

What happens when a general contractor files for bankruptcy?

If you are a subcontractor or owner on a project where the general contractor has declared bankruptcy, you should act quickly to ensure, to the extent possible, that your rights are protected.

1) Whether you are a subcontractor or owner: Examine your contract and realize that termination due to bankruptcy is likely unavailable. Once an individual or corporation files bankruptcy, a provision called the “automatic stay” comes into play, which allows the individual or corporation filing bankruptcy to [avoid creditors’ demands](#) while organizing for the coming proceedings. Thus, generally, a contract with a general contractor cannot be terminated unless the bankruptcy court lifts the automatic stay.

2) If you are a subcontractor: You should contact the surety (if the project is bonded) or the owner (if it is a private, unbonded project) to make sure that the owner or surety has a formal written claim from you that shows what has been paid, what



invoices were submitted but not yet paid, and the balance to finish. Make sure that the owner or surety, as the case may be, is also aware of any submitted changed orders that may be going through the approval process. Note that lien rights are unaffected by a general contractor’s bankruptcy, as liens are against the owner and not the general contractor.

3) If you are a subcontractor: Your automatic reaction may be to stop or slow work. However, simply pulling from the job may not be the best option in all circumstances. General contractors can still enforce their rights for performance under the subcontract, and you do not want to be dealing with a breach claim at the same time as trying to receive payment for work performed but unpaid. However, if a general contractor decides to enforce his or her rights to performance, the general contractor will have to pay you for that work. To ensure payment, joint checks from the owner may need to be negotiated. In either event, slowing work while working with the general contractor, owner, or surety may be the best option to preserve all rights and make sure you do not incur additional costs or obligations.

4) If you are an owner: If the project is bonded with a performance or payment bond, you will want to make sure you are in close communication with the bonding company. Additionally, you will want to make sure the surety is paying claims so you are not faced with lien claims by unpaid subcontractors or suppliers.

In conclusion: The key point is to communicate up and down the chain. Owners need to know what claims are outstanding and who was working on the projects so they can protect their rights and move forward with the project. Similarly, and for the same reasons, subcontractors need to let owners and the surety, if applicable, know that they have outstanding unpaid bills and receive guidance on how to proceed. While this article addresses certain considerations after bankruptcy is declared, owners and subcontractors should consider contacting legal counsel to make sure they are protected while moving the project forward and to protect their rights in the bankruptcy proceedings.

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