



Preserving Claims Made Against Performance Bonds on Construction Projects, NYREJ

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On many construction projects, owners require general contractors to provide performance bonds which guaranty the performance of the general contractor's work at the project in the event the general contractor abandons the project or the contract is terminated for cause. Many times the contract between the owner and general contractor has termination provisions which do not coincide with the performance bond's termination provisions required to trigger the surety's obligations under the performance bond. There are instances when an owner follows the termination provisions of a contract but fails to follow the termination provisions of the performance bond precluding a claim against the bond.

Virtually all owner/general contractor contracts have provisions that state that the owner may terminate the contract for cause when, for example, the contractor fails to perform its work in a good and workmanlike manner or does not provide the necessary manpower to complete its work by the substantial completion date. These provisions require the owner to provide notice to the contractor of the default and that the contractor has a specified period of time, e.g., one week, to remedy the default or the contract will be terminated. However, many performance bonds such as the AIA A312 bond require the owner to provide notice to the surety that the owner is considering declaring the contractor in default and seeks a conference with the contractor and its surety to be held within 15 days of their receipt of the notice. If the surety fails or refuses to meet with the owner within the 15 day period, the owner may then terminate the contract for cause no earlier than 20 days from the surety's receipt of the aforesaid notice.