

# Payment Bonds & Bond Claims in construction

Payment bonds and bond claims are a payment security often available for those furnishing to public and federal construction projects, and even the occasional private project.

## What is a payment bond?

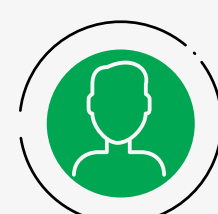
A surety bond, particularly on public projects, issued as assurance of payment to certain parties should the principal of the bond breach their construction contract.

## What is a bond claim?

A Bond Claim is a written notice that the claimant (e.g. subcontractor, supplier) looks to the recipient for payment.

## 01

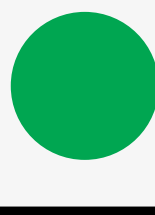
## Who is a party to the payment bond?



**Surety:** One who agrees to answer for the debt or default of another, usually an insurance company that is compensated for the risk by charging a premium.



**Obligor aka Principal:** An entity that has an obligation to pay a debt/the party required to furnish a payment bond.

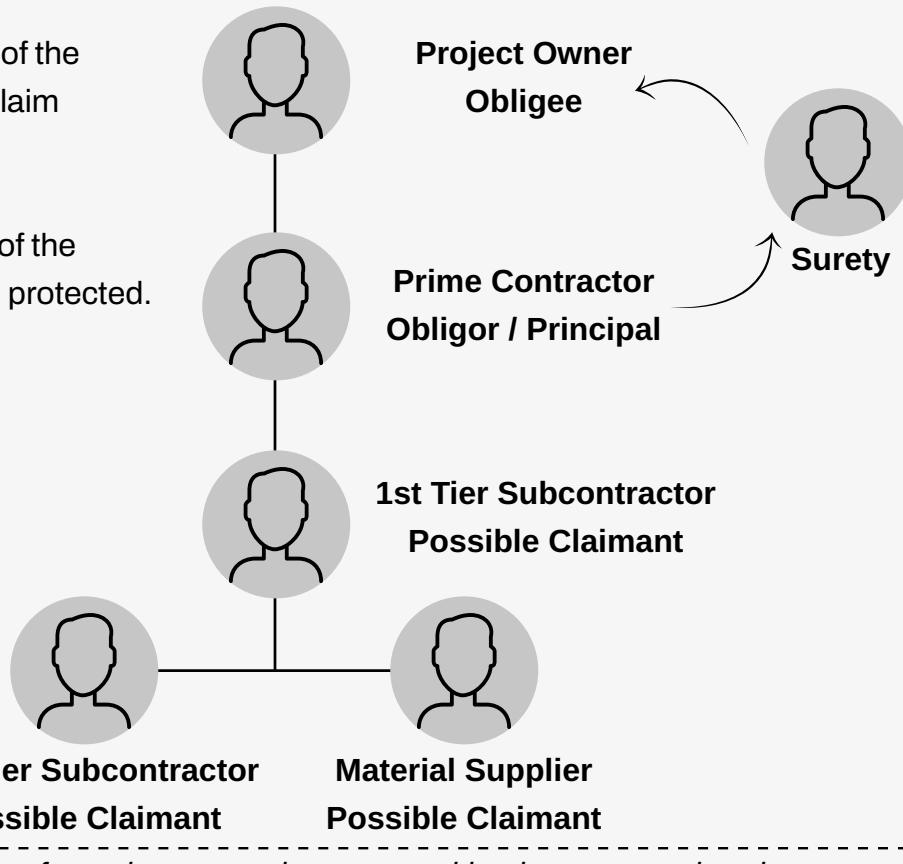


**Obligee:** The party protected by a bond, the one who requires the bond to be furnished.

## Who is protected by the payment bond?

Frequently, parties within two tiers of the principal are permitted to make a claim against the principal's bond.

However, depending on the terms of the bond, more remote parties may be protected.



*Parties below this line of supply may not be protected by the payment bond.*

## How would I know if a payment bond has been issued?

## 02

You may find it easiest to **contact the project owner** to confirm whether a payment bond was required and if one was required, ask to be provided with a copy.

Make this request at the beginning of the project when everyone is happy — don't wait until there are payment issues.

As a best practice, include language requesting a copy of a payment bond within your preliminary notice.



To Whom it May Concern,

We are writing to you in connection with the above project, where we have contracted with ABC Company to furnish materials. We ask that you please forward a copy of any payment bond(s) for this project to the undersigned.

Thank you for your assistance.

## 03

## When should a bond claim be served?



Frequently, a bond claim notice must be served **within 90 days from your last furnishing.**

However, some state statutes, such as in Colorado, refer the claimant to the terms of the payment bond.

*"Serve the bond claim notice in accordance with the terms and conditions of the payment bond."*

Non-Statutory Bonds, such as those obtained by a subcontractor, also typically look to the terms of the payment bond.

## Who should receive a copy of the claim?

## 04

Based on state statute, typically the **bond claim must be served upon the general contractor / principal and the surety**, however, it is recommended to serve a copy of the bond claim on all parties involved.



## 05

## How should a bond claim be served?



Typically, **bond claims can be served via certified mail** and as a best practice, request the return receipt.

In cases where you are close to the deadline, **consider also serving the claim via overnight service or personal server.**

Check the statutory requirements to be certain.



## Best Practice Tips

- ✔ If there is a payment bond on the project, attempt to obtain a copy of the bond at the time of contract.
- ✔ Confirm the surety is on the Department of the Treasury's Listing of Approved Sureties.
- ✔ Review the payment bond and statute to ensure you are covered as a potential claimant.
- ✔ Serve applicable preliminary notices in accordance with statute.
- ✔ If you remain unpaid, serve a copy of the bond claim upon all parties.
- ✔ Keep all project documentation in a central location (e.g. invoices, statement of account, delivery tickets etc.)

## Questions about payment bonds and bond claims?

Contact NCS today!



800.826.5256 | NCSsales@NCScredit.com | NCScredit.com

This information is provided with the understanding that the publisher is not engaged in rendering legal advice. NCS recommends retaining an attorney for each case.