

NEWS & INSIGHTS

Does acceptance (or remittance) of final payment waive claims on a construction project?

[INSIGHTSARTICLE](#)

OCTOBER 4, 2022



A frequent issue that arises on construction projects is whether the acceptance or remittance of final payment acts as a waiver of claims. An owner or higher-tiered contractor may fear that remitting payment will be deemed acceptance of the work and waiver of any claims. On the other hand, if receiving payment, the contractor or subcontractor often fear that accepting partial or reduced payment will waive claims for additional payment.

So should you remit or accept final payment? It depends.

As a contractor or subcontractor, should I accept a final payment?

For those receiving the payment, and fearful of waiving claims for additional compensation, it depends on the circumstances, including the detailed language in your contract and invoice packages. Most construction contracts provide that a contractor's (or subcontractor's) acceptance of final payment from the owner is a waiver of any claims that have not been preserved in writing.

And this makes sense: Often, the only claim a lower-tiered party will have is for payment. By the end of the project and final invoicing, the contractor/subcontractor ought to know if any moneys are owed, and, if so, it ought to say so in writing by invoicing it and following any preservation of claims clauses in the contract. Timely invoicing of amounts and notification of claims allows the books to be closed and project to be finished in timely fashion.

Similarly, most contracts require waiver of liens/claims to be submitted with payment applications, including final payment. Depending on the language in the lien/claim waiver, it's possible that signing it and accepting final payment will waive any further claims. It's also possible that the written language on the check itself, or a cover letter, can conclusively end any claims. Thus, contractors and subcontractors should closely examine all contracts and lien/wavier language with their attorneys to determine exactly what claims will be waived with acceptance of final payment.

Generally, the recommended practice is to timely notify the owner of all issues and reduce all issues to proper written claims. By doing these practices in conformance with the contract, it should be a written, preserved claim at the time of final payment that can either be negotiated to conclusion at that time or preserved beyond acceptance of final payment.

As an owner, should I submit a final payment?

Most construction contracts provide that owner's remittance of final payment is not an acceptance of non-conforming or defective work. Thus, typical contract language helps the owner (or higher-tiered contractor) to preserve rights, even if final payment has been sent. This makes sense, because latent (concealed or unknown) non-conforming or defective work may not be known until much later. Thus, it makes sense that the higher-tiered party preserves certain rights to enforce the construction documents.

With that being said, most contracts also provide a specific right to withhold moneys for defects, and generally the better approach for the higher-tiered contractor is to withhold the money for known defects and force the resolution of the issue. Even if a contract allows for payment and preservation of rights, many courts will examine this issue through the lens of whether the defect was known or unknown at the time of payment. Regardless of the contract language, if an owner or higher-tiered contractor has knowledge of a defect or non-conformance (or if it is obvious), courts will sometimes conclude that the remittance of payment was an acceptance of the defect or non-conformance.

Thus, in all circumstances, if there is any desire to remit or accept final payment and still preserve rights, the safest and most prudent option is to closely follow the contract language and identify and preserve in writing all claims at that time to avoid waiver. Further, if a party is suffering hardship or loss from a breach, raising the claim in a timely, professional and constructive manner is typically a necessary first step towards solving the problem.

When claims or disputes arise on construction projects, best advice is to reach out to your counsel for guidance. [Ron Pollock](#), [Matt Chabal](#), [Mike Traxler](#), [Aaron Scheibelhut](#) and the entire [Saxton & Stump Construction Law Group](#) are available to advise companies on construction contract issues, project disputes, claims and insurance.

Related People

[Ronald H. Pollock](#)
[Matthew Chabal, III](#)
[Michael T. Traxler](#)
[Aaron M. Scheibelhut](#)

Related Services and Industries

[Construction](#)
[Construction Litigation](#)