

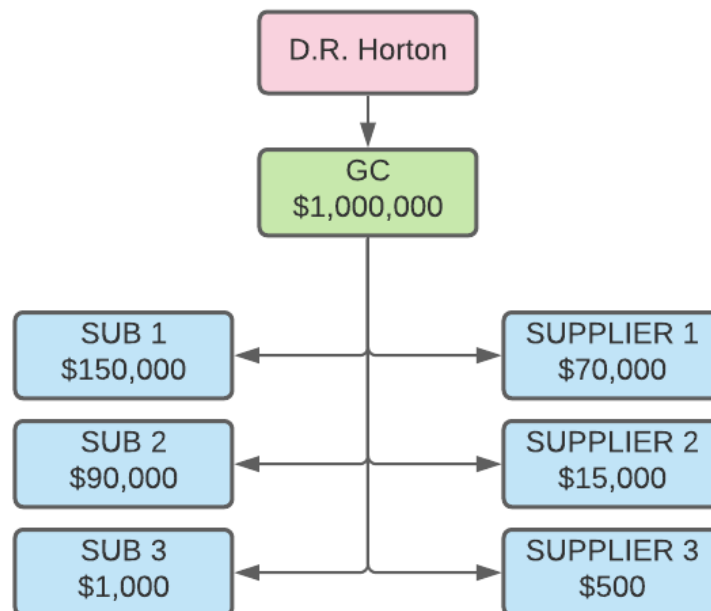
General Contractor & Owner Financial Protection: Two Ways

Executive summary. When making regular payments throughout the lifespan of a construction project, there are two main ways a general contractor or owner can achieve a significant level of financial protection: the joint check and/or the lien release.

The payment process. Most construction projects pay on a monthly basis. Payments are made down from the general contractor or the owner usually via one of the following methods: cost + markup, percentage of work complete, or on a unit price basis. This is the method to determine how *much* money to pay. Now, *how* should an owner pay?

The example project. As an example, let's say you are D.R. Horton, one of America's largest home construction companies. Your project is a 20-home site

20-Home Site Development Project for \$1,000,000



development for \$1,000,000. Above is the party hierarchy, contractually.

How to pay. Now that you've decided, as the owner, to pay, say, \$105,000 this month. How do you as an owner ensure that your money is going to the parties associated with your project? Two key methods exist to ensure you're paying your own vendors.

No. 1 – the joint check. When the GC makes his monthly draw request to the owner, the owner may require as part of the request package a list of subcontractors and suppliers used on the project in the corresponding time period. The owner at this point can simply decide to "joint check" these parties. So, if the GC says that this month they used SUB 1 for \$82,000, D.R. Horton will write a check to "General Contractor, Inc. / SUB 1" for this amount. GC will then have to endorse the back of the check, hand it to SUB 1, and then SUB 1 will take it to her/his bank, endorse the back, and then put it in SUB 1's bank account for the full amount.

No. 2 – the lien release. A lien release is a document between two parties in which one party is ensured that the other party is fully paid for all work during a certain period which should guarantee that a party will not lien the job. Lien releases can be full, partial, conditional, unconditional, et cetera. As an owner, you should ensure that your GC and his key subcontractors and/or suppliers, execute lien releases on a monthly basis and that they are included in the pay request package. Be advised, liens are very state-specific, so be sure to include the appropriate language per your attorney.



My story. You just read it. I'm the guy in the green box. I had many projects with national homebuilders. They all used one or both of these methods of payment. So, on a monthly basis I would have to chase lien releases for subcontractors and suppliers. And then the owner would decide what (s)he wanted to joint check. So, when that \$105,000 monthly payment came it had one to me for \$50,000

and then six other checks totaling \$55,000 to equal the \$105,000 payment. Does that process sound like a huge pain in the rear for the GC? Yes, you're right, the process was a half-time job for one of my staff. And for the owner, yes, probably an inconvenience, but a great safeguard for them! Work safe!