



“LIEN INTO THE TURNS”

by J. Kevin Shuba and Ryan P. Hunt

As the Irish say: “Tis a dull road, indeed, that has no turns.” Following in this tradition, the 74th Oregon Legislature altered the legal landscape for residential construction contractors and subcontractors by enacting House Bill 2654 (2007) that amends ORS chapter 87 (regarding construction liens) and chapter 701 (governing contractors).

House Bill 2654 requires all residential construction contracts that exceed \$2,000 be in writing. This is not new language but was moved from another statute. What’s new is that the bill requires the Construction Contractors Board to adopt administrative rules that require contractors to include mandatory terms in their written contracts including a new-home warranty and maintenance schedule. If an “original” contractor fails to use a written contract (when required) that contractor may not claim a lien arising from the improvement of the real property. “Original contractor” means a contractor who has a contract with the owner. A subcontractor, by nature of its relationship with the general (original) contractor, is not an original contractor and its lien would not be barred by the statute. Failure by that subcontractor to give the owner advance written notice of the lien within no more than eight days of starting work may bar the lien. In any event, ORS 87.030 permits an owner to disclaim any improvement and not be subject to a lien.

Liens are used by contractors and subcontractors to leverage payment on outstanding obligations. Oregon is a direct lien state meaning that any contractor who complies with the statutory notice and filing requirements can create a lien even if the person with whom they contracted has been paid. The power of a lien is the ability to force foreclosure; the sale of the property to satisfy the outstanding balance due. Anyone who closely follows the rules has an automatic “secured interest” in being paid for its work. Depending on one’s vantage point, the new law creates additional layers of protection for homeowners or barriers to acquiring liens for work and materials. It deserves careful scrutiny.

