

## Getting paid on Construction Projects - Bond Claims are available!

In Utah, the law requires that all owners of real estate who enter into a contract worth more than \$50,000 for the improvement of commercial real estate, must require their contractor to provide a payment bond to protect subcontractors and suppliers of products to the project. A payment bond is similar to an insurance policy which will pay suppliers and subcontractors if the contractor does not. While this is true of governmental agencies, there is no such requirement for residential construction.

If a payment bond was required, those who are owed money for labor or materials they supplied to the construction project, can file a claim with the bonding company and then, if necessary, filing a lawsuit.

A claim against the bond is one of the best methods of collecting what you are owed where the contractor will not or cannot pay it's bills. Payment bonds for private projects are governed by their terms and it is important to review the wording of the bond on each project.

Federal projects are governed by the federal bonding law, called the Miller Act. The Miller Act provides that, before a contract that exceeds \$100,000 in amount for the construction, alteration, or repair of any building or public work of the United States is awarded to any person, that person shall furnish the federal government with performance and payment bonds of the contractor. Subcontractors and materialmen who have a contract with the general contractor and those who have a contract with a subcontractor are covered by the payment bond.

If a supplier does not get paid, he may file a claim directly against the bonding company. A bond claimant who has a contract directly with the general contractor, is not required to give notice of a claim to the general contractor, he may sue the bonding company. Other subcontractors and suppliers must give notice of their claim to the general contractor with 90 days of the day they last provided labor or materials to the project. The law requires that a lawsuit be filed within one year of the claimant's last work on the project.

If an owner does not require a payment bond, and subcontractors and suppliers are not paid on time, the owner of the real estate may be personally liable for their bills. This may be true even if the owner has already paid the general contractor!

If you are having trouble getting paid on a construction project make sure you add to

your list of ways to get money collected, claims against 1) the bonding company and 2) the owner, if there is not a payment bond for the project.

This article is intended for general information purposes only, and does not constitute legal advice. While in this article we have attempted to discuss some of the rights of creditors, your rights may vary according to the peculiar facts of each case. It is important that competent legal counsel be contacted if problems are encountered.

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