

## Chapter 2 Private Contracts

### **14-2-1 Definitions -- Payment bond required -- Right of action -- Attorney fees.**

- (1) For purposes of this chapter:
  - (a) "Commercial contract" means a contract for the construction, alteration, or repair of the following if it is not residential construction:
    - (i) a building;
    - (ii) a structure; or
    - (iii) an improvement upon land that is not associated with a single family detached housing.
  - (b) "Contractor" means any person who is or may be awarded an original commercial contract for the construction, alteration, or repair of any building, structure, or improvement upon land.
  - (c) "Owner" means any person contracting with the original contractor for construction, alteration, or repair of the following if it is not residential construction:
    - (i) a building;
    - (ii) a structure; or
    - (iii) an improvement upon land.
  - (d)
    - (i) "Residential construction" means the construction, alteration, or repair of:
      - (A) single family detached housing; or
      - (B) multifamily attached housing up to and including a fourplex.
    - (ii) "Residential construction" includes rental housing.
- (2) Before any original commercial contract exceeding \$50,000 in amount for the construction, alteration, or repair of any building, structure, or improvement upon land is awarded to any contractor, the owner shall obtain from the contractor a payment bond:
  - (a) complying with Subsection (3); and
  - (b) that becomes binding upon the award of the original commercial contract to the contractor.
- (3) The payment bond shall be:
  - (a) with a surety or sureties satisfactory to the owner for the protection of all persons supplying labor, services, equipment, or material in the prosecution of the work provided for in the commercial contract; and
  - (b) in a sum equal to the original commercial contract price.
- (4) A person shall have a right of action on a payment bond under this chapter for any unpaid amount due that person if that person:
  - (a) has furnished labor, services, equipment, or material in the prosecution of the work provided for in the commercial contract for which the payment bond is furnished under this chapter; and
  - (b) has not been paid in full within 90 days after the last day on which that person:
    - (i) performed the labor or service for which a claim is made; or
    - (ii) supplied the equipment or material for which the claim is made.
- (5)
  - (a) An action under this section shall be brought in a court of competent jurisdiction in the county where the commercial contract was to be performed and not elsewhere.
  - (b) An action under this section is barred if not commenced within one year after the last day on which the claimant:
    - (i) performed the labor or service on which the claim is based; or
    - (ii) supplied the equipment or material on which the claim is based.

- (c) The obligee named in the payment bond need not be joined as a party to an action under this section.
- (d) In any action upon a payment bond under this section, the court may award reasonable attorney fees to the prevailing party, which attorney fees shall be taxed as costs in the action.
- (6) The payment bond shall be exhibited to any interested person upon request.
- (7) In any suit upon a payment bond under this chapter, the court shall award reasonable attorney fees to the prevailing party.
- (8) Unless otherwise specified in a lawful contract between the owner and the person making a claim under this section, the interest rate applicable to the claim is the rate described in Subsection 15-1-1(2).

Amended by Chapter 330, 2012 General Session

**14-2-2 Failure of owner to obtain payment bond -- Liability.**

- (1) An owner who fails to obtain a payment bond required under Section 14-2-1 is liable to each person who performed labor or service or supplied equipment or materials under the commercial contract for the reasonable value of the labor or service performed or the equipment or materials furnished up to but not exceeding the commercial contract price.
- (2) An action to recover on the liability described in Subsection (1) may not be commenced later than one year after the day on which:
  - (a) the last of the labor or service was performed; or
  - (b) the equipment or material was supplied by the person.
- (3) In an action for failure to obtain a bond, the court shall award reasonable attorney fees to the prevailing party. These attorney fees shall be taxed as costs in the action.

Amended by Chapter 330, 2012 General Session

**14-2-5 Preliminary notice requirement.**

- (1) Any person who furnishes labor, service, equipment, or material for which a claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1a-501, except that this section does not apply to an individual performing labor for wages.
- (2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a claim under this chapter.
- (3) The preliminary notice required by Subsection (1) shall be provided prior to commencement of any action on the payment bond.
- (4) Subsection (1) does not exempt the following from complying with the requirements of this section:
  - (a) a temporary labor service company or organization;
  - (b) a professional employer company or organization; or
  - (c) any other entity that provides labor.

Amended by Chapter 293, 2014 General Session