



Turner Padgett Insights

State of Confusion: Differences in North and South Carolina Construction Law Contractors Need to Understand

Posted On August 13, 2019

Construction is booming in Charlotte, Charleston and other cities in the region — in May of this year, 17% more residential building permits were issued in North Carolina, and 18% more were dispensed in South Carolina than in May 2018, according to the Federal Reserve Bank of Richmond's most recent report.

With ample construction projects underway, it's not uncommon for general contractors, designers and other construction professionals in the Carolinas to work in both states. Industry members who do, though, should be aware that certain aspects of construction law differ in each state.

North Carolina, for instance, passed an indemnity-related bill in early July that could affect the liability protections that are included in contract negotiations with property owners, design professionals, and subcontractors.

The bill, [HB 871](#), which goes into effect August 1, 2019, amends N.C.G.S. § 22B-1 to the benefit of design professionals and voids as against public policy certain indemnity provisions in contracts with design professionals and contractors. This could have the further effects in a design-build project by placing the primary liability on the party contracting with the owner and preventing the contracting party from receiving indemnity from its consultants, subcontractors or other professionals. How the courts will interpret this new bill in light of the Spearin Doctrine, which in certain circumstances allows a contractor to insulate itself from liability where it is shown the contractor followed plans provided by the owner, usually through a design professional, remains to be seen.

As in the past, general contractors in North Carolina may need to proactively include additional insured provisions in their contracts. The new bill may now encourage design professionals to include additional insured provisions in their contracts with the consultants, subconsultants and others providing services under the lead design professional.

Pay-when-paid Clauses

Pay-when-paid clauses — which stipulate contractors can delay payments to a subcontractor until they've been paid — are also treated differently in North and South Carolina.

In North Carolina, pay-when-paid clauses are unenforceable. In South Carolina, however, they generally can be enforced; so standard contracts issued in the state may contain the provision.

As a result, subcontractors should check any agreements for a pay-when-paid clause before signing, as it could significantly affect when the subcontractor receives payment for goods or services, depending on the contractor's agreement with the property owner; any issues the contractor has obtaining payment and other factors.

Filing a Mechanic's Lien

Similarly, the timeline to file a mechanic's lien — a legal claim contractors can hold against a property, based on the value of goods or services they've supplied — also varies in each state.

In South Carolina, a contractor, subcontractor or supplier can file a mechanic's lien within 90 days of the date labor or materials were last furnished for a project.

North Carolina construction industry professionals have a bit longer — 120 days after the last date services or materials were provided. North Carolina has additional requirements where the person or entity seeking to assert a lien is a subcontractor.

Speaking to an attorney as early as possible in the agreement process is advisable — particularly regarding lien rights. Given South and North Carolina have a 90- and 120-day filing period limit, knowledge of the time limitations in each state is essential and contacting an attorney early will help ensure a contractor's lien rights are protected.

Because laws relating to the construction industry feature a number of different provisions in South and North Carolina, construction industry members working in the Carolinas can benefit from consulting with an attorney who is licensed in both states to find out what considerations need to be taken into account under the varying laws.