

808-002-0500

Landscaping Work

"Landscaping Work," as used in ORS 671.540, 671.570, 671.660(5), and 671.690, **and 2015 Laws Chapter 672**, means:

(1) The planning or installing of lawns, shrubs, vines, trees, and nursery stock outdoors including the preparation of property on which the vegetation is to be installed. For the purposes of this rule, "preparation of property" includes, but is not limited to the installation of root penetration prevention materials, the placement of containers and pots that require the use of power equipment to move, the adding and incorporating of soil amendments, importation of topsoil and other planting media, removal of soil, and final grading to the specified aesthetic and drainage needs of a site on which landscaping work is to be performed;

(2) The preparation, installation, and repair of artificial turf installed outdoors, except sports fields. For purposes of this rule:

(a) sports field means one or more areas of a property that total more than 30,000 square feet of artificial turf and are designated to be used primarily for sport or other athletic activities

(b) "preparation," for the purpose of this rule, includes, but is not limited to the installation of root penetration prevention materials, base material such as crushed rock, gravel, or decomposed granite, grading to smooth out the base material, compacting the base, laying, cutting, stretching, seaming, and fastening the turf, the addition of a filler, and brushing.

(2) The ~~construction~~**installation, maintenance** or repair of ornamental water feature or **landscape** drainage systems;

(3) The ~~construction~~**installation** or repair of irrigation systems for lawns, shrubs, vines, trees and nursery stock;

(4) The maintenance of irrigation systems with the use of compressed air;

(5) The preparation of plans and drawings for a landscape irrigation system.

"Plans and drawings for a landscape irrigation system" include, but are not limited to plans and drawings that identify the positioning, number, type and model of pumps, piping, valves, sprinklers, nozzles, emitters, filters, controllers and other components for the system. The landscape construction professional may only prepare these plans and drawings if that professional holds a license that authorizes the installation of irrigation systems.

~~(56)~~ The planning, **installation, maintenance, or repair** and installing of fences, decks, arbors, patios, landscape edging, driveways, walkway and retaining walls, which can be constructed of, but not limit to, the following materials: sand, gravel, rocks, bricks, concrete, asphalt, wood, wire, plastic, composite decking, fabrics and synthetic turf.

~~(67)~~ Landscaping work does not include structural work, waterproofing or work with waterproof membranes, flashing, or other work involving the building envelope that is outside the scope of license of a landscape contracting business.

808-002-0455

Install

(1) For the purpose of ORS 671.520 **and 2015 Laws Chapter 672** "install" means:

(a) the planting of lawns, trees, shrubs, vines and nursery stock outdoors including the preparation of the property. For the purpose of this rule, planting includes, but is not limited to, the excavation of the planting pit or hole, physically moving the plant into the pit or hole, backfilling the pit or hole, compacting the backfill and staking the plant if necessary.

(b) the laying of artificial turf as defined in OAR 808-002-0500(2) including the preparation of the site.

(c) the construction of

(A) ornamental water features,

(B) landscape drainage,

(C) irrigation systems,

(D) fences,

(E) decks,

(F) arbors,

(G) patios,

(H) landscape edging,

(I) driveways,

(J) walkways; and

(K) retaining walls.

(2) Installing does not include:

(a) the placement of mulching materials which includes, but is not limited to bark dust, chips, husks, shells or compost; and

(b) the planting of nursery stock for commercial sale or reforestation.

808-002-0780

Plan and/or Install

"Plan or Install" as used in ORS 671.520(2)(a) and (f) means:

(1) "Plan," for the purposes of this rule, means the ability to lay out verbally, or in sketch or scale drawing form, a landscape project for implementation, including preparation, construction, and planting ~~and the actual preparation, construction, and planting of the landscape project as defined in OAR 808-002-0455.~~

(2) "Install," for the purposes of this rule, has the same meaning as it does under OAR 808-002-0455.

808-002-0200

Casual, Minor, or Inconsequential

"Casual, Minor, or Inconsequential" work, as used in ORS 671.540(1)(c)(C), includes:

(1) The replacement of shrubs, vines, trees and nursery stock with varieties that are similar in habit and culture;

(2) The replacement of existing lawns;

(3) The replacement of artificial turf;

~~(34)~~ The planting of annuals, perennials and bulbs in existing beds and outdoor pots and containers that are part of a structure or require power equipment to be placed when empty or filled. This does not include the commercial production of nursery stock;

~~(45)~~ The replacement of non-concrete landscape edging;

~~(56)~~ In an irrigation system, the replacement of three or fewer malfunctioning sprinkler heads with heads of the same or of a similar type and hydraulic equivalency;

~~(67)~~ "Casual, minor or inconsequential" work does not include:

(a) The construction of new planting areas;

(b) The construction or repair of arbors, decks, driveways, fences, retaining walls, walkways, patios, concrete landscape edging, or ornamental water features, drainage systems or irrigation systems; or

(c) The maintenance of irrigation systems with the use of compressed air.

(d) The placement of outdoor pots and containers where the use of powered equipment is required when the pots or containers are empty or filled.

808-002-0250

Construct Ornamental Water Features, Drainage Systems, Irrigation Systems

(1) As used in ORS 671.520(1)(c), to "construct" ornamental water features includes, but is not limited to:

- (a) Excavating;
- (b) Liner installation;
- (c) Gravel, rock and boulder placement;
- (d) Piping;
- (e) Pump installation;
- (f) Automatic fill installation;
- (g) Mortaring;
- (h) Concreting; or
- (i) Filter installation.

(j) To construct ornamental water features does not include the installation of pre-fabricated systems that are self contained and do not require construction on the site.

(2) As used in ORS 671.520(1)(c), to "construct" drainage systems includes, but is not limited to:

- (a) Trenching;
- (b) Installing drainage pipe or pipe fittings;
- (c) Installing drainage filtering materials including filter fabric, gravel, or other natural or synthetic materials; or
- (d) Backfilling.

(e) To construct drainage systems does not include installing drainage systems for buildings, basements, foundations, footings, roofs, or crawl spaces, unless done in conjunction with planting lawns, trees, shrubs, nursery stock or other landscape work.

(3) As used in ORS 671.520(1)(c), to "construct" irrigation systems includes, but is not limited to:

- (a) Trenching;
- (b) Installing irrigation pipe or pipe fittings, valves, control wires, sprinkler heads, emitters, nozzles, controllers or other elements of an irrigation system;
- (c) Altering an existing irrigation systems; or
- (d) Backfilling.

808-002-0810

Repair Ornamental Water Features, Drainage Systems, Irrigation Systems

(1) As used in ORS 671.520(1)(c), "repair" ornamental water features includes, but is not limited to:

- (a) Liner patching;
- (b) Rock and boulder replacement;
- (c) Mortaring; or
- (d) Pump replacement.

(e) Repair of ornamental water features does not include draining, cleaning or refilling ornamental water features.

(2) As used in ORS 671.520(1)(c), "repair" drainage systems includes, but is not limited to:

- (a) Patching; or
- (b) Replacement of piping, fittings and filtering materials.

(3) As used in ORS 671.520(1)(c), "repair" irrigation systems includes, but is not limited to:

- (a) Replacing any irrigation water line;

~~(b) Disassembling and replacing the internal parts of backflow assembly when performed pursuant to ORS 447.060(3).~~

~~(c) Repair of irrigation systems does not include replacing three or fewer sprinkler heads with the same or similar type and hydraulic equivalency sprinkler heads, adjusting sprinkler head nozzles; or programming irrigation controls.~~

808-002-0338

Drainage Systems

(1) "Drainage Systems," as used in ORS 671.520(1)(c), mean assemblies of piping and fittings that are used to drain lawns, trees, shrubs, and nursery stock and other landscape work. "Drainage Systems" do not include systems used solely to drain roofs, foundations, footers, buildings, basements, or crawl spaces unless done in conjunction with landscape work. Drainage systems do not include systems used to drain agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

(2) Installation. For the purposes of ORS 671.520(1)(c), to install drainage systems includes, but is not limited to:

(a) Trenching;

(b) Installing drainage pipe or pipe fittings;

(c) Installing drainage filtering materials including filter fabric, gravel, or other natural or synthetic materials; or

(d) Backfilling.

(e) To install drainage systems does not include installing drainage systems for buildings, basements, foundations, footings, roofs, or crawl spaces, unless done in conjunction with planting lawns, trees, shrubs, nursery stock, artificial turf or other landscape work.

(3) Maintenance. As used in ORS 671.520(1)(c), "maintain" drainage systems includes, but is not limited to:

(a) Cleaning out the catch basin; or

(b) Cleaning out the drain tiles.

(4) Repair. As used in ORS 671.520(1)(c), "repair" drainage systems includes, but is not limited to:

(a) Patching; or

(b) Replacement of piping, fittings and filtering materials.

808-002-0884

Use of Compressed Air

~~Use of compressed air as used in ORS 671.520(1)(d) means the use of an air compressor or air storage tank to introduce air into an irrigation system to remove water within the system for winter.~~

808-002-0480

Irrigation Systems

"Irrigation systems" as used in ORS 671.520(1)(ee):

(1) Includes, but are not limited to, assemblies of station or master valves, piping, sprinklers, nozzles, emitters, filters, or controllers and the positioning and piping of pumps; that are installed for the purpose of watering lawns, trees, shrubs or nursery stock.

(2) If an irrigation system is connected to a water supply that is used for multiple purposes, the irrigation system begins immediately downstream of a backflow device (if required) or any shut-off valve installed at the point of connection in the water supply line separating the irrigation system from the other functions of the water supply.

(3) Irrigation systems do not include systems used to irrigate agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

(4) For the purpose of this rule, a shut-off valve is any valve installed solely for the purpose of isolating all functions of an irrigation system from the supply source and a station or master valve is a valve installed for the purpose of distributing a controlled amount of water to the other components of the irrigation system.

(5) Installation. For the purposes of ORS 671.520(1)(e), to install irrigation systems includes, but is not limited to:

(a) Trenching;

(b) Installing irrigation pipe or pipe fittings, valves, control wires, sprinkler heads, emitters, nozzles, controllers or other elements of an irrigation system;

(c) Altering an existing irrigation systems; or

(d) Backfilling.

(6) Maintenance. Maintenance of irrigation systems includes, but is not limited to:

(a) the use of compressed air. "Use of compressed air," as used in ORS 671.520(1)(d), means the use of an air compressor or air storage tank to introduce air into an irrigation system to remove water within the system for winter;

(b) Replacing debris screens in nozzles and drip irrigation;

(c) Any project that includes cutting, raising and changing irrigation head grade more than four (4) inches; or

(d) Replacement of irrigation heads.

(7) Repair.

(a) As used in ORS 671.520(1)(c), to "repair" irrigation systems includes, but is not limited to:

(A) Replacing any irrigation water line;

(B) Disassembling and replacing the internal parts of backflow assembly when performed pursuant to ORS 447.060(3).

(b) The Repair of irrigation systems does not include replacing three or fewer sprinkler heads with the same or similar type and hydraulic equivalency sprinkler heads, adjusting sprinkler head nozzles; or programming irrigation controls.

808-002-0730

Ornamental Water Features

(1) "Ornamental Water Features," as used in ORS 671.520(1)(c) & (5), means outdoor fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions including shallow, decorative pools (singularly or in combination with others), or streambeds constructed of material such as liners, gravel, rocks, boulders, or concrete. Ornamental water features may include piping, pumps, or a filtration system.

(2) Ornamental water features do not include prefabricated systems which are self contained and do not require construction on the site.

(3) Installation. For the purpose of ORS 671.520(1)(c) "install" ornamental water features includes, but is not limited to:

(a) Excavating;

(b) Liner installation;

(c) Gravel, rock and boulder placement;

(d) Piping;

(e) Pump installation;

(f) Automatic fill installation;

(g) Mortaring;

(h) Concreting; or

(i) Filter installation.

(j) To install ornamental water features does not include the installation of pre-fabricated systems that are self-contained and do not require construction on the site.

(4) Repair. As used in ORS 671.520(1)(c), "repair" ornamental water features includes, but is not limited to:

(a) Liner patching;

(b) Rock and boulder replacement;

(c) Mortaring; or

(d) Pump replacement.

(e) Repair of ornamental water features does not include draining, cleaning or refilling ornamental water features.

808-002-0490

Landscape Edging

"Landscape edging," as used in ORS 671.520(1)(d), means concrete, metal, plastic, wood or other material that is used to separate different planting elements of a landscape from each another.

808-004-0180

Claimants' Responsibility to Pursue Claim; Processing claims filed with the Construction Contractors Board (CCB) and the Landscape Contractors Board (LCB)

(1) Throughout the processing of a claim, a claimant has the responsibility to pursue the claim and to respond in a timely manner to requests from the agency for information or documentation.

(2) The agency may close a claim under OAR 808-004-0260 if:

(a) The claimant fails to respond to a written request from the agency, or to provide requested information or documentation within a time limit specified in that request; or

(b) The claimant fails to respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 808-004-0260.

(4) If a claim is filed with the CCB and the LCB, the claimant must:

(a) Notify the LCB of the complaint filed with the CCB within 14 days of filing that claim with the CCB; and

(b) Provide a copy to the LCB of the complaint filed with the CCB.

(5) A determination by either agency is not binding on the other agency.

(6) The total amount required to be paid by the respondent to the claimant may not exceed the damages sustained.

OAR 808-003-0040

Scope of License and ~~Subcontracting; Sanctions for Claims Filed against Probationary License~~

(1) **Scope of License.** A licensed landscape contracting business may only advertise for or perform those phases of landscaping work for which its owners or employees hold a valid landscape construction professional license.

(2) The landscaping work a licensed landscape contracting business advertises for or performs shall be limited to the following:

(a) For an all phase license holder, all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;

(b) For an irrigation, no backflow, limited license holder, irrigation functions, including, **but not limited to, the preparation of plans and drawings for landscape irrigation systems and** the maintenance of irrigation systems with the use of compressed air;

(c) For a sod and seed limited license holder, grass seed planting or sod laying;

(d) For a tree limited license holder, install new or transplant trees;

(e) For a planting limited license holder, plan or install lawns, shrubs, vines, trees or nursery stock and perform grading and drainage services for the installation of lawns, shrubs, vines, trees or nursery stock. This also includes the preparation of the property on which the vegetation is to be installed as defined in OAR 808-002-0500. A planting limited licensing holder cannot perform low voltage work.

(f) For a standard limited license holder, all areas of landscaping work except irrigation functions and the installation of backflow assemblies;

(g) For an irrigation plus backflow license holder, irrigation functions, including, **but not limited to, the preparation of plans and drawings for landscape irrigation systems,** the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.

(h) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of \$15,000,

(3) **Landscaping Work Exceeding Licensee's Scope.** A landscape contracting business may bid on a job or enter into a contract that includes **one or more phases** the phase of landscaping work for which it is not licensed if that landscape contracting business:

(a) Upgrades the landscape contracting business license phase by employing a landscape construction professional licensed for that phase of landscaping work and notifies the board of this change in license prior to performing this landscaping work; or

(b) Subcontracts the landscaping work that is outside the phase of the license to another licensed landscape contracting business licensed for that phase of landscaping work and comply with the minimum standards for written contracts as required in OAR 808-002-0020(1)(k).

(4) Landscaping Job Exceeding Licensee's Scope or Including Construction Contracting. A landscape contracting business may bid on a job or enter into a contract that, as part of the landscaping project, includes:

(a) Landscaping work for which the landscape contracting business is not licensed, and which is also within the scope of a construction contractors license under ORS chapter 701, if the landscape business subcontracts with a construction contractor licensed under ORS chapter 701 to perform that work within the scope of the construction contractor's license; or

(b) Construction contracting work that is not included within the lawful scope of work of a landscape contracting business, including work of residential specialty contractors and commercial specialty contractors, and for which the landscape contracting business does not fall under a statutory exemption from appropriate licensure. This construction contracting work may be subcontracted only if the landscape contracting business subcontracts with a

construction contractor licensed under ORS chapter 701 to perform work within the scope of the construction contractor's license, and if the construction contractor and its employees are properly licensed by the Department of Consumer and Business Services, Building Codes Division when required by law.

(5) Subcontracting.

(a) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with another licensed landscape contracting business to perform landscaping work, pursuant to subsection (3) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed landscape contracting business or licensed landscape contracting professional.

(b) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with a construction contractor licensed under ORS chapter 701 to perform construction contracting work pursuant to subsection (4) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed construction contractor.

(6) Subsection 3 through 5 of this rule do not allow a landscape contracting business to advertise or represent that the business is licensed to provide construction contractor services or specialty trade services regulated by the Department of Consumer and Business Services, Building Codes Division.

~~(4) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscape contracting business within a 12 month period the owner or employee who holds the probationary landscape construction professional license and is providing supervision as described in ORS 671.540(1)(q) & (r) or 671.565(1)(b) may be required to take specific continuing education hours (CEH) or approved courses as required by the board that are related to the claim issues. Failure to complete the required CEH or courses within the specified time frame may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.~~

808-003-0126

Permits and Other Requirements for Work Performed by a Landscape Contracting Business

(1) Prior to the performance of work a landscape contracting business must obtain a permit, if required. This includes but is not limited to the installation of:

- (a) A backflow assembly for irrigation systems or water features;
- (b) A retaining wall, driveway, deck, fence, walkway, arbor, landscape edging or patio;
- (c) Low voltage wiring for irrigation systems or landscape lighting;
- (d) Plantings on structures; and
- (e) Drainage systems for landscaping work.

(2) Prior to the performance of landscaping work on a structure the landscape contracting business must confirm that the structure has been properly engineered and municipal approval has been obtained in writing or by issuance of a municipal permit for construction.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by a licensed landscape

construction professional who holds a backflow license and who is either an employee or owner of a landscape contracting business. The landscape construction professional or landscape contracting business shall obtain all required permits prior to the installation of the backflow assembly and the landscape construction professional shall install the backflow assembly in conformance with the applicable code requirements.

(b) If a landscape construction professional or landscape contracting business fails to obtain permits to tap into the potable water system for the installation of backflow assemblies for irrigation or ornamental water feature or fails to comply with applicable code requirements, the Board, in addition to any other remedy, may suspend, condition or revoke the landscape construction professional and/or landscape contracting business license.

(4) The preparation of plans and drawings for a landscape irrigation system may only be prepared by a landscape construction professional if that professional:

(a) holds a license that authorizes the installation of irrigation systems as stated in OAR 808-003-0040 of this rule; and

(b) meets the employment requirements of ORS 671.570(1)(d); or

(c) meets any of the alternative experience qualifications listed under OAR 808-003-0025.

808-003-0015

Application for Landscape Contracting Business and Landscape Construction Professional License

(1) Application for a landscape contracting business license shall be on forms provided by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional assumed business names under which the landscaping work is conducted and Corporation Division registry numbers (if applicable). The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable;

(b) Mailing and physical address of the business entity;

(c) Name of all owners and percent of ownership of each owner;

(d) Name and license number of all licensed landscape construction professionals employed by the business as required under ORS 671.565 along with a signed and notarized verification of employment form provided by the agency. A business may meet the requirements of ORS 671.565, notwithstanding the conditions of 657.044, if the licensed landscape construction professional is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscape contracting business' operations and is receiving remuneration, whether by salary or other payment, for services provided;

(e) Name and address of owner or managing employee;

(f) Independent contractor certification statement;

(g) A signed statement by the owner of the business, on which the landscape contracting business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(h) Social security number of the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings);

(i) Complete questions to Licensing and Litigation History and Criminal Background sections;

- (j) State Tax Identification number, if applicable;
 - (k) Federal Employer ID Number (EIN), if applicable;
 - (l) Workers Compensation Information, if nonexempt; and
 - (m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.
- (2) Application for a landscape contracting business license must be accompanied by:
- (a) A non-refundable application fee;
 - (b) A required license fee;
 - (~~b~~c) A properly executed surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;
 - (~~e~~d) A Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than \$100,000 **if the application is received prior to January 1, 2106 and not less than \$500,000 if the application is received after January 1, 2016** listing the Landscape Contractors Board as the certificate holder;
 - (~~e~~e) A Certificate of Completion of Owner/Managing Employee course from an approved course provider and proof of passing the Laws, Rules & Business Practice examination **if the managing owner or managing employee does not hold an active landscape construction professional license**;
 - (~~e~~f) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.
 - (~~f~~g) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships;
 - (~~g~~h) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional who is supervising work for the landscape contracting business as required in OAR 808-003-0018; and
 - (~~h~~i) Certificate of Insurance verifying workers' compensation insurance coverage for all employees, if the applicant qualifies as nonexempt.
- (3) Application for a landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:
- (a) A non-refundable application fee;
 - (b) Verification of experience and/or transcripts or copies of completion certificates from courses of study;
 - (c) If applicable, name of employing licensed landscape contracting business or businesses;
 - (d) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" means the person applying for the individual landscape construction professional license;
 - (e) Complete questions to Licensing and Litigation History and Criminal Background sections;
 - (f) Social security number of the applicant;
 - (g) Mailing and physical address of the applicant; and
 - (h) Signature of applicant.

(4) Application for a probationary landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

(a) A non-refundable application fee,

(b) If applicable the name of the employing licensed landscape contracting business or businesses.

(c) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" means the person applying for the individual probationary landscape construction professional license;

(d) Complete questions to Licensing and Litigation History and Criminal Background sections;

(e) Social security number of the applicant;

(f) Mailing and physical address of the applicant; and

(g) Signature of applicant.

(5) If an applicant as defined in subsections (1), (3) and (4) of this rule has any unpaid damages as stated in subsections (1), (3) and (4) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to issue the license.

808-003-0095

Liability Insurance

(1) An applicant for the landscape contracting business license or renewal shall;

(a) submit a "Certificate of Insurance" (certificate) from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and subsection (2) of this section and

(b) ~~will~~ continue to meet those insurance requirements for as long as the applicant is licensed.

(2) The certificate ~~shall~~ **of insurance must** include:

(a) **the** name of the insurance company,

(b) policy number, ~~and~~

(c) **effective dates of coverage;**

(d) coverage **in at least the** amount **required in ORS 671.565 and Section 2 of this rule;**

(e) **the agent's name**, ~~and state that~~

(f) the Oregon Landscape Contractors Board is the certificate holder.

(2) The certificate must be for an amount not less than \$100,000 **if the application is received prior to January 1, 2016 and not less than \$500,000 if the application is received after January 1, 2016** and include public liability, personal injury and property damage insurance covering landscaping work.

(3) The name of the entity as it appears on the certificate must be the same as the name on the landscape contracting business license application or license of record with the agency and the same entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the certificate must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the certificate must include the names of all partners (except limited partners);

- (c) If the entity is a limited liability partnership, the certificate must be issued in the name of all partners and the name of the limited liability partnership;
- (d) If the entity is a limited partnership, the certificate must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the certificate;
- (e) If the entity is a corporation or trust, the certificate must be issued showing the corporate or trust name; or
- (f) If the entity is a limited liability company, the certificate must be issued in the name of the limited liability company.
- (4) A landscape contracting business must continuously have in effect public liability, personal injury and property damage insurance during the licensing period to maintain an active license.
- (5) A new certificate must be on file with the agency prior to the expiration date on the previous certificate. If the policy as required in subsection 2 of this section expires and a new certificate is not received on or before 5 pm on the day of policy expiration, the agency may suspend the landscape contracting business license
- (6) Upon cancellation of the insurance required under ORS 671.565 the agency may immediately suspend the landscape contracting business license as provided for in 671.610(2)(b).
- (7) If a landscape contracting business is licensed as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types and a new license is required, the application must be accompanied by a new certificate.

808-003-0230

Renewal of Landscaping Contracting Business and Landscape Construction Professional License

(1) Application for renewal of a landscape contracting business license shall comply with ORS 671.660 and be:

(a) Accompanied by:

(A) Required renewal fee; ~~and~~

(B) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.560 and 671.563, "applicant" has the same meaning as owner as defined in OAR 808-002-0734; ~~and~~.

(c) A certificate of insurance as required in OAR 808-003-0095 if the licensee's insurance coverage amount is less than \$500,000.

(b) On forms provided by the agency and the licensee shall update the following items:

(A) Mailing address;

(B) Assumed business name;

(C) Entity type;

(D) Employer status as required by ORS 671.525 and OAR 808-003-0090;

(E) Listing of owners/officers and percentage of ownership of each owner;

(F) List of landscape construction professional(s), with accompanying license numbers employed by the business;

(G) Bond amount as required by ORS 671.690 and OAR 808-003-0613;

(H) Insurance expiration date as required by OAR 808-003-0095; and

- (1) Name of the owner/managing employee, if applicable as required by ORS 671.595
- (2) Application for renewal of a landscape construction professional license shall comply with ORS 671.660 and be:
- (a) Accompanied by:
 - (A) Required renewal fee; and
 - (B) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.560 and 671.563, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.;
 - (b) On forms provided by the agency and the licensee shall update the following items:
 - (A) Mailing address; and
 - (B) Name of landscape contracting business(es) individual is employed by, if applicable;
 - (C) Listing of continuing education courses completed, if applicable; and
 - (D) Signature of applicant.
- (3) If an applicant as defined in subsections (1) and (2) of this rule has any unpaid damages as stated in subsections (1) and (2) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to renew the license.
- (4) If an applicant satisfies all requirements for license renewal before the expiration date:
- (a) The license is renewed;
 - (b) The effective date of the license is the expiration date; and
 - (c) The license is valid until the last day of the anniversary month of the initial issues of the license.
- (5) If an applicant satisfies all requirements for license renewal within two years after the expiration date:
- (a) The license will be renewed;
 - (b) The effective date of the license is the date the agency updates the record; and
 - (c) The license is valid until the last day of the anniversary month of initial issuance of the license
- (6) If an applicant satisfies all requirements for renewal more than two years after the expiration date, the license cannot be renewed or reissued. The applicant must apply for a new license under OAR 808-003-0015.

808-003-0060

Examinations; Translation of Exam

- (1) The exam will consist of the following sections:
- (a) Laws, Rules and Business Practice which includes Contract Law, General Business, and Agency Involvement;
 - (b) Plants and Turf;
 - (c) Design, Grading and Drainage;
 - (d) Hardscaping;
 - (e) Irrigation Systems, which includes, but is not limited to pipes and fittings, electrical, head and nozzles, Hydraulics, installation/practical application, plan questions, winterizing, repair/troubleshooting, valves, plant culture, drip irrigation, design, and pumps; and

(f) Backflow, which includes, but is not limited to the installation of irrigation and ornamental water feature backflow assemblies, cross connections, piping, valves, and related plumbing code provisions.

(2) All applicants must successfully pass the Laws, Rules and Business Practice section.

(3) To obtain an All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Low Voltage; Design; & Personal Safety, Irrigation and Backflow Prevention sections.

(4) To obtain a Standard license, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, and Hardscaping sections.

(5) To obtain an Irrigation license, the applicant must successfully pass the Laws, Rules and Business Practice, Irrigation and Backflow Prevention sections.

(6) To obtain a Planting license the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, and Design, Grading and Drainage sections.

(7) To obtain a Probationary All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Irrigation and Backflow Prevention sections within 12 months after the first sitting of any section of the examination.

(8) Translation of Exam.

(a) Pursuant to 2015 Laws Chapter 672 all exams will be given in the English language, unless otherwise requested.

(b) A candidate must notify the exam provider if they wish to take any section of the exam in a Spanish language.

808-003-0125

Notification of Change of Address, Employment, Partners or Owners or Ownership Interest

(1) Within ~~ten (10)~~ **thirty (30)** calendar days following a change of address, the landscape construction professional shall submit written or online notification to the agency as provided in ORS 671.603.

(2) Within ~~ten (10)~~ **thirty (30)** calendar days following a change of address, the landscape contracting business shall submit written or online notification to the agency as provided in ORS 671.603.

(3) A landscape contracting business shall notify the agency in writing within ten (10) days after the date a landscape contracting business' phase of license changes due to:

(a) The license phase of an owner or employee who is the licensed landscape construction professional and phase basis of the business changes; or

(b) The landscape construction professional who holds part or wholly the phase basis of the landscape contracting business license ceases to own or be employed by the landscape contracting business.

(4) A landscape construction professional shall notify the agency in writing within ten (10) days of the date of termination of employment or ownership from an actively licensed landscape contracting business.

(5) A landscape contracting business subject to ORS 671.595 must:

(a) Within ten (10) calendar days of the date a managing owner or managing employee ceases to act in the roles as defined in OAR 808-002-0625 or 808-002-0734(2) notify the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the managing owner or managing employee ceasing to act in this role.

(b) Within thirty (30) calendar days of a change of managing owner or managing employee, designate a new managing owner or managing employee and must have notified the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the new managing owner or managing employee performing this role.

(6) Within ten (10) calendar days following a change in partners or owners or a change in percentage of an ownership interest, the landscape contracting business shall submit written notification of the change to the agency as required by ORS 671.605.

808-004-0211

Address of Claimant and Respondent

(1) Initial notice of a contested case or arbitration directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within ~~40~~**30** days of any change in the party's address withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the claim and until 90 days after the date the agency notifies the parties that the claim is closed.

808-002-0020

Contracts; 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) Written Landscaping contracts and subcontracts with a homeowner or an agent of the homeowner shall include, but not be limited to, the following:

(a) Landscape contracting business name, license number, business address and telephone number;

(b) Consumer's name and address;

(c) Address or location of work to be performed if different from the consumer'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 such a statement shall be included;

(h) Signatures of the authorized business representative and consumer;

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

(j) Effective January 1, 2012: If subcontractors will be used for the performance of landscaping work, the contract must include a statement notifying the consumer that there will be subcontractors used to perform landscaping work.

(23) **Written** Landscaping contracts or subcontracts with another contractor licensed with the Landscape Contractors Board or the Construction Contractors Board shall 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 such a statement shall be included; and
- (h) Signatures of the authorized business representative for both the other contractor and the landscape contracting business.

~~(3) For enforcement actions taken by the Landscape Contractors Board subsection (1) and (2) of this are retroactive to August 1, 2011. All contracts or subcontracts with another contractor signed on or after August 1, 2011 only need comply with subsection (2).~~

(4) Changes or amendments to landscaping contracts and subcontracts shall identify the scope of the change or amendment, be agreed to by both parties, and be in writing.

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

- (a) Name, address and telephone number of the licensed landscape contracting business;
- (b) Name and address of the consumer;
- (c) Total contract price and amount paid to date;
- (d) The amount now due and the work performed for the amount due.

808-002-0495

Landscape Job

"Landscape job," means the performance of, bidding on, contracting for, or arranging for landscaping work on a given job site, with the same owner in any 12-month period, regardless of the number of contracts or bids submitted.

808-040-0020

Continuing Education Biennial and Reporting Requirement

(1) Biennial CEH requirement. To maintain licensing, a landscape construction professional ~~must complete~~:

(a) licensed for six (6) years or less must complete sixteen (16) hours of continuing education hours (CEH) every two years unless such requirement is waived by the Board under ORS 671.676(4)) and OAR 808-040-0070.

(b) licensed for more than six years must complete eight (8) hours of continuing education hours (CEH) every two years unless such requirement is waived by the Board under ORS 671.676(4)) and OAR 808-040-0070.

~~(a2)~~ The ~~16 CEH~~**required hours** must be completed during the two-year period immediately preceding the renewal date of the landscape construction professional license.

~~(b3)~~ The ~~16 CEH~~**required hours** must conform to OAR 808-040-0040.

(24) Reporting Requirement at Renewal. As a requirement of renewal of an active landscape construction professional license, licensees are required to certify that the licensee has fulfilled the CEH requirement.

(35) Licensees with even numbered licenses must report the CEH requirement by the license expiration date in even numbered years.

(46) Licensees with odd numbered licenses must report the CEH requirement by the license expiration date in odd numbered years.

(57) New Licensees. CEH requirements for new licensees are as follows:

(a) New licensees who receive an even numbered license in an odd numbered year must report 8 CEH **the first reporting cycle**, and then report the full 16 CEH with the renewal every even numbered year thereafter. An example of this is an individual who receives an even numbered license in 2011 must report 8 CEH in 2012 and then 16 CEH in 2014.

(b) New licensees who receive an even numbered license in an even numbered year must report the 16 **CEH the first reporting cycle** requirement every even numbered year thereafter.

(c) New licensees who receive an odd numbered license in an even numbered year must report 8 CEH **the first reporting cycle**, and then report the full 16 CEH with the renewal every odd numbered year thereafter. An example of this is an individual who receives an odd numbered license in 2012 must report 8 CEH in 2013 and then 16 CEH in 2015.

(d) New licensees who receive an odd numbered license in an odd numbered year must report the 16 **CEH the first reporting cycle** requirement every odd numbered year thereafter

(e) CEH obtained by new licensees during the two-year period immediately preceding the renewal date of the landscape construction professional license will be eligible to meet the initial CEH requirement.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: 2007 OL Ch. 550 **ORS 671.676**

808-040-0080

CEH Requirement for Reinstatement to Active Status

(1) Except as provided for in subsection (2) of this section any licensee that reinstates an inactive or expired landscape construction professional license to active status must:

(a) Comply with OAR 808-003-0255;

(b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the 16 CEH **required hours** obtained within the two years immediately preceding the renewal date of the landscape construction professional license; and

(c) Meet the CEH requirement for each subsequent renewal period.

(2) Any licensee that reinstates an expired landscape construction professional license to active status more than 14 days after the expiration of the license and the license was subject to audit prior to its expiration, the licensee must submit documentation as per the audit requirement of OAR 808-040-0060.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: 2007 OL Ch. 550 **ORS 671.676**

808-003-0610

Bonds, Generally

(1) A properly executed Landscape Contractors Board bond issued after January 1, 2010 must:

(a) Be in the form adopted by the Landscape Contractors Board **required by the agency** as the Landscape Contractors Board Surety Bond revised January 1, 2010.

(b) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the

agency may require the licensee and surety to use the most recent revision of the surety bond form.

(c) If issued after January 1, 2010 include the following:

~~"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "landscape contracting business" as defined by ORS 671.520, shall pay all amounts that may be ordered by the Landscape Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 671 and OAR chapter 808, then this obligation shall be void; otherwise to remain in full force and effect. This bond is for the exclusive purpose of payment of final orders of the Landscape Contractors Board in accordance with ORS chapter 671. This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond. This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 671, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Landscape Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation. This bond shall not be valid for purposes of licensing in accordance with ORS chapter 671 unless filed with the Landscape Contractors Board within sixty (60) days of the date shown below."~~

(2) Bond documents received at the agency office from a surety company or agent via electronic facsimile **or as a PDF file transmitted by e-mail or electronically** may be accepted as original documents. The surety must provide the original bond document to the agency upon request.

808-003-0611

Letters of Credit or Deposits, Generally

(1) A properly executed Landscape Contracting Business Assignment of Savings or Deposit ~~issued after January 1, 2010~~ must:

(a) Be in the form adopted by the Landscape Contractors Board **required by the agency** as the Landscape Contracting Business Assignment of Savings Account or Deposit ~~revised January 1, 2010. If issued prior to January 1, 2010, the revised form must be used upon the renewal of the document as required by subsection 3 of this rule.~~

(b) Be signed by an owner or officer of the landscape contracting business;

(c) Be signed by an authorized agent of the bank or financial institution or by one having power of attorney and must bear an account number. Additionally, the agency may require the licensee and bank or financial institution to use the most recent revision of the Assignment of Savings Account or Deposit form; and

(2) Letters of credit or cash assignment documents received at the agency office from a bank or financial institution via electronic facsimile **or as a PDF file transmitted by e-mail or electronically** may be accepted as original documents. The bank or financial institution must provide the original documents to the agency upon request.

(3) Letters of credit or cash assignment documents must be renewed every year upon renewal of the landscape contracting business license.

808-003-0613

Bond, Letter of Credit or Cash Deposit Amounts

(1) Except as provided in subsection (2) below, a surety bond, letter of credit or cash deposit required under ORS 671.690 must be in one of the following amounts:

(a) \$3,000 for an applicant, unless the applicant is described in subsections (b), (c), (d) or (e) of this rule.

(b) \$10,000 for an applicant, who not in conjunction with the performance of landscaping work, constructs fences, decks, arbors, patios, landscape edging,

driveways, walkways or retaining walls, unless the applicant is made subject to paragraph (c) of this subsection by work on other jobs performed by the applicant.

(c) \$10,000 for an applicant who charges more than \$10,000, but less than \$25,000, for a landscape job.

(d) \$15,000 for an applicant who charges \$25,000 or more, **but less than \$50,000** for a landscape job.

(e) \$20,000 for an applicant who charges \$50,000 or more for a landscape job.

(e) \$15,000 for a Probationary All Phase Plus Backflow license phase.

(2) A landscape contracting business may obtain or maintain a bond, letter of credit or cash deposit in an amount that exceeds the amount required under section (1) of this rule if the bond, letter of credit or cash deposit obtained or maintained is in an amount that is equal to an amount required under section (1) of this rule.

(3) A landscape contracting business is subject to a higher bond, letter of credit or cash deposit before the landscape contracting business submits a bid or contract to a customer, whichever occurs first.

(4) A landscape contracting business must increase or file an additional bond, letter of credit or cash deposit when the cost of the landscape project makes the licensee subject to a higher bond, letter of credit or cash deposit.

808-004-0320

Jurisdictional Requirements

(1) A claim must be of a type described under ORS 671.690(2) & (3), OAR 808-002-0220 and ORS 671.695.

(2) **In addition to the types of claims described in ORS 671.690 a** claim may **also** be accepted for **breach of contract, negligent or improper work, failure to pay for materials, equipment, or labor** for the following activities performed or contracted to be performed ~~on or after January 1, 2012:~~

(a) Backflow assembly testing services provided by employees of the landscape contracting business who are certified under ORS 448.279; and

(b) The installation, repair or maintenance by the landscape contracting business of backflow assemblies for irrigation systems and ornamental water features as described in ORS 447.060; ~~and~~

(c) The installation by the landscape contracting business of landscape irrigation control wiring and outdoor landscape lighting as described in ORS 479.940; **and**

(d) The removal or pruning of a tree, removal of limbs or stumps and tree or limb guying if the removal, pruning, or guying were performed after January 1, 2016.

(3) The agency will only process a claim that is filed within the following time limitations:

(a) State tax and contribution claims must be filed within one year of the due date of the tax or contribution.

(b) Labor, material and equipment claims must be filed within one year of the **order or** delivery date of the labor, material or equipment.

(c) Negligent or improper work claims must be filed within one year following the date the work was completed.

(d) Breach of contract claims must be filed within one year of the contract date or the last date of work on the project, whichever is later.

(4)(a) A claim will be processed **and damages may be awarded** only against a licensed landscape contracting business. **A respondent is "licensed" for purposes of this section as follows:**

(b) For a State tax and contribution claim, ~~the landscape contracting business against which the claim is filed will be considered licensed~~ if the tax and contribution liability arose while the business was licensed.

(c) For a material or equipment claim, ~~the landscape contracting business against which the claim is filed will be considered licensed~~ if one or more invoices involve material delivered or equipment rented while the landscaping business was actively licensed. ~~Damages will be awarded only for material delivered within the period of time that the landscape contracting business was actively licensed.~~

(d) For any other claim, ~~the landscape contracting business against which the claim is filed will be considered licensed~~ if the landscape contracting business was actively licensed during all or part of the work period, unless the claim is for breach of contract only, in which case a landscape contracting business is "licensed" if it was actively licensed at the time the contract was entered.

(5) A labor, material and equipment claim, negligent or improper work claim or breach of contract claim will be accepted only when one or more of the following relationships exist between the claimant and the licensed landscape contracting business:

(a) A direct contractual relationship based on a written or verbal contract entered into by the claimant and the landscape contracting business, their employees, or their agents; or

(b) Performance of landscaping work by the landscape contracting business on property owned, rented, or managed by the claimant;

(c) Payment made by a claimant, the claimant's employee, or the claimant's agent to the landscape contracting business; or

~~(db)~~ An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim.

(6) A claim by a person furnishing material, or renting or supplying equipment to a landscape contracting business may not include a claim for non-payment for tools sold to a landscape contracting business, for equipment sold to the landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(7) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for installation or use on property located within the boundaries of the State of Oregon.

(8)(a) Except as provided in subsection (b) of this section, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscape contracting business.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 671.710.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.690, 671.695, 671.703 & 2011 OL Ch. 104

808-002-0300

Defective Materials

"Defective Materials" are materials which are below the standard quality normally used unless specified in the written or verbal contract.

808-002-0320

Defective Work

"Defective Work" means work which does not substantially meet the provisions presented in the written or verbal contract.

808-002-0920

Work Period

"Work Period" as used in OAR 808-004-0320 and 808-004-0600 means the time period from the date a landscape contracting business accepts a payment, offers a written or verbal proposal which is later accepted as a contract or enters into a contract or begins construction, whichever occurs first, until the date the work is completed as defined in OAR 808-002-0280 or the landscape contracting business ceases work.

808-003-0018

Supervisory Responsibilities; Employment

(1) The licensed landscape construction professional who holds part or the complete phase basis of the landscape contracting business license must perform the following supervisory services:

- (a) Review and initial the landscape plan and/or written contract for each job;
- (b) Attend all on-site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and
- (c) Directly supervise all non-licensed employees employed by the landscape contracting business as defined in OAR 808-002-0328. For the purpose of verification of direct supervision of an unlicensed employee as required by ORS 671.540(1)(q) or (r), the communication requirement of direct supervision will be considered met if the licensed landscape construction professional communicates with the Landscape Contractors Board investigator who requested the unlicensed employee to contact the supervising landscape construction professional before midnight of the same day of the request.

(2) A landscape contracting business must:

- (a) require a licensed landscape construction professional to directly supervise the unlicensed employees of the landscape contracting business who are performing work that corresponds to the landscape construction professional's phase of license; and
- (b) Have the landscape construction professional who is responsible for supervision as required in subsection (a) of this section on the payroll each hour receiving at least minimum wage or meeting the salary test for salaried exempt employees during the time the landscape contracting business is engaged in landscaping work that corresponds to this landscape construction professional's phase of license except when the landscape construction professional is not considered a subject worker under ORS 656.027.

(c) Submit a Verification form when a new landscape construction professional becomes part or the complete basis of the landscape contracting business license.

(3) Upon application for a landscape contracting business license, and at any other time the board requests, a landscape contracting business must submit a completed, signed and notarized Verification form (provided by the board) for every licensed

landscape construction professional for whom the landscape contracting business has not previously submitted this Verification form and who is supervising landscaping work for the landscape contracting business;

(4) The Verification form verifies that the licensed landscape construction professional:

- (a) Is a paid employee of the landscape contracting business and is on the payroll each hour receiving at least minimum wage or meets the salary test for salaried, exempt employees or is an owner of the business as defined in OAR 808-002-0734 during the time the business is performing landscape work related to the landscape construction professional's phase of license;
- (b) Will directly supervise work based on the landscape construction professional's phase of license;
- (c) Will attend on site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and
- (d) Understands the requirement to notify the board within ten calendar days after termination of employment from the landscape contracting business as required by OAR 808-003-0125(4).

808-005-0020

Schedule of Civil Penalties and Suspensions

The agency assesses civil penalties for violations of ORS 671.510 to 671.760 and OAR chapter 808, some of which may be settled per the terms of a settlement agreement. These penalties include, but are not limited to:

(1) **Operating as a landscape contracting business** in violation of ORS 671.530(1) or (3):

- (a) if the value of the work is \$500 or less; \$500; and
- (b) if the value of the work is more than \$500; \$1,000

(2) **Operating as a landscape contracting business** in violation of ORS 671.530(1) or (3), when a claim has been filed for damages arising out of that work, \$2,000.

(3) **Operating as a landscape construction professional** in violation of ORS 671.530(1), \$1,000.

(4) **Advertising** in violation of ORS 671.530(2), (4), or (5):

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(5) **Advertising for landscaping work outside the scope** of the landscape contracting business license in violation of OAR 808-003-0040:

- (a) \$1,000 for the first offense; and
- (b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(6) **Operating as a landscape contracting business in violation of ORS 671.530(1) or (3) when one or more previous violations have occurred** after action taken on first offense, \$2,000.

(7) **Operating as a landscaping contracting business without having at least one owner or employee who is a licensed landscape construction professional licensed within the phase of work performed**, in violation of OAR 808-003-0040 and 808-003-0045:

- (a) \$1,000 for the first offense; and
- (b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(8) **Performing landscaping work while not subject to a written contract when the job charges are more than \$2,000 or failing to comply with minimum contract standards**, in violation of ORS 671.625(2) and OAR 808-002-0020:

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.
- (9) **Failure to include the license number in all written advertising**, in violation of OAR 808-003-0010:
 - (a) \$500 for the first offense; and
 - (b) \$1,000 for subsequent offenses occurring after action taken on first offense.
- (10) **Performing work outside the scope** of the landscape contracting business license in violation of OAR 808-003-0040:
 - (a) \$1,000 for the first offense; and
 - (b) \$2,000 for subsequent offenses occurring after action taken on first offense.
- (11) **Installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement** with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.
- (12) **Failure to maintain the insurance or workers compensation insurance coverage required by ORS 671.565 or bond** or other board accepted surety as required by ORS 671.690 in effect continuously throughout the license period:
 - (a) \$500 for the first offense; and
 - (b) \$1,000 for subsequent offenses occurring after action taken on first offense.
- (13) **Failure to submit documentation of workers' compensation insurance coverage** or failing to register with the agency as non-exempt upon hiring one or more employees:
 - (a) \$500 for the first offense; and
 - (b) \$1,000 for subsequent offenses occurring after action taken on first offense.
- (14) **Failure to conform to information provided on the application** in violation of ORS 671.510 to 671.710:
 - (a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules; and
 - (b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules.
- (15) **Failure to comply with any part of ORS Chapters 316, 656, 657, and 671**, as authorized by ORS 671.510 to 671.710 or rules promulgated by the agency:
 - (a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and
 - (b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules.
- (16) **Conduct that is dishonest or fraudulent or that the board finds injurious to the welfare of the public** as a landscape construction professional or landscape contracting business:
 - (a) \$1,000 for the first offense and suspension of the license; and
 - (b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license. The agency may also revoke the license.
- (17) **Failure to verify workers' compensation coverage for temporary or leased workers** as required in OAR 808-003-0620:
 - (a) \$500 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and
 - (b) \$1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules. For purposes of subsection 17(a) only, if the

documentation of verification of workers' compensation coverage is received by the agency on or before the 21st day after the date of the contested case notice and the verification shows coverage of all employees from the employees' hire date, the contested case will be withdrawn without prejudice.

(18) Hiring employees while licensed as an exempt landscape contracting business:

(a) \$400 for the first offense if the licensee obtained workers' compensation coverage prior to the employee hire date;

(b) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date;

(c) \$1,000 for subsequent offenses occurring after action taken on first offense if the licensee obtained workers' compensation coverage prior to the employee hire date; and

(d) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date.

(19) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(20) Failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply with applicable plumbing code requirements as required by OAR 808-003-0126(3)(a):

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(21) Failure to obtain the appropriate building code permit(s):

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(22) When as set forth in ORS 671.610(5), the number of licensed landscape contracting businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;

(b) \$2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(23) Failure of a landscape contracting business to notify the board of a change in the landscaping business' phase of license as required by OAR 808-003-0125:

(a) \$200 for the first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(24) Failure by the landscape construction professional to comply with the supervisory responsibilities as required by OAR 808-003-0018;

(a) \$200 for the first offense;

(b) \$500 for the second offense occurring after action taken on first offense; and

(c) \$1,000 and six month suspension of the license for the third offense.

(25) Failure of the landscape construction professional to notify the Landscape Contractors Board of a change of address or employment in writing or on line at the LCB website as required by ORS 671.603 and OAR 808-003-0125:

- (a) \$200 for the first offense; and
- (b) \$500 for subsequent offenses occurring after action taken on first offense.
- (26) Failure of a landscape contracting business to notify the board of a change in address** in writing or on line at the LCB website as required by ORS 671.603:
 - (a) \$200 for the first offense; and
 - (b) \$500 for subsequent offenses occurring after action taken on first offense.
- (27) Failure of a landscape contracting business to require the landscape construction professional to directly supervise** unlicensed employees of the landscaping business performing landscaping work that is related to the landscape construction professional phase of license:
 - (a) \$200 for the first offense; and
 - (b) \$500 for subsequent offenses occurring after action taken on first offense.
- (28) Failure of a landscape contracting business to obtain the correct amount of surety bond** or irrevocable letter of credit, as required by ORS 671.690(1):
 - (a) \$1,000 for the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office;
 - (b) \$2,000 for the second offense occurring after action taken on the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office.
- (29) Failure to notify the LCB of a new business name** (including any new assumed business name) or, in the case of a sole proprietor, any personal surname under which the business is conducted, in violation of OAR 808-003-0020:
 - (a) \$200 for first offense; and
 - (b) \$500 for subsequent offenses occurring after action taken on first offense.
- (30) Failure to respond to the continuing education audit** as required under OAR 808-040-0060(3):
 - (a) For the first offense:
 - (A) \$200; and
 - (B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 26(a) only, if the CEH documentation as required by OAR 808-040-0060(3) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.
 - (b) For subsequent offenses occurring after action taken on the first offense:
 - (A) \$500; and
 - (B) Suspension of the license until the CEH documentation is received by the agency.
- (31) Failure to submit complete documentation** as required under OAR 808-040-0060(3), (4), (5) or (6):
 - (a) For the first offense:
 - (A) \$200; and
 - (B) Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 27(a) only, if the CEH documentation as required by OAR 808-040-0060(3), (4), (5) or (6) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.
 - (b) For subsequent offenses occurring after action taken on the first offense:
 - (A) \$500; and
 - (B) Suspension of the license until the CEH documentation is received by the agency.
- (32) Failure to complete the continuing education hours by the deadline** as required under OAR 808-040-0020(1):
 - (a) For the first offense, \$200; and
 - (b) For subsequent offenses occurring after action taken on the first offense, \$500.

(33) Pursuant to ORS 671.610(1)(e) makes misleading statements when advertising services or materials:

(A) \$200; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.