

**WESTERN NATIONAL MUTUAL INSURANCE COMPANY (WNMIC)
Sub-Contractors and/or Material Supplier Questionnaire**

Bond # _____

Your return of a completed claims questionnaire is an extremely important part of WNMIC's claims investigation process. Your prompt completion of this document, and its return to WNMIC will directly impact WNMIC's ability to make a speedy determination regarding your claim.

Please answer the following questions and attach copies of pertinent and/or requested documents. If you need additional space, please continue on a separate page.

I. Preliminary Facts

Claimant:

Your Name: _____
Contact Person: _____
Address: _____

Phone No.: _____
Fax No.: _____
E-mail : _____
License No.: _____

Contractor ("Principal"):

Name: _____
Address: _____

Phone No: _____
Fax No: _____
E-Mail: _____
License No: _____
Related firms: _____

II. Loss Amounts

TOTAL AMOUNT OF YOUR CLAIM: \$ _____

Sub-Contractors Only:

Original Contract Amount: \$ _____
Total Change Order Amount: \$ _____
Total Amount Paid: \$ _____
Date of Contract: _____
Date of Loss: _____

Suppliers Only:

Date the materials were supplied: _____
Date payment became due: _____
Date payment became late: _____

III. Attachments

Please attach the following documents, if applicable:

- _____ A copy of your contract with the Principal
- _____ A copy of the contract between Principal and the project owner.
- _____ Proof that the materials were used on the project (i.e., Preliminary 20-Day Notice or signed delivery tickets).
- _____ A copy of any Mechanic's Lien(s) you have filed for the project(s) in question.
- _____ A copy of all invoices.
- _____ Proof Principal was paid on the project (copies of both sides of canceled checks).
- _____ Any other documents which you believe are relevant to your claim.
- _____ A copy of the credit application.
- _____ A copy of the complete account ledger.

If there is not enough room on the form to enter the information, please attach additional pages.

IV. Detailed Claims Information

1. Summarize the amounts presently due by invoice number, job, date and amount:

2. If known, identify each specific construction project or projects to which material and/or services were furnished.

3. Identify each project owner by name, address, and telephone number.

4. State whether the materials were picked up by the contractor or delivered to the job site. (**Note:** Please attach any documentation proving the contractor accepted delivery.)

5. If the contractor was acting as a subcontractor, please identify the general contractor by name, address and telephone number.

V. Detailed Claims Information
(Bus. & Prof. Code, §§ 7108 and 7120)

If you contend or have reason to believe that the contractor misapplied or “diverted” construction funds intended to pay your account, answer the following:

1. Identify the party or parties who made the payments to the contractor.

2. Describe in detail any information concerning payment which was conveyed to you by that party.

3. State the exact date of such payment(s).

4. State the exact amount of the payment(s).

5. State whether the contractor disputes any items, or has given you any other reason for not paying your invoices.

6. State whether the project owner disputes the quality or condition of any items, or contends that there was a delay in furnishing them to the construction project.

7. If you contend that the contractor “willfully and deliberately” misapplied construction funds, please state the facts upon which you base this belief.

VI. Informal Dispute Resolution

1. Describe all efforts you have made to resolve the past due payments directly with the contractor.

2. State whether either you or the contractor has offered to compromise, mediate or arbitrate the dispute, and state the response. If you are now willing to compromise, mediate or arbitrate, please so indicate. (Please note the Contractors’ State License Board may be able to assist you in arranging an arbitration.)

3. State whether you have presented a claim to your own insurance carrier or to other sureties. If so, please attach copies of all correspondence with the insurance carrier or sureties.

4. State whether you have presented your claim to the Contractors’ State License Board. If so, please attach a copy of the completed Complaint Form, as well as any industry expert reports, citations or accusations resulting from your action.

5. State whether the contractor has made, or offered to make, partial payment or installment payments. If so, provide the details of the offer and whether any partial payments were actually made. If you entered into any form of written payment agreement, please attach. hereto.

Note: Please attach copies of cancelled checks or receipts which prove the contractor received and deposited payment.

VII. Litigation

1. Have you pursued any legal action against the contractor? _____

2. Please attach copies of all papers filed in the legal action, including any judgment.

_____ Copies Attached

3. State the title and case number of any lawsuits related to this claim.

4. State whether you presently have any right of recovery under a mechanic's lien or stop notice, or under a payment bond. If so, please describe:

VIII. Final Document Checklist

While we have asked you to attach documents in the preceding sections of this Questionnaire, the following checklist will assist you in gathering any additional documentation that you may have not attached to the Questionnaire, but is nonetheless important to the surety's investigation of your claim. It is not necessary to re-submit items previously sent. It is very important, however, to submit all documents in your possession or available to you. Please check the items you are enclosing with the Claims Questionnaire:

- _____ All Invoices and delivery tags, if applicable.
- _____ All of your correspondence and records of communications with the contractor.
- _____ All of your correspondence and records of communications with persons (such as owners, lenders, etc.) who made payments to the contractor which should have been used to pay your account.
- _____ Any personal notes, diaries or summaries.
- _____ Copies of any preliminary lien notices, mechanic's liens, stop notices or payment bond claims.
- _____ Copies of any complaint by the Contractor's State License Board.
- _____ Copies of any bankruptcy notices the Principal may have filed naming you as a creditor.
- _____ Copies of any court papers and/or judgments.
- _____ Any other documents which you believe are relevant to your claim.

PLEASE NOTE: For your protection, California law requires the following to appear on this form (Insurance Code § 1871.2) "Any person who knowingly presents false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison."

CERTIFICATION

The undersigned represents that he/she has read the entire foregoing Claims Questionnaire, including Document Checklist. The responses to this Questionnaire and attached documents are the basis for a claim for payment of money under the terms and provisions of the Contractors License Act, Business and Professions Code, Division 3, Chapter 9, Sections 7000, et seq. The undersigned hereby declares, under penalty of perjury, that the responses are true, complete and correct.

DATED: _____, 20____

(Signature of Claimant/Declarant)

PLEASE TAKE NOTE OF THE FOLLOWING INFORMATION REGARDING THE APPLICABLE STATUTE OF LIMITATIONS:

Business and Professions Code Section 7071.11(c) and (d) provides that the statute of limitations for bringing an action against the bond is as follows:

“(c) Except for claims covered by subdivision (d), any action against a bond required under this article, excluding the judgment bond specified under Section 7071.17, shall be brought in accordance with the following:

(1) Within two years after the expiration of the license period during which the act or omission occurred. The provisions of this paragraph shall be applicable only if the license has not been inactivated, canceled, or revoked during the license period for which the bond was posted and accepted by the registrar as specified under Section 7071.7.

(2) If the license has been inactivated, canceled, or revoked, an action shall be brought within two years of the date the license of the active licensee would have expired had the license not been inactivated, canceled, or revoked. For the provisions of this paragraph to be applicable, the act or omission for which the action is filed must have occurred prior to the date the license was inactivated, canceled, or revoked.

(3) An action against a disciplinary bond filed by an active licensee pursuant to Section 7071.8 shall be brought in accordance with the provisions of paragraph (1) or (2), as applicable, or within two years after the last date for which a disciplinary bond filed pursuant to Section 7071.8 was required, whichever date is first.

(d) A claim to recover wages or fringe benefits shall be brought within six months from the date that the wage or fringe benefit delinquencies were discovered, but in no event shall a civil action thereon be brought later than two years from the date the wage or fringe benefit contributions were due.”

**ATTACHMENT 1 to CLAIMS QUESTIONNAIRE
RELEVANT EXCERPTS OF THE CONTRACTORS LICENSE LAW (BUSINESS &
PROFESSIONS CODE §§7000, ET SEQ.) INCLUDE THE FOLLOWING:**

Business and Professions Code Section 7071.5 provides that the contractor's bond benefits:

(c) A person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

Sub-Contractor and Material Supplier Claimants are Entitled to a Maximum of \$7,500 in Bond Funds:

§ 7071.6(b) Excluding the claims brought by the beneficiaries specified in subdivision (a) of Section 7071.5, the aggregate liability of a surety on claims brought against a bond required by this section shall not exceed the sum of seven thousand five hundred dollars (\$7,500). The bond proceeds in excess of seven thousand five hundred dollars (\$7,500) shall be reserved exclusively for the claims of the beneficiaries specified in subdivision (a) of Section 7071.5. However, nothing in this section shall be construed so as to prevent any beneficiary specified in subdivision (a) of Section 7071.5 from claiming or recovering the full measure of the bond required by this section.

Typical violations include:

§ 7108 Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, or failure substantially to account for the application or use of such funds or property on the construction project or operation for which such funds or property were received constitutes a cause for disciplinary action.

§ 7120 Willful or deliberate failure by any licensee or agent or officer thereof, to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

Contractors State License Information can be found at:

<http://www.cslb.ca.gov/default.asp>