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Maryland Little Miller Act
By Elliott Andalman, Esquire

The Maryland Little Miller Act (State Finance and Procurement Article §17-101, *et seq*.), the state counterpart to the federal Miller Act[1] (40 USCA §3131, *et. seq*), sets out the time and notice requirements in order for subcontractors and suppliers (hereinafter "suppliers") to take advantage of the bond or other payment security required for construction contracts with public bodies. You and your clients must comply with the strict time and notification requirements to sue on the payment security, or else you forfeit your right to collect under the payment security.

The Little Miller Act applies to construction contracts only (§17-102(b)) of more than $100,000, with some exceptions (§§17-102 and 17-103), for the State, a county, a municipal corporation or other political subdivision, a public instrumentality, or any governmental unit authorized to award a contract (§§17-103(a)(1) and 17-101(d)). Payment security may take the form of a bond, cash, other security, or a mortgage or deed of trust on real property (§17-104).

Record of the payment security is filed with the Office of the Comptroller or office of the appropriate public body (§17-105), and payment security on a mortgage or deed of trust is also recorded with land records (§17-104(b)). A supplier may request a certified copy of the payment bond or statement of security, for a fee, from the Comptroller or officer of the office where the payment security is filed (§17-108(c)). In order to perfect this request, the supplier must include an affidavit stating that materials or labor were provided on the contract and payment has not been received (§17-108(c)).

Contractors must certify in writing, before receiving each progress payment or final payment, that suppliers of labor and materials have been paid from previous progress payments and will be paid timely from the current progress or final payment (§17-106).

Suppliers with direct contracts with the contractor may sue on the payment security if the supplier provided labor or materials under an eligible contract and has not been paid in full within 90 days after the day last labor or materials were supplied (§17-108(a)).

Suppliers whose contracts are with a sub- or sub-subcontractor, but not the contractor directly, must give written notice to the contractor within 90 days after labor or materials were last furnished (§17-108(b)(1)) before filing suit on the security. The notice must include the amount claimed, the person to whom labor or materials were provided, and must be sent by certified mail to the contractor at the contractor's residence or where the contractor has an office or does business (§17-108(b)(2)).

An action on a payment bond must be filed within one year after the public body finally accepts the work performed under the contract (§17-109(b)). Any such action must be filed in the county where the contract was executed and performed or where the contractor has its principal place of business (§17-109(a)).

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[1] The Miller Act is discussed in the Spring 2004 issue of The Law Clerk.

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