NCS CREDIT

Bond Claims and Public Construction

For Webinar Technical Assistance, please call NCS at 800-826-5256. Our presentation will begin shortly.

- Public vs Private Construction
- The Role of Sureties
- Bonding Company’s Qualification Process
- Miller Act for Federal Projects
- Bond Claims Process
- Bonds and Private Jobs
- Public Improvement Liens

How do you justify the credit?

Construction Credit

Construction Credit

Private Construction

Public Construction

LIENS Owner

- Corporation
- Partnership
- Individual

BONDS Owner

- Federal
- State
- Municipal

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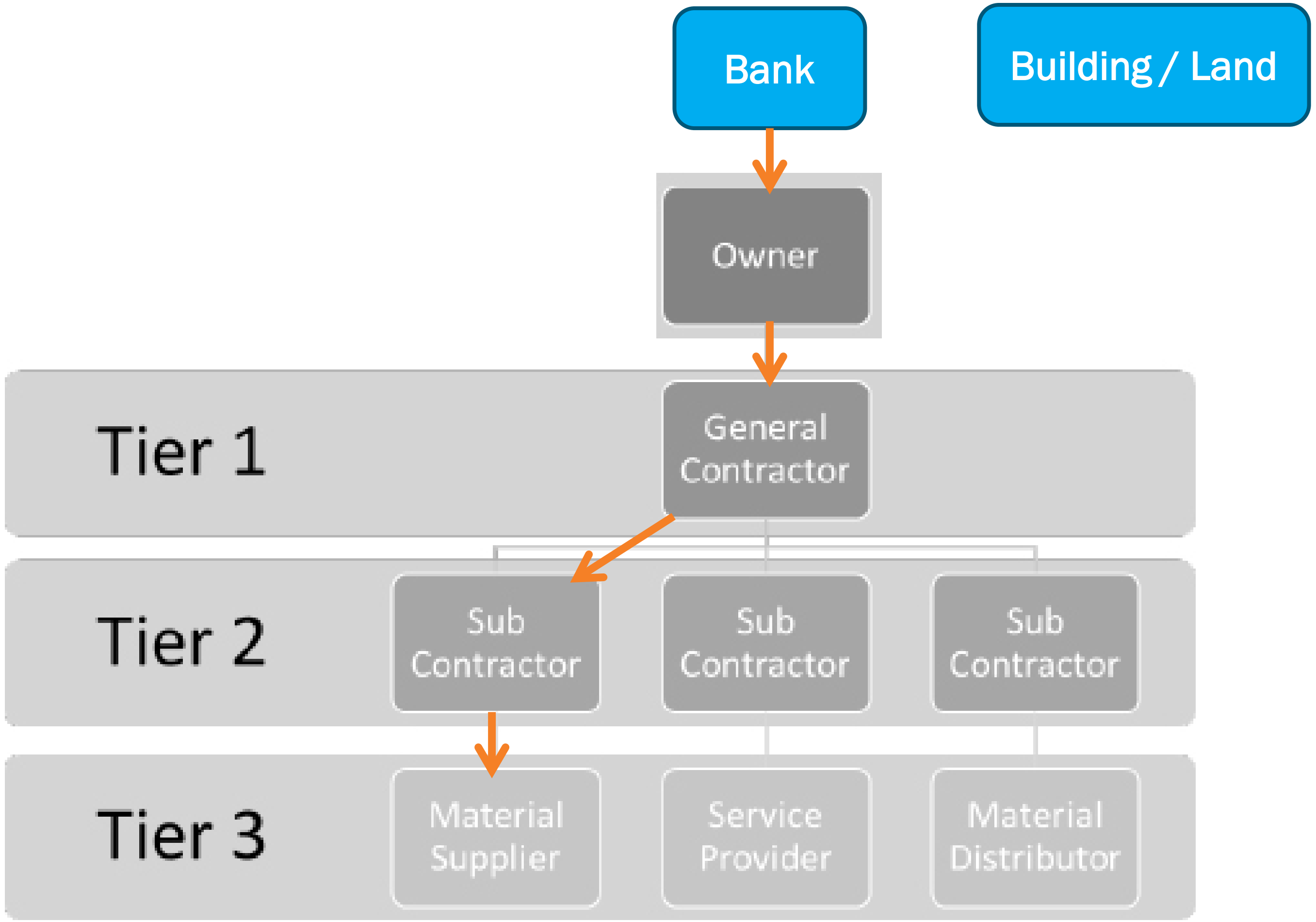
Bond: Public Construction

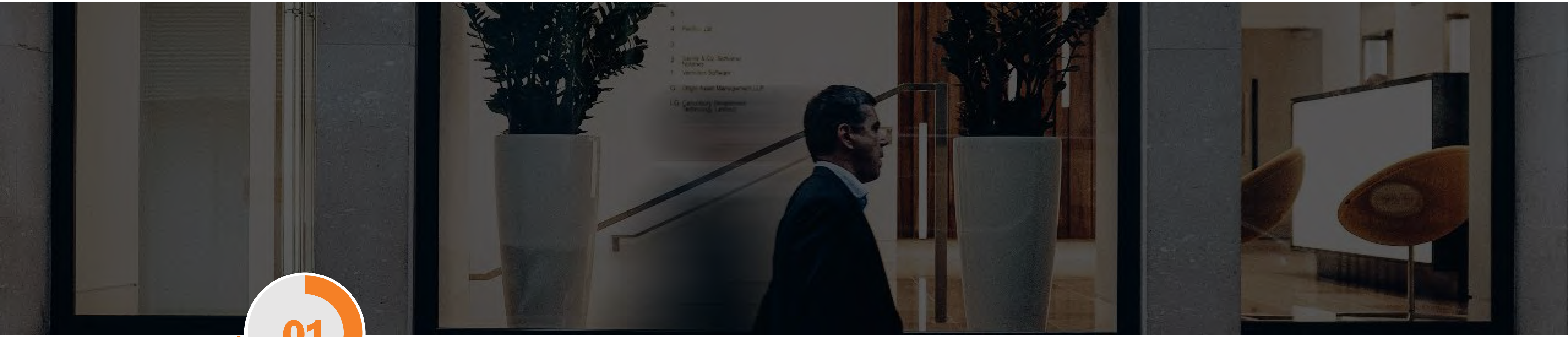
- It wasn't until the 19th century that corporate surety bonds were used.
- Congress passed the Heard Act in 1894, which required surety bonds on all federally-funded projects.
- The Miller Act of 1935 was the last major change in public sector surety.

Bond Claim Process: The Ladder of Supply



Claims filed below this line may be questionable.

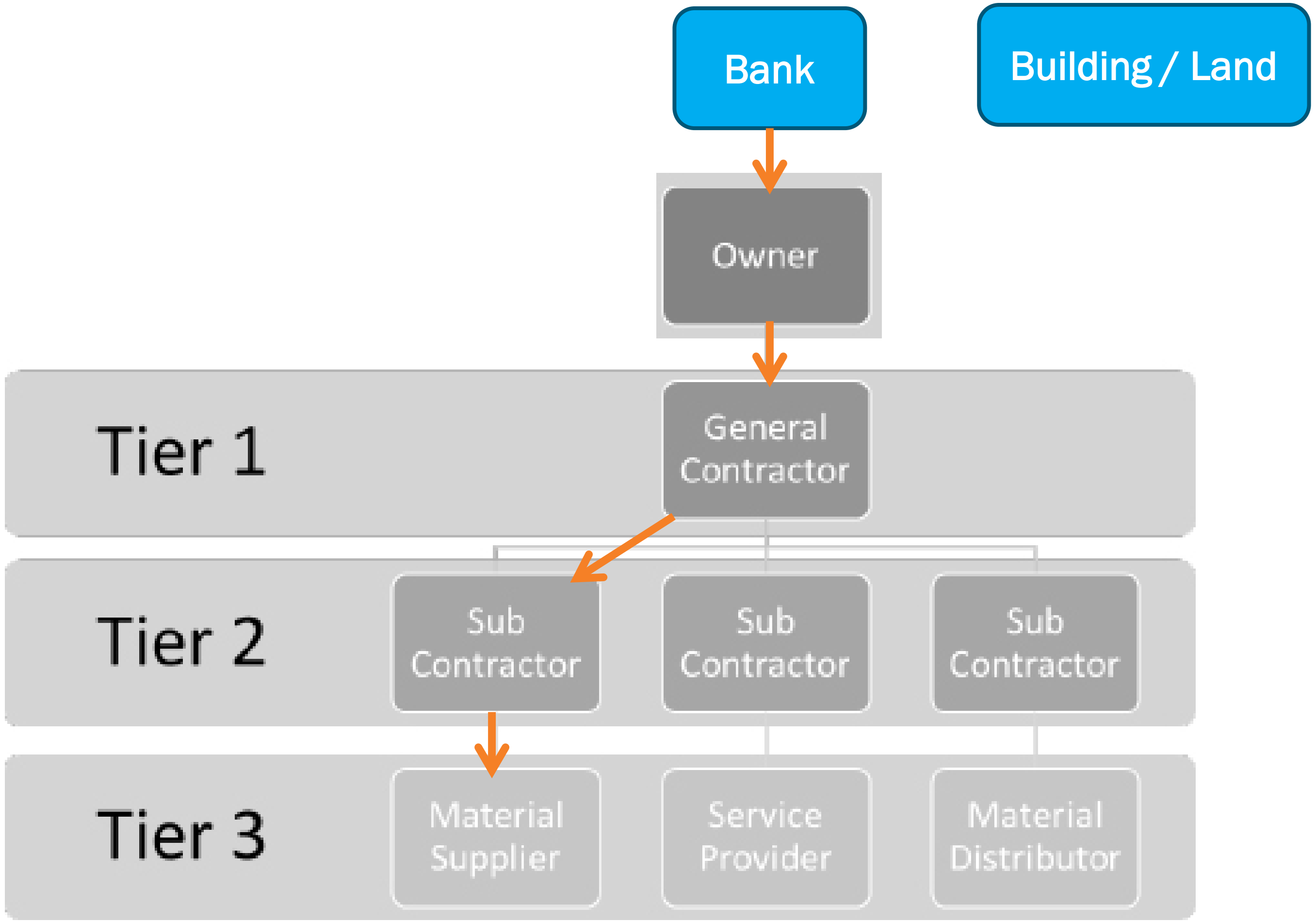
Bond Claims: A Defined Right



01

Within three tiers of the owner

Mechanic's Lien Process



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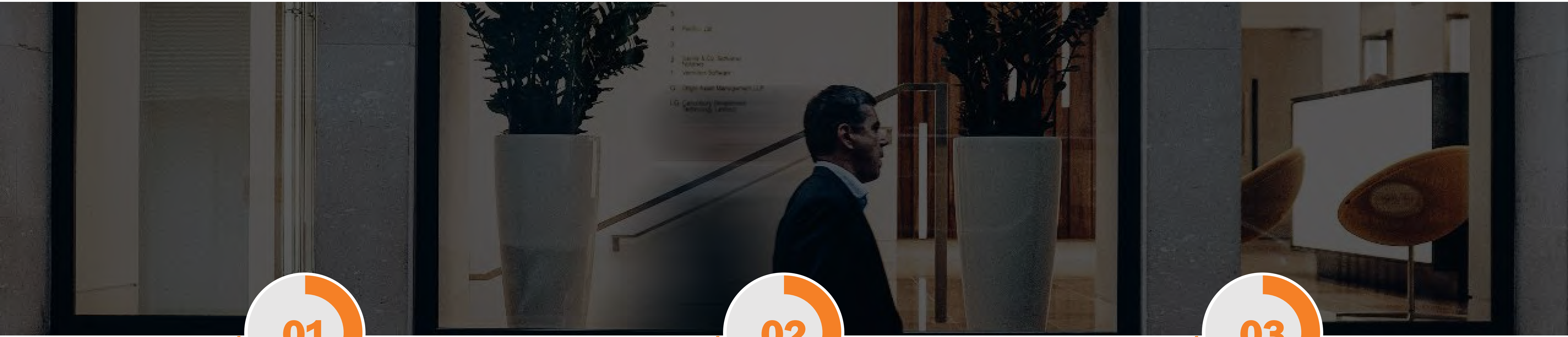


01

Within three tiers of the owner

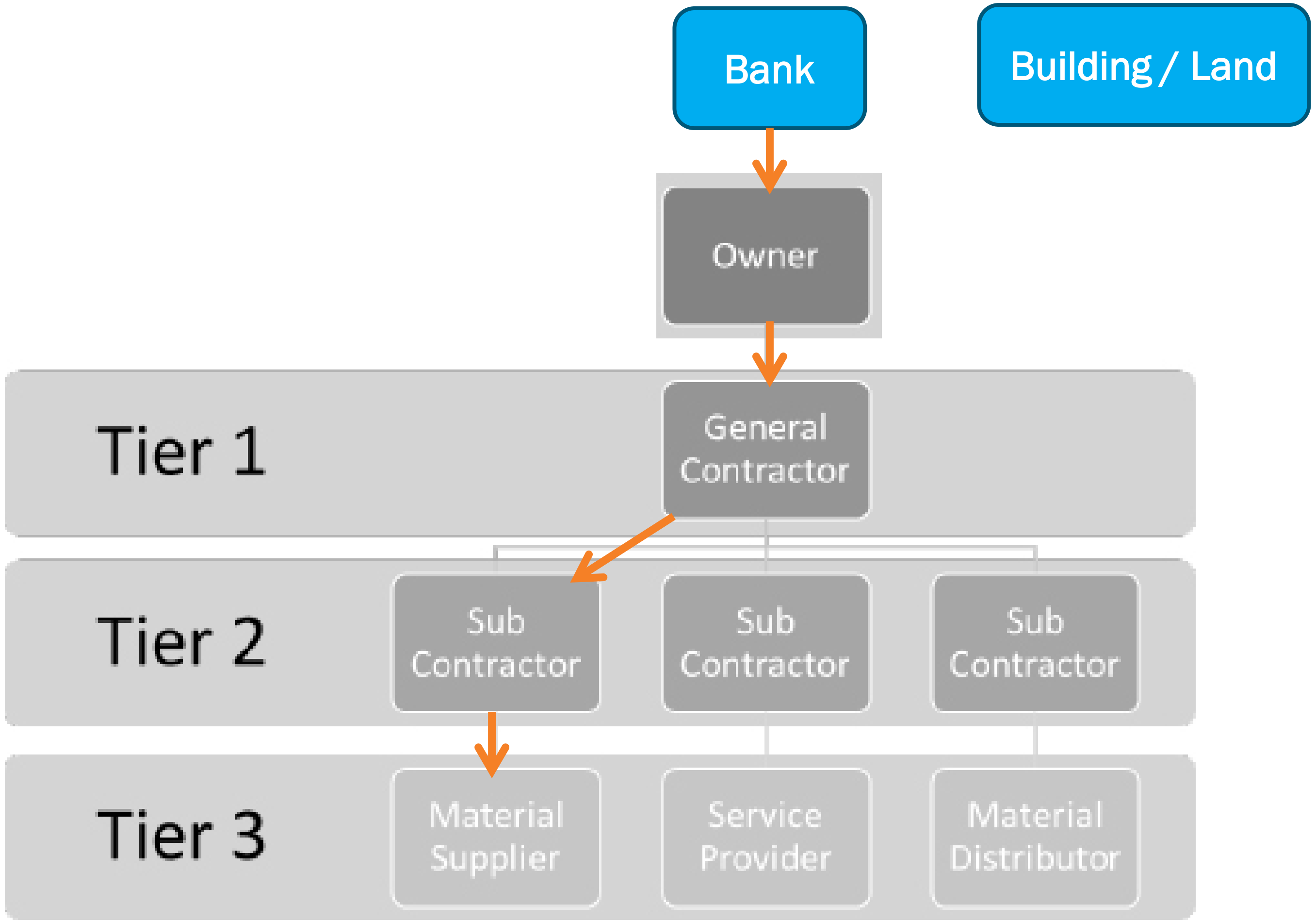
02

Tangible goods must be affixed (glued down, plumbed, not freestanding)

03

No suppliers-to-suppliers

Mechanic's Lien Process



Claims filed below this line may be questionable.

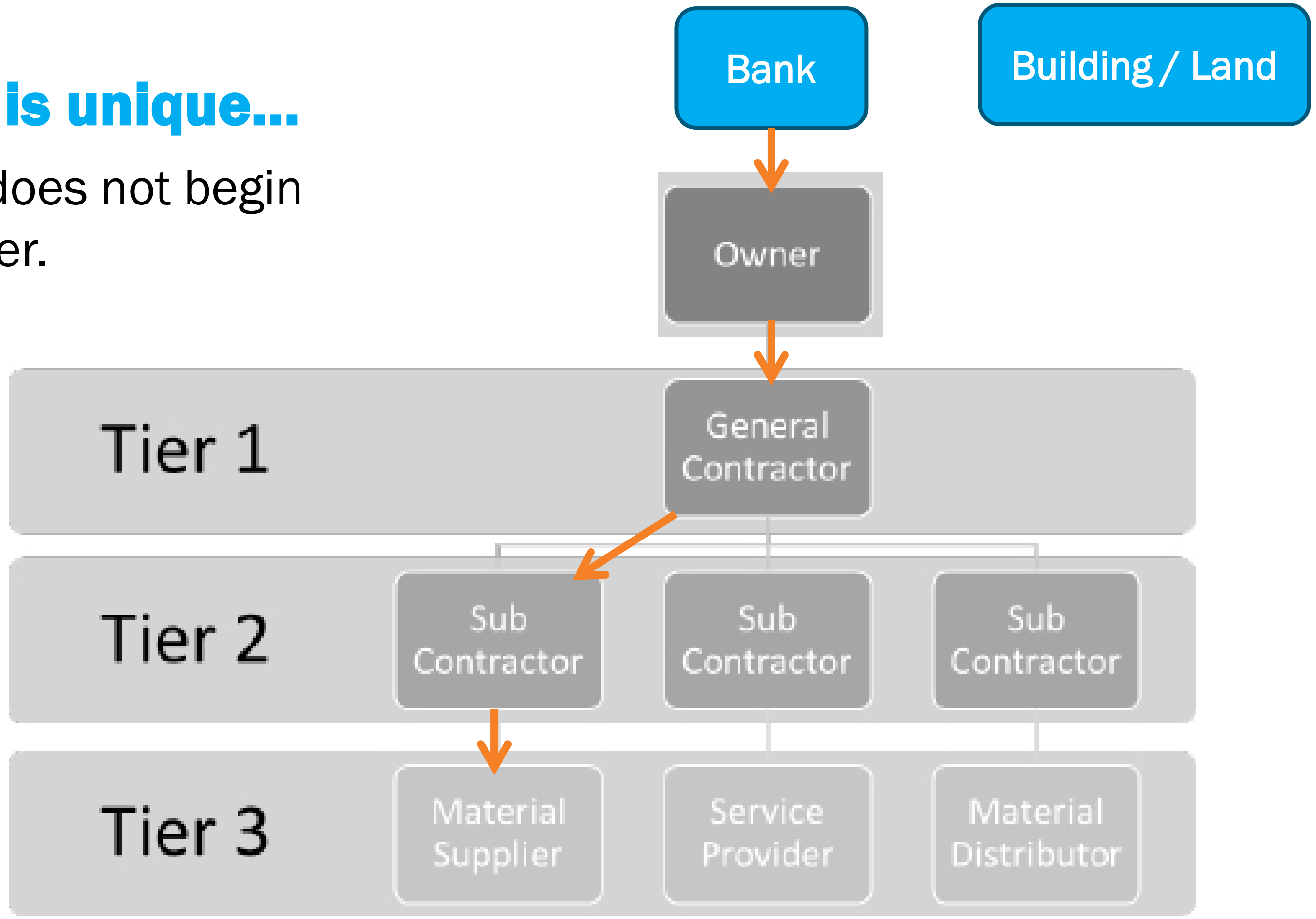
Alternative Protections

1. Security Agreement
2. Financing Statement or UCC-1

Mechanic's Lien Process

Construction credit is unique…

The credit investigation does not begin and end with my customer.



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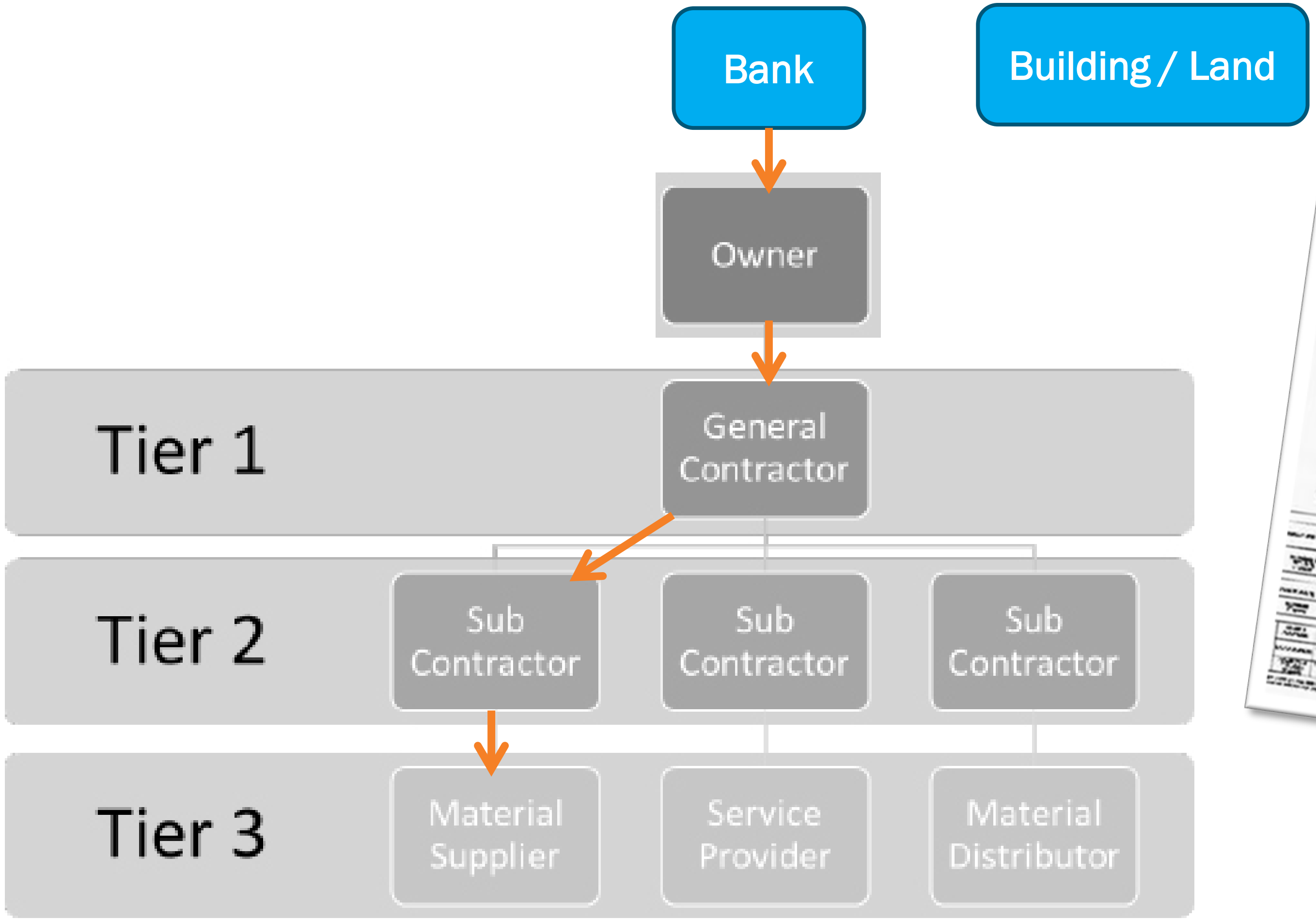
Mechanic's Lien Process



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The Role of Sureties

- Essentially the government is using the surety bond process to pre-qualify contractors.
- If the surety makes a poor decision and suffers claims, it may have to pay.
- This moves the risk of loss from the government to the surety and forces the surety to make prudent pre-qualification decisions.
- It also eliminates any political influences in pre-qualifying potential contractors.

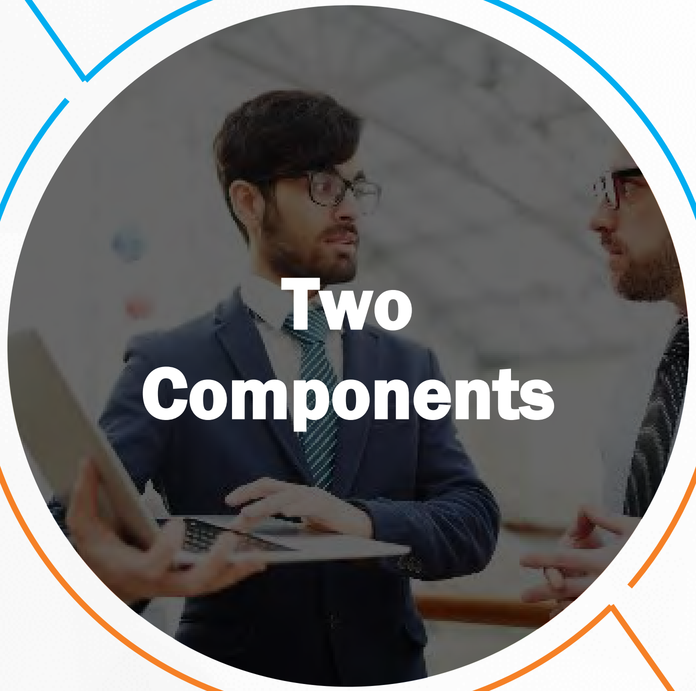
Creating a Bonding Line

- Exhaustive analysis.
- Slotting the contractor
- Establishing the bank
- Setting requirements
  - Collateral
- Retiring the bond.

The Miller Act

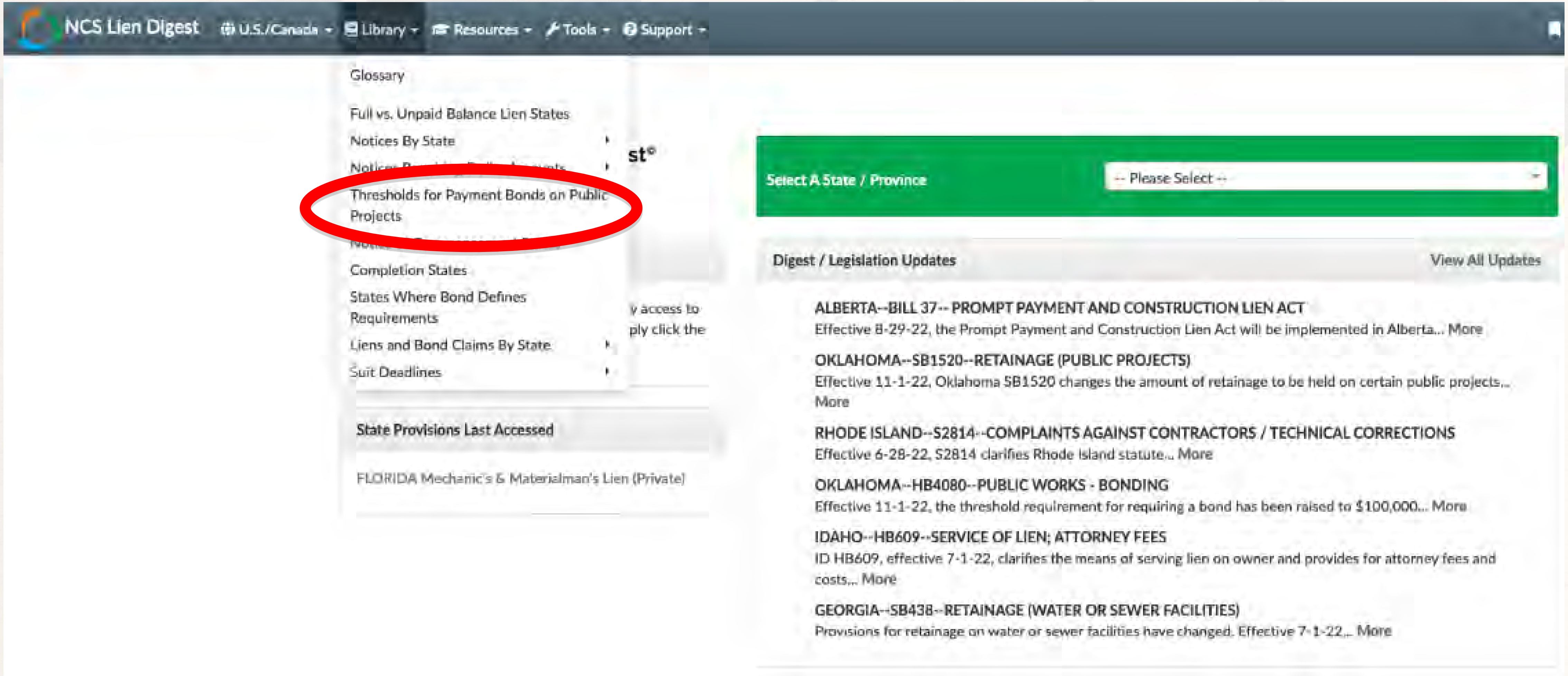
Thresholds

Miller Acts
FEDERAL Projects



Little Miller Acts
STATE Projects

Time Frames/ How to Claim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U.S./Canada
Library
Resources
Tools
Support
Glossary
Full vs. Unpaid Balance Lien States
Notices By State
Thresholds for Payment Bonds on Public Projects
Completion States
States Where Bond Defines Requirements
Liens and Bond Claims By State
Suit Deadlines
State Provisions Last Accessed
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Some Bond Thresholds

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From Protection to Collection

Each state has its own statutes requiring payment bonds on construction projects. Some statutes may require that the general contractor obtain a payment bond on every construction project, and other states may only require a payment bond when the total value of the construction project exceeds a certain threshold. Additionally, the states vary in their requirements for the penal sum of the bond. The following is a guideline for public and federal projects. Please be aware that in some states, special statutes may apply for governmental entities not listed below.

State	[illegible]	[illegible]
Alabama	$50,000 or more	at least 50% of contract price
Alaska	exceeding $100,000 (municipalities may exempt bond requirement on projects not exceeding $400,000)	50% of contracts < $1,000,000 40% of contracts < $5,000,000 $2,500,000 on contracts >= $5,000,000
Arizona	$50,000 or more	equal to contract amount
Arkansas	> $50,000	equal to contract amount
California	exceeding $25,000	equal to contract amount
Colorado	> $50,000 (local public works projects) > $150,000 (state projects) > $150,000 (local public-private partnerships)	50% of contract price
Connecticut	> $100,000 for general contracts	equal to contract amount
Delaware	> $100,000	equal to contract amount
District of Columbia	> $25,000 > $100,000 District Government Procurement Regulations	Contracts less than $1,000,000, 50% of contract Contracts more than $1,000,000, but less than $5,000,000, 40% of contract Contracts more than $5,000,000, $2,500,000
Florida	> $100,000 > $250,000 Department of Transportation	equal to contract amount
Georgia	> $100,000	equal to contract amount
Hawaii	> $25,000	equal to contract amount
Idaho	> $50,000 or more	85% of contract amount
Illinois	> $50,000	amount fixed by public entity
Indiana	> $200,000	equal to contract amount
Iowa	> $25,000	75% of contract price
Kansas	> $100,000 > $25,000 - County road projects > $1,000 - State Highway projects	equal to contract amount

continued...

What is a bond?

- A **contract, a surety, or a guarantee agreement** that contains the promise of a third-party (bonding company or surety) to pay a fixed sum if certain acts are not performed.
- The acts are typically non-performance or non-payment.

Defining Terms

- Surety = Bonding Company
- Principal = General Contractor
- Obligee = Owner
- Beneficiary = Performance – Owner
- Beneficiary = Payment – Subs / Suppliers

Mechanic's Lien Filing Process: Three Steps

Notice	LIEN	Suit
Notice 20 days from first furnishing	**LIEN** 90 days from last furnishing	**Suit** One year from lien filing

Above deadlines are examples

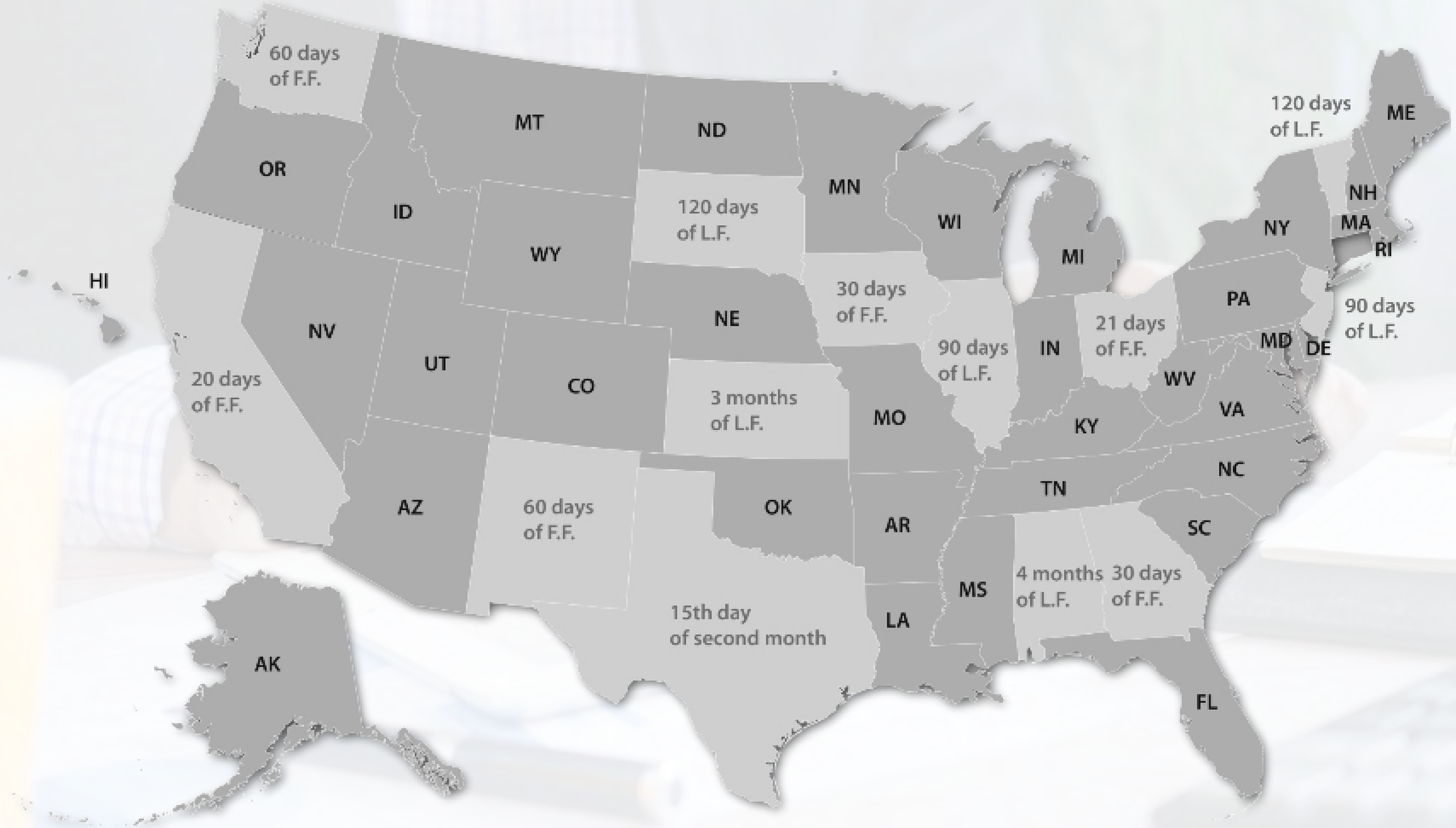
Bond Claim Filing Process: Three Steps

18 States

Notice	LIEN	Suit
Notice 20 days from first furnishing	**LIEN** 90 days from last furnishing	**Suit** One year from lien filing

Above deadlines are examples

Consistencies and Procedures



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Bond Claim Filing Process: Three Steps

Copy of Bond

Copy of Bond
Immediately

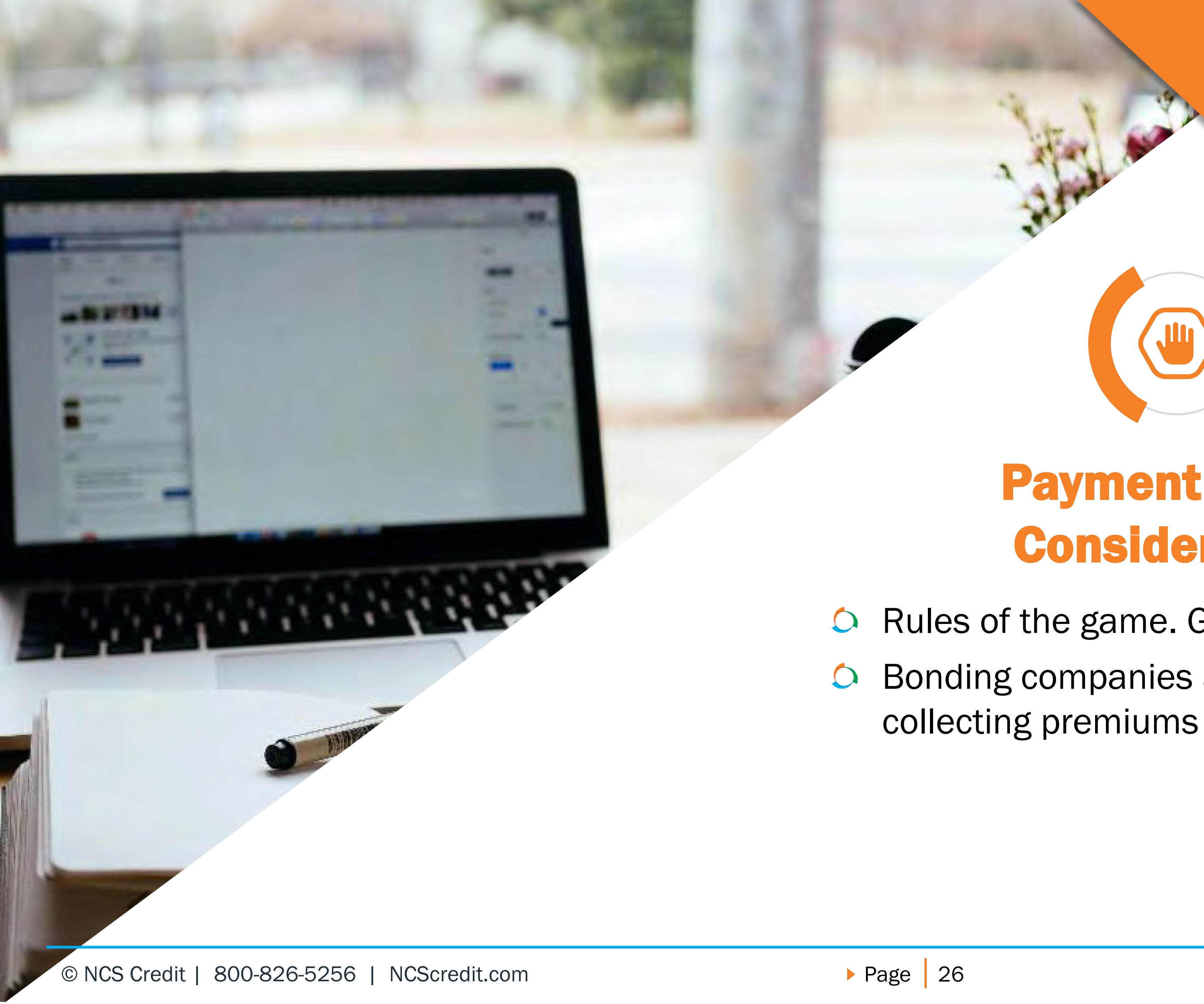
Bond Claim

Bond Claim
90 days from last furnishing

Suit

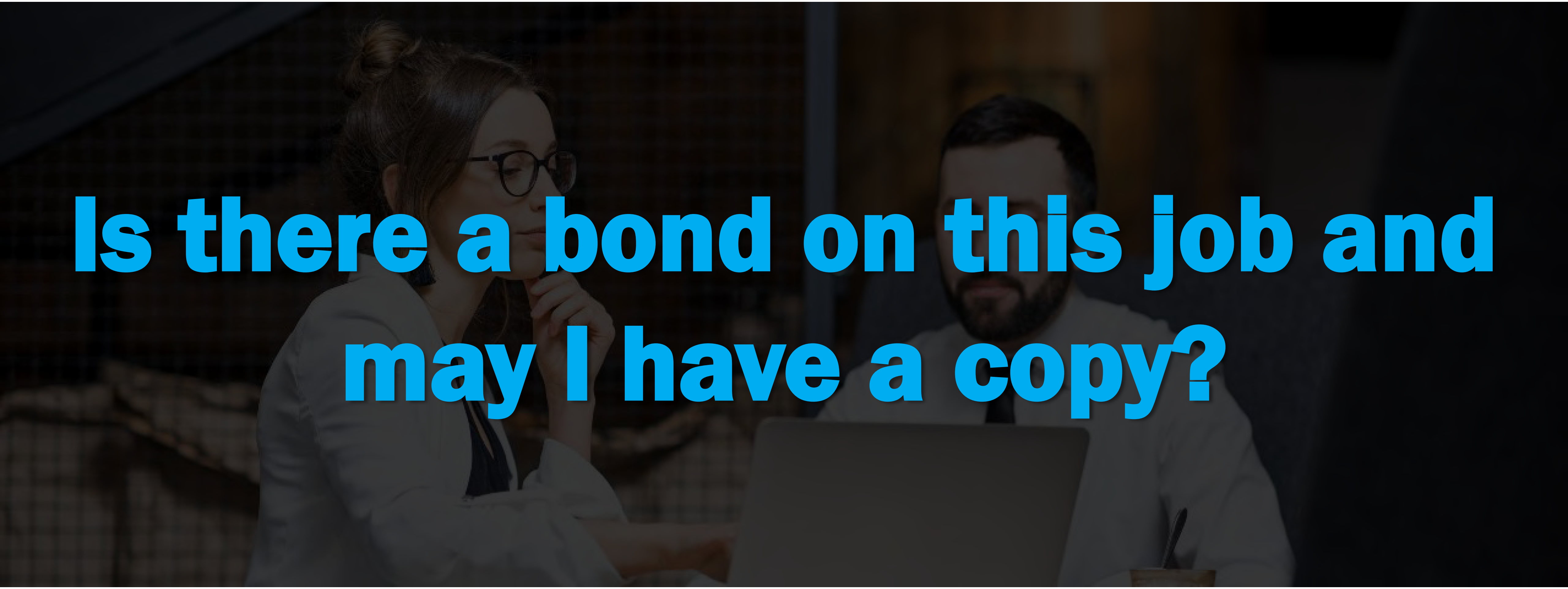
Suit
One year from lien filing

Above deadlines are examples



Payment Bonds: Considerations

- Rules of the game. Get a copy up front.
- Bonding companies are in the business of collecting premiums not paying claims.



Is there a bond on this job and may I have a copy?

The Project Credit Application

- Customer's legal name, address and relationship to the job
- Job location and owner or awarding authority
- Lender name and address
- General contractor's legal name and address
- Sub contractor's legal name and address
- Bonding company if public
- Architect's name and address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JOB INFORMATION SHEET

The following is required on all jobs:

A. Project Type

B. Materials to be Furnished

C. Customer Information

D. Customer's Relationship to Job

E. Job Location

F. Owner/Awarding Authority

G. Lending Company

H. General Contractor

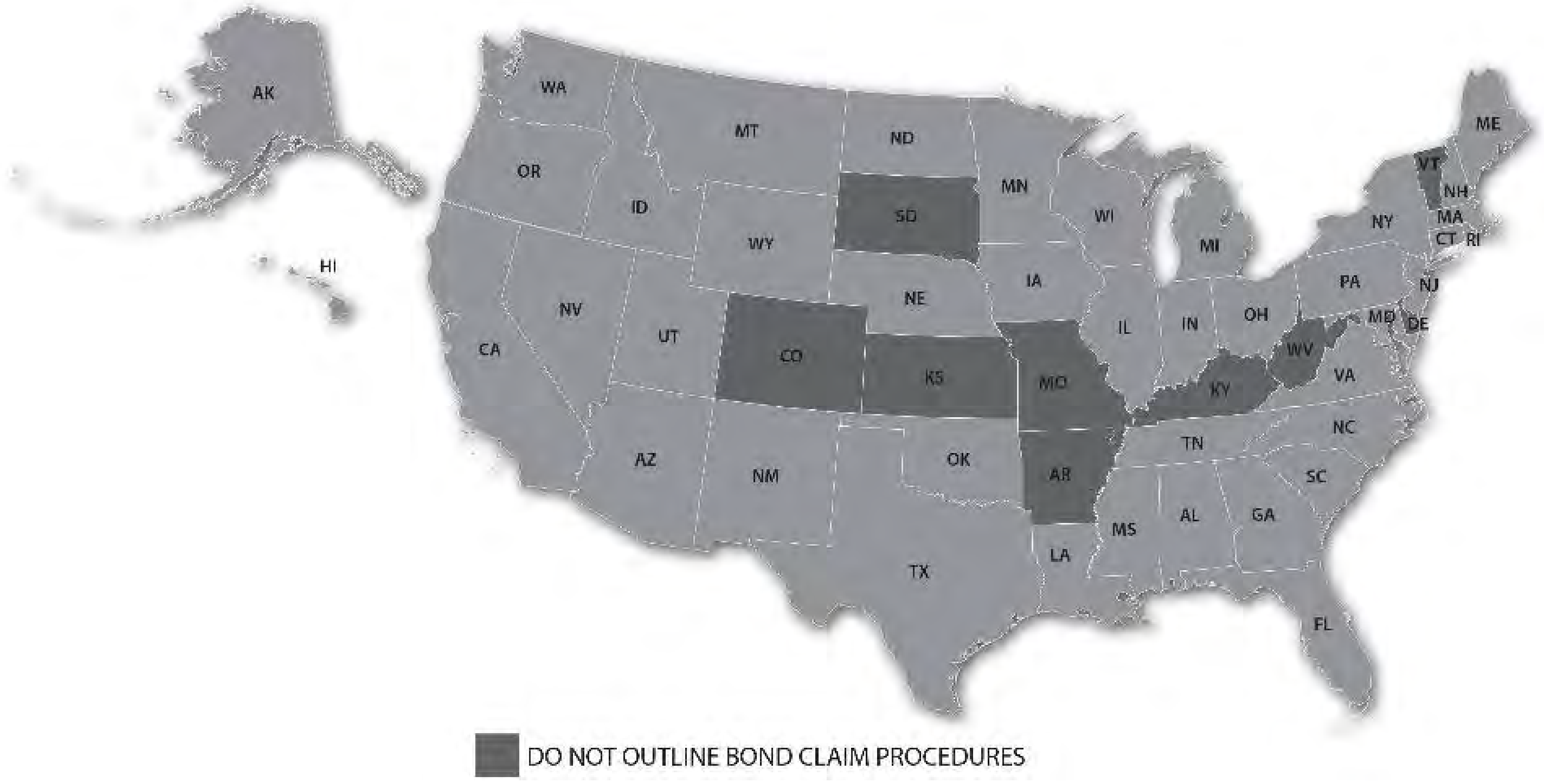
Contractor (if other than customer)

I. Architect

To be completed by customer if no separate purchase order exists.

Collection Services | UCC Services | Notice and Mechanic's Lien Services | Education & Resources

States That Do Not Outline Bond Claim Procedures



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Florida Man Sentenced in $100 Million Surety Bond Fraud Scheme

U.S. Attorney's Office
March 24, 2015

Northern District of Georgia
(404) 581-6000

ATLANTA—Eric Campbell has been sentenced to four years, nine months in prison for operating a multi-million dollar surety bond fraud scheme which caused not only financial losses, but also created delays in construction projects across the country and compromised bids resulting in some contracts being awarded to unqualified construction companies.

"This defendant lied to building contractors and government agencies about his qualifications to issue surety bonds. When his fraud was uncovered and a new valid surety bond had to be found, the construction bidding process was compromised for various projects across the country. There were construction delays, and the construction firms that unwittingly purchased fraudulent surety bonds from the defendant lost hundreds of thousands of dollars in premiums they had paid," said Acting U.S. Attorney John Horn.

J. Britt Johnson, Special Agent in Charge, FBI Atlanta Field Office, stated: "The level of fraud seen in this case was costly in many ways to those doing business with Mr. Campbell. It is hoped that the sentencing of Mr. Campbell will send a clear message to others that these types of criminal schemes to defraud are destined to fail and those involved will be held accountable."

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Wanted by the FBI - Atlanta

FBI Jobs

https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm

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  - Navigating Our Site
  - Regulations and Guidance
  - Surety Bonds
    - Background
    - Getting Started
    - Certified Companies
    - Admitted Reinsurers
    - Sureties Listing
    - Forms
    - Regulations & Guidance
    - Correspondence
    - Contacts
- Systems Access

Surety Bonds

Department of the Treasury's Listing of Approved Sureties (Department Circular 570)

4810-35

Department of the Treasury

Fiscal Service
(Dept. Circular 570; 2016 Revision)

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies

Effective July 1, 2016

This Circular is published annually for the information of Federal bond-approving officers and persons required to give bonds to the United States consistent with 31 CFR 223.16. (Interim changes are published in the FEDERAL REGISTER and on the internet as they occur). Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Bureau of the Fiscal Service, Surety Bond Section, 3700 East West Highway, Room 6D22, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

The most current list of Treasury authorized companies is always available through the Internet at www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm. In addition, applicable laws, regulations, and application information are also available at the same site.

Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write. Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to Note (b) at the end of this publication.

Related Resources

- Certified Companies
- Certified Reinsurer Companies
- Footnotes
- Notes
- States Insurance Departments
- Supplemental Changes to Circular 570

For Customs 3 Digit Surety Codes call 317-381-5434

:://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570_a-z.htm

/ approved bonding companies

Index of Programs & Services

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Regulations and Guidance

Surety Bonds

Background

Getting Started

Certified Companies

Admitted Reinsurers

Sureties Listing

Forms

Regulations & Guidance

Correspondence

Contacts

Systems Access

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z

A

Updated July 1, 2016

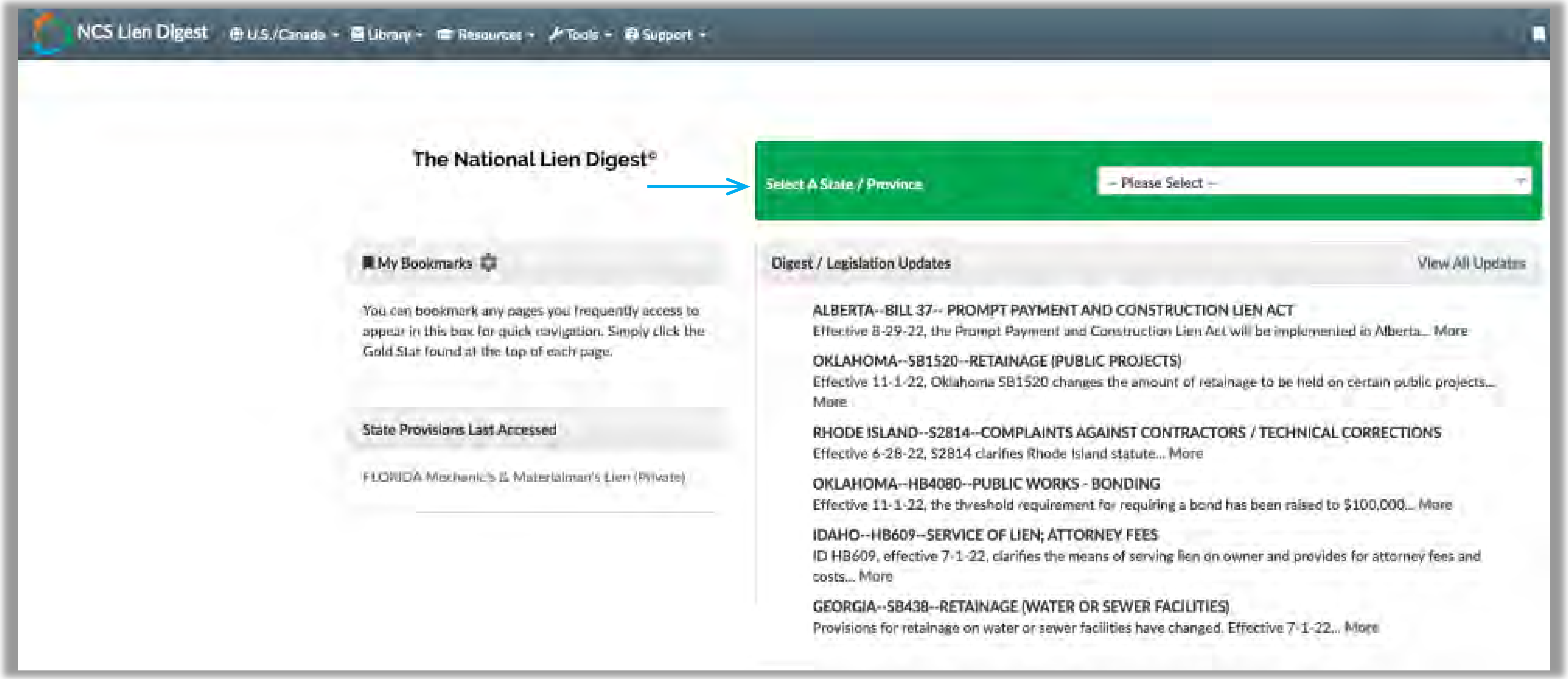
ACCREDITED SURETY AND CASUALTY COMPANY, INC. (NAIC #26379)
BUSINESS ADDRESS: PO Box 140855, Orlando, FL 32814 - 0855. PHONE: (407) 629-2131. UNDERWRITING LIMITATION b/: $2,164,000. SURETY LICENSES c,f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

ACE American Insurance Company (NAIC #22667)
BUSINESS ADDRESS: 436 Walnut Street P.O. Box 1000, Philadelphia, PA 19106. PHONE: (215) 640-1000. UNDERWRITING LIMITATION b/: $257,882,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

ACE Property and Casualty Insurance Company (NAIC #20699)
BUSINESS ADDRESS: 436 WALNUT STREET, P.O. Box 1000, Philadelphia, PA 19106. PHONE: (215) 640-1000. UNDERWRITING LIMITATION b/: $199,590,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

ACSTAR INSURANCE COMPANY (NAIC #22950)
BUSINESS ADDRESS: 30 SOUTH ROAD, FARMINGTON, CT 06032. PHONE: (860) 415-8400. UNDERWRITING LIMITATION b/: $2,634,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company (NAIC #33898)
BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION b/: $5,644,000. SURETY LICENSES c,f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL,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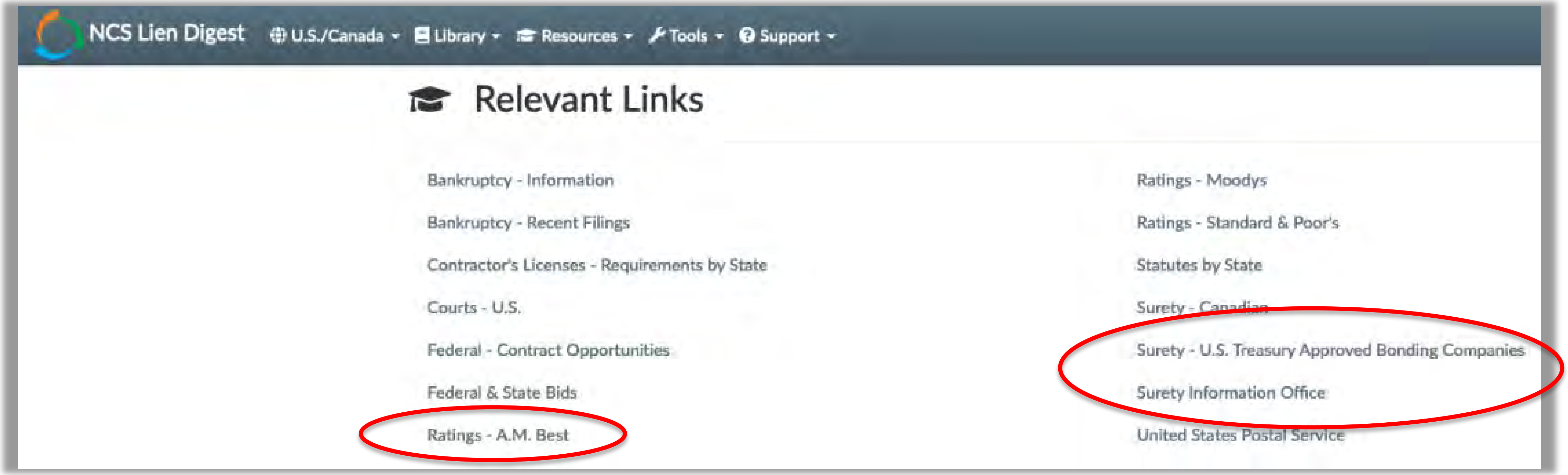
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Federal - Contract Opportunities
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Ratings - Moodys
Ratings - Standard & Poor's
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Notice to Owner or Preliminary Notice?

CALIFORNIA PRELIMINARY NOTICE

USE PROOF OF SERVICE AFFIDAVIT OF CALIFORNIA PRELIMINARY NOTICE
(PRIVATE AND PUBLIC WORK – IN ACCORDANCE WITH SECTION 8034, 8102, 8116 AND 8200 ET SEQ. AND 8034, 8612 AND 9300 ET SEQ. CALIFORNIA CIVIL CODE)

CONSTRUCTION LENDER
(Or Reputed Construction Lender, If Any)

Construction loan no. _______________ (if known)

OWNER or PUBLIC AGENCY
(Or Reputed Owner)
(On Private Work) (On Public Work)

DIRECT CONTRACTOR
(Or Reputed Direct Contractor)

SUBCONTRACTOR
(Or Reputed Subcontractor)

SUB-SUBCONTRACTOR
(Or Reputed Sub-Subcontractor)

BOND COMPANY

An estimate of the total price of the labor, services, equipment or materials furnished or to be furnished is:

$0.00

An estimate of the amount currently owing to claimant for providing through the date of this notice the above Work, after deducting payments and offsets, is:

$43,310.00

YOU ARE HEREBY NOTIFIED THAT....
INVENTORY MANUFACTURERS DBA THE CONSTRUCTION PEOPLE
PO BOX 24101
CLEVELAND, OH 44124
(MS. JANE SMITH at (440) 461 - 9661)
(name and address of person or firm – sender)

has furnished or will furnish MATERIALS AND LABOR of the following general description:

PIECES, PARTS AND THINGAMAJIGS

for the building, structure or other work of improvement located at:

The name of the person or firm who contracted for the purchase of such labor, services, equipment or materials:

NOTICE TO PROPERTY OWNER

EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances.

This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or the person employed by you on the construction project.

If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.

Claimant's Notice of unpaid compensation & employer payments owing to laborers & entities (described in Civil Code §8202(b)): The names and addresses of the laborer(s) and the Trust Fund to whom compensation and employer payments is/are due and payable are:

(Names) ______________________________
(Addresses) ______________________________

Mailed this date: JANUARY 5, 2016

______________________ Agent
(Signature)
Our Reference: (L196149) ORDER 345-394

NCS CREDIT

JANUARY 5, 2016

ILLINOIS - Notice of Furnishing

VIA CERTIFIED MAIL
DEBTOR CONSTRUCTION
357 SOUTH DRIVE
CLEVELAND, OH 44143

Re: JERRY'S BIG BUILDING
123 MAIN ST
CHICAGO, IL 60604

Dear Sir or Madam:

INVENTORY MANUFACTURERS DBA THE CONSTRUCTION has or will be furnishing to you MATERIALS AND LABOR (STUFF, SUPPLIES AND THINGAMAJIGS) for the above project. The purpose of this letter is not in any way intended to be a reflection on your creditworthiness, but is intended merely to protect the rights of INVENTORY MANUFACTURERS DBA THE CONSTRUCTION PEOPLE, under applicable lien, bond or other laws. We request that you please provide a copy of any payment bonds for this project to:

Attn: Bob Jones
P. O. Box 24101
Cleveland, OH 44124

It is requested that timely payment be made in accordance with the terms of INVENTORY MANUFACTURERS DBA THE CONSTRUCTION PEOPLE's invoice(s). In the event the invoices are not paid in accordance with the terms, INVENTORY MANUFACTURERS DBA THE CONSTRUCTION PEOPLE reserves its rights under the mechanic's lien law, any payment bond, and any other possible remedies.

Should you have any questions regarding this notice, please contact MS. JANE SMITH at the address listed below.

Sincerely,

Bob Jones

Bob Jones, (c/o bjones@ncscredit.com) Agent for
INVENTORY MANUFACTURERS DBA THE CONSTRUCTION PEOPLE
PO BOX 24101
CLEVELAND, OH 44124
Contact: MS. JANE SMITH at (440) 461 - 9661
Reference #: L196149 S.O. 23-345

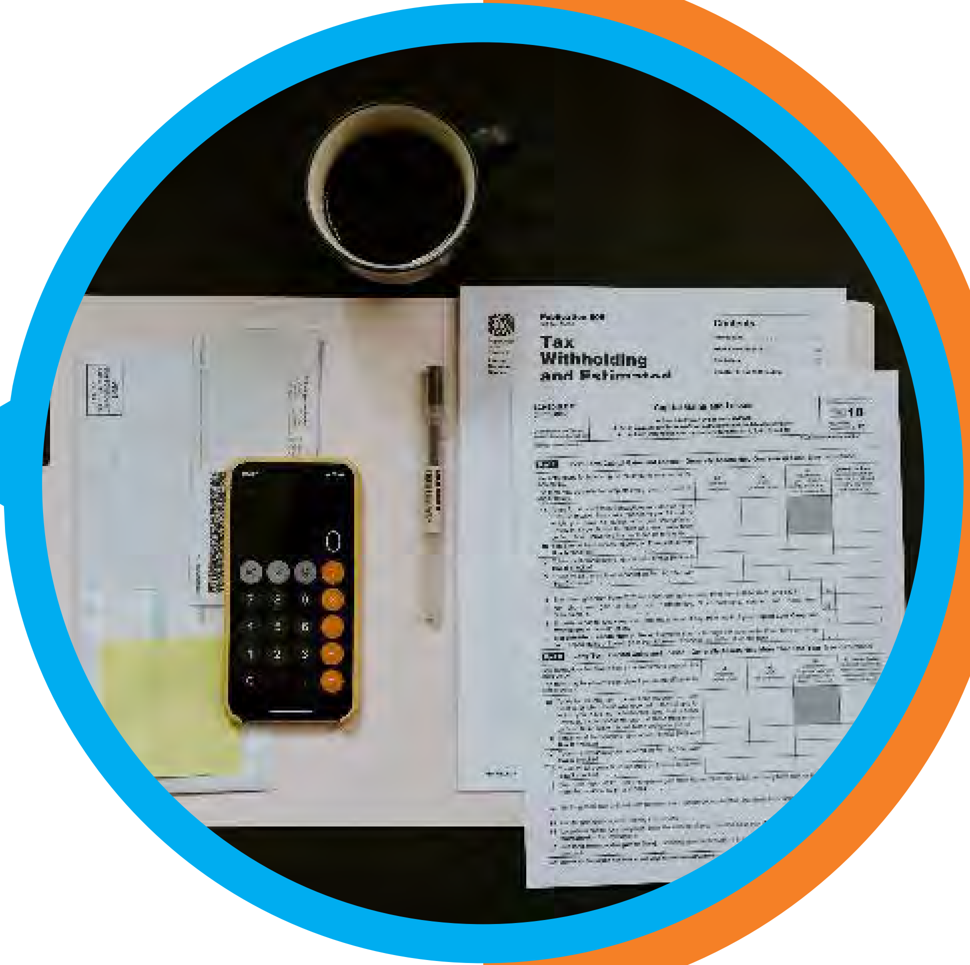
NCS CREDIT

Preliminary Notice

01 Notice given to various parties on the ladder of supply

02 Prerequisite to filing a lien claim

03 Typically required to be served 20 days after first furnishing or greater



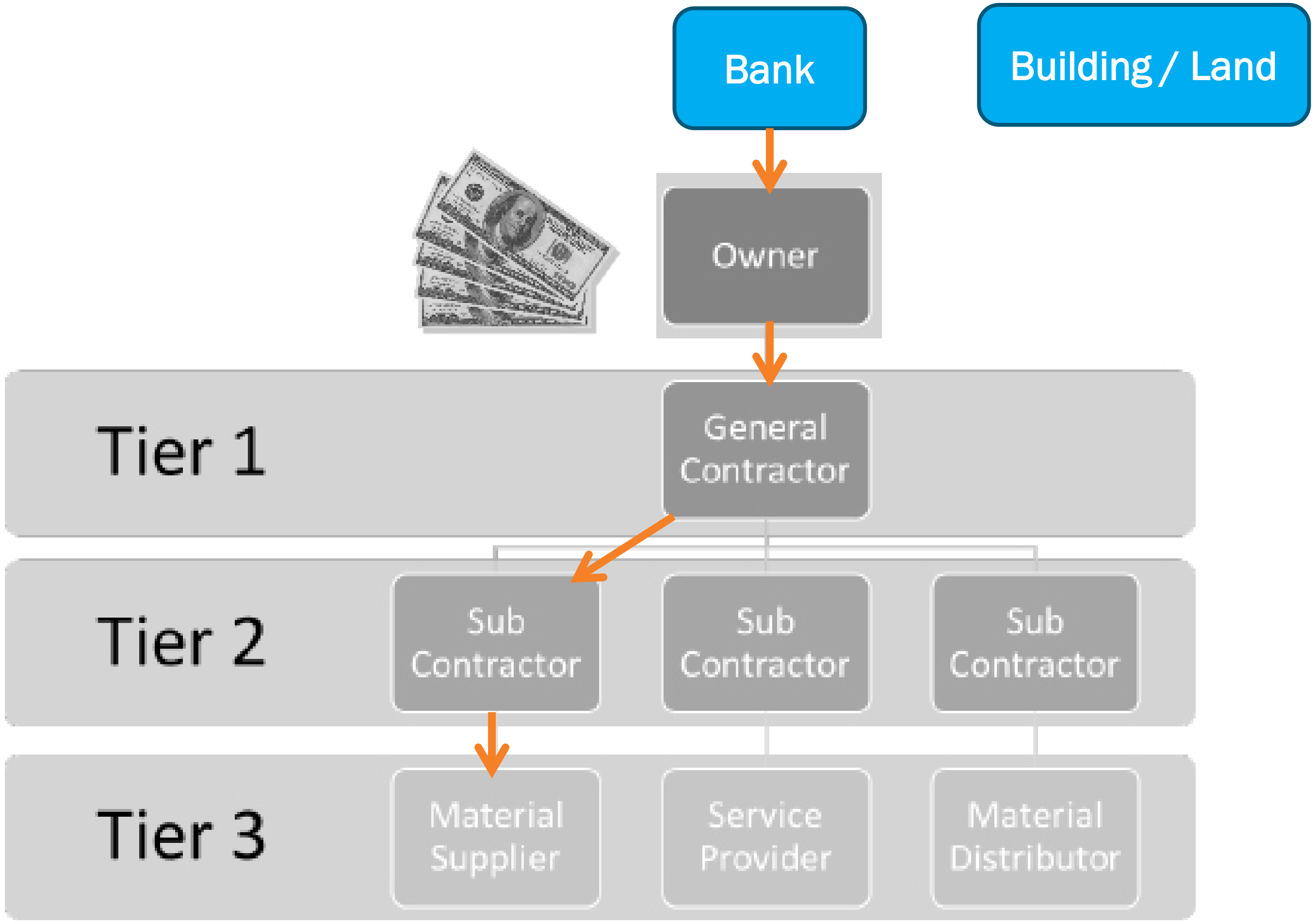
NCS CREDIT

Reasons to Serve Notices

- Notices initiate compliance with state lien laws and preserve your right to lien if needed.
- Notices identify you to the owner of the property, who wants to ensure you receive payment.
- Notices make you a priority for payment from your customers.

NCS CREDIT

Justifying the Credit



Claims filed below this line may be questionable.

Bond Claim Filing Process: Three Steps

Copy of Bond

Copy of Bond
Immediately

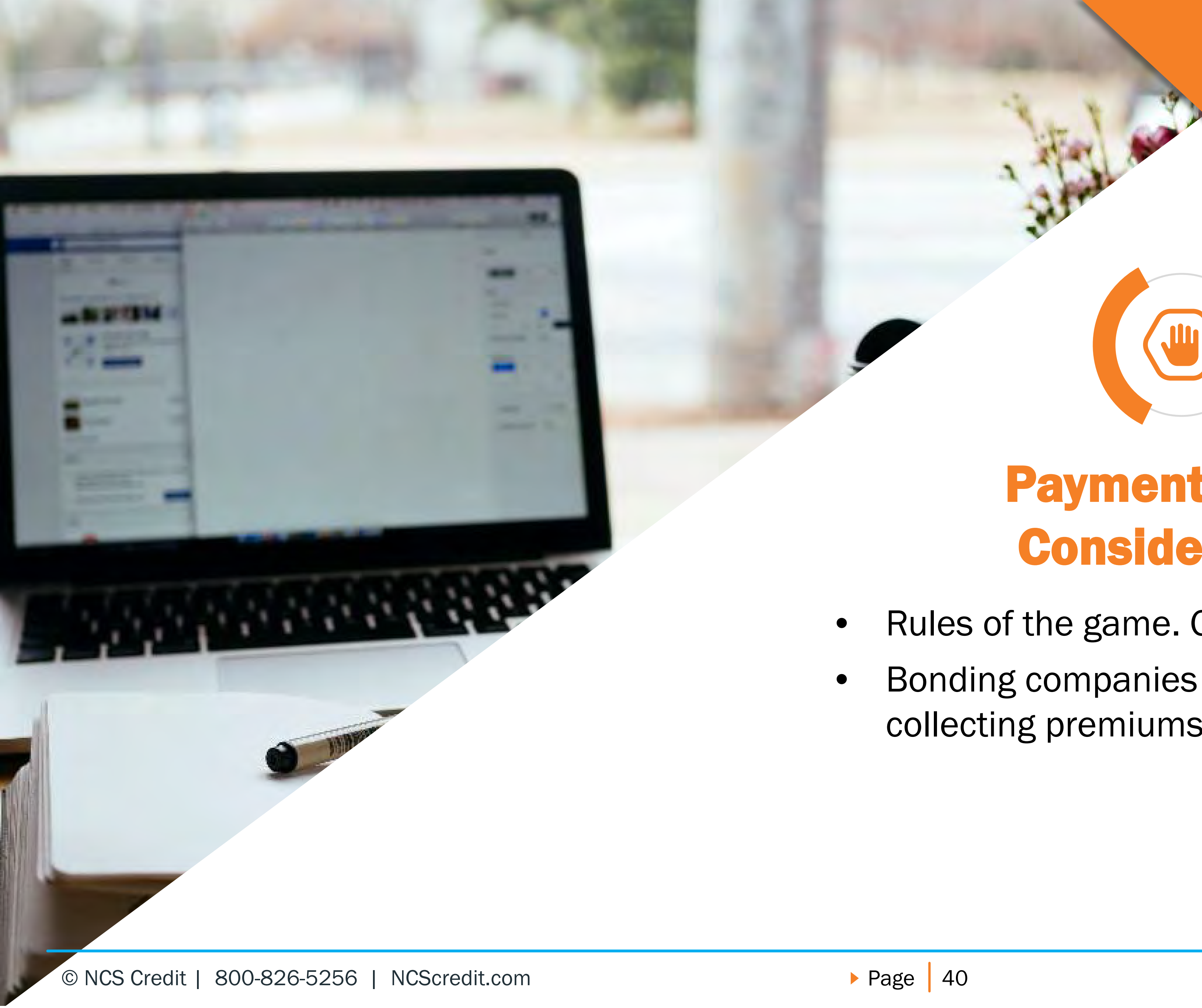
Bond Claim

Bond Claim
90 days from last furnishing

Suit

Suit
One year from lien filing

Above deadlines are examples



Payment Bonds: Considerations

- Rules of the game. Get a copy up front.
- Bonding companies are in the business of collecting premiums not paying claims.

NCS CREDIT

Filing Bond Claims

AIA A312

- Most widely used form of payment bond
- Paragraph six outlines response time frames for sureties

Filing Bond Claims

AIA A312

- Surety must respond within 45 days after receipt of claim
  - State the amounts disputed
  - The basis for challenging any amounts disputed

Payment Bonds: Considerations

- Rules of the game. Get a copy up front.
- Bonding companies are in the business of collecting premiums not paying claims.
- Sue me, sue you.

Bond Claim Filing Process: Three Steps

Copy of Bond

Copy of Bond
Immediately

Bond Claim

Bond Claim
90 days from last furnishing

Suit

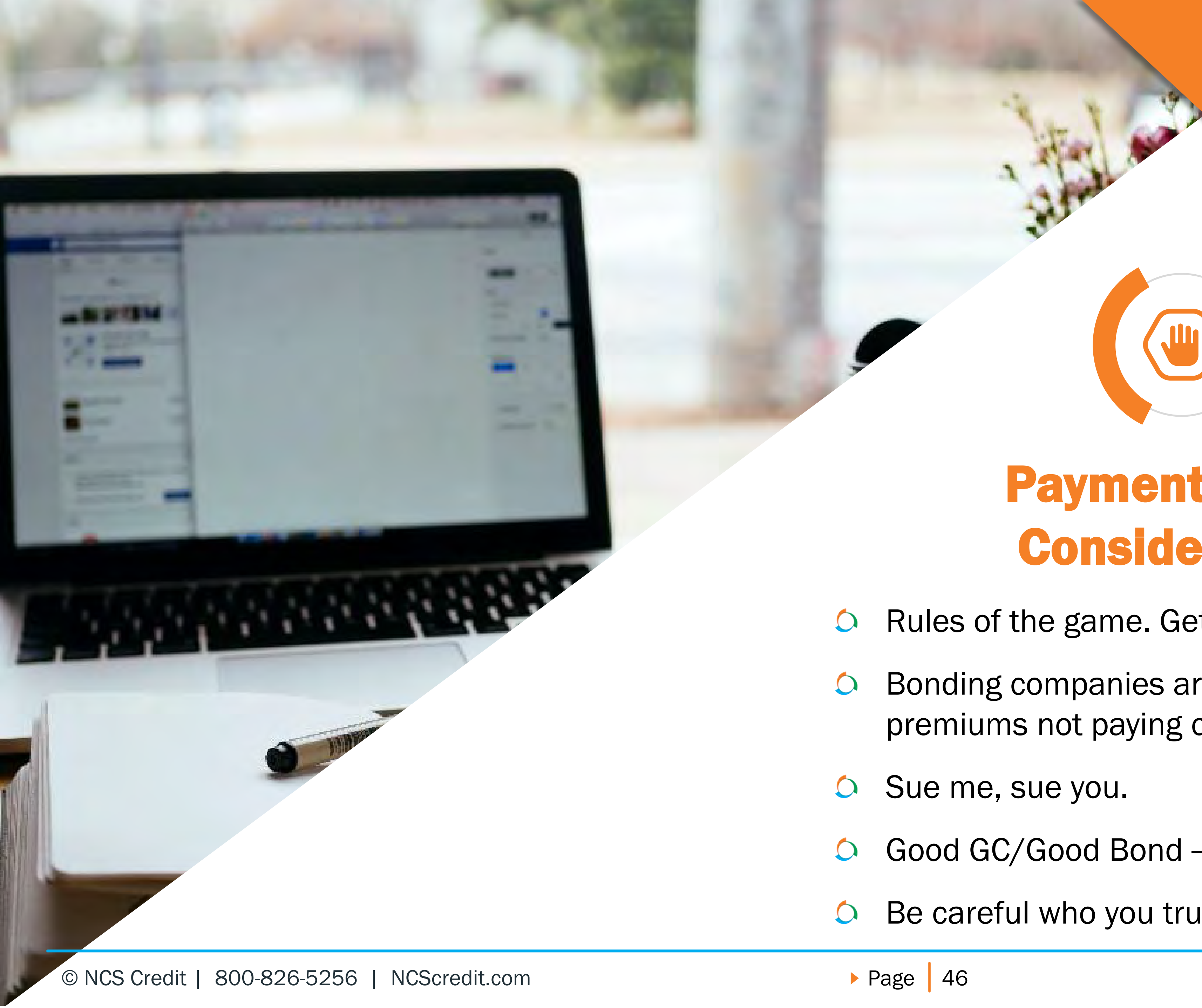
Suit
One year from lien filing

Above deadlines are examples

Claims

- Undisputed
- Dealings seem forthright

- Disputed
- Stagnant



Payment Bonds: Considerations

- Rules of the game. Get a copy up front.
- Bonding companies are in the business of collecting premiums not paying claims.
- Sue me, sue you.
- Good GC/Good Bond – Bad GC/Bad Bond
- Be careful who you trust.

Construction Credit

Construction Credit

Private Construction	Public Construction
LIENS Owner	**BONDS Owner**
Corporation	Federal
Partnership	State
Individual	Municipal

Miller Act: Federal Projects

In the U.S., the law requiring contract surety bonds on federal construction projects is known as the Miller Act (1935).

- Requires contractor to post two bonds
  - Performance Bond
  - Labour and Material Payment Bond
- Surety company issuing these bonds must be listed as a qualified surety on the Treasury list, issued by the U.S. Dept. of the Treasury

Miller Act: Federal Projects

Before a contract exceeding $150,000 for the construction, alteration or repair of any building or public work of the U.S. is awarded to any person, that person provides:

Performance Bond

- Protection for labor and material suppliers
- Normally equal to contract price
- Contracting officer may set amount lower
- Amount can’t be less than performance bond

Miller Act: Federal Projects

Requirements

Serve the Miller Act Bond Claim Notice upon the general contractor within 90 days after last furnishing materials or services.

Last furnishing

- "Substantial" completion
- Small additional shipments, replacement and repairs do not extend the 90-day notice period

Miller Act: Federal Projects

Requirements

File suit to enforce the Miller Act Bond Claim in the U.S. District Court after 90 days from last furnishing materials or services, but within one year of last furnishing materials or services

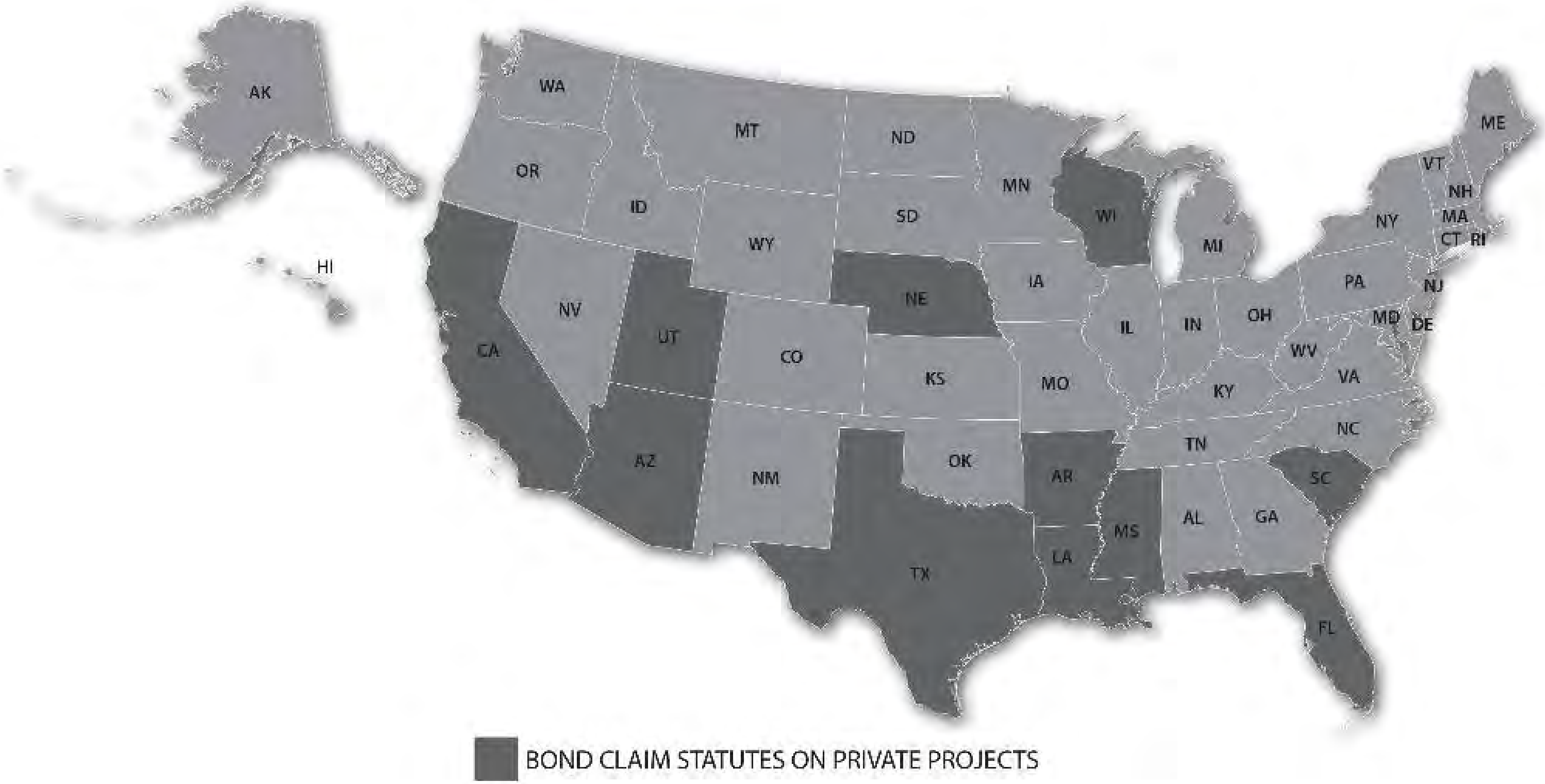
Construction Credit

Bonds may be available on private jobs also

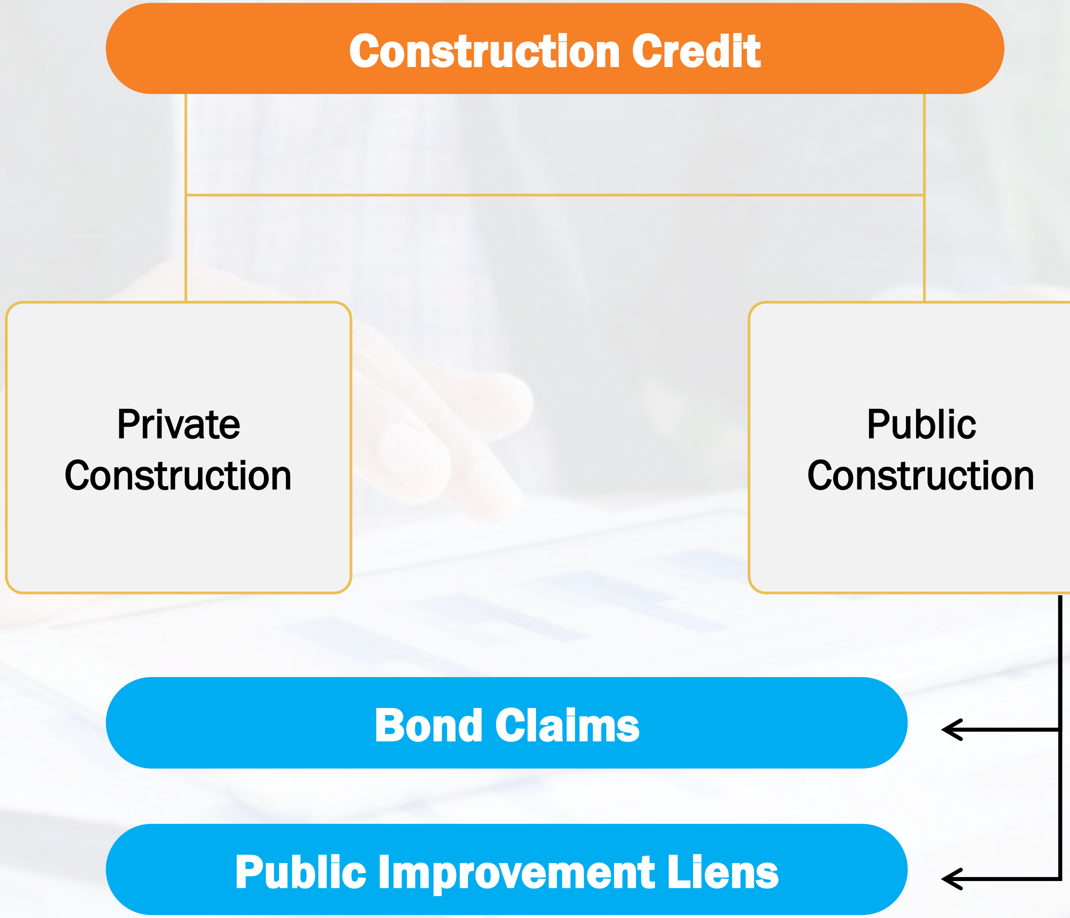
Construction Credit

Private Construction	Public Construction
LIENS Owner	**BONDS Owner**
Corporation	Federal
Partnership	State
Individual	Municipal

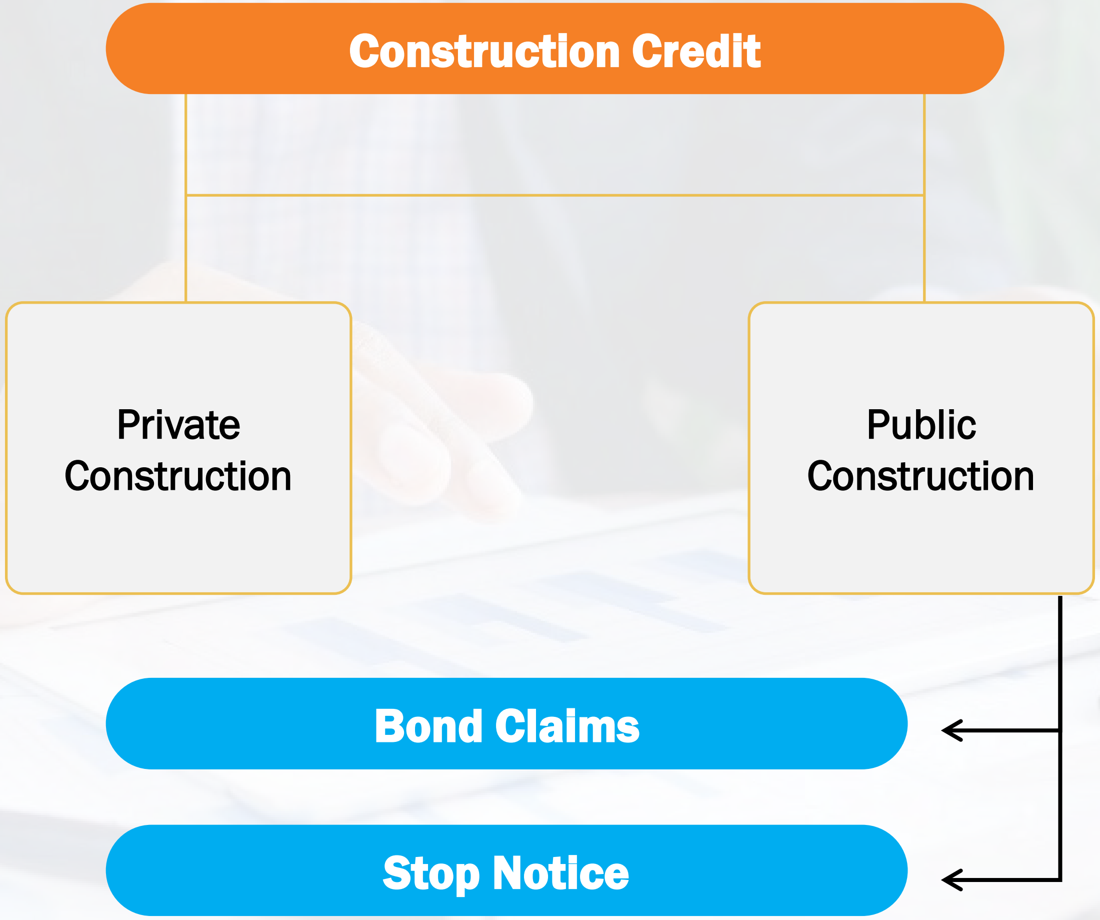
States That Have Bond Claim Statutes on Private Projects



Public Improvement Liens / Stop Notices



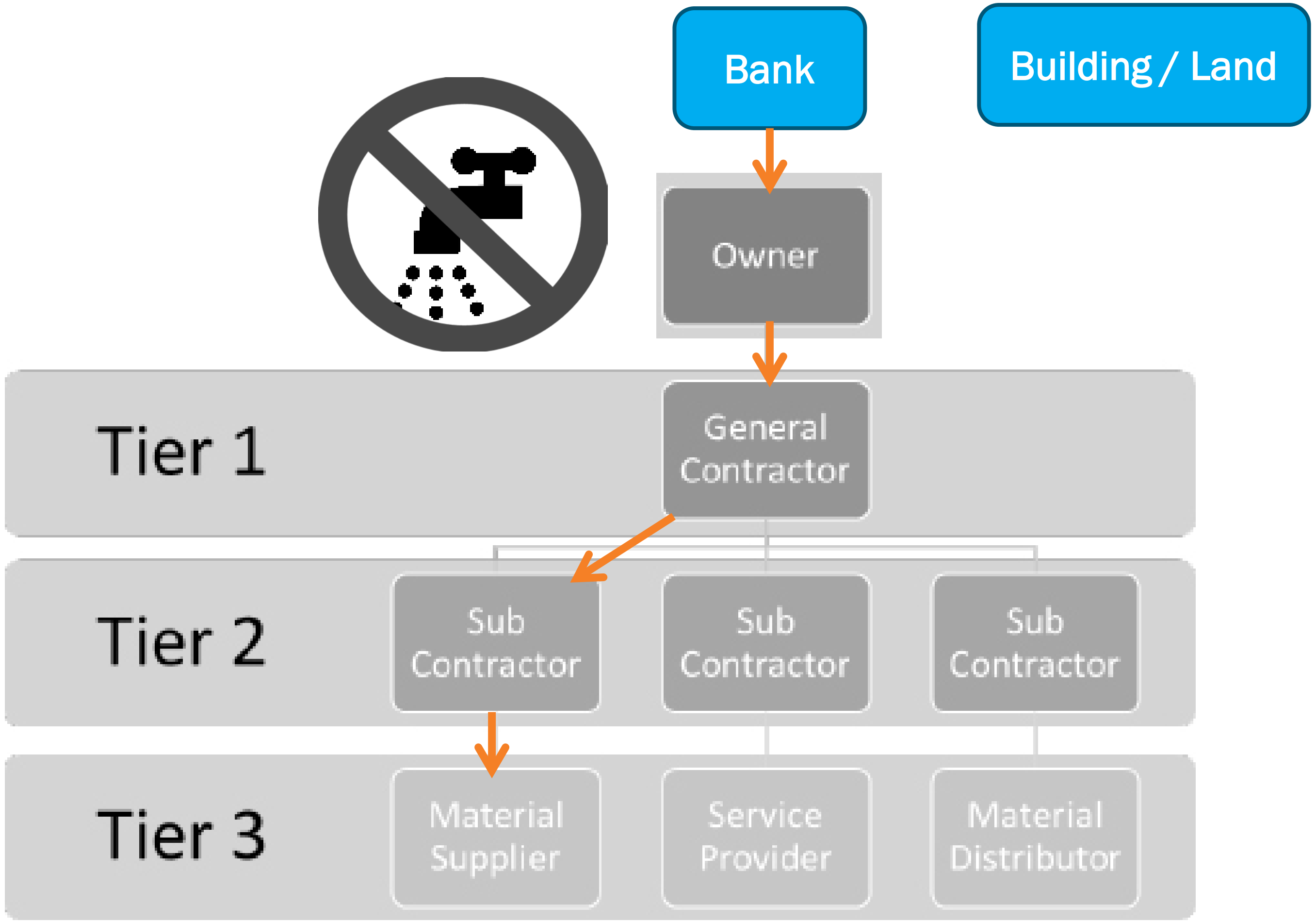
Public Improvement Liens / Stop Notices



Public Improvement Liens

***California** will allow for "Stop Notices" on public projects, as well as private.*

Mechanic's Lien Process



Claims filed below this line may be questionable.

Bond Claims vs. Public Improvement Liens

Bond Claims

2022

- Availability: Many public jobs, some private
- Stronger at third step: Lawsuit
- Initiate suit against surety

Public Improvement Liens

2023

- Availability: About 20% of states; 30% of provinces
- Stronger at second step: “Lien” stage
- Shuts off funds

Which should you use?

Recap of Protections Discussed

01

Mechanic's Lien

Lien on property

- Building
- Land

02

Bond Claim

Lien on insurance policy or guarantee

- Bond company

03

Public Improvement Lien

Lien on unpaid funds

- Unpaid funds

Review of Topics Covered

01 Justifying some of the credit lines required for construction projects is not easy.

02 Bond claim statutes have been put in place to assist credit professionals in these instances.

03 Use of these tools is imperative to protecting profits in the construction industry.

04 Knowledge of the applicable statutes is critical to protect your rights.

Thank you for your time!

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