

APPENDIX A - OREGON LIEN AND BOND INTAKE CHECKLIST
(Use in conjunction with lien or bond specific summary and checklist)

1. Is the Project located in Oregon?

Lien laws are different in every state. If the project is a private (non-governmental) project and located out of state, then the matter should be referred to a qualified attorney licensed to practice in that jurisdiction. The same is true of government projects located out-of-state.

If the project is owned by a state or local agency or body outside of Oregon, the claim will likely be governed by that state's particular "Little Miller Act." For federal projects outside Oregon, the Oregon attorney could issue the proper Miller Act Notice (subject to ethical and professional insurance considerations), but filing suit on the bond may require associating with an attorney in that jurisdiction.

2. Is the client a licensed contractor?

If the claim is for work for which licensing with the Oregon Construction Contractors Board ("CCB") is required (non-supplier claims), then being licensed with the correct endorsement under ORS 701.021 is a prerequisite to pursuing a lien or bond claim. In general terms, construction contractors must be licensed with the CCB to be entitled to pursue a construction lien or any other claim. ORS 701.131. There may be certain exemptions, however, those are limited. *Id. at (2); 701.010*. Certain other trades, such as electricians and plumbers, have additional licensing requirements, and will be barred from pursuing such legal remedies if they do not hold valid additional licenses for those trades.

Also, some trade licensure statutes require the claimant to "plead and prove" licensure. An outline of the various laws and agencies affecting contractors can be found in publications available from the CCB.

For bond claims on state and local projects, the licensing requirements applicable to Oregon's Little Miller Act are generally equivalent to those under the construction lien statutes. For federal projects, being a non-licensed contractor is not necessarily an absolute bar, since work on a site under the jurisdiction of the federal government is exempt from the Oregon contractor licensing statutes. ORS 701.010(2).

3. Is the Project private or public?

If the property is owned privately (not by the federal, state or local government, or any subdivision of the same), then the claimant's remedy is to file a **construction lien claim**. Check to determine whether there may also be a voluntary payment bond on the project. If the Project is public, then the claimant's remedy is to file a **bond claim**, either under the Miller Act (for federal projects) or under the Little Miller Act (for Oregon projects). Yet, to the extent that the public has given up an interest in its property, such as a leasehold or right-of-way, that private interest in public property may be subject to a construction lien.

ORS 87.010 describes protected parties and the activities that give rise to construction lien rights under Oregon's Construction Lien Law (ORS 87.001 et seq.). See Checklist item 6 below, Appendix B Summary of Steps and Checklist for Oregon Construction Liens.

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4. If the Project is public, is the claimant a protected party who can assert a claim against the bond?

a. The protected parties under Oregon’s Little Miller Act includes suppliers and subcontractors, no matter how “remote” to the prime contractor. See Checklist item 6 below, Appendix C Summary of Steps and Checklist for Oregon Public Works Claim.

b. By contrast, the protected parties under the federal Miller Act are limited as follows:

Federal Government			
Prime Contractor			
First Tier Supplier		First-Tier Subcontractor	
Supplier	Subcontractor	2 nd Tier Supplier*	2 nd Tier Subcontractor*
		Supplier or Subcontractor	Supplier or Subcontractor

ONLY THE PARTIES **ABOVE** IN GREY ARE PROTECTED BY A FEDERAL MILLER ACT PAYMENT BOND. THOSE IN WHITE ARE **NOT** PROTECTED.

* Timely written notice of claim is required

See Checklist item 6 below, Appendix D Summary of Steps and Checklist for Federal Public Works Claim.

5. All Projects

Review and consider contractual requirements, progress payment waivers and dispute resolution procedures that may apply to the underlying dispute. An action on a federal Miller Act bond cannot be waived until after claimant has furnished labor or material. 40 USC §3133(c).

IMPORTANT NOTICES

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