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Sureties Rights and Obligations in South Carolina

1. Are Surety bonds the same as insurance?

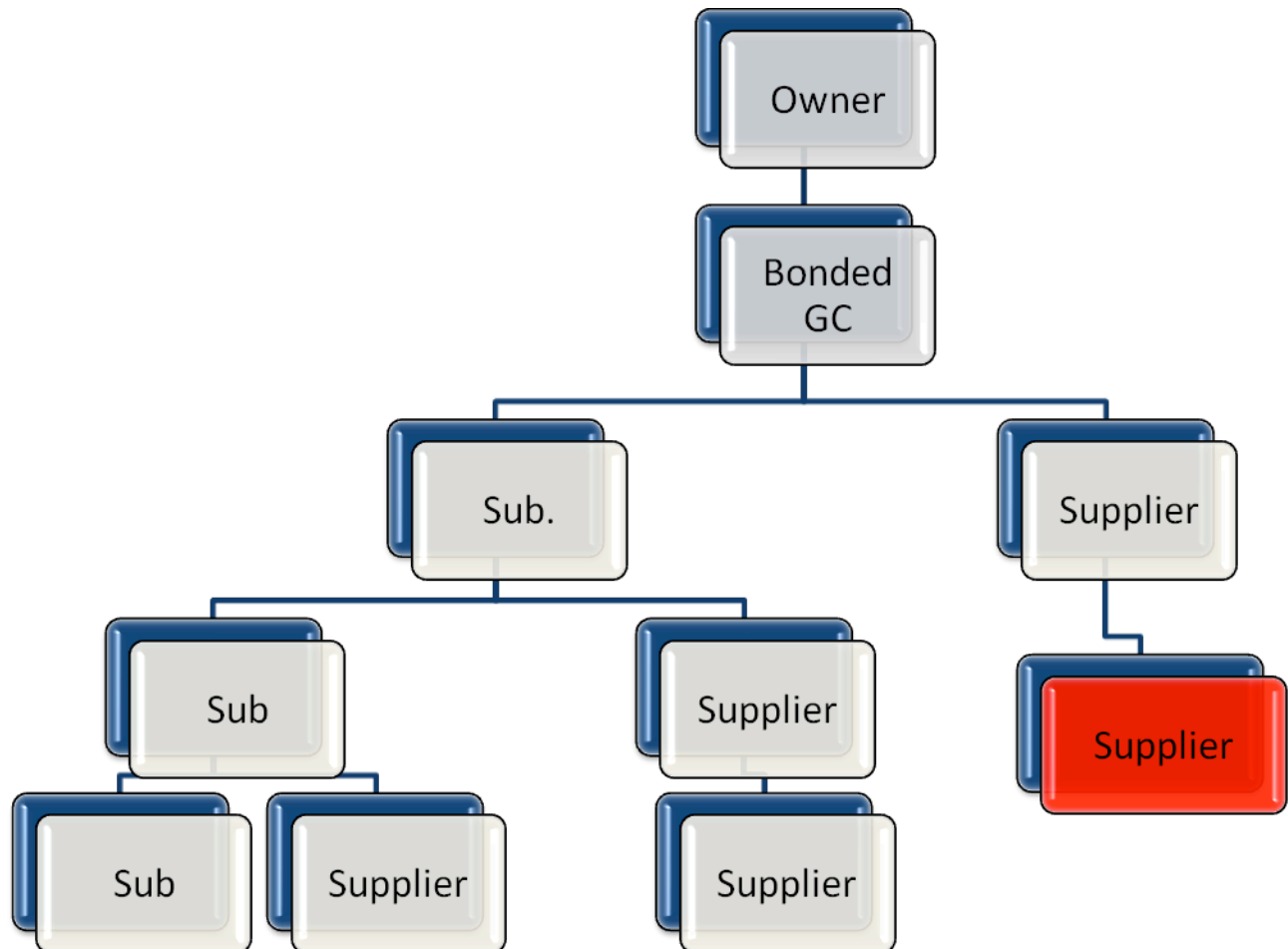
No. Many distinctions between insurance and surety bonds exist. The main difference is that insurance is written to insure against expected losses. Surety bonds, however, are never written to cover expected losses. The surety's goal is to properly underwrite the risk and issue bonds for a principal whose assets are sufficient to cover a loss in the event of a default under the terms of the bond and underlying contract.

2. Can an unpaid subcontractor file a lien on a public project?

No. It is against public policy to lien public property. Accordingly, most jurisdictions and public entities require surety bonds to protect parties that would otherwise have lien rights. On federal projects, the statute governing bonds is referred to as the Miller Act and State statutes requiring bonds are referred to as Little Miller Acts

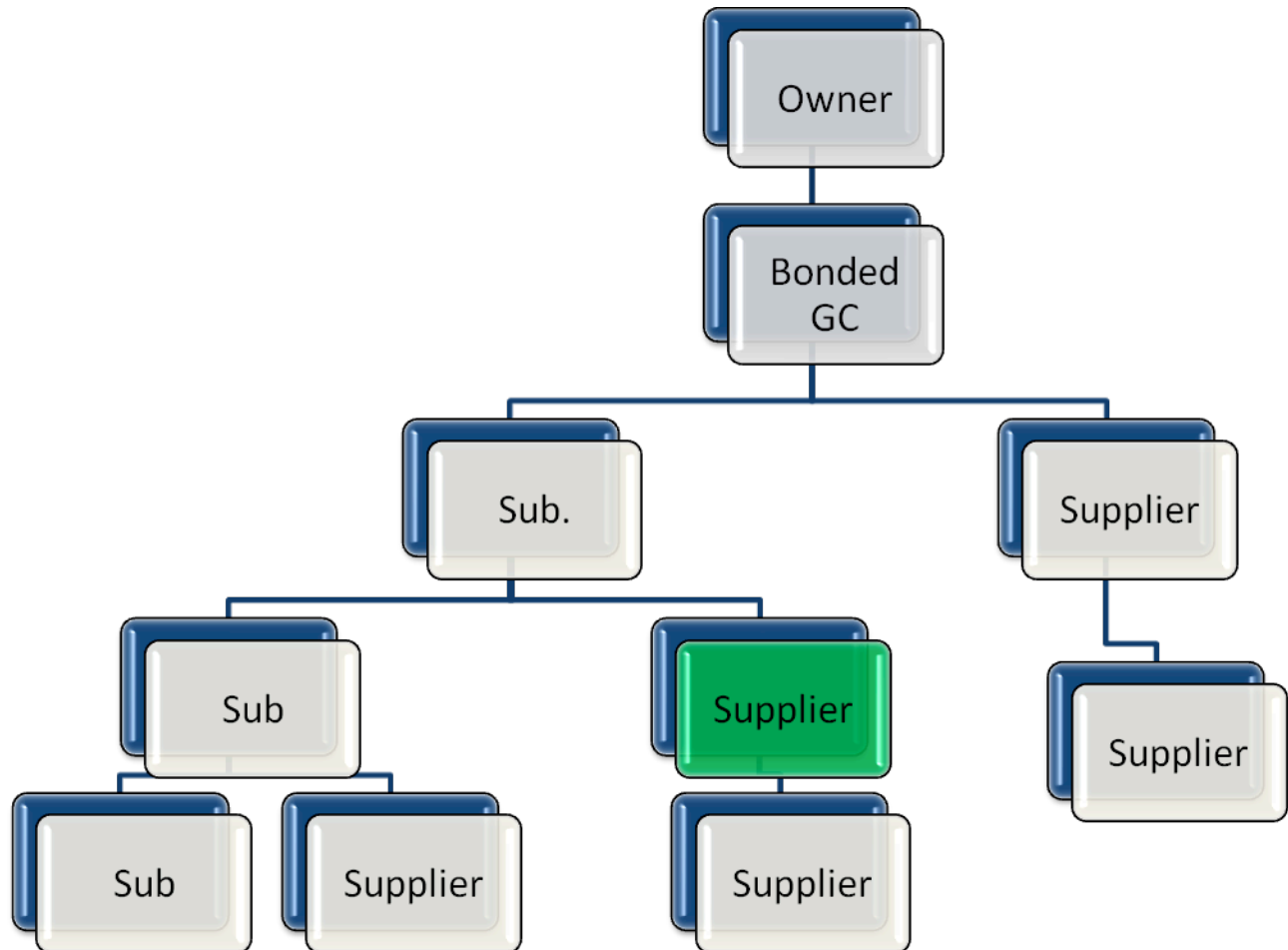
3. Is a supplier to a supplier of the general contractor on a federal project is protected by the Miller Act?

No. Only those with a direct relationship with the prime contractor are covered. This is true for South Carolina projects covered by the State's Little Miller Act. See the following Chart:



4. Is a supplier to a subcontractor on a federal project protected by the Miller Act?

Yes. Claimants with a direct relationship to the prime contractor are protected by the Miller Act and by the State's Little Miller Act. See the following Chart:



5. Can attorney's fees can be recovered under the Miller Act?

No. Attorney's fees can be collected when provided for via contract or statute and the Miller act does not have an attorney's fees provision.

6. Must a notice of a claim to the prime contractor on a federal project be made within 3 months of the last day the claimant performed labor or provided materials for a project?

This is a trick question and it depends. *The statute requires written notice within 90 days. Under certain situations, 3 months is less than 90 days. Typically, however, the answer is False. If you rely on providing notice within 3 months, you may have a problem.*

7. A suit against a payment bond on a federal project must be brought within how many days of last furnishing labor or materials?
- a. 6 months
 - b. 180 days
 - c. 1 year
 - d. 3 years

Answer: c. 1 year. *Although the notice period for 2nd tier claimants is based on 90 days, the time for filing suit against a payment bond is 1 year for 1st tier claimants, as well as 2nd tier claimants.*

8. In South Carolina, can a Notice of Project Commencement and a Location Notice only be used on a private, non-bonded project?

NO. *Notices of Project Commencement and Location Notices can be used on private, non-bonded jobs, as well as state, local, and private jobs where a payment bond has been issued. If properly used, a Notice of Project Commencement and Location Notice can provide against double payment.*

9. Can a Notice of Project Commencement and a Location Notice be used at any time during a project?

NO. *Under the terms of the statute, a Notice of Project Commencement must be filed and a Location Notice must be posted within 15 days of commencement of a project in order to be effective.*

10. True or false - If a private project is bonded, subcontractors and suppliers cannot file a mechanic's lien, but must instead pursue their claims against the bond.

FALSE - *Just because a private project is bonded, does not mean that a subcontractor or supplier cannot also file a mechanic's lien.*

For more information see: "South Carolina Construction Law" under Trey Watkins' Publications, or contact me directly at:

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