

Joint-Check Agreements in the Construction Industry

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In the construction industry the use of joint-check agreements is common. A joint-check agreement allows a general contractor to make payments due under a subcontract to both the subcontractor and a third party. The third party is usually providing services or materials covered under the subcontractor's scope of work. In a typical joint-check agreement a general contractor, subcontractor, and supplier agree that the general contractor will issue checks for progress payments or final payment that are payable jointly to the subcontractor and the supplier. A joint-check agreement may also be with the owner, general contractor, and a subcontractor. Under this arrangement, the owner would issue checks jointly to the general contractor and the subcontractor.

These agreements are used to avoid lien and bond claims by unpaid second tier subs and suppliers and to maintain work progress by direct payment.

A joint-check agreement may be included in the original subcontract or established later by a separate contract.

A general contractor has no obligation to issue joint checks. A joint-check agreement may be established by using language such as "general contractor reserves the right to write joint or severable checks to the subcontractor and/or his suppliers and/or second tier subcontractors or any other party."

Because the checks are jointly issued, the subcontractor and the supplier must each endorse the check before it may be legally cashed. When the named parties sign and cash the joint check, the general contractor has fulfilled its contractual and statutory obligations to pay both the subcontractor and the supplier. How the check is divided between the parties is to be determined by the subcontractor and the supplier. Because the general contractor has fulfilled its payment obligations by issuing the joint check, it may avoid future potential lien or bond claims asserted by the suppliers.

The use of joint-check agreements can minimize the risk of funds being diverted from their intended path. An owner may

want to use a joint-check agreement to ensure that funds are properly distributed. During a construction of a building, a portion of plumbing work is performed. The plumber complains to the owner that payment for his services are overdue and the job may not be completed. A joint-check agreement is signed. The general contractor is entitled to a sum of money, as is the subcontractor, who performed the plumbing work. The owner issues a joint check to the two parties. Because the plumber must endorse the check along with the general contractor, the intended result is that the general contractor will not divert the funds without first paying the subcontractor, the owner avoids a potential lien claim, and the job is completed.



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