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COVID CONSTRUCTION ALERT: LIENS, BOND CLAIMS AND OTHER TIMING ISSUES

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NOW is the time to work on protecting suspended projects and the rights of the participants!

As the state imposed restrictions on construction projects continue well into the second month, with projections that in one form or another they may remain in effect for a further extended period of time, timing requirements on contractual and statutory rights and obligations of the parties continue to run.

Many rights allowed by statute, including lien rights for non-payment, payment timing requirements under “prompt payment” statutes and claim rights under bonding laws have strict time allowances. Those deadlines do not change because a project has been delayed or suspended, even where it is a result of state imposed Executive Orders.

Lien and bond claim requirements are typically under time restrictions measured by the last day of work. While a resumption after a suspension of the work will typically re-set the clock, there is no telling whether a lifting of the imposed restrictions will result in the resumption of the project. Financial conditions of the parties to the project may have changed, making resumption impossible. Where the project does not resume or a party to the project can no longer participate, if planning and action to protect lien and bond rights have not been exercised, they may be lost.

Similarly, terms of an applicable “prompt payment act” typically require payment on invoices within a specific time period. While those can be altered by the contract terms, if payments are being delayed due to factors involved in the construction suspension, it could generate claims under the prompt payment act terms that may also include sanctions and fees, not otherwise available.

Further, contract terms pertaining to work stoppages and suspensions may allow parties to not only seek time extensions and perhaps damages and costs associated with the stoppage or suspension, but may also allow for a party to contractually walk away from the project, leaving the ability to resume construction in jeopardy.

As the restrictions remain in place, but the prospects of resuming projects are improving, this is the time to prepare and assure that rights are protected:

- Review the timing requirements of the applicable lien statutes and bond claim statutes (if it is a bonded project) to assure that the ability to file a lien or bond claim is protected (or from an owner/developer’s standpoint to know when such rights expire);
- If there is any concern about the project resuming within the statutory deadlines of the lien and /or bond laws, or at all, action should be taken to file required lien or bond notices;



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- If payments have been withheld beyond the contract time periods or applicable “prompt payment act” provisions, effort should be made to either negotiate a payment structure or, from the perspective of the payment recipient who has not received payment, to provide any required notices of non-payment;
- Review the contract documents to confirm how they address work suspensions or stoppages. If appropriate, negotiate resumption provisions to establish appropriate new terms for the resumption of work and to assure that the suspension or stoppage will not allow a party to terminate the contract; or
- Alternatively, to consider whether a termination resulting from the suspension or a termination for convenience is allowed under the circumstances and is appropriate. If so, issue all required notices and/or negotiate a termination agreement with applicable releases.

Waiting for the restrictions to finally be lifted before addressing the above issues can and will result in potential surprises and the loss of valuable rights under the contract and statutes.

If you have any questions on the above or wish to discuss, please contact [James Landgraf](#) or [Mark Schiavo](#).