

## **How To Make a Claim Against a Washington Contractor's Bond**

*This article is written by Douglas S Reiser, principal at [Reiser Legal LLC](#) and [The Builders Counsel Blog](#). Doug is a construction lawyer licensed in Washington and Louisiana. Follow him on Twitter: [@douglasreiser](#).*

### **Introduction**

This article provides a pithy, yet reliable resource for taking action to recover against a contractor's bond. Remember that there are many legal issues that can arise during a bond action. Recently, I ran into two separate situations that required courts to take a first look at a legal dilemma. The bond statute is still not cut and dry and its advisable to have an attorney assist you with your legal action.

If you have a claim against a registered contractor (you can check if your contractor debtor is registered [by clicking here](#)) for breach of a contract, you can bring an action against their bond. A breach of contract claim might arise from an unpaid supplier account, an unpaid invoice for services, or construction defects resulting from a building contract. Whatever your circumstances, the procedure remains the same. Follow these steps to properly raise a claim against a contractor's bond:

### **Step 1: File Suit.**

Unfortunately, there is no simple claim process. You cannot simply make a "claim" by phone and recover. You must file a lawsuit under [RCW 18.27.040](#). Your lawsuit must be filed against the contractor and their registered surety. You can find the name of the registered surety by reviewing the [contractor's L&I profile](#). Look for the active bond; that party *must be named* in the lawsuit. Any action against the bond company should reference the bond number in order to provide effective notice.

Your action should be filed in the Superior Court of the County where the work was done, the supplies were purchased or the damages committed. This is a good way to ensure that you have proper jurisdiction against the contractor.

### **Step 2: Serve L&I.**

Under [RCW 18.27.040\(3\)](#), you must serve your action on L&I. To do this, you need to file the action, obtain a case number, and then send the appropriate number of copies of the suit to L&I along with their fee.

Service on L&I is absolutely necessary to obtain jurisdiction over the bond. There is no getting around this requirement. I believe that its beneficial because L&I will go ahead and serve the surety for you.

### **Step 3: Show the Surety.**

This step is not mandatory, but extremely helpful. Once the surety is served with your action, they will most likely contact you regarding your claim. Its helpful to show the surety that you have a viable claim, covered under [RCW 18.27.040](#).

To do this, its important that you provide a full copy of your file, proving that you are owed money. Its important to forward the surety (or its attorney) your records, whether that file contains a credit application and purchase orders; it contains engineer inspection reports and a building contract; or it contains a subcontractor agreement and invoices.

Doing this should speed along the process, persuading the surety to tender the bond proceeds to the Court.

### **Step 4: Obtain Judgment.**

While there are other ways to recover against the bond, the best way is to obtain a judgment against the contractor. If the contractor debtor fails to appear before the court, twenty (20) days after service, you can file for a default judgment. If they do appear and defend the claim, you will be forced to put on your case against the contractor before recovering against the bond.

Typically, it all depends on the contractor. If the contractor has elected to close up business, or cannot dispute your allegations, you are likely to obtain a quick default. If you have a dispute with the contractor about the debt, collecting against the bond will be delayed until you can prevail on your claim against the contractor.

Remember that a judgment is not always necessary, but it certainly preserves your right against the bond.

### **Step 5: Collect Disbursed Funds.**

If you were successful in compelling the surety to disburse funds to the court, you can collect by motioning the court. The surety may have tendered those funds because they believed you have a viable claim, or because you obtained a judgment against the bonded contractor. In either event, you must move the court to have these funds disbursed.

If there are other active claimants, you may have to work together to determine how the funds are to be divided. Check out our [earlier article on priority to the bond proceeds](#), so that you can determine what right you might have.

Typically, parties of the same priority (multiple homeowners or suppliers) will agree to take the disbursed funds in pro rata shares, related to the amount of debt owed.

For example:

- You have three homeowners with claims against the same contractor. Homeowners have the same priority to this bond, which is \$12,000.00.
- Homeowner A's claim – \$15,000.00
- Homeowner B's claim – \$5,000.00
- Homeowner C's claim – \$3,000.00
- The total of claims is \$23,000.00, more than the amount of the bond. So, we need to determine each party's portion of the total claim.
- Homeowner A –  $15/23 = \sim 65\%$
- Homeowner B –  $5/23 = \sim 22\%$
- Homeowner C –  $3/23 = \sim 13\%$
- Now, we take those percentages out of the bond proceeds and A recovers \$7,800; B recovers \$2,640.00 and C recovers \$1,560.00.

A bond claim is a good way to make sure you get something out of your loss. But you must always recognize that you are limited to the amount of the bond. Its advisable to always discuss your claim with an attorney before proceeding in court.