

THE OREGON HOMEBUYER PROTECTION ACT

By

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Background. In Oregon, claims of lien for certain types of labor, material or services that are provided by licensed contractors to real property can be created and exist for a period of time *before* they have to be recorded in the public records. This period can generally last up to 75 days after the contractor has provided the labor or material, or 75 days after completion of the residential construction, whichever is earlier. As a result of this 75-day period, occasionally lien claims are recorded on property *after* it has been sold to the new owner, even though the debt upon which the lien is based belongs to the prior owner. If the prior owner is unable or unwilling to pay the debt, the new owner may be compelled to do so in order to avoid a lien foreclosure on their home. Additionally, there have been instances in which the home seller pays the general contractor, but the general contractor does not pay his subcontractors, who then file lien claims on the home. It is these types of risks that the Homebuyer Protection Act (“HPA”) seeks to address.

Seller Alternatives. The HPA provides that for certain residential sales transactions, sellers are required to take one of the following actions to protect new buyers from construction liens that are not yet recorded as of the date of closing of the sale:

- The seller may purchase or provide title insurance with extended coverage to help cover any construction liens that are recorded after the buyer has completed the purchase of the residence.
- Escrow may be instructed to retain an amount of funds that is not less than 25% of the sale price of the property until the status of all construction liens is resolved after closing. The seller may maintain a bond or letter of credit in an amount that is not less than 25% of the sale price of the property, until the status of all construction liens is resolved after closing.
- The parties may simply delay closing the purchase of the residence until 75 days after the completion of construction.

Not later than the date of closing, the seller is required to complete, sign and deliver to the buyer a form specifying either: (a) The method that the seller has selected to comply with the requirements of law; or (b) That the law does not apply to the sale of the subject property. The form of notice is designated by Construction Contractors Board. Violation of this subsection of the law is a Class A Violation.²

Real Estate Licensees Not Liable for Seller Noncompliance. Real estate licensees, when acting in their professional capacity, cannot be held liable in any criminal, civil or administrative proceeding arising out of the failure of a seller to comply with this law. However, this does not mean that licensees need not be informed about the HPA. Undoubtedly, upon learning of the law’s requirements, buyers and sellers will turn to their Realtors® for direction.

Properties Subject to the HPA. The HPA applies to the following sales of residential property:

1. A new single family residence.
2. A single family residence where the sale price for original construction or contract price for improvements completed within three months prior to the date of sale of the property is \$50,000 or more.
3. A new residential condominium unit.
4. A residential condominium unit where the sales price for original construction or contract price for improvements completed within three months prior to the date of the sale of the property is \$50,000 or more.
5. A new residential building (up to four units and used for residential purposes only).
6. A residential building where the sales price for original construction or contract price for improvements completed within three months prior to the date of the sale of the property is \$50,000 or more.

Violations and Penalties. In addition to any other remedy or penalty provided by law, a buyer may file a civil action to recover up to twice the amount of actual damages caused by a seller's violations of the obligations described above. The court may award prevailing party attorney fees. Actions brought for violations of the HPA have a two-year statute of limitations.

There are several defenses to claims of violation, including: (a) That there has been no enforcement or attempted enforcement of any lien claim against the property arising before the date of closing; (b) That the claim of lien is invalid; or (c) That the seller has satisfied the lien or obtained the necessary releases.

A violation is not considered to have occurred during the period that the validity of the lien is disputed in a judicial proceeding or Construction Contractor's Board proceeding. The law does not require payment of a lien that is invalid, nor does it apply to lien claims arising out of materials, equipment, services or labor requested by the buyer.

When the seller is an Oregon licensed contractor, failure to comply with the HPA may become the basis for suspension or revocation of the contractor's license, refusal to issue or reissue a license, assessment of a civil penalty or any combination thereof. Significantly, it is also a violation of the Unlawful Trade Practices Act.

Footnotes

1 ORS 87.007

2 A Class A Violation is an offense punishable by a fine of up to \$600. Violations are not punishable by a jail sentence.