Insights: Alerts

5 Key Takeaways: Texas Lien Laws and Advanced Lien & Payment

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Kilpatrick Townsend's **Brian Gaudet** recently gave two presentations, **"Texas Lien Laws"** and **"Advanced Lien & Payment,"** at the Associated General Contractors of America Houston Chapter.

Key takeaways from the presentation include:

Joint Check Agreements

For Contractors especially, its simply not enough to know you have a joint check agreement in place. Joint check agreements are not all the same. They are a matter of contract and what they say is important. If you are entering into a joint check agreement with a subcontractor and supplier you will want to make sure the supplier has an obligation to fully inform you and keep you updated on the status of the account. You will only want the joint check agreement to cover items actually delivered and used on the project. You will want the supplier to be contractually obligated to provide you with the release forms you need to obtain payment from the owner and its lender.

Releases

In Texas, there are statutory required forms of lien releases. Do not get caught trying to use something else, as they may not be enforceable. For those of you executing lien releases in order to receive progress payments, make sure that you are not agreeing to additional terms such as new indemnity clauses that obligate you to indemnify another party for something far greater than what was originally negotiated in the contract.

Texas Liens and Bond Claims

These are notice based and the deadlines matter. Identify the type of project, send the required notices by the deadline, and be sure to keep complete and accurate records and backup documentation to prove up your claims.

Bankruptcy and Construction

In the event you receive a letter from a bankruptcy trustee asking you to repay a bankrupt construction company you finally received past due money from, obtain legal counsel immediately. You may not need to pay it back in the event the payment was for the contemporaneous exchange for new value, the payment was received in the ordinary course of business or the Texas Construction Trust Fund act applies to remove the payment from the assets of the estate.

Texas Construction Trust Fund Act

Be careful in how you spend money your company receives on a construction project. It can be a violation of the trust fund statute to take money from one project and use it to pay debts on another project if it results in an inability to pay what is owed to subcontractors and suppliers on that project. For the beneficiaries of the trust fund act,

remember, it is not necessarily a violation if the contractor has used the funds to pay direct expenses on the current project. Bid busts, replacing defective work and price escalations are all legitimate reasons why there may not be enough money to pay all of the bills. For those who control the flow of money on a project, be aware that there can be personal liability under the trust fund act.

Related People



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