



THE CROMEENS  
LAW FIRM, PLLC



# QUIT GETTING SCREWED

**Presented By:**  
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**Owner and Managing Partner of  
The Cromeens Law Firm**

# INTRODUCTION & AGENDA

## Introduction:

Karalynn Cromeens, Owner and Managing Partner of The Cromeens Law Firm, will dissect liens, collections, and contract terms and share best practices surrounding them.

## What You Will Learn today:

- Commercial Subcontracts
- Liens and When You Can File One
- Indemnification
- Employees vs. Independent Contractors






# SCOPE OF WORK

- The scope is by far the most important part of a subcontract. The scope is the work you agree to do and is explained by the documents described in the subcontract

Your bid is not part of the scope

Review the scope attached to the subcontract as if you were bidding a new project, and make sure it matches your original bid



# BIDS

- Your bid does not become part of the subcontract

Always submit an itemized bid

Your bid is a legal offer and can be accepted once it is provided to the general contractor





# SUBCONTRACT DOCUMENTS:

- The subcontract is not the only document you are responsible for

Do not just agree to the prime contract being part of your subcontract. Request a copy of the prime contract and add language to make sure you get the benefits of the prime contract, not just the responsibilities

Make sure the same set of plans and specifications that you based your bid on are the ones attached to the subcontract

Do not agree to a schedule you cannot complete





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# SUBCONTRACTOR BONDS:

- When you get a subcontractor bond, you are pledging your personal assets for the project

Build some protections into the subcontract, do not get a bond after you have started the project, and limit when the bond can pay out

If you get a bond for the project, make sure you get a copy of the general contractor's bond before you begin work






# PERSONAL GUARANTEES (AND WHY YOU SHOULD NEVER SIGN ONE):

- Do not sign a personal guarantee as part of a subcontract

If you are not incorporated, go get incorporated

When you sign a document for your company, make sure you use your name and title

If you sign a personal guarantee, you are waiving the protections offered through your incorporated entity





# PRIOR WORK AND FIELD CONDITIONS:

- Find and change or remove the provision that makes your company responsible for the work of the subcontractors before you

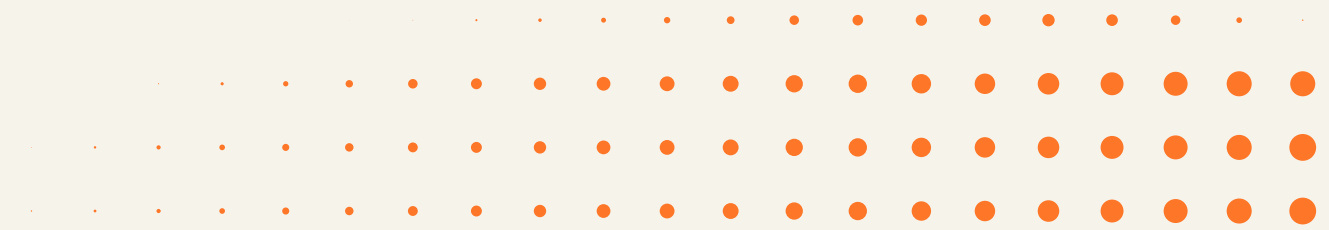
Visit the project site before you sign the subcontract





# INDEMNIFICATION:

- *Subcontractors shall indemnify and hold harmless the Owner and general contractor for all damages, losses, or claims that arise as a result, in whole or in part, from the negligence, error, omissions, or failure to perform by the subcontractor, his employees, or his agents.*






# SUBMITTALS AND AS BUILTS :

- Supply a submittal package to the general contractor even if it is not required by your subcontract

Get signed approval of your submittal package before you begin work

When your scope is complete, send the general contractor the as-built drawings along with the transmittal letter



# DAILY REPORTS:

- Do a daily report even if one is not required by your subcontract

Keep copies of the daily reports you turn in

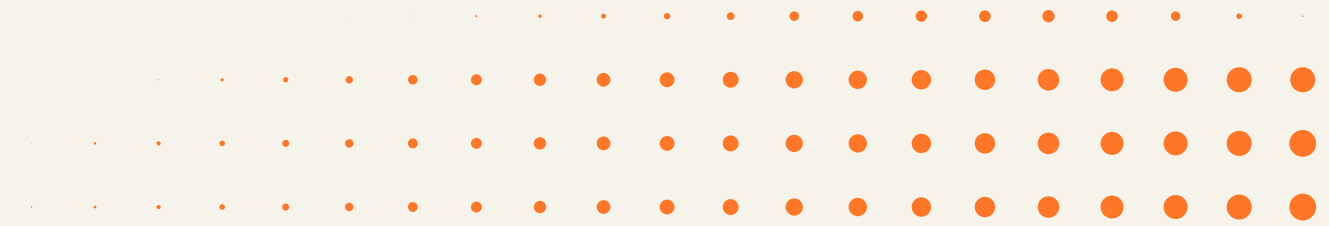
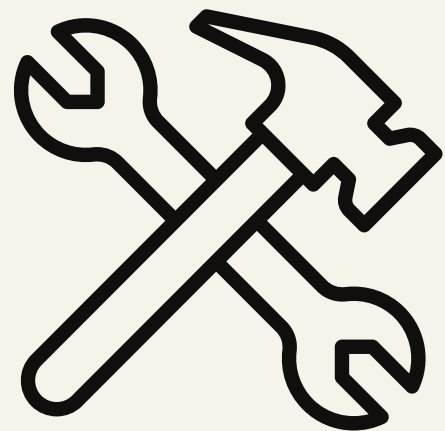




# PAY WHEN PAID CLAUSES:

- Pay when paid clauses make your timely payment condition upon an action you cannot control. The owner must pay the general contractor in order for you to be paid

You should not have to take all the risk of nonpayment from the owner. Negotiate pay when paid provisions



# RETAINAGE:

- Retainage can limit the owner's liability to 10% of the prime contract amount

File your lien for retainage when the project is complete to ensure that you will be paid in time



# LIEN WAIVERS:

- Do not sign an unconditional lien waiver if you have not been paid

There are standard lien waiver forms; do not sign a waiver unless it is the standard form






# TRUST FUNDS:

- Everyone who receives funds on a construction project has the legal obligation to use those funds to pay everyone they owe money to for work on that project

Do not use funds from one project to pay for your debts on a different. That is breaking the law

You could be personally liable for any misapplication of construction funds

Your personal and business accounts and credit card statements can be subpoenaed if you are sued for a trust fund violation








# CHANGE ORDERS:

- If you don't get a signed change order, you are doing the extra work for free

Read your subcontract; know who can approve change orders

Use your own form if you have to

Request additional time to complete your scope if the extra work from the change order will make your original completion date impossibly






# ASSIGNMENTS:

- If you plan on hiring someone else to do your work or any portion of your work, you need to change the anti-assignment clause or get the general contractor's approval before you hire them.

The general contractor cannot stop you from factoring or selling your rights to payment on any pay application or invoice, but doing so might be a bad idea for other reasons.






# DELAY DAMAGES:

- When you agree to or provide a schedule, make sure it is realistic and something you can complete

Search both your subcontract and the prime contract for the delay damages provision; negotiate if possible

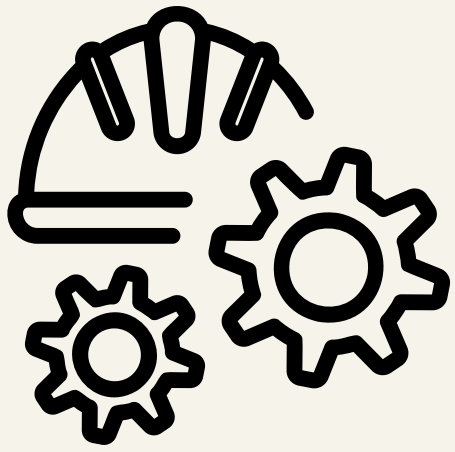
For any changes in work that will take longer than your promised completion date, make sure you get approval in writing for the extra time

Any additional cost that is not your fault will not be recoverable unless you change the provision or ask for a change order before the cost is incurred






# WARRANTIES:



- Know what warranty will be required when you are bidding the project so you can include a projected price for any warranty claims

Your manufacturer issues a warranty as well; make sure you get a copy of the written warranty to include with your warranty packet submitted to the general contractor

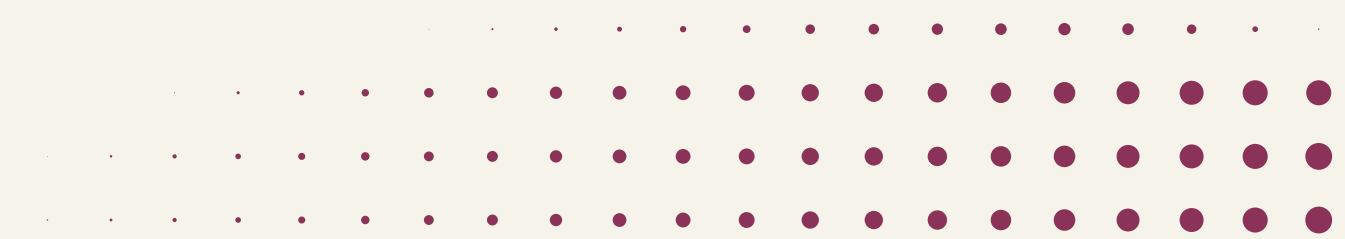




# WARRANTIES:

- Make sure the warranty required by the subcontract and the prime contract is the same one you reviewed in your bid

Add a restriction to your warranty if you are required to issue one before you are paid






# DEFAULT AND TERMINATION:

- Never agree to a termination for convenience provision. Or at least make it mutual

Be familiar with all the requirements of the subcontract; failing to follow any of them will cause you to be in default

Know how long you have to fix a default

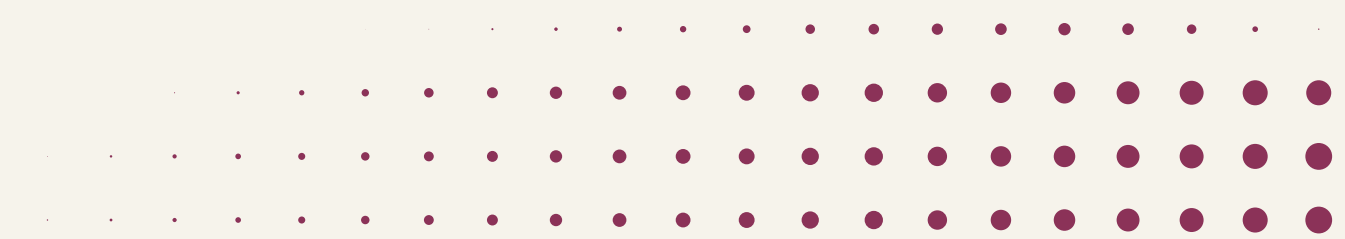




# DEFAULT AND TERMINATION:

- Respond immediately and in writing to any notice of default.

At all costs, fix the defect and avoid being terminated. You will not be paid for any work already done, and you will be responsible for the expense and cost of the replacement subcontractor.





# ATTORNEY FEES & COSTS:

- You have to pay your team and your material suppliers even if you have not been paid by the general contractor.

Have a written subcontract that has provisions dealing with attorney fees.

Make sure the attorney fee provision lets you recover your fees as well.





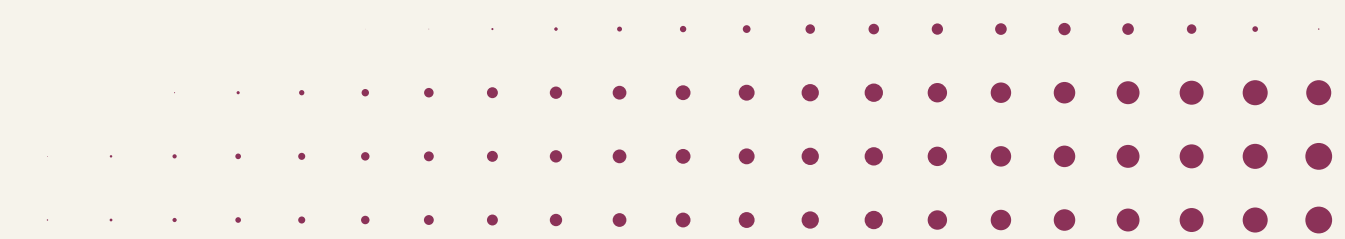


# DISPUTE RESOLUTION:

- There are three ways to formally settle a dispute: mediation, court room, or arbitration.

If your case goes to court, the best outcome you can hope for is to break even.

Know what your subcontract says about dispute resolution, and use whatever provision works best for you.



# WHEN CAN YOU FILE A LIEN:

- No subcontract can stop you from filing a lien


A lien secures the amount you are owed with the property

A lien gives you leverage





# WHAT IS THE DIFFERENCE BETWEEN AN EMPLOYEE & INDEPENDENT CONTRACTOR (1099)

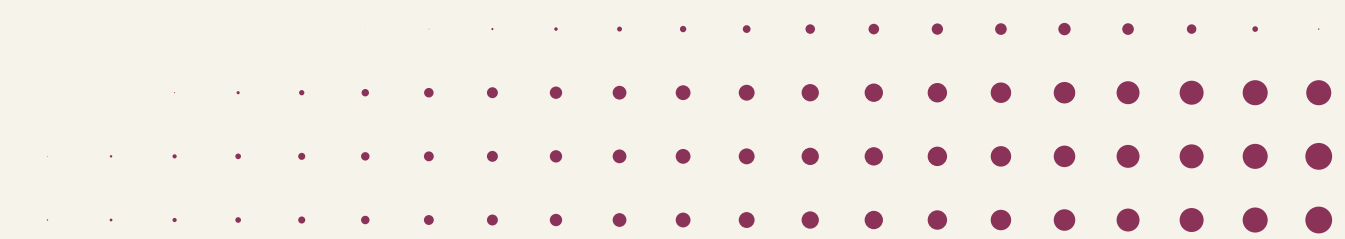
- 1. The opportunity for profit or loss depending on managerial skill
  - 2. Investments by the worker and potential employer
  - 3. The degree of permanence of the work relationship
  - 4. The nature and degree of control over the performance of the work and working relationship
  - 5. The extent to which the work performed is an integral part of the potential employer's business
  - 6. The skill and initiative of the worker
- 



# WHAT CAN HAPPEN IF YOU MISCLASSIFY AN EMPLOYEE AS AN INDEPENDENT CONTRACTOR

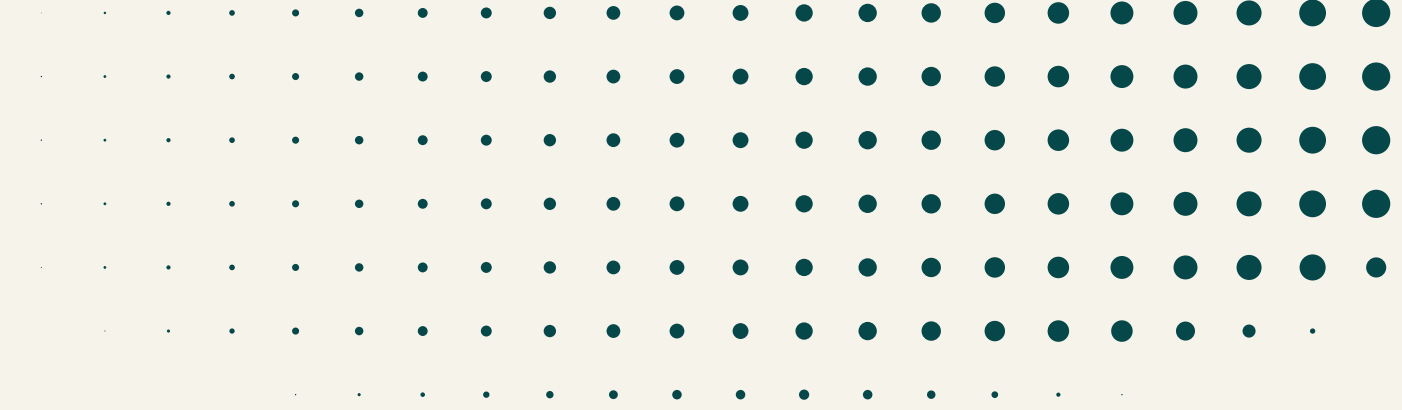
- If you have employees, you need a new employee intake process and an up-to-date employee handbook

If you have subcontractors, you must have a written subcontract





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# Q & A

Contact us!

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