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Four Types of Lien Waivers and When to Use Them.

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Where do we start?

Lien waivers are one of the most frequently exchanged documents in the construction industry. This is because waivers are practically part of a payment itself.

Since they are such routine documents, and because signing a waiver is often required in order to get paid, many people skim them over before signing without fully understanding what the says or how important it is. This is a problem, because signing a "bad" lien waiver can have dire consequences.

You'll find everything you ever wanted to know about these documents in our **Ultimate Guide to Lien Waivers.** For those who don't have time for a 5,500-word article on the subject, this simple guide to the four types of lien waivers will get you up to speed with the basics.

So what exactly is a lien waiver?

A lien waiver is a document exchanged by two parties on a construction project—one making payment, and the other receiving payment—which states that one party (the one receiving payment) is giving up their right to file a lien on the property they've worked on for the amount of money stated in the waiver.

A waiver is supposed to function like a receipt. If a subcontractor is paid $10,000, that subcontractor waives $10,000 in lien rights (i.e. they give up their ability to file a lien for that $10,000).

There are four basic types of waivers. Each is a combination of 2 variables:

(1) The stage of payment: progress payment or final payment;

(2) The parameters of the waiver: conditional or unconditional

	Conditional Waivers	Unconditional Waivers
Progress or Partial Payment	1 Lien rights waived for a partial amount due on the condition of actual payment made.	2 Lien rights waived for the partial amount due upon signature. Recommended only after payment is complete.
Final Payment	3 Lien rights waived for the full amount due on the condition of actual payment made.	4 Lien rights waived for the full amount due upon signature. Recommended only after payment is complete.

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Conditional Waivers:

A conditional waiver waives the signor's lien rights conditioned upon the occurrence of some other event (generally actual receipt of payment). To make this simpler, **the signor holds onto their lien rights until they actually get paid**, because the waiver is ineffective until payment is received. This type of waiver is immediately effective when the payment is made. Conditional waivers protect the party signing the waiver and the party making the payment.

1. Partial Conditional

A conditional waiver for progress/partial payment should be used by parties making and receiving progress payments. Partial/progress payments are when future payments for the same project are expected, but the parties wish to waive lien rights for the amount of money in the progress payment. Partial conditional waivers are only valid when the "condition" in the waiver (typically, payment being made) is satisfied. They are often exchanged alongside monthly invoices.

2. Final Conditional

A final conditional waiver should be used when no further payments are expected for your work on the project. In other words, they're only used for the very last payment being exchanged on a job. Final conditional waivers are only valid when the "condition" in the waiver (typically, payment being made) is satisfied.

Unconditional Waivers

Unconditional waivers are **effective immediately** when they're signed, whether or not payment is made. Signing one ***before*** you get paid waives your lien rights so you can't use them to claim your payment. Therefore, unconditional waivers should only be used ***after*** a payment has been received.

It is especially important to review the contents of an unconditional waiver, because the language used in the document (e.g. the sum of money listed) is more legally relevant than the amount of payment that you actually receive. For example, if you receive $5,000 but the waiver says you have received and are waiving $10,000, then you will be waiving $10,000.

3. Partial Unconditional

Like the partial conditional waiver, a partial unconditional waiver should be used for progress payments, when the party receiving payment expects future payment on the same job. This waiver will be effective as soon at it is signed. Partial conditional waivers should only be signed after payment has been received, and if the sum in the waiver reflects the amount of money received.

4. Final Unconditional

A final unconditional waiver is to be used after a party's final payment for a job has been received, when no further payment is expected. This waiver will be effective immediately after it is signed, and therefore should only be signed after payment has been received, and if the sum in the waiver reflects the sum of payment.

There are 2 other important things to look out for when dealing with lien waivers.

Statutory Lien Waiver Forms

12 states in the country set forth specific lien waiver forms that must be used. (Think, for example, of a marriage license. You can't create your own marriage license, you have to use the one that the government provides.) These 12 states are: Arizona, California, Florida, Georgia, Nevada, Massachusetts, Michigan, Mississippi, Missouri, Texas, Utah, Wyoming. In the other 38 states, it is up to the parties making the exchange to select and/or draft their own lien waivers.

Clauses that Waive More than Lien Rights

In the 38 states without statutory forms, it's easy for the person drafting the waiver to add extra language that would sign away more than just your lien rights, either because they are confused about the purpose of the document, or for more suspect reasons. Specifically, look out for clauses that would waive claims to retainage, change orders, or other work; or that attempt to waive contractual rights (e.g. liquidated damages); or that add a requirement for an attestation or guarantee that would make you personally liable.