

May 21, 2020

CONSTRUCTION INDUSTRY UPDATES AMID COVID-19

Due to ongoing updates regarding the impact of COVID-19 on the construction industry, and in an effort to bring more certainty to your business and employees during this uncertain time, Johnston Allison Hord wishes to remind clients of two important points of interest:

You and your construction business work too hard to not get paid, regardless of COVID-19

While construction remains an “essential business” per the recent state and local orders, some contractors are beginning to report owner suspension/cancellation of ongoing construction projects due to COVID-19. It is possible that, even when the existing restrictive orders are lifted, suspensions or cancellations will continue to happen. Given the uncertainty surrounding how long any sort of suspension could last, and in addition to the other measures, it is important that construction professionals remain aware of the time limits for filing, perfecting, and enforcing mechanics’ lien rights in North Carolina.

As a general rule, one who furnishes labor, materials, or equipment for the improvement of real property located in North Carolina has 120 days from their last date of furnishing of such items/services to file a Claim of Lien on the improved real property. Running concurrently with this 120-day deadline is the 180-day deadline to file a lawsuit to enforce the Claim of Lien on the improved real property – this deadline is also measured from the last date of furnishing. For subcontractors, note that the Lien upon Funds is not limited to the 120 days, but we suggest the sooner a Lien upon Funds is served, the more dramatic its impact (there is an advantage to file/serve early, notwithstanding noted deadlines). ***Of equal importance (if not possibly greater, at this moment) – is making sure that appropriate “Notice to Lien Agent” has been given, in light of recent COVID-19-directed changes to the Clerks’ indexing processes, as well as the increased likelihood for project refinancings due to the economic impact of the virus.***

For South Carolina projects, our firm’s attorneys licensed there indicate that the deadline for both filing AND serving a Claim of Lien is only 90 days from a contractor’s last date of furnishing. This means the deadline is even shorter in South Carolina, and therefore requires even more lead time for our firm to protect and preserve lien rights.

Knowing What Your Contracts Say is Key to Preserving Claims for Payment and Time

On a related note, the fact that projects are now being or may be suspended or cancelled makes it more important to review all active contracts in order to know what rights and duties exist surrounding potential extensions of time. In the event of a project shutdown – particularly an owner-driven shutdown – it is critical that written notice be given upstream for an extension of time BEFORE demobilizing and as an immediate response to any work stoppage. Ideally, this notice would include requests both for time and compensation, though the end result may be only that additional time is given. Regardless, this keeps the record straight as to schedule impacts caused by the virus and minimizes the risk in which you might be held accountable for any such delays. JAH is staffed and ready to review contracts, notices, or other similar documents in an effort to maximize your chances to obtain viable extensions – and hopefully compensable ones, too.

If you have questions about lien rights, bond rights, delay claims, contract provisions, or any other impacts COVID-19 may be having on your construction business, reach out to any member of our **Construction Practice** listed below. JAH is here to help you through these challenging times.

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