How to Make a Claim on a Payment Bond

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By Timothy "Tim" J.W. Muller on February 23, 2024

One of the many challenges that arise throughout the course of a construction project is the issue of payment to subcontractors and suppliers. While your contract may designate that you will be paid for the work you do or the supplies you furnish upon completion or delivery, the contractor in charge of the project may not be motivated to pay you on time or at all.

Fortunately, there are federal and state laws designed to combat this risk and help you receive payment for the work that you complete or supplies that you deliver. The terminology varies from public project to private project, but the goal of the protection is the same, to help you receive the compensation designated in your contract.

To collect the payment you are owed, if the project is large enough to be required to comply with the law, you must file a claim on a payment bond.

What is a Payment Bond?

A payment bond is a legal contract that provides financial security for subcontractors, laborers, and material suppliers, as well as assurance to project owners that the contractor in charge of the work will pay everyone involved according to their contract terms. In South Carolina, payment bonds apply to public construction contracts valued at $100,000 or more, excluding Department of Transportation projects, which have a lower threshold.

Payment bonds are similar to **mechanic's liens** that apply to private projects. There are a few key differences aside from the terminology, but overall, the purpose is the same: to ensure payment of subcontractors and material suppliers.

While a **mechanic's lien** is filed and attaches to and is secured by real property, a bond claim attaches to and is secured by a payment bond. The payment bond is taken out before the project starts and covers all anticipated expenses and wages based on the terms of the contracts.

When are Payment Bonds Necessary?

Not every construction project is required to have a payment bond. There are different rules in place for federal and state public contracts, but most state contracts are designed based on the federal Miller Act.

On a federal level, the Miller Act requires that prime contractors on all federal contracts of $100,000 or more must have a payment bond. Most states, including South Carolina, have adopted similar laws that require a payment bond on contracts over a certain threshold. South Carolina's Little Miller Act is the bond claim statute that requires that projects over $100,000 have a payment bond.

How Make a Claim on a Payment Bond

To make a claim on a payment bond you must follow a certain procedure. Each state has its own deadlines, so you need to make sure that you file a claim on a payment bond within the statute of limitations.

If, as a subcontractor, you have not been paid for the work that you performed and were contracted for, you can file suit on the payment bond at the expiration of 90 days after the last day that you worked on the project. The first step is to give written notice either served personally or by certified or registered mail to the bonded contractor within 90 days of the last day of work. That notice should be sent to the permanent office of the bonded contractor or to the current address of the bonded contractor as shown in the records of the Department of Labor, Licensing, and Regulation.

The claim must include the name of the bonded contractor and a statement of the amount owed. It is also beneficial to include the name of the contracting public entity, the scope of the work or materials furnished, and the project itself.

Charleston Construction Lawyer

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