

Resolutions for owners and contractors

Firms that take care of the little things now will avoid encountering some big problems in the new year



CONSTRUCTIVE ADVICE

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Here are some resolutions for contractors and project owners to consider in the new year:

Are your corporate and business licenses up-to-date?

Many companies rely on someone to look after "corporate maintenance," including the routine renewal of corporate and business licenses. If you want to explore business in a new state this year, consider starting the process now to get the appropriate license. If you are a partnership or joint venture, check whether your partnership agreement has a termination date that needs attention, and confirm that your partners are properly licensed.

Is your professional license up-to-date?

This is a good time to check on the status of your state general contractor or specialty contractor licenses. In some states, developers also need licenses, particularly if they act as general contractors by managing multiple subcontractors on their projects. It is important to address this because in some states (e.g., Washington) a contractor is barred from filing a lawsuit to get paid for work unless it can show it was licensed at the time it submitted a bid or entered into a construction contract. In other words, after-the-fact licensure may be insufficient. To obtain a contractor's license, you may first need to make arrangements for appropriate insurance and a contractor's bond. The requirements should be available on the Web site of the state licensing agency.

Check contractual claim deadlines.

Many contracts for major construction projects contain detailed claim and dispute resolution provisions. Claim notices must be submitted within a certain number of days after the basis for the claim arises, claim backup must be provided shortly thereafter, and, if the owner rejects the claim, the contractor may need to give prompt notice of its intent to pursue the claim further or risk losing the right to do so. The contractor's access to certain claim resolution methods (e.g., arbitration) may be lost if it fails to make a timely request. The construction contract may even restrict the time in which the contractor may file claims in court.

Check statutory claim deadlines.

Most states impose strict deadlines for the assertion of liens; other statutory deadlines also may apply. While there are no lien

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rights on public projects, there are analogous rights to assert claims against the project bond or retainage, subject to timely filing and specific forms of notice. In some states, construction defect claims may not be filed in court until the claimant has given the contractor an opportunity to inspect and correct the claimed defects. Don't leave these issues until the last minute. Complying with statutory requirements may require considerable lead time to collect information, find the right place for filing, and draft the proper forms of notice.

Have notices been given to insurers?

Are you dealing with any claims that may implicate insurance coverage? Insurance policies generally require timely and ongoing notices and cooperation in the dispute resolution process. Don't risk losing insurance coverage that may play a key role in resolving a pending dispute; make sure you have given proper notices and have an understanding with your insurer about how the claim resolution process is going to proceed.

Do you have concerns about others' financial viability?

In this tight economy, it may be prudent to consider whether any party involved in your project is in financial distress. If a contractor or subcontractor is running out of money, is there a bond or parent company guarantee in place, and is the person providing security alerted to the problem? Are suppliers willing to deal directly if the contractor or subcontractor is not able to continue? If the owner is running out of money, the contractor needs to be cautious about performing work and incurring costs that may not be reimbursed. Is there security for payment, or can security be obtained? Should there be a frank conversation about protections available to the contractor? Consider performing a title search on the property to determine what liens and encumbrances exist.

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