rules”). The Oregon Public Contracting Code and the Model Rules govern the purchasing of goods, services and public improvements.

ORS 279C and OAR 137, division 49: addresses public improvements

279C.335. (1) All public improvement contracts shall be based upon competitive bids except:

- (a) Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855.
- (b) A public improvement contract exempt under subsection (2) of this section.
- (c) A public improvement contract with a value of less than \$5,000.
- (d) Contracts for repair, maintenance, improvement or protection of property obtained by the Department of Veterans' Affairs under ORS 407.135 and 407.145 (1).
- (e) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS 279A.065.
- (f) A public improvement contract awarded under subsection (6) of this section in response to an emergency.

(2) Subject to subsection (4)(b) of this section, the Director of the Oregon Department of Administrative Services, a local contract review board or, for contracts described in ORS 279A.050 (3)(b), the Director of Transportation may exempt a public improvement contract or a class of public improvement contracts from the competitive bidding requirements of subsection (1) of this section upon approval of the following findings submitted by the contracting agency seeking the exemption:

(a) It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and

(b) The awarding of public improvement contracts under the exemption will result in substantial cost savings to the contracting agency or, if the contracts are for public improvements described in ORS 279A.050 (3)(b), to the contracting agency or the public. In making the finding, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board may consider the type, cost and amount of the contract, the number of persons available to bid and such other factors as may be deemed appropriate.

(3) In making findings to support an exemption for a class of public improvement contracts, the contracting agency shall clearly identify the class using the class's defining characteristics. Those characteristics shall include some combination of project descriptions or locations, time periods, contract values, methods of procurement or other factors that distinguish the limited and related class of public improvement contracts from the contracting agency's overall construction program. The contracting agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria set forth in subsection (2) of this section.

(4) In granting exemptions under subsection (2) of this section, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board shall:

(a) When appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the contracting agency that support the awarding of a particular public improvement contract or a class of public improvement contracts, without the competitive bidding requirement of subsection (1) of

this section. The findings must show that the exemption of a contract or class of contracts complies with the requirements of subsection (2) of this section.

(5)(a) Before final adoption of the findings required by subsection (2) of this section exempting a public improvement contract or a class of public improvement contracts from the requirement of competitive bidding, a contracting agency shall hold a public hearing.

(b) Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

(c) The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. At the time of the notice, copies of the draft findings shall be made available to the public. At the option of the contracting agency, the notice may describe the process by which the findings are finally adopted and may indicate the opportunity for any further public comment.

(d) At the public hearing, the contracting agency shall offer an opportunity for any interested party to appear and present comment.

(e) If a contracting agency is required to act promptly due to circumstances beyond the contracting agency's control that do not constitute an emergency, notification of the public hearing may be published simultaneously with the contracting agency's solicitation of contractors for the alternative public contracting method, as long as responses to the solicitation are due at least five days after the meeting and approval of the findings.

(6) After declaring that an emergency exists in accordance with rules adopted under ORS 279A.065, a contracting agency may award a public improvement contract in response to the emergency without using a competitive solicitation.

(7) A public improvement contract awarded under the competitive bidding requirement of subsection (1) of this section may be amended only in accordance with rules adopted under ORS 279A.065.

(8) Public improvement contracts excepted from competitive bid requirements under subsection (1)(a), (c), (d), (e) or (f) of this section are not subject to the exemption requirements of subsection (2) of this section.

279C.365 Requirements for solicitation documents and bids and proposals. (1) A contracting agency preparing solicitation documents for a public improvement contract shall, at a minimum, include:

(a) The public improvement project;

(b) The office where the specifications for the project may be reviewed;

(c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;

(d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement, and may, in the sole discretion of the contracting agency, direct or permit the submission and receipt of bids by electronic means;

(e) The name and title of the person designated for receipt of bids;

(f) The date, time and place that the contracting agency will publicly open the bids;

(g) A statement that, if the contract is for a public works subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 276a), no bid will be received or considered by the contracting agency unless the bid contains a statement by the bidder that ORS 279C.840 or 40 U.S.C. 276a will be complied with;

(h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;

(i) A statement that the contracting agency may reject any bid not in compliance with all prescribed public contracting procedures and requirements and may reject for good cause all bids upon a finding of the agency that it is in the public interest to do so;

(j) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and

(k) A statement that a bid for a public improvement contract may not be received or considered by the contracting agency unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board.

(2) All bids made to the contracting agency under ORS 279C.335 or 279C.400 must be:

(a) In writing;

(b) Filed with the person designated for receipt of bids by the contracting agency; and

(c) Opened publicly by the contracting agency immediately after the deadline for submission of bids.

(3) After having been opened, the bids must be made available for public inspection.

(4) A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check of each bidder shall be submitted with or posted for all bids as bid security unless the contract for which a bid is submitted has been exempted from this requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the contract.

(5) Subsection (4) of this section applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways, bridges and other transportation projects, more than \$50,000.

[2003 c.794 §115; 2005 c.103 §15]

279C.370 First-tier subcontractor disclosure. (1)(a) Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract, a bidder shall submit to the contracting agency a disclosure of the first-tier subcontractors that:

(A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement contract; and

(B) Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

(b) For each contract to which this subsection applies, the contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.

(c) This subsection applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000.

(d) This subsection does not apply to public improvement contracts that have been exempted from competitive bidding requirements under ORS 279C.335 (2).

(2) The disclosure of first-tier subcontractors under subsection (1) of this section must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract. The information shall be disclosed in substantially the following form:

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM		
PROJECT NAME: _____		
BID #: _____		
BID CLOSING: Date: _____ Time: _____		
<p>This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.</p> <p>List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)</p>		

Name	Dollar Value	Category of Work
1)	\$	
2)	\$	
3)	\$	
4)	\$	

<p>Failure to submit this form by the disclosure deadline will result in a non-responsive bid. A non-responsive bid will not be considered for award.</p> <p>Form submitted by (bidder name): _____</p> <p>Contact name: _____</p> <p>Phone no.: _____</p>
--

- (3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the contracting agency to be a non-responsive bid and may not award the contract to the contractor. A contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.
- (4) After the bids are opened, the subcontractor disclosures must be made available for public inspection.
- (5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.
- (6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section. [2003 c.794 §116; 2005 c.103 §16]

279C.375 Award of contract; bonds. (1) 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.

(2) At least seven days before the award of a public improvement contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the contracting agency's intent to award a contract. This subsection does not apply to a contract excepted or exempted from competitive bidding under ORS 279C.335 (1)© or (d) or (6). The notice and its manner of posting or issuance must conform to rules adopted under ORS 279A.065.

(3) In determining the lowest responsible bidder, a contracting agency shall do all of the following:

(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

(b) Determine whether the bidder has met the standards of responsibility. In making the determination, the contracting agency shall consider whether a bidder has:

(A) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(B) A satisfactory record of performance. The contracting agency shall document the record of performance of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.

(C) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a bidder if the contracting agency finds the bidder not to be responsible under this subparagraph.

(D) Qualified legally to contract with the contracting agency.

(E) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information, or may find the bidder not to be responsible.

(F) Document the contracting agency's compliance with the requirements of paragraphs (a) and (b) of this subsection in substantially the following form:

RESPONSIBILITY DETERMINATION FORM

Project Name: _____
Bid Number: _____
Business Entity Name: _____
CCB License Number: _____
Form Submitted By (Contracting Agency): _____
Form Submitted By (Contracting Agency Representative's Name): _____

Title: _____

Date: _____

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):

Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has considered whether the bidder:

Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

Has a satisfactory record of performance.

Has a satisfactory record of integrity.

Is qualified legally to contract with the contracting agency.

Has supplied all necessary information in connection with the inquiry concerning responsibility.

Determined the bidder to be (check one of the following):

Responsible under ORS 279C.375 (3)(a) and (b).

Not responsible under ORS 279C.375 (3)(a) and (b).

Attach documentation if the contracting agency finds the bidder not to be responsible.)

(d) Submit the form described in paragraph (F) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

(4) The successful bidder shall:

(a) Promptly execute a formal contract; and

(b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

PREVAILING WAGE

For all public works projects where the contract is worth more than \$50,000, the prevailing rate of wage in the locality where the contract is being performed must be paid to those working on the project.

“Public works” is defined at ORS 279C.800(5) and basically refers to public improvement contracts “carried on or contracted for by any public agency.”

Note that under ORS 279C.810(2)(b) prevailing wages do not apply to any public works project “for which no funds of a public agency are directly or indirectly used.”

Duty to defend “agents” of public entities

Under the Oregon Tort Claims Act an agent of a public entity is entitled to indemnification from that entity if the agent is sued by a third party. See ORS 30.285(1).

DISTINCTION BETWEEN AGENTS AND INDEPENDENT CONTRACTORS

Even if a contract between a party and a public entity states that the party is an independent contractor who will indemnify and hold harmless the entity from any suit brought by a third party, courts will look to the relationship between the party and the public entity to determine whether the party is subject to coverage under the OTCA (Oregon Tort Claims Act).

Courts will consider (1) whether the party is performing a function that the public entity itself is authorized to perform and (2) whether the public entity retains the “right to control” the party’s work. (issues of fact will determine whether a contractor is an “agent” within the meaning of ORS 30.285 and ORS 30.287.

****Note: Do not presume the above mentioned laws are the only laws that will be covered on the examination for the owner/managing employee. Also note that Administrative rules change periodically through actions of the board and for clarification of the laws. The LCB website is a viable source for keeping abreast of these changes as they occur. Website: www.lcb.state.or.us.***

APPENDIX A

FINANCIAL HEALTH

The Financial Health of a business is an issue that is not easily determined and for many landscape contracting businesses the determination that a business is in financial trouble is not seen until it is too late. There are several indicators of financial health that the LCB considers important to mention in this manual though the board has no requirements that a business need to be financially healthy, it is just information that could be useful for any business. Financial Ratios are the main indicator of financial health and for a complete description and analysis of these ratios go to:

<http://www.netmba.com/finance/financial/ratios/>. Analyzing complete and accurate financial statements that include a balance sheet and profit and loss statement can help you as a business owner or managing employee determine if the business is on firm financial footing or if it is destined for bankruptcy.

A. Financial Ratios

Some of the most common financial ratios to consider are:

1. Current Ratio

a. $\text{Current Assets} \div \text{Current Liabilities}$ (#'s from Balance Sheet)

- Measures ability to pay the current liabilities (short term debt) from assets that can be converted to cash. E.g., if the current assets on the balance sheet are \$300,000 and the current liabilities are \$100,000 then the Current Ratio (CR) is 3:1 which means that the business has \$3.00 in solvent assets for every \$1.00 of liability that is payable in the next 12 months.
- Average ratio of Landscape Installation businesses is 1.9:1 [Nationally per PLANET]

2. Quick Ratio

- $[\text{Cash} + \text{Accounts Receivable}] \div \text{Current Liabilities}$ (#'s from Balance Sheet)
- Measures ability to pay current liabilities from liquid assets (assuming A/R is a current number). For instance, if the cash plus A/R is \$150,000 and the current liabilities are \$100,000 then the Quick Ratio (QR) is 1.5:1 which means that there is \$1.50 of cash and A/R to pay \$1.00 of current debt.
- Average ratio of Landscape Installation businesses is 1.4:1 [Nationally per PLANET]

3. Cash to Current Liabilities

$\text{Cash} \div \text{Current Liabilities}$ (#'s from Balance Sheet)

- Measures the amount of fully liquid asset (cash) that is available to pay current debt. For example if the cash is \$15,000 and the current liabilities are \$100,000 then cash to current liability ratio is 0.15 :1 which means there is only \$0.15 available in cash to pay \$1.00 of the current debt (payable in a 12 month period). This means that though the company may have enough current assets to pay the debt, most of these assets would have to be liquidated to pay the \$100,000 of current debt.

Reserves should be built up to avoid having to borrow to meet a greater percentage of the current debt obligation.

- Average ratio of cash to current liabilities for a landscape contracting business is 0.27:1 (\$0.27 for every \$1 of current liability) [Nationally per PLANET]

4. Debt to Equity

Total Liabilities ÷ Owner's Equity (#'s from Balance Sheet)

- Measures the amount of debt that can be financed by the owner's equity (net worth of owner in business => assets – liabilities) e.g if the total liabilities for the business (long and short term) is \$300,000 and the owner's equity is \$450,000 then the Debt Equity ratio is $\$300,000 \div \$450,000 = .60$. This means that the business has \$0.60 of debt for every \$1.00 of owner's equity. The business has less debt than equity and is therefore able to provide funding for the business without outside resources. Borrowing money increases debt which is an increase in liability from principle and interest.
- A Debt to Equity ratio of 1:1 should not be exceeded unless there are significant business situations that would demonstrate a short term need for exceeding this ratio.

B. Production Ratios.

Work produces sales and production ratios help show the owner or managing employee what is happening in the business in terms of production. Some of the common Productivity Ratios are:

1. Sales per employee

Net Sales ÷ Full-time equivalent employees (FTE) [Two ½ time employees = 1 FTE] (#'s from P & L Sheet and number of direct employees)

- Labor is most likely the largest cost to a landscape contracting business and it is a benefit to the business to maximize the amount of sales each employee produces for the business. For example if the company has \$800,000 in sales and the business has 20 employees to produce this amount of sales, the ratio is $\$800,000 \div 20 = \$40,000$. This means that each employee that is directly affecting the sales of this business is producing \$40,000 in sales. This information helps a business see what "should be" and "what is" and make changes to increase this productivity number.
- Average productivity number for landscape contracting businesses is \$77,926 [Nationally per PLANET]

2. Sales to Fixed Assets

Net Sales ÷ Fixed Assets (#'s from P&L and Balance Sheet)

- The fixed assets of a landscape contracting business are largely composed of equipment. Large equipment that gets depreciated over a period of years such as trucks, tractors, skid steer loaders, etc make up the majority of the fixed asset column on the balance sheet. Other items are buildings (if owned) and office equipment. Return on this investment is measured by the amount of sales this equipment produces for the business. This number can help determine if the business owns too much

equipment and should sell and then rent or does not own enough equipment to be profitable. For example if the fixed assets for the business is \$400,000 and the sales are \$800,000 then the ratio of sales to fixed assets is 2:1 ($\$800,000 \div \$400,000$). This means that \$2.00 of sales is produced for every \$1.00 of fixed asset. This is generally considered a low ratio and indicates that the business is probably either invested in a building or has equipment that is not being utilized. If sales can increase without increase in fixed asset this ratio will improve.

- Average for a landscape contracting business is a ratio of about 9.5:1.

C. Profitability Ratios.

Without profit there is really no need to be in business. Profitability ratios tell the owner or managing employee what the business is returning to the owner for his/her investment into the business. Some of the most common profitability ratios are:

1. Gross Margin (Percentage)

Gross profit \div Net Sales \times 100 (#'s from P & L Statement)

- Gross profit is the calculated by subtracting direct costs from sales. Remember direct costs are those costs associated with producing the sales; they must relate directly to the production of a sale. Gross margin percentage then is an indication of how these direct costs are managed. For example if the gross profit of the business is \$300,000 and the sales were \$800,000 then the gross margin is $300,000 \div 800,000 = .375 \times 100 = 37.5\%$. This means that for every \$1.00 of sales, it costs the business \$0.375 in direct cost (labor and material) to produce that sale. The lower the gross margin percentage, the less cost is associated with the sale.
- Average Gross Margin percentage for a landscape contracting business is 39% [Nationally per PLANET]

2. Profit Margin (Percentage)

Profit before taxes \div Net Sales \times 100 (#'s from P & L Statement)

- Profit is the "bottom line" on the P&L Statement and indicates what is left over after all expenses are paid (excluding taxes since taxes can vary from business to business depending on the formation of the business). This percentage is indicative of what the production efficiency is for the business. For example if the business has a net profit of \$100,000 and net sales of \$800,000 the profit margin is: $\$100,000 \div \$800,000 = .125 \times 100 = 12.5\%$. The larger the profit margin the healthier the business is and the more likely it will be able to grow and produce more in the future.
- Average profit margin for landscape contracting business is 3.8% low to 9.7% high. [Nationally per PLANET]

3. Return on Assets (Percentage)

Profit before taxes \div Total Assets \times 100 (#'s from P & L and Balance Sheet)

- This indicator measures what the return is on the assets of the company, which is one indicator of return on dollars invested in the business. For example if the net profit is \$100,000 and the total assets are \$700,000 then the Return on Assets (ROA) is $\$100,000 \div \$700,000 = .143 \times 100 = 14.3\%$. This means that the business is generating \$0.14 for every \$1.00 of business assets. An owner or managing employee should think in

terms of what a person could receive if they invested these assets in a bank or some other stable security.

- Average ROA for landscape contracting business is 12.4% [Nationally per PLANET]

4. Return on Net Worth (owner's equity)

Profit before taxes ÷ owner's equity x 100 (#'s from P & L Statement)

- This indicator measures what the owner receives in return from their equity holding in the business. This is a very important number to an owner, since if the owner has an investment in the business their money either needs to grow or why bother. For example if the net profit is \$100,000 and the owner's equity is \$450,000 then the return on net worth is: $\$100,000 \div \$450,000 = .22 \times 100 = 22\%$ which is a fairly good return considering other forms of investment the owner could have chosen.
- Average return on net worth for a landscape contracting business is 32.3% [Nationally per PLANET]

There are other ratios that can be used to determine the performance of the business in other areas and if these are of interest to you, these can be found on the web at <http://www.netmba.com/finance/financial/ratios/> and also Steven Cohan's book *Business Principles of Landscape Contracting* covers many of these ratios in detail. It is good reading.

APPENDIX B

SAMPLE CHART OF ACCOUNTS

FOR LANDSCAPE CONTRACTING BUSINESS

BALANCE SHEET ACCOUNTS

ASSETS (Account #'s 1000 – 1999)

Current Assets:

- Cash in Bank
- Petty Cash
- Cash in Savings

Accounts Receivable

- Less Allowance for Bad Debts
- Prepaid Expenses
- Inventory

TOTAL CURRENT ASSETS

Fixed Assets

- Land
- Buildings
- Equipment
- Office Fixtures
- Vehicles
- Allowance for Depreciation

TOTAL FIXED ASSETS

TOTAL ASSETS

LIABILITIES (Account #'s 2000 – 2999)

Current Liabilities

- Accounts Payable
- Notes Payable (due within 12 months)
- Payroll Taxes, Current
- Accrued Payroll
- Unpaid Vacation/Sick Time
- Current Portion of L/T Liabilities

TOTAL CURRENT LIABILITIES

Long-Term Liabilities

- Notes Payable (due after 12 months)

TOTAL LIABILITIES

EQUITY (Account #'s 3000 – 3999)

OPEN BALANCE EQUITY

PAID IN CAPITAL

RETAINED EARNING

TOTAL ASSETS = TOTAL LIABILITIES (+) EQUITY => Balance

(CREDIT ACCOUNTS) = (DEBIT ACCOUNTS)

PROFIT & LOSS ACCOUNTS

INCOME (Account #'s 4000 – 4999)

Sales

- Construction Labor
- Construction Materials
- Construction Equipment
- Irrigation Labor
- Irrigation Material

Total Income (Revenue)

DIRECT EXPENSES (Account #'s 5000 – 5999)

Direct Expenses (expenses tied directly to production – on the job expenses)

- Direct Labor
- Labor Burden (taxes, etc)
- Direct Materials
 - Plants
 - Pavers
 - Wood
 - Mulch
 - Irrigation supply
 - Other materials (the more defined the

better the tracking)

- Equipment (owned)
- Rental Equipment
- Fuel (if used on project)

Total Direct Expenses

INDIRECT EXPENSES (Account #'s 6000 – 6999)

Indirect expenses (expenses that are related to job but cannot be attached to a specific job)

Indirect Labor (e.g. picking up materials, travel time, warranty, shop loading time, fueling time, etc)

- Labor Burden (taxes, etc)
- Warranty Materials
- Uniform Expense
- Small tools
- Repair parts
- Fuel (vehicle) & Oil
- Mobile phones
- Other (Itemize if possible)

Total Indirect Expenses

GENERAL OVERHEAD EXPENSES (Account #'s 7000 – 8999)

Overhead Expenses (expenses that occur even if the business is not producing)

- Administrative Salaries
- Labor Burden (taxes, etc)
- Rent
- Office Supplies
- Telephone
- Electric
- Gas
- Water
- Advertising

Licenses
Insurance
Professional Services (lawyer, accountant)
Property Taxes
Taxes
Depreciation
Interest (on equipment purchases)
Interest (lines of credit, etc)
Other (Itemize if possible)
Total Administrative Expenses
Total Expenses (direct + indirect +
administrative)
Net Profit = Total Revenue (-)Total expenses

Credits: The State Landscape Contractors Board recognizes the following for providing reference material and information used throughout this manual:

Business Principles of Landscape Contracting; (Steven M. Cohan) 2006

Jeff Bennett; Attorney at Law (Jordan Schrader Ramis PC)

Oregon Construction Contractors Board (CCB)

Oregon Department of Agriculture

Oregon Department of Motor Vehicles

Oregon State Bar Association

Professional Landcare Network (PLANET)

Scott- Hookland LLP