

# Bond and lien claims term paper sample

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## **Bond and Lien Claims**

### Pros of lien claims vs. bond claims

A lien claim is formulated by the law of state in order to secure compensation for materials, services or labor used to build or to improve a real property. The main reason behind this law is the reluctance associated with the property owners, to compensate for construction in advance. Also, the fact that it is impossible to return the work done in case of failure for compensation, made the law be enacted. The law supports construction and development via giving a means, through which employees, as well as other contractors conducting work with no current pay, could safeguard their entitlements by recording a lien claim against the constructed or improved property. On the other hand, the bond claim only put into consideration the principal, who is the owner of the property, the surety or guarantor and the main contractor. In most cases, the employees, material suppliers as well as sub contractors are left out and have no claims against the employer if they are not paid.

Despite the fact that lien laws may seem complex, and traps for the innocent, through few plans and foresight, the construction owners could use the statutory plan to guard their construction projects and property against unanticipated claims and encumbrances of lien. This means that property owners could considerably decrease liabilities for nonpayment of the material suppliers and subcontractors by the contractor. The decrease could be via the use of waivers for lien, or final affidavits.

In cases where the contractors refuse to compensate the workers and material suppliers, legal actions are taken. According to the law, these contractors are ordered to bond off instantly or to fulfill the claim. In case they fail, they ought to be fired from the construction work, be charged for bonding payments, as well as fees for attorney. The situation discourages such occurrences, and hence making lien claims to be highly effective.

Unlike bond, claims, in a lien claim, a contractor, who is not compensated in time, can record a lien claim on the owner's property. This means that the owner can never sell or refinance the property, unless he first addresses the issue to the lien. The law also provides the best solution for safeguarding compensation by giving some instructions, which enables the compensation claim to be recognizable. For instance, in cases where a contractor lacks direct agreements with the property owner, he ought to give the owner a first round notice to inform him that he is conducting work on the construction. If the contractor fails to notify the owner, he will be denied the right of lien. Moreover, the lien ought to be verified within 90 days, from the last day of work completion by the contractors and other people contributing to the project development (Sweeny, 2010). Nevertheless, the 90 days period could be reduced to 40 days, in cases where the owner verifies a completion notice. The lien is applicable for just 6 months, and in case the compensation is not made, legal actions ought to be commenced.

Another advantage of lien claim over bond claim concerns the time deadline for presenting the claim. The Lien Claim, which ought to be served by registered mail, or personal service, does not have a deadline. On the other

hand, bond claims, ought to be submitted within 12 months, from the day the labor or materials were supplied. Furthermore, surety is the only significant party to the suit, as the payment bond issuer. This means that there exists no need for the claimant to unite with the contractor since the majority of sureties contain a contract by the contractor to cover the surety for bond losses. Hence, the contractor always has an interest of finances in the case.

### **Cons of lien claim vs. bond claims**

Despite the several advantages of lien claims, there also exist some disadvantages of lien vs. bond claims. First, in case a contractor fails to be paid on a personal construction development and he files construction lien, he can be quickly compensated. The lien appears to be an excellent remedy since it results in having material suppliers and contractors' paid.

Nevertheless, there exist some situations when a property or project owner, or contractor cannot pay the claims, leaving the claimants to struggle with the construction and mortgages lenders, concerning the splitting of the property among them. For instance, in a situation where the property has a value of \$ 200, 000 as compared to the claims of \$ 700, 000, fights over the division are likely to be experienced. On the contrary, such a challenge rarely occurs with bond claims. In the majority of cases, bonds of payment ought to be given in a sum equivalent to the contract sum. Hence, there exist extremely rare circumstances, when the sums due to suppliers and contractors exceed the bond value. The consequent is that the bond claim appears to be more secure than the lien claims since it is guaranteed that

there will be compensation. This means that, unlike the lien claims where the property has to be sold, bond claimants do not experience such situations.

Second, filing a claim of the bond helps a contractor to be compensated, in exclusion of litigation. This is possible since the bonding firm reviews the claim as well as endorsement materials and determines its validity, after which it pays. The consequence of this is that the claimant gets a solution early. In cases where the bonding firm denies and refuses to compensate the claim, the contractor can go ahead and file a court case to insist on his claim and compensation. This shows that the firm's choice is never final.

Nevertheless, it is advantageous to have the firm evaluate the claim and probably pay for it. This situation never exists in a lien claim, meaning there is no probability of compensation without the litigation process.

It is worth noting that a surety bond is by no means a policy for insurance. Instead, it is a warranty, where the surety warrants that the principal, who is the contractor, will fulfill the agreement declared in the bond (John & Cameron, 2000). In case the principal, who is the contractor, fails to fulfill the stated obligation in the bond, the surety and principal are both accountable for the bond. This means that either the surety or the principal could be litigated for the contract. The value of the bond that is paid by either or both of the two is called the penal amount, and it is the maximum limit of bond liability.

Of late, the globe has been experiencing some hard economic times, and hence, it is vital for the contractors to engage in contracts, which they are sure of being compensated for their efforts. This critical situation, demands

lien claims, as the law provides the best solution for safeguarding compensation by giving some instructions, which enables the compensation claim to be recognizable. The contractor, who is not compensated in time can record a lien claim on the owner's property. This means that the owner can never sell or refinance the property, unless he first addresses the issue to the lien.

As a result of the hard economic times, most contractors would be tempted to sell the property, but the strict laws governing lien can never allow this. In cases where a contractor lacks direct agreements with the property owner, he ought to give the owner a first round notice to inform him that he is conducting work on the construction. Furthermore in cases where the contractors refuses to compensate the workers and material suppliers, contractors are ordered to bond off instantly or to fulfill the claim. In case they fail, they ought to be fired from the construction work, be charged for bonding payments, as well as fees for attorney. Another reason for applying of lien claim concerns the time deadline for presenting the claim as it lacks a deadline. Property owners could trap the contractors by ensuring they delay their claims, which would result to their cancellation.

## **References**

John, G. & Cameron, J. (2000). A practitioner's guide to construction law. New York: ALI-ABA.

Sweeny, N. (2010). Construction law updates 2010. New York: Aspen Publishers Online.