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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 808
LANDSCAPE CONTRACTORS BOARD

FILED

03/28/2024 10:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates language to reflect statute regarding contract standards.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/26/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

Clarifying that this rule applies to all contracts with real property owners, including residential and commercial.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 671.625 and ORS 671.627

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule amendment does not affect racial equity.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal and economic impact.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

There is no cost associated to other agencies, this affects approximately 1500 small businesses, there are no reporting or other costs required.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Several Board members are small business owners.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Board acts as its own Rule Advisory Committee.

AMEND: 808-002-0020

RULE SUMMARY: Removes temporary rule to make it permanent and clarifies "homeowner/lessee or other consumer type" to be "consumers" to encompass all types including both residential and commercial property.

CHANGES TO RULE:

808-002-0020

Minimum Standards for Written Contracts and Billings ¶

(1) Contracts. Pursuant to ORS 671.625(2) a contract for landscaping work for which the business charges \$2,000 or more for a landscape job must be in writing. For the purpose of this rule, "landscape job," has the same meaning it does under OAR 808-002-0495.¶

(2) ~~W~~Except as provided in subsection (3) written landscaping contracts and subcontracts ~~with non-contractor homeowner/lessee or other consumer type, or an agent of the homeowner/lessee or other consumer type~~ shall include, but not be limited to, the following:¶

(a) Landscape contracting business name, license number, business address, mailing address if different from the physical business address, and telephone number;¶

(b) ~~Homeowner/lessee consumer or other c~~Consumer type's name and address;¶

(c) Address or location of work to be performed if different from the ~~homeowner/lessee or other consumer type's~~ address;¶

(d) General description of the work to be performed and materials to be installed;¶

(e) Estimated time for completion or estimated completion date;¶

(f) Price and payment schedule;¶

(g) Description of guarantee; if no guarantee is being provided, a statement that no guarantee is being provided;¶

(h) Signatures of the authorized business representative and ~~homeowner/lessee or other consumer type~~;¶

(i) Statement that the business is licensed by the Oregon State Landscape Contractors Board (Board) and the current address and phone number of the Board;¶

(j) If subcontractors will be used for the performance of any of the landscaping work, the contract must include a statement notifying the ~~homeowner/lessee or other consumer type~~ subcontractors may be used to perform portions of the landscaping work;¶

(k) If the contract contains an arbitration clause or binding arbitration clause, the contract must include language explaining that if the ~~homeowner/lessee or other consumer type~~ signs the contract, the ~~homeowner/lessee or other consumer type~~ may be waiving their right to access the Board's claims process and may not have access to the landscape contracting business' bond;¶

(L) Pursuant to HB 2292 (2023), Chapter 304 and effective January 2, 2024, a Notice of Right to Cancel Contract must be included as an attachment to the contract when first presented to a ~~home~~real property owner/ or lessee consumer. Both the contract and the Notice of Right to Cancel Contract must bear the signatures of the ~~home~~real property owner/ or lessee consumer and an authorized business representative before the three-business day right to cancel time period commences. The Notice of Right to Cancel Contract must be on the form provided by the Board. The Notice of Right to Cancel Contract will explain that a ~~home~~real property owner/ or lessee consumer who signs a written contract with a landscape contracting business may, within three business days after the date of signing, cancel the contract in writing unless:¶

(A) The ~~home~~real property owner/ or lessee consumer agrees in writing that the landscape work may begin before the three-business day right to cancel period expires; or¶

(B) The ~~home~~real property owner/ or lessee consumer agrees to an amendment of the terms or conditions of the contract after the three-business day cancellation period has already expired;¶

(m) As used in subsection (L) of this rule three business days means three consecutive business days, excluding Saturdays, Sundays, and holidays. For example, if the day the contract and the Notice of Right to Cancel Contract are signed by the ~~home~~real property owner/ or lessee consumer is a Friday, then three business days after the execution of the contract and Notice of Right to Cancel Contract would run through midnight on the following Wednesday. However, if the ~~home~~real property owner/ or lessee consumer who signed on a Friday waives the three-business day right to cancel, then the landscape contracting business may order materials and start work any day between, and including, the Friday signing day and the following Wednesday; and¶

(n) Effective January 2, 2024, the landscape contracting business must, in addition to the provision of a physical address for receipt of written correspondence, identify a form of electronic communication such as facsimile,

email, or text messaging for use by the ~~home~~real property owner/or lessee consumer unless, the landscape contracting business does not use electronic communication, such as facsimile, email or text messaging, for the conduct of its landscape contracting business. The ~~home~~real property owner/or lessee consumer may send a written cancellation of the contract to the landscape contracting business, as required in subsection (L) of this rule and HB 2292 (2023), Chapter 304, using first class mail, certified mail, hand delivery, or the written form of electronic communication identified by the landscape contracting business in the contract.¶¶

(3) Written landscaping contracts or subcontracts with another contractor licensed with the Board or with the Construction Contractors Board must include, but not be limited to, the following:¶¶

(a) Landscape contracting business name;¶¶

(b) Other contractor's name;¶¶

(c) Address or location of work to be performed;¶¶

(d) General description of the work to be performed;¶¶

(e) Estimated completion date or statement regarding schedule of work;¶¶

(f) Price and, if payments are to be made, a payment schedule;¶¶

(g) Description of guarantee; if no guarantee is being provided, a statement that no guarantee is being provided;¶¶

(h) Signatures of the authorized business representative for both the other contractor and the landscape contracting business;¶¶

(i) Notification of the date the landscape contracting business signed the contract with the homeowner/lessee consumer and the date the three-day business period for homeowner/lessee consumer cancellation will have expired.¶¶

(4) Changes or amendments to landscaping contracts and subcontracts must identify the scope of the change or amendment, must demonstrate that the change or amendment is agreed to by both parties, and be in writing. Changes or amendments to the landscape contract and subcontracts may be in the form of facsimile, email, or text messaging.¶¶

(5) All billings by a licensed landscape contracting business shall include the following:¶¶

(a) Name, address (and mailing address if different from the physical business address) and telephone number of the licensed landscape contracting business;¶¶

(b) Name and address of the ~~homeowner/lessee~~ consumer;¶¶

(c) Total contract price and amount paid to date;¶¶

(d) The amount now due and the work performed for the amount due.

Statutory/Other Authority: ORS 183, ORS 671.670, ORS 670.310

Statutes/Other Implemented: ORS 671.625, ~~HB 2292 (2023), Chapter 304~~ORS 671.627