



The Miller Act: Uncle Sam's Answer For Materialmen And Subcontractors On Public Projects

If you are a provider of material and/or services as a contractor or materialman, your traditional recourse against a default in payment for such services or materials is to file a lien against the real estate upon which the improvements are being made. These lien rights are granted by statutes and are ordinarily referred to as materialman's or mechanic's liens.

Our federal government, however, does not allow liens to be filed against its property. Therefore, since 1935, it has extended an alternative form of security to materialmen and subcontractors on construction projects on federal land. This statutory protection is commonly referred to as "the Miller Act."

The Miller Act requires general contractors for the government to supply a payment bond as a substitute for the lien rights that materialmen and subcontractors would otherwise have. Those who are allowed to make claims under this bond required under the Miller Act must have a direct contractual agreement with the prime contractor or with a subcontractor. Those whose contract is only with a materialman are not so protected. That is, those who supply materials to the contractor or subcontractor are protected, but not those who provide materials

to one who is himself only supplying materials to the prime or sub.

If the contractual relationship is directly with the prime contractor furnishing the payment bond, the claimant under the Miller Act bond need not give notice of its claim under the Act, but those who have no direct contractual relationship with the prime contractor, but deal rather with a subcontractor to the prime contractor, must provide written notice to the prime contractor within 90 days from the date on which the last of the labor or materials were supplied, which notice must state with "substantial accuracy" the amount of the claim and the name of the party to whom the material was furnished or labor provided.

The notice must be either mailed to the prime contractor by registered mail or personally served on it. If suit must be filed against the bonding company and prime contractor to collect the claim, it must be initiated within one year of the date the last of the labor was performed or materials were supplied. The plaintiff in such an action must bring the lawsuit in the name of the United States of America, for the use of the claimant, and the place for filing such suits is in the United States District Court in the district in which the contract was performed and executed.

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