

Legal Scope

A Construction Law Newsletter by Bright Law Firm, PLLC

Advertising Material

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Bonds . . . Payment & Performance & More

The question is often asked: “Is there a bond on the Project?” But there are several types of bonds. Let’s discuss them.

Payment Bonds. A payment bond is a contract that involves three parties: the surety (bonding company); the “principal” (usually the general contractor); and the “obligee” (usually the owner on the project).

Under the payment bond, the surety is promising to be responsible for the principal’s payment obligations to those who furnished labor or materials to the project. Thus, if the principal is a general contractor who fails to pay subcontractors or materialmen, then, the surety is obligated to cover those missed payments. Know that there are additional nuances. Claims on a bond often must

be notified by certain deadlines, and only certain laborers and materialmen are covered.

Performance Bonds. A performance bond is a promise by the surety that if the principal (again, usually a general contractor) does not perform its work per the contract documents, then, the surety will ensure (guaranty) that the work is completed accordingly. Thus, if an owner believes that the work is deficient, it can make a claim on the performance bond, requesting the bonding company to complete the work in compliance with the contract docs.

Bid Bonds. Bid bonds cover the bid process, and are generally only used on public jobs. If a bidding contractor is awarded the work, but refuses to sign a contract at the bid price, then, the bonding company will protect the owner by ensuring that the work gets performed at the same out-of-pocket cost to the owner as the original bid amount.

When procuring bonds, it is important to know which bond is the correct one to get. Further, each of the above bonds has different requirements and conditions for pursuing a claim. Generally, owners bring claims on performance bonds, and subcontractors and suppliers bring claims to pursue payment bonds. Regardless of whether you are a frustrated owner or a frustrated subcontractor/supplier, it is important to seek legal advice early and often—bonds have deadlines for giving notice and filing claims, and different bonds have different remedies, legal rights, and obligations.

The Numbers:

15.1 %

- **Increase in private housing completions, comparing April 2017 to April 2016.**
- **Housing completions were at a seasonally adjusted annual rate of 1,172,000 for April 2017.**

Source: U.S. Census Bureau & U.S. Dept. of HUD, Monthly New Residential Construction, April 2017, (May 16, 2017).

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Legal Scope is written by Jeffrey Bright, an attorney licensed in Pennsylvania and Maryland. For more information, contact Bright Law Firm. This newsletter is not legal advice. Unlike this newsletter, legal advice is specifically tailored to the facts, law and objectives unique to each circumstance. To join or remove yourself from this subscription list, email jbright@bright-lawfirm.com.