

Construction Contractors Board

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Residential Contractors: Staying Legal

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Written Contracts & Contract Requirements

When written contracts are required

All contracts on a residential structure that exceed \$2,000 must be committed to writing. If the original contract price is less than \$2,000 and during the course of the project, the contract price exceeds \$2,000, then the contractor must provide the owner a written contract within five days. (ORS 701.305)

Contractors that fail to commit a contract with an owner on a residential structure to writing, when required, are prohibited from claiming a lien. (ORS 87.037)

The CCB encourages contractors to commit all contracts to writing. A well-written contract helps protect both the contractor and the consumer by specifying what has been agreed to. A number of homeowner complaints may be avoided with a well-written contract.

Specific terms that are required in a written contract

All contractors working on residential construction projects are required to include the following in the written contract, when a written contract is required:

- The contractor's name, address, phone number, and CCB license number that is shown on CCB records.
- The customer's name, address where the work will be performed, a description of the work to be performed, the price, and the payment terms.
- An explanation of the property owner's rights under the contract including but not limited to, the ability to file a complaint with the board, and the existence of any mediation and arbitration provision in the contract.

Contractors that complete the building of a **new residential construction** must include in their contract an acknowledgment of property owner's receipt of maintenance information. (Scroll down for more information on the maintenance schedule requirement)

- Contractors building a new residential structure must include in the contract an acknowledgment of a written offer of warranty including the acceptance or rejection of the offer.

Contracts are also required to be legible and in dark ink.

The CCB has developed the following tools to help contractors comply with the new contract term provisions.

- Contractors may download a checklist that will help them recognize problems in their current contracts. [Click here](#) for the contract checklist.
- Contractors may download and incorporate the addendum or verbiage from the addendum into their contracts. [Click here](#) for a copy of the addendum.



Required notices for residential construction

Contractors performing construction work on residential structures are required to provide the following consumer notices and retain proof of the property owner's receipt when the total contract amount exceeds \$2,000.

- [Information Notice to Owner About Construction Liens](#)

- [Consumer Protection Notice](#)
- [Notice of Procedure](#)

Contractors may retain proof of the property owner's receipt of the notices by:

- Including the notices fully within the written contract.
- Getting and keeping signed copies of the notices.
- Providing the property owner with the notices, and include in the written contract, an unambiguous phrase that acknowledges receipt of the notices with the property owner's initials.

Contractors must maintain proof that they delivered any required notices, for two years after the contract is entered into.

Copies of the notices are available to download from the above links. Contractors may also request to have a copy of the notice mailed to them by calling the CCB at 503-378-4621.



Warranties on new residential structures

Who must offer a warranty?

Contractors that enter into a contract to build a new residential structure must make a written offer to the owner or first purchaser, a warranty that provides against defects in materials and workmanship for the structure. (ORS 701.320)

This law does not apply to manufactured dwellings.

Below are common questions and answers about a contractor's obligation under the new law. You may wish to consult an attorney for advice on how this applies to your construction business.

What is a warranty?

A warranty is an obligation by the seller that the seller's product (here, a new home) is free from defective materials or workmanship, together with a promise to repair or replace the defective items and faulty work. A warranty is not a guarantee. Repair or replacement is satisfied by meeting building industry standards. There does not need to be complete customer satisfaction. Generally, a warranty does not cover items that arise from customer neglect.

What does a typical new home warranty cover?

A new home warranty typically covers:

- Structural defects: Warrants against failure of structural components such as the load-bearing elements of the home.
- Major home system failures: Warrants against failure of plumbing, electrical, heating and air-conditioning systems. Also warrants against failure of major appliances, such as refrigerators, dishwashers, ovens and stove-tops.
- Workmanship: Promises to repair defects in the work performed, such as installation.

All warranties are contracts. The terms of the contracts will vary. Some warranties, for example, cover only major home systems. Others provide limited coverage for all of the listed items. Still others exempt certain products or installations. Some warranties allow for the purchase of optional, additional coverage. Any warranty contract satisfies the new law.

Who must supply the warranty?

Although the contractor must offer a warranty, the contractor decides whether to supply the warranty directly or through a company that sells warranties. A direct warranty is a contract between the contractor and the owner or purchaser. A purchased warranty is a contract between a company that sells warranties and the owner or purchaser. Either warranty satisfies the new law.

What period of time must the warranty cover?

The law does not require a specific time for warranty protection. A typical new home warranty protects against structural defects for five to ten years and promises to repair or replace major systems for one to two years.

The contractor may select the time period the contractor feels is appropriate for the warranty.

How much may the contractor charge for the warranty?

The law does not set any limit on the amount that a contractor may charge for the warranty. Typically, new home warranties purchased from warranty companies run around \$250 - \$500. There may also be a service fee, like a deductible, which the homeowner pays when requesting service. A typical service fee is \$50.

The owner may refuse the warranty and, as long as the two parties have not signed the contract, the contractor may withdraw the offer to construct the residential structure.

When must the contractor offer the warranty?

The contractor must, in writing, offer the warranty either before or at the time the contractor and owner (or purchaser) sign a contract for the construction of the home.

What must the contractor do to prove that the contractor offered the warranty?

The contractor must include statements in the contract that: (1) the contractor made a written offer of

warranty, and (2) the owner or purchaser accepted or rejected the offer.



Maintenance schedules on new residential structures

Contractors completing a new residential structure will be required to provide the owner or first purchaser with a recommended maintenance schedule. (ORS 701.335)

By law, the minimum information the maintenance schedule must include is:

- (a) Definitions and descriptions of moisture intrusion and water damage.
- (b) An explanation of how moisture intrusion and water damage can occur.
- (c) A description and recommended schedule for maintenance to prevent moisture intrusion.
- (d) Advice on how to recognize the signs of water damage.
- (e) Appropriate steps to take when water damage is discovered.

With the help of contractors and industry representatives, the CCB developed a Moisture Intrusion & Water Damage information sheet and a recommended maintenance schedule that contractors would be able to use.

Contractors can download a copy of the [maintenance schedule](#) information.

Alternatively, contractors may develop and use their own maintenance schedule as long as it contains the information required by OAR 812-012-0120.



Homebuyers Protection Act

The Homebuyers Protection Act (HPA) is designed to protect home buyers from construction liens when the buyer has already paid for the construction work. Construction work performed **before** the sale of a home may result in a lien **after** the sale. This law offers various ways to protect a buyer against such liens. (ORS 87.007)

The law applies to the following:

1. A new single family residence, condominium unit, or residential building.
2. An existing single family residence, condominium unit, or residential building that had at least \$50,000 worth of improvements, additions or remodeling within three months before the sale.

"Residential building" is not defined. However, "residential structure" means a building with one or more dwelling units, less than four stories tall.

Ways to protect buyers

A contractor selling a home (or condominium unit or residential building) that is applicable under the law must protect the buyer from liens. To comply with the law, the contractor-seller may:

- (1) purchase title insurance that does not exclude filed or unfiled claims of lien;
- (2) retain at least 25% of the sales price in escrow;
- (3) maintain a bond or letter of credit for at least 25% of the sales price;
- (4) obtain lien waivers or releases;
- (5) wait to complete the sale after the deadline for filing liens (usually 75 days)

HPA Compliance Form

The contractor-seller must complete the form Notice of Compliance with the Homebuyer Protection Act, indicating the protection selected.

[Notice of Compliance with the Homebuyer Protection Act \(HPA\)](#)

Bond Option

If the contractor selects the bond, the bond must comply with OAR 812-012-0145. The contractor's regular surety bond will not satisfy this requirement.

Letter of Credit Option

If the contractor selects the letter of credit, the letter of credit must comply with OAR 812-012-0150.

Lien Waivers/Releases

If the contractor selects lien waivers or releases from subcontractors, the contractor should consult an attorney for the appropriate forms and delivery requirements.

Penalties

Failing to provide the Notice of Compliance is a Class A violation.

In addition to penalties or remedies provided by law, if a lien is filed, the contractor may have to pay up to twice the buyer's damages plus the buyer's costs and attorney fees.

Homeowner's right to cancel

Three-day Right to Cancel:

Oregon law contains a mandatory, three-day right of a buyer to cancel a home solicitation contract when the contract is solicited at any place that is not the seller's permanent place of business.

This law applies to construction contracts as well as most other types of contracts.

A construction contract is subject to this law if there is a personal solicitation made by the contractor or the contractor's agent and the contractor's offer is accepted anywhere other than the contractor's permanent place of business.

Regardless of who initiates the contact, in every such situation, the property owner must be given notice of his or her right to rescind the contract. The form of notice is specified by statute in ORS 83.730.

One-Day Right to Cancel

Oregon law permits a property owner to cancel **any** initial contract for construction, improvement, or repair of a residential structure by giving the contractor a written notice of cancellation prior to midnight of the next business day. Some exceptions apply such as work already substantially begun.

The buyer is required to provide the contractor a written notice of cancellation. The contractor does not have any notice requirements. (ORS 701.310)

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