



Opinion on Waiver of Subrogation

A client should carefully consider the risks before agreeing to a waiver of subrogation in a construction contract. By signing such a waiver, the client effectively gives up important protections and financial recovery rights. Here are the key reasons why it is generally not in the client's best interest:

1. **Loss of Insurance Recovery Rights**

A waiver of subrogation prevents the client's insurance company from pursuing the general contractor (or their subcontractors) for reimbursement when damages occur due to the contractor's negligence, defective work, or code violations. This can leave the client bearing increased insurance costs and deductibles without any way to recoup those expenses.

2. **Encourages Contractor Negligence**

Knowing that subrogation rights are waived may reduce the contractor's incentive to maintain the highest standard of care, since their financial liability is effectively shielded. This shifts the burden of loss away from the party at fault and onto the property owner (or their insurer).

3. **Increased Premiums and Out-of-Pocket Costs**

When insurance carriers cannot recover damages from the responsible contractor, the client's own insurance company absorbs the loss. This often leads to higher premiums, surcharges, or policy non-renewal for the client.

4. **Unbalanced Risk Allocation**

Construction contracts are intended to allocate risks fairly between parties. A waiver of subrogation shifts too much risk onto the client, leaving them exposed to potential damages caused by contractor error or misconduct. The general contractor should stand behind their work and insurance coverage—not transfer liability back to the property owner.

5. **Legal and Practical Complications**

If damages occur, the client may be forced into a direct dispute with their own insurer rather than holding the responsible contractor accountable. This not only complicates the claims process but may also restrict recovery options in cases of severe or repeated negligence.

Conclusion

For these reasons, we strongly recommend that a client **not agree to a waiver of subrogation** in their general contractor agreement. Preserving subrogation rights ensures that responsibility for damages rests with the party that caused them, keeps insurance costs under control, and protects the client's financial interests in the event of contractor negligence or construction defects.