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CCB LEGISLATIVE CONCEPTS

With the approval of its Board, the CCB submitted its legislative concepts to Department of Administrative Services. These concepts must be approved by the Governor's Office before they are sent to Legislative Counsel for drafting.

Consumer Protection: The Board proposed providing more protection to residential consumers. One concept increases the bond amount for residential contractors. A second concept creates a recovery fund for injured homeowners.

Notices to Consumers: The Board is considering steps to persuade contractors to be more consistent in providing required notices to consumers (especially the Information Notice to Owner and the Consumer Notification). One concept allows consumers an additional year to assert CCB claims against a contractor who fails to provide the Consumer Notification form. This concept also requires that a contractor maintain written proof that the Consumer Notification form was delivered to a consumer and sets up a rebuttable presumption that the form was not delivered if the contractor can't produce that proof.

Information Notice to Owner: The Board proposed that contractors must maintain written proof that the contractor delivered the Information Notice to Owner about Construction Liens. This concept also sets up a rebuttable presumption that the form was not delivered if the contractor can't produce that proof.

"Pay Twice" Lien Situation: The Board proposed changes to Oregon's lien laws that would allow payment by the homeowner to the contractor to be a complete defense to a lien claim. (Editorial Note: This would fundamentally change Oregon's lien law from a "direct" lien concept to a "derivative" lien concept. Since its conception, Oregon's lien law has followed the "direct" lien view.)

RMI Accountability: The Board is concerned that there are persons acting as "professional" Responsible Managing Individuals ("RMI") for Oregon contractors. The Board proposes that a RMI must exercise management or supervisory authority over a company's construction activities.

Insurance Coverage: The CCB's present laws do not require insurance companies to notify the CCB when a contractor's insurance has lapsed. The Board proposed a concept that would require insurance companies to give that notice to the CCB.

Notice of Court/Arbitration Awards: The Board proposed that residential contractors (not commercial ones) must notify the CCB whenever they receive an adverse court judgment or arbitration award against the contractor. However, a contractor does not have to report a judgment or award if the contractor pays it within 30 days or appeals it.

Notice of Bankruptcy: The Board proposed that all contractors must notify the CCB of any bankruptcies filed by the contractor or its owners or officers.

Contract Terms: The Board proposed that a construction contract with a residential owner must meet minimum standards adopted by the board. The Board must publish one or more model construction contracts that meet or exceed the minimum standards.

Business Ownership: The Board proposed that any CCB licensee must notify the CCB if its ownership or officers change. Previously only partners and corporations had to do this.

The Board can decide to withdraw some of these concepts before filing them with the Legislature. If you are interested in any of the above issues, there are a number of steps you can consider. You can attend CCB Board meetings and voice your opinions (contact the CCB to get onto the

mailing list for notice of the meetings). Second, you can contact an interested organization (such as AGC or HBA) that maintains an active involvement in the legislative process. Third, you can contact your representative directly.

EROSION OF TRADE CREDITORS' TOOLS?

Oregon CCB's "Past Unresolved Activity" Statute, Potential Bankruptcy Limitation and New Higher Bond Requirement.

Many trade creditors consider Oregon's Construction Contractors Board to be a significant ally because of its ability to refuse licensing a contractor. Recent bankruptcy rulings, however, may significantly limit the CCB's ability in this area.

A typical scenario is where a small construction company shuts down its business and where its owners file personal bankruptcy. Creditors of these small companies may not only be unable to collect the debt against the company, but they also may be frustrated to learn the same individuals have started up a new construction contractor business.

Fortunately for creditors, Oregon law presently permits the CCB to refuse issuing a license to a new businesses that share any owner or officer in common with a previous defunct business that has certain "past unresolved activity," such as unpaid judgments or CCB final orders. As a result, these owners have been forced to enter into repayment plans with the defunct company's creditors in order to obtain the license for their new company.

A recent bankruptcy court case, however, suggest the CCB's ability to compel repayment may be significantly limited. Federal law (which preempts Oregon law if a conflict exists) provides that a governmental agency cannot discriminate against bankruptcy debtors. At least one recent non-binding bankruptcy court ruling suggests this federal law may prevent the CCB from refusing to license a new business started up by individuals who obtained a bankruptcy discharge of the debts they owed from operation of a previous defunct

company. *Lee v. Washington Dept Labor & Indust.*, US Bankr. Ct. Adv. Proc. No. 05-04002 (W.D. Wa. 2005).

While the issue has not yet been decided as to Oregon's law, a case concerning this same issue is presently before the Oregon bankruptcy court. In response, the CCB has recently adopted temporary rule OAR 812-003-0175. That rule provides a new business may have to provide a surety bond that is up to five times higher than the normal bond amount if the company or its owners or officers are in a "past unresolved activity" situation. Presently, this regulation will expire September 5, 2006 unless renewed.

Although the Oregon bankruptcy court has not yet issued its ruling, the CCB's policy of attempting to prevent "bad" contractors from starting new businesses remains strong. The question that remains, however, is whether these recent developments will impact trade creditors.

FIRM NEWS:

MICHAEL SCOTT spoke to the Oregon Casualty Adjusters Association on April 20, 2006 about construction defect claims in Oregon and Washington. Michael E. Farnell of Parsons Farnell & Grein co-authored the materials.

Alan Mitchell spoke to the Home Builders Association of Metropolitan Portland on April 19, 2006 about Oregon and Washington construction lien claims. Joining Mr. Mitchell in this presentation was John LaVeille of Pacific Northwest Title Company.

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Alan L. Mitchell, Editor

SCOTT ♦ HOOKLAND LLP

L A W Y E R S

Mailing Address: Post Office Box 23414, Tigard, Oregon 97281 ♦ Street Address: 9185 SW Burnham, Tigard, Oregon 97223
Telephone: 503-620-4540 ♦ Facsimile: 503-620-4315 www.scott-hookland.com