Oregon State Bar Construction Law Section

Construction Law Newsletter

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In this issue

CONSTRUCTION LIENS FOR LANDSCAPERS AND NURSERYMAN'S LIENS

Van M. White III
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In the course of my practice, I do a fair amount of construction lien work. However, that work is almost always for construction contractors or companies that provided materials for the construction of improvements. Recently, I've been approached by several landscapers with respect to preparing or foreclosing construction liens for their landscape contracting business. Because landscape contractors are regulated by the Landscapers Contractors Board ("LCB") and governed by ORS 671.510-671.710 and OAR 808 (construction contractors are regulated by the Construction Contractors Board and governed by ORS 701 and OAR 812), said inquiries caused me to refresh my memory with regard to construction liens for landscapers and reminded me that there is a separate statute which grants lien rights to those who provide nursey stock.

Van M. White III

We didn't find a lot of case law specifically relating to construction liens for landscape contracting businesses while researching the subject for this article. Given the number of licensed construction contractors in Oregon (over 40,000 as of June 2019) versus the number of licensed landscape contracting businesses in Oregon (1,238 as of June 5, 2019), it's not surprising that there isn't a lot of case law relating to construction liens for landscaping contracting businesses.

Even though landscape contractors and construction contractors are regulated under different statutes and administrative rules, the statutory basis of their construction lien rights is the same. However, because: (1) landscapers are regulated under different statutes and administrative rules and; (2) landscapers generally prepare lots or parcels (rather than construct improvements), there are some things you should be aware of if you haven't performed construction lien or collection work for landscape contracting businesses.

ORS 87.001-87.093 is the Basis for Construction Liens for Landscapers

Just like construction contractors, landscape contracting businesses look to ORS 87.001-87.093 for the authority and statutes relating to securing, perfecting, and foreclosing construction liens.

Save the Date!

Oregon State Bar
Construction Law Section
Annual CLE

WHAT YOU SHOULD KNOW: OREGON CONSTRUCTION LAW 2019

Experienced construction lawyers will review practice tips and recent developments in the following topics:

- Liens and collection tools;
- Construction insurance;
- Oregon Construction Contractors Board update;
- Employment issues in construction;
- Case law and legislative updates;
- Contract drafting considerations; and
- Ethics.

Continuing Legal Education Seminar
(anticipated credit hours)
Oregon State Bar: 6.5 CLE credits (5.5 general plus 1 ethics; approval pending)
Washington State Bar: 5.25 CLE credits (4.25 general plus 1 ethics; approval pending)

Friday, October 4, 2019
8:45 a.m. to 5:15 p.m.
Oregon State Bar Center
16037 SW Upper Boones Ferry Road,
Tigard, OR 97224

Landscape contracting businesses are required to be licensed with the LCB if they perform the type of activities specified in ORS 671.520(1). A landscape contracting business may not file a lien, file a claim with the LCB or bring or maintain in any court of Oregon a suit or action for the performance of any work that is subject to ORS 671.560-671.997 unless they were actively licensed with the LCB when they entered into the contract and were continuously licensed while performing the work for which compensation is sought.

If they are an original contractor (i.e., a contractor who has a contractual relationship with the owner), they are required to provide an Information Notice to Owner About Construction Liens (per ORS 87.093) if, in general, they have a direct contract with a residential property owner for over $2,000. If the landscape contracting business is a subcontractor, they may be required to provide a Notice of Right to a Lien, pursuant to ORS 87.021-87.023, to secure their right to file a lien in the event of non-payment, depending on whether they worked on residential or commercial property.

Liens for landscape contracting businesses must be filed, per ORS 87.035, not later than 75 days after they have ceased to provide labor, rent equipment or furnish materials, or 75 days after completion of construction, whichever is earlier. In addition, landscaping contracting businesses are required to provide the post-lien notices specified in ORS 87.039 and 87.057 to secure their right to attorney fees in the event of non-payment. The deadline for a landscape contracting business to foreclose their lien is, per ORS 87.055, generally 120 days from the date the lien was recorded.

Liens for Landscaping Encumber the Land

An important distinction between landscape contractors and construction contractors with regard to construction liens is whether the construction lien encumbers the land or the improvement situated upon the land. Pursuant to ORS 87.010(1), those who perform labor upon, transport or furnish material to be used in, or rent equipment **used in the construction of any improvement shall have a lien upon the improvement** for the labor, transportation, or material furnished or equipment rented at the instance of the owner of the improvement or the construction agent of the owner. Improvement is

defined as a building, wharf, bridge, ditch, flume, reservoir, well, tunnel, fence, street, sidewalk, machinery, aqueduct or other structure or superstructure.

Whereas, pursuant to ORS 87.010(2), any person who engages in or rents equipment **for the preparation of a lot or parcel or land**, or improves or rents equipment for the improvement of a street or road adjoining a lot or parcel or land at the request of the owner of the lot or parcel, **shall have a lien upon the land** for work done, materials furnished, or equipment rented. Preparation is defined as excavating, surveying, landscaping, demolishing or detaching existing structures or leveling, filling in or otherwise making land ready for construction. As such, per ORS 87.010(2), persons performing landscaping work have a lien upon the land upon which they worked. That is the same for construction contractors who perform excavation work.

In addition, per ORS 87.010(6), architects, landscape architects, land surveyors or registered engineers who prepare plans, drawings, or specifications that are used for the landscaping or preparation of a lot or parcel of land or who supervises the landscaping or preparation shall have a lien, like landscape contractors (i.e., per ORS 87.010(2)), upon the land.

ORS 87.025 (Priority of perfected liens; right to sell improvements separately from land) also addresses the distinction between those whose work or efforts are used in the construction of an improvement and those whose efforts are used in the preparation of a lot or parcel of land.
ORS 87.025(1) holds that a lien created under ORS 87.010(2) or (6) (i.e., work or services relating to the preparation of a lot or parcel of land) and perfected under ORS 87.035 upon any lot or parcel of land shall be preferred to any lien, mortgage, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of the improvement.
ORS 87.025(2) holds that a lien created under 87.010(1), (4), and (5) (i.e., for those whose efforts relate to the construction of an improvement, rather than the preparation of a lot or parcel of land) and perfected under ORS 87.035 upon any improvement shall be preferred to all prior liens, mortgages, or other encumbrances upon the land which the improvement was constructed.
ORS 87.025(2) further contemplates if the lien is only upon the improvement that, upon foreclosure of the lien, the improvement may be sold separately from the land.

Written Contract Requirements

An issue that did come up in our research for this article was the different statutory requirements relating to written contracts for landscape contracting businesses and construction contractors. Both ORS 671 (Landscape Contractors) and ORS 701 (Construction Contractors) and the underlying administrative rules have provisions which require what must be included in certain written contracts for landscaping and construction. Failure to follow those written contract requirements could adversely impact a landscaper's or contractor's right to file claims for compensation or file and enforce construction liens.

For construction contractors, ORS 701.305 holds that a contractor may not perform work to construct, improve, or repair a residential structure without a written contract if the aggregate price exceeds $2,000. OAR 812-012-0110 specifies what must be included in such construction contracts. In addition, ORS 87.037 specifies that an original contractor may not claim a lien arising from the improvement of real property if a written contract for the work is required by ORS 701.305 and the contractor does not have a written contract.

For landscape contracting businesses, ORS 671.625 holds that the LCB may adopt minimum standards for written contracts and billings of landscape contracting businesses and

that landscape work for $2,000 or more shall only be performed subject to a written contract. The written contract requirements for landscape contracting businesses can be found at OAR 808-002-0020. Subsection (2) of said rule relates to written landscape contracts and subcontracts with a homeowner or agent of the homeowner. Said written contract requirements are more detailed and stringent than the CCB's written contract requirements. Subsection (3) of OAR 808-002-0020 relates to written landscaping contracts or subcontracts with another contractor licensed with the LCB or CCB. The CCB does not have a similar statute or rule that regulates what must be included in a contract between a construction contractor and another contractor licensed with the CCB or LCB.

ORS 671.625(3) holds that a contract that does not substantially comply with said section may not be enforced by a landscaping business in any court or other proceedings within the state. In *Jehnings v. Allison*, 93 Or App. 414, 416 (1988), a landscaping business sued for payment for landscaping work. The landscaping business and the property owner who requested the work did not have a written contract for the work for which the landscaping business sought compensation. The work was performed pursuant to an oral agreement. The court found that the landscaping business failed to comply with the written contract requirements of ORS 671.625(2). As such, the court held that a claim for compensation for any landscaping work performed pursuant to an oral agreement cannot be the subject of litigation and plaintiff's claim for payment was dismissed by the court. Even though the landscaper's only claim in the case was for quantum meruit, the court would likely make the same ruling in a similar lien foreclosure action because the court held that the legislature clearly intended that landscaping businesses make their contracts in writing in order to avoid disputes about the value of services and to allow for better regulation of the industry.

Nurseryman's Liens

In conjunction with my research for this article I was reminded that there is a separate lien statute in Oregon for those who provide nursery stock. Whereas those who provide materials for the construction of an improvement look to ORS 87.001-87.093 for their lien rights, those who provide nursery stock look to ORS 87.358 (i.e., Nurseryman's Lien) and ORS 87.364-87.392 (Liens on Real Property) for the authority and statutes relating to securing, perfecting, and foreclosing Nurseryman's Liens. As discussed below, there are a number of differences between the statutes relating to Nurseryman's liens and construction liens.

ORS 87.358 holds that a person who furnishes nursery stock of the value or agreed price of $25 or more, for planting on land, at the request of the owner of that land, or with the knowledge or consent of the owner has a lien on the land upon which the nursery stock is set out and planted for the reasonable and agreed charges for the nursery stock. Nursery stock is defined as fruit trees, fruit-tree stock, nut trees, grapevines, fruit bushes, rose bushes, rose stock, forest and ornamental trees, and shrubs both deciduous and evergreen, florists' stock and cuttings, scions and seedlings of fruit or ornamental trees and shrubs, and all other fruit bearing-plants and parts thereof and plant products for propagation or planting.
Per ORS 87.364, Nurseryman's liens attach to the land on the day on which the claimant ceases to perform the labor or furnish the materials or provisions for which the lien is created.

ORS 87.366 (Filing notice of claim of lien) requires that a person claiming a Nurseryman's lien shall file a written notice of claim not later than 120 days after the lien attaches with the recording officer in the county where the land to be charged with the lien is situated. The items required by ORS 87.366 to be included in the claim of lien are similar to what is required in a construction lien. The Nurseryman's Lien must

include: (1) a true statement of demand; (2) the name of the owner or reputed owner of the land to be charged with the lien; (3) the name of the person by whom the lien claimant was employed; and (4) a description of the property.

A suit to foreclose a Nurseryman's lien generally must be brought within six months of the filing of the claim of lien. If there are extended payment terms, they are required to file suit within six months of the extended payment terms. However, a Nurseryman's lien cannot be continued for more than two years from the time the claim of lien is filed. Per ORS 87.832, Nurseryman's liens shall be foreclosed in the manner provided in ORS 88 (i.e., Foreclosure of mortgages and other liens) rather than in the manner provided in ORS 87 for construction liens.

With respect to priority, ORS 87.392 holds that Nurseryman's liens are prior to and superior to all other liens, mortgages, and encumbrances of a subsequent date against the land upon which the lien is imposed. ORS 87.386 provides that in a suit to foreclose a Nurseryman's lien, the court upon entering judgment for the lien claimant shall allow (1) reasonable attorney fees at trial and on appeal to the prevailing party; and (2) as part of the lien all moneys paid for the filing or recording of the lien as provided in ORS 87.910 as part of the lien.

SUMMARY

While the statutory authority for construction liens for construction contractors and landscape contracting businesses comes from the same set of statutes, there are some differences you ought to be aware of, especially if you haven't previously assisted a landscape contracting business with construction lien or collection issues. The primary differences relate to: (1) whether the lien encumbers the land or the improvement; and (2) the written contract requirements. The written contract requirements for landscape contracting businesses are more stringent than those for construction contractors. Failure to abide by the written contract requirements could cause the lien claimant to lose the right to seek compensation, including potential loss of lien rights. In addition, those who provide nursery stock have lien rights, but the basis of their lien rights comes from a different set of statutes than the statutes that grant construction lien rights to construction contractors and landscape contracting businesses.

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LIQUIDATED DAMAGES SHOULD NEVER BE AN AFTERTHOUGHT

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Time is an essential deliverable in every construction project. Owners and contractors typically agree each may suffer financial loss if the work is not completed on time. The contractor will have extended overhead cutting into already tight margins. The owner will not have the use of the project during the delay period. While the contractor can typically seek a change order to extend time and price, an owner does not have a similar mechanism. Instead, the parties agree on a stipulated (or "liquidated") amount of delay damages at the time of contract, taking the place of proof of actual damage.

A problem arises when the amount of liquidated damage is an afterthought. One party throws out a number near the end of contract negotiations without context or explanation for why the amount is appropriate. The other party may or may not

object. There may or may not be negotiations on a compromise number. Frequently, there is little analysis of potential damages under various delay scenarios and no appreciation of the risk liquidated damages present. Instead, the parties haggle over the number untethered from how that number may or may not be an acceptable substitution for the owner's actual damage caused by delay.

Owners certainly prefer liquidated damages; it avoids costly analysis of calculating actual damages. However, avoiding the "damages" phase of potential future litigation is no excuse for an unsupported liquidated damage amount, especially when considering that a valid liquidated amount precludes the owner from recovering actual damages, even where actual damage exceeds the liquidated amount. *Heinkel v. City of Corvallis*, 13 Or App 375, 382–83 (1973) (citing *Learned v. Holbrook,* 87 Or 576, 589 (1918)).

Contractors too prefer liquidated damages as a motivation lever for subcontractors to maintain or even accelerate the schedule. However, if the amount is too low, there may be little motivational force. Conversely, if the amount is too high, the exposure to liquidated damages puts the contractor's financial stability at risk too late into the project to avoid ruin.

In sum, both parties benefit from initial analysis of the amount of liquidated damages at the contracting stage. Once in litigation, it is too late; once in litigation, the focus is on enforceability.

Oregon courts have established a two-part test for determining enforceability of liquidated damages:

1. Is the provision a liquidated damage provision or something else; and
2. If so, is it valid or an unenforceable penalty.

Kesterson v. Juhl, 157 Or App 544 (1988); *DiTommaso Realty, Inc. v. Moak Motorcycles*, 309 Or 190, 785 (1990). In the construction industry, this first step is typically satisfied. The second step is where the parties run into trouble.

Under the first step, the court analyzes whether the words used in the contract establish a condition precedent to payment or an amount of damages as a result of the other's failure to perform. *Illingworth v. Bushong*, 297 Or 675, 681 (1984) *overruled on other grounds by DiTommaso Realty, supra*. In other words, a liquidated damages clause is not a clause triggering payment after "a contract term has been satisfied." *Kesterson*, 157 Or App at 548. If the words used in the contract create a liquidated damages scenario, the court proceeds to the second step.

The second step presents a more nuanced and fact sensitive approach. Whether a liquidated damage provision is enforceable depends on the reasonability of the amount at issue:

> damages for breach of either party may be liquidated in the agreement, but only at an amount which is reasonable in light of the actual or anticipated harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

ORS 72.7180(1). *See also Illingsworth, supra*, (adopting ORS 72.7180(1) to liquidated damages provisions in cases other than sale of goods); Restatement (Second) of Contracts, § 356(1) (stating "damages for breach by either party may be liquidated in the agreement but only at an amount that is reasonable in light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss. A term fixing unreasonably large liquidated damages is unenforceable on grounds of public policy as a penalty.").

Applying this second step, the court in *Kesterson* held a fee for failing to timely repay a loan was an unlawful penalty where there was "no evidence as to [the lender's] actual or anticipated harm" and "no evidence as to the difficulty of proving loss to [the lender] or the inconvenience or nonfeasibility of obtaining an alternate remedy." *Kesterson*, 157 Or App at 549.

Similarly, *Illingsworth* affirmed the trial court's refusal to enforce a liquidated damages clause where the liquidated amount ($50,000) was "grossly disproportionate to" the actual damage. *Illingsworth,* 61 Or App 152, 156 (1982).

Likewise, in *Stephenson v. Great Frame Up Sys., Inc.,* 184 F Supp 2d 1048, 1057 & n 11 (D Or 2002) the absence of actual harm rendered a liquidated damages clause unenforceable.

Applying these lessons to a construction context, contract negotiations regarding liquidated damages should include an analysis of the owner's actual damages: lost revenue, extended construction administration costs, extended financing costs or refinancing costs, lost tax incentives/advantages, governmental penalties, lost reputation damages, increased insurance costs, and lost opportunity costs. Failing to do so invites the risk that the provision will be deemed an unenforceable penalty.

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When It Comes to Existing Buildings Projects, Prepare for the Unexpected

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Building materials and labor costs are at or near all-time highs. Consequently, a number of building owners and developers are looking to existing buildings to create growth opportunities at a cost savings. Developers may look to existing buildings to adapt a space for a new tenant or upgrade an existing building to allow for more modern use. Rehabbing existing structures includes varying level of uncertainties. This is particularly true in existing buildings, when what lies beneath the floor and within the walls can be a mystery. Worse yet, prior building modifications frequently vary in approach, material and quality throughout the building.

Building Information Modeling (BIM) has a number of benefits that improve coordination and efficiency. BIM allows project teams to efficiently identify and resolve issues before work starts. Ideally, the streamlined communication between design professionals and contractors reduces costs and litigation exposure. As a result, it is no surprise the BIM use is the standard for large commercial projects. However, even the best technology has its limits. When a design professional's knowledge about the structure of an existing building or its systems is limited, designing and implementing adaptations or upgrades can be challenging.

Handling the difficulties that come with limited information needs to be addressed at the beginning

of the project. The design team and client need to set expectations and understand the project goal. The goal of the project will determine the level of information needed. Generally, minor aesthetic changes require less detailed information and documentation than projects that require more significant changes (e.g. installation of heavy machinery, moving or altering walls, replacement of mechanical, electrical, or plumbing systems, or incorporation of a fire protection system).

BIM models can be generated a number of ways. A design professional can start by entering the available historical information into the BIM file. If historical documents are unavailable or incomplete, laser scanning is one way to supplement information. A laser scan provides architects, engineers, and contractors detailed information regarding volumes of spaces. The scans can be used to generate the BIM model or be overlaid on the BIM model to help verify that the available information is accurate.

The BIM model is used to create the drawing set the contractor will use for construction. When an architect or engineer does not know what is concealed within an existing structure, they are forced to model the unknown, which then produces drawing sets that reflect portions of the building that are known with certainty, along with portions that are merely an educated guess. Thus, it is important for the owner, design professionals, and contractors to discuss and understand what is known and what is not.

Because the unforeseen is almost a guarantee in an existing building, it is incumbent upon design professionals to make sure the owner is allocating a sufficient contingency to allow for the necessary flexibility to address the complications that may arise, including asbestos abatement, existing code violations, or any number of complications that could not be determined from historical documents and the other information on hand. (For the sake of the project, hopefully the discovery does not include 10,000 year-old mammoth bones like those discovered during a 2016 expansion project at Oregon State University's Reser Stadium).

It is critical that construction contracts involving existing buildings address how unexpected conditions will be addressed, how deviations from the BIM model will impact the project, and who is responsible for coordinating and maintaining the BIM model. Further, open communication between the design team and owner is necessary to appropriately manage timelines and prepare everyone to expect the unexpected

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2019 OREGON LEGISLATIVE UPDATE

Jakob Lutkavage-Dvorscak
Davis Rothwell

Jakob

The 2019 Oregon Legislative Session adjourned on June 30, 2019 after a dramatic game of hide and seek put the last ten days of the session at a standstill. This being an odd numbered year the legislative session was the extended version which allows for much more actual legislating. Since the Democrats achieved supermajorities in the Senate and House in 2018 election as well as continuing their decades long hold on the governorship, they controlled all levers of power passing easily most of their favored legislation including a new gross receipts tax. However, one of the most notable exceptions was the failure to pass the so-called carbon cap-and-trade bill aimed at reducing greenhouse gas emissions. The bill itself did not have 16 votes in favor but the mere

consideration of the bill led the Republican senators to vacate the state in order to deny the Senate a quorum to conduct business.

As always there is a hodge-podge of bills affecting the construction industry to varying degrees from taxes to retention to conflict minerals to tiny houses and more!

HB 3427 -- Gross Receipts Tax

After a failed ballot measure in 2016 and a failed legislative attempt in 2017 to pass a gross receipts tax, the Legislature passed a more limited gross receipts tax this year with the support of some in the business community. The new tax places a 0.49% on all commercial activity of a business greater than $1 million. The revenue raised from this new tax is supposed to provide an additional $1 billion per year for the education budget. Obviously this is one mostly for the accountants but certainly is worth noting for your larger contractor clients. However, stay tuned because there is already an effort to put the tax on the ballot where the prior gross receipts tax was soundly defeated.

On a related budget note, it appears Governor Brown's plan to raid the SAIF capital surplus to help fund PERS is once again going nowhere. This issue is very important to businesses and contractors because the SAIF surplus is one of the reasons that Oregon has some of the lowest workers compensation insurance rates in the nation. This one will likely have another life down the road.

SB 608 – Rent Control

This year Oregon became the first state to impose rent control on the entire state. The legislation caps rent increases at 7% per year on tenants. If a prior tenant vacates the property there are no caps on the rent increase. To help address concerns about rent control affecting new development, residential properties 15 years or newer are exempted from the new law. The legislation does not eliminate the state pre-emption on cities or counties implementing their own rent control policies. For those readers involved in litigation involving rental properties in Portland it remains an unresolved question whether the City's renter protection ordinances are rent control. There are conflicting Multnomah County Circuit Court opinions on the topic. The legislation appears to be somewhat more forgiving than Portland's regulations but it remains an issue to be watched.

HB 2007 – Diesel Regulation

For the last few years, lawmakers have targeted off-road diesel vehicles for additional emission regulations. Typically the proposed laws have adopted California's policies for off-road diesel vehicles. However, this year the tactic was two pronged. First, a new law was passed that would not allow registration of older diesel engines in the three metro area counties. The restrictions are phased in with the ultimate goal to only allow registration of 2009 or newer clean diesel engines by 2029. There is an exception if the diesel engine is retrofitted to meet stricter emission regulations. Second, the new law inserts a public contract requirement on contracts greater than $20 million requiring contractors to have more than 80% of their on-road fleet vehicles and off-road diesel equipment to have 2010 or newer clean diesel engines. With these new regulations, contractors will certainly need to start planning financially on how they will meet these requirements.

SB 369 – ORS 12.135 Statute of Repose Revision

SB 369 revised the definition of "substantial completion" in ORS 12.135 to provide additional benchmarks that can signify a project is substantially complete and commence the running of the repose period. The previously approved statutory language defining substantially complete was

> "[t]he date when the contractee accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee."

It also now includes as potential benchmarks:

> "The date when a public body issues a certificate of occupancy for the improvement;" or

> "The date when the owner uses or occupies the improvement for its intended purpose."

Whichever event is the earliest commences the period.

This language should help clarify when the repose period commences because oftentimes there is no writing accepting the construction. However, the practice pointer remains the same—make sure your clients understand to obtain either an architect's certificate of substantial completion, a certificate of occupancy, or whatever else the contract may require. If a jurisdiction does not issue certificates of occupancy, then there may still be some litigation issues.

HB 2423 – Small Home Specialty Code

There will be a new code for contractors to learn in the near future after the Legislature passed HB 2423. The bill requires the Department of Consumer and Business Services to adopt a building code for residences smaller than 400 square feet.

SB 455 – Higher Education Contractors

This bill requires Oregon public institutions of higher education to hire contractors that are "Training Agents" as defined under ORS 660.110. A training agent is a company participating in a apprenticeship program. This law only applies to projects estimated at greater than $8 million and would require subcontracts greater than $200,000 to be awarded only to bidders who are also Training Agents.

SB 471 – Conflict Minerals

This bill requires contractors in public contracts to disclose if it procures conflict minerals, which are defined as: Columbite-tantalite or an ore for tantalum; Cassiterite or an ore for tin; Wolframite or an ore for tungsten; or Gold. If it is then it must certify in its bid that its procurement procedures meet those of the Organization for Economic Cooperation and Development's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas.

HB 2415 – Retention Payments

This new law requires all retention amounts held on contracts greater than $500,000 to be held in an interest-bearing escrow account. The accrued interest is due to the subcontractor. Contractors should review their accounting systems to ensure compliance by January 1, 2020 when the law goes into effect.

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