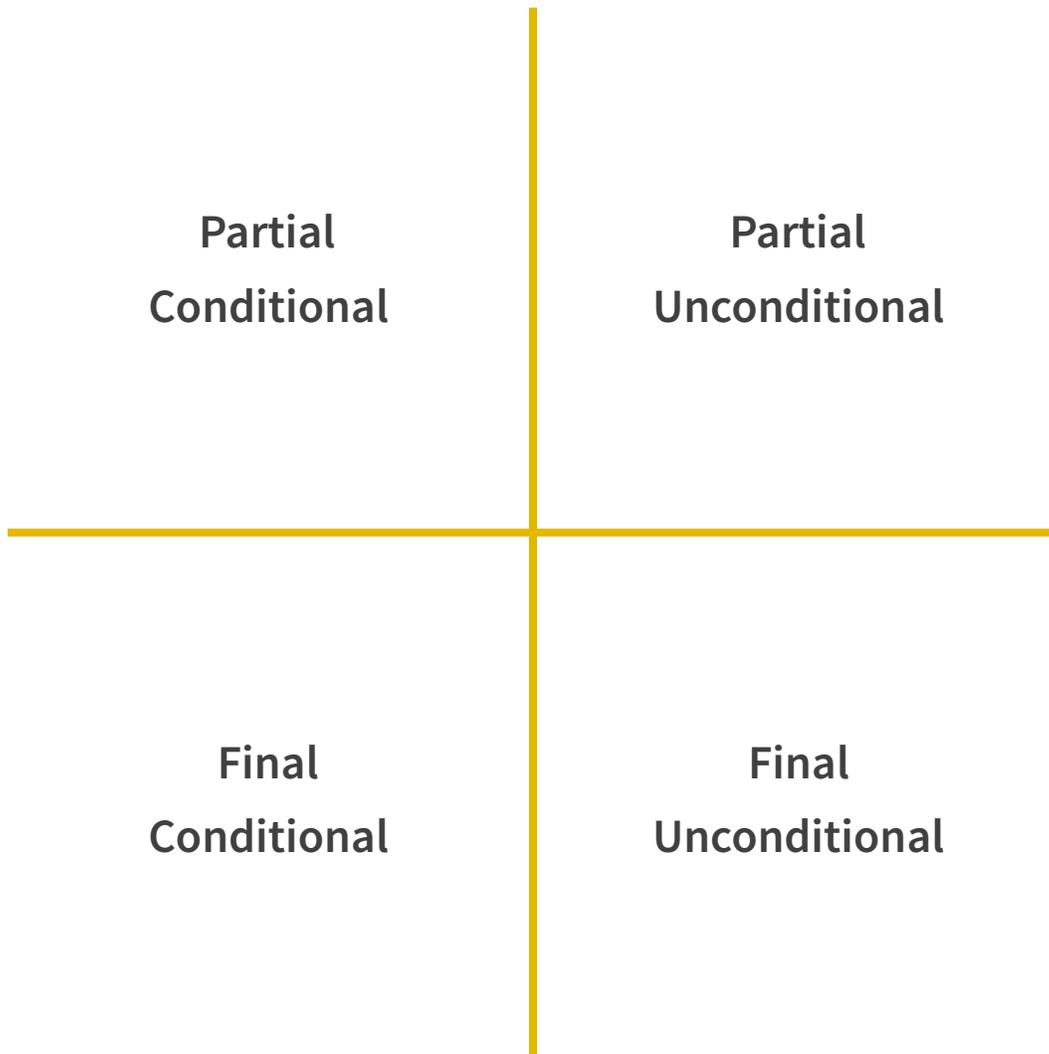


The 4 Types of Lien Waivers

AND WHEN TO USE THEM



Where do we start?

Lien waivers are one of the most frequently-exchanged documents in the construction industry. This is because a waiver is almost always required when payment is made. As such, many are willing to skim over the document they're signing, without fully understanding it, in order to obtain payment. The problem is that 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 discourse on the subject, this simple guide to the four types of lien waivers will set out the basics of what you need to know.

What 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, arrived at by combining two variables: (1) The stage of payment: progress payment or final payment; (2) The parameters of the waiver: conditional or unconditional. Combining these yields the four waiver types:

| | | Partial | Final |
|--------------------------|---------------|---------|-------|
| 1. Partial Conditional | Conditional | 1 | 2 |
| 2. Partial Unconditional | | | |
| 3. Final Conditional | Unconditional | 3 | 4 |
| 4. Final Unconditional | | | |

Conditional Waivers

A conditional waiver waives the signor's lien rights conditioned upon the occurrence of some other event (generally actual receipt of payment). The lien waiver, therefore, can be signed before payment is made (which provides the benefit of protecting against double payment), but is ineffective until payment is received (which provides the benefit of not waiving lien rights prior to payment). This type of waiver is immediately effective when the payment is made.

1. PARTIAL CONDITIONAL

A conditional waiver for progress/partial payment should be used by parties making and receiving progress payments, 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.

2. FINAL CONDITIONAL

A final conditional waiver should be used when no further payments are expected for your work on the project. 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 upon signing (with very few exceptions), whether or not payment is made. As such, they have the potential for significant and undesired consequences to those that would be receiving payment. 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 actual exchange that takes place. 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 as it is signed. Partial unconditional waivers should only be signed after payment has been received, and if the sum in the waiver reflects the sum of payment.

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.

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.

Need to send or request a lien waiver?

Click the button below to create and exchange lien waivers online for free.

[GET YOUR WAIVER](#)