

## Legislative changes sweep up chimney workers, more

Builders aren't alone in facing a host of laws addressing construction defects

Looking to protect consumers and reduce construction defect claims, the Oregon Legislature in 2007 passed key bills governing how local contractors do business.

Yesterday we looked at two new statutes, House bills 2654 and 3242, which will require Oregon contractors to carry more insurance, rethink existing contracts and eventually revisit the classroom. Today, we discuss new laws that affect dispute resolution, chimney sweeps, home inspectors, landscape contractors and personnel issues.

### Choice of forum clauses may not be enforceable.

When a contract or job goes bad, Oregon residents now have more power to have their disputes heard in state courts under Senate Bill 484. If an Oregonian contracts to buy less than \$15,000 in residential construction services, any out-of-state forum mandated in the contract are unenforceable.

This legislation allows residents to revoke agreed-upon clauses requiring non-Oregon forums for both arbitration and contract suits. The first lesson is clear: Contractors cannot rely on contract language concerning the choice of forums. The second repercussion presents a danger for contractors ignoring that first lesson: Attempting to enforce the forum clause may make a contractor liable for the consumer's resulting attorney's fees.

### Changes sweep up chimney workers

SB 605 may be overlooked due to its narrow scope, but it makes a big difference to those earning their living cleaning or servicing chimneys. Chimney sweeps are considered "contractors" under the new legislation and therefore must be licensed as such and at times have appropriate insurance and bonds. This modifies the current law requiring a license to inspect or repair a chimney but not to clean one. There's one exception: Chimney sweeps have a grace period of one year after the date of enactment of this bill before being disciplined for not being licensed.

### Inspectors will notice higher fees

A new fee structure under SB 95 means more upfront costs to fund licensing and regulation. In place of the current maximum \$75 fee for annual certificate renewal, fees may now be levied totaling \$150 for the initial two-year certificate and another \$150 for renewal every other year.

### Landscape contractors get clarification

Mostly clarifying existing law, SB 62 lays out the circumstances



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under which property owners, their agents and subcontractors can make claims against landscapers for breach of contract, negligent work or improper work.

In another consumer protection move ensuring money exists for homeowner recovery, the law provides that claimants other than the property owner cannot recover more than \$3,000 from a bond. Additionally, no single recovery can exceed \$3,000 for all dispute resolution costs, including interest and attorney fees. The law also formally approves mediation as a dispute resolution device. The state Landscape Contractors Board already uses mediation for most claims.

### Name changes call for notification

Licensed contractors must immediately notify the state Construction Contractors Board upon any identity, name or address change for a contractor, responsible managing individual or other controlling individual named in SB 91. Moreover, when a party leaves a construction partnership or joint venture, a new license is required before work can continue. These changes apply to personnel and license applications occurring Jan. 1, 2008, or later.

Another minor change contained in this legislation requires trustees' information to be included in licensing applications by trusts.

### Know your rights

Parties to a contested hearing before a state agency must now be served personally or in the mail by the agency under HB 2423. Additionally, anyone facing a hearing is now entitled to a more extensive explanation of what the hearing will involve, including what evidence can be presented and explanations of when a default order can be entered. The state agency must also deliver notice of a right to hearing and information regarding how to request a hearing if one is not scheduled to anyone affected.

*Thomas S. Smith is an attorney at Davis Wright Tremaine LLP, where his practice includes the management, operation, construction, development, acquisition, leasing and disposition of conventional and distressed real estate. Contact him at [thomasmith@dwt.com](mailto:thomasmith@dwt.com) or 503-778-5404. Dean Phillips is of counsel, advising on private and municipal corporation and contractors on large construction projects, including architectural and engineering contracts and licensing issues. Contact him at [deanphillips@dwt.com](mailto:deanphillips@dwt.com) or 503-778-5284.*