

Member Communication Experience

How to Protect Your Projects with Construction Lien Waivers

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Using construction lien waivers is a simple way for program and construction management professionals to protect projects against mechanic liens. Smart contractors give construction lien waivers to trade partners and suppliers every time they pay them. By signing, trade partners and suppliers agree they've been paid and give up their right to file a mechanics lien for that amount. Lien waivers prevent payment disputes that halt projects, disrupt cash flow, and harm hard-won relationships.

Read on to learn about the different types of construction lien waivers, when to use each, and best practices for managing them. So you can be confident your projects are properly protected.

FOUR TYPES OF CONSTRUCTION LIEN WAIVERS AND WHEN TO USE THEM

There are four types of construction lien waivers. They're defined by where they fall in the payment process and are divided into two main categories: conditional or unconditional.

Conditional construction lien waivers

Conditional lien waivers only waive lien rights once a payment clears. Since conditional lien waivers are dependent upon receipt of payment, they're a win-win.

They reassure suppliers and trade partners that if your check bounces, they'll retain their lien rights and can take action if needed. They protect you and your clients because they're



signed before you send a payment.

They're the best waivers to use in nearly every situation because they're fair for all parties.

Type 1: Conditional waiver upon partial payment

Use a conditional waiver upon partial payment before releasing progress payments.

Example: Let's say a roofing trade partner completes 50% of their work and submits an invoice. You can request they fill out and sign a Conditional Waiver and Release Upon Progress Payment form. This document ensures that once the roofing trade partner receives payment, they can no longer file a lien for that amount of work.

Type 2: Conditional waiver upon final payment

Use a conditional waiver upon final payment before issuing the final payment for the project. It protects against any last-minute claims and ensures that the project can be closed out without the risk of liens.

Example: In this scenario, the roofing trade partner completes all work and submits an invoice for the final 50%. Before releasing the final payment, you can require the roofer to sign a Conditional Waiver Upon Final Payment form. This ensures the trade partner will waive their lien rights once the payment has cleared.

Unconditional construction lien waivers

Unconditional construction lien waivers have no conditions attached. Once signed, they're legally binding — effective immediately.

It's best to avoid unconditional lien waivers unless you're paying with cash or credit card, in person. Otherwise, unconditional lien waivers can put you or the person you're doing business with at risk.

For instance, if a trade partner or supplier signs an unconditional waiver and a check gets lost or bounces, then they have no legal recourse to get paid for their work if the general contractor refuses to recut the check.

On the flip side, if you send a check before getting a waiver signed, busy trade partners and suppliers may never take the action to sign the lien waiver. Then, your project is at risk of future mechanics liens.

Type 3: Unconditional waiver upon partial payment

Like conditional waivers upon partial payment, unconditional waivers upon partial payment are used as a receipt for progress payments. But unlike a conditional waiver, these go into effect immediately. Unconditional waivers for final payments work best when you pay in person, with cash or credit card.

Example: If a supplier is onsite and you pay them with a credit card for partial delivery, have them sign an unconditional waiver upon partial payment. In this scenario, the risk is low for both parties. The waiver is signed at the same time the card payment goes through.

Type 4: Unconditional waiver upon final payment

This unconditional waiver is used after the trade partner or supplier has received final payment. It confirms that all payments have been made. The trade partner or supplier waives their right to file a lien on the project, effective immediately.

Example: Let's say a trade partner hand-delivers their final invoice. If you pay with cash on hand, there's no problem with using an Unconditional Waiver and Release on Final Payment form. No party is at risk. The trade partner has their money in hand and you have the signed waiver in yours.

BEST PRACTICES FOR MANAGING CONSTRUCTION LIENS

To effectively manage lien waivers, get clear on your state lien laws and integrate construction lien waivers into your overall payment processes.

Understand construction lien law in your state

In 12 states, state law mandates the specific lien form you'll use.

1. Arizona
2. California
3. Florida
4. Georgia
5. Massachusetts
6. Michigan
7. Mississippi
8. Missouri
9. Nevada
10. Utah
11. Texas
12. Wyoming

If you live in one of these 12 states, you must include all state-specific fields in your lien waiver form for the waiver to be legally binding.

In every other state, lien waiver forms aren't regulated by state law. However, this means that lien waivers are often drafted from scratch. So, make sure a lawyer skilled in lien law drafts

or reviews your waiver. In doing so, you avoid any loopholes that could create problems later.

States that require notarized lien waivers

Wyoming and Mississippi are the only two states that require lien waivers to be notarized. Georgia requires waivers to be given “under hand and seal.” While Georgia doesn’t require notarization, you may want to notarize a lien waiver if you don’t have a seal. In all other states, no notarization or special action is required for a signed contract to be legally binding.

Collect construction lien waivers from your trade partners’ vendors

Your trade partners may hire other trade partners for themselves. Those trade partners also have lien rights. To fully protect your projects, you must collect lien waivers from everyone contracted on the job – not just those directly contracted with you. If you don’t have signed waivers from everyone with lien rights, you’re leaving your project at risk.

Include lien waiver requirements in contracts

Outline lien waiver requirements in your contracts. Specify which lien waivers will be required at each stage of the payment process, and make sure all parties understand their obligations. This sets expectations early and reduces the chances of disputes later. Also, avoid no-liens clauses in contracts. Unless you live in Colorado, Massachusetts, or Nebraska, no-liens clauses aren’t legally binding.

Standardize your construction lien waiver process


Standardize the lien waiver process across all your projects. Use the same forms and procedures every time to ensure each payment includes the correct lien waiver. This reduces the risk of errors. It also makes tracking and managing lien waivers easier. Some construction management software solutions offer form templates and processes to help standardize the lien submission and approval process.

Store lien waivers securely

Keeping organized records of construction lien waivers protects your business in the event of a dispute. Store lien waivers in a secure, centralized location. Ideally, a cloud-based digital construction project management system that can be accessed from anywhere at any time.

CONSTRUCTION SOFTWARE FOR LIEN WAIVERS

Managing lien waivers manually can be time-consuming and error-prone – especially if you’re handling multiple projects at once. Construction management software automates and streamlines the process. You can handle all the legal “paperwork” for construction liens online, using apps and integrations that offer signing and tracking functionalities.

Software solutions provide a lien law framework that allows you and your trade partners to upload and categorize construction lien waivers in a central online location. You can monitor waivers in real time and only release payments once lien waivers are signed, making it simple to keep your projects and business protected. 



About the Article

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