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## **The Importance of Understanding Payment Provisions**

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Understanding payment provisions in design professional contracts is vital for a successful project. These provisions specify how, when, and how much professionals will be paid for their design services.

Payment provisions can help prevent disputes regarding payment and the project. They outline the terms of payment for the work provided, which can help mitigate misunderstandings between the parties involved. They ensure the professional gets paid in a timely manner. If the contract includes a schedule of payments, it can provide the professionals with a predictable income stream for the duration of the project.

Payment terms also help in defining the scope of the project through payment tie-ups with project milestones. These provisions also provide both parties with legal recourse in case of non-payment.

Understanding certain clauses that may be included in payment provisions is a critical part of ensuring projects are successful and minimizing potential conflicts or challenges. These clauses include “Paid when Paid” and “Paid if Paid” clauses.

### **Difference between “Paid if Paid” and “Paid When Paid” Clauses**

1. Paid-If-Paid: This clause creates a condition precedent to the obligation of the design professional to pay a subconsultant. It means the subconsultant will only get paid if and only if the Prime Consultant gets paid by the project owner. It shifts the risk of owner's non-payment from the Prime Consultant to the subconsultant.

This type of clause transfers the risk of the project owner's non-payment from the Prime Consultant to the subconsultant. It essentially states that the Prime Consultant is only obligated to pay the subconsultant if they themselves have been paid by the client.

2. Paid-When-Paid: This clause is a timing provision. It states that the Prime Consultant will pay the subconsultant within a certain period after the Prime Consultant gets paid by the client. It does not shift the risk of owner's non-payment to the subconsultant, but it dictates when

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payment must be made. If the Prime Consultant never gets paid by the project owner, a reasonable amount of time will be given after which the Prime Consultant is still obligated to pay the subconsultant.

These clauses may have significant financial implications for design professionals, so it's crucial to understand them before signing any contract and how they may effect your relationship with your subconsultants.

## **Requirement to Keep Project Free of Mechanic's Liens**

Contracts sometimes require the design professional to keep the project free of mechanic's liens from their subconsultants. This can be difficult when the above provisions are considered and a project owner is not making timely payments. It is important to understand your obligation under the contract and your subconsultants and ensure that this provision requires timely payment from the owner in order to enforce. This can help avoid potential claims from both subconsultants and project owners.

The inclusion of clear payment provisions in contracts with design professionals is crucial in managing expectations and maintaining healthy business relationships. These provisions not only promote fairness and transparency, but they also provide a mechanism for dispute resolution, thereby reducing potential conflicts. Moreover, definitive payment terms safeguard all parties by ensuring that the design expert is duly compensated for their work within the stipulated timeline, and the client is secure in knowing what they should receive in return for their payment.

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