

State of the Industry: Key Legal and Policy Issues Affecting Contractors

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An Industry in Transition

- **Consolidation and Private Equity Influence**
- **Insurance & Risk Transfer**
- **Payment Risk & Project Financing Instability**
- **Scope Creep, Change Orders, & Design Responsibility Drift**
- **Impact of AI and Automation**
- **Labor, Immigration, & Workforce Volatility**



Contractor-to-Contractor Mergers & Roll-Ups

What's Driving Consolidation

- Aging ownership and succession gaps
- Private equity targeting predictable cash flow and scale
- Roll-ups focused on geographic footprint

What We're Seeing

- Regional roofing contractors acquiring competitors
- Multi-state roofing brands expanding footprint
- Operational synergies replacing organic growth
- Shared labor pools, equipment, and vendor relationships

Why This Matters Legally

- Legal exposure scales faster than operations
- Contracts signed by one entity follow the entire group
- Legacy liabilities migrate across the organization





How PE Is Reshaping the Industry

- Accelerated consolidation and multi-state expansion
- Standardized contracts and centralized decision-making
- Increased emphasis on margins, predictability, and scalability
- Shorter investment horizons driving risk reallocation

Insurance & Risk Transfer

What We're Seeing

Additional insured status being denied post-loss

Residential exclusions gutting coverage

Wrap-ups that exclude trade-specific losses

Carrier insolvencies and restrictive endorsements

Additional Insured Issues

Contractors are being promised additional insured status in the contract, but when a claim hits, the upstream party's carrier says:

- The endorsement doesn't apply to *this* loss
- The paperwork wasn't issued correctly
- The work performed falls outside the endorsement scope

Why it happens:

- Blanket additional insured endorsements are narrow
- Endorsements require strict causal language ("caused, in whole or in part")
- Certificates of insurance are not binding

Real-world effect:

You thought you were covered under someone else's policy. You're not and you find out only after the lawsuit is filed.

Residential Exclusions Gutting Coverage

Many commercial policies exclude:

- Condos
- Mixed-use buildings
- Multi-family housing
- Any structure with residential occupancy

Why it matters:

Contractors think they are doing “commercial roofing” and later learn the building is classified as residential for insurance purposes.



Wrap-Up Surprises

Wrap-ups that exclude trade-specific losses

What it means:

Owner-controlled or contractor-controlled insurance programs (OCIPs/CCIPs) are sold as comprehensive, but often:

- Exclude roofing operations
- Exclude water intrusion or envelope work
- Provide only excess or limited coverage

Why it happens:

Wrap-ups are designed to protect the project owner — not individual trades.

Real-world effect:

You waive your own insurance rights to participate in the wrap-up, only to discover your biggest risks are carved out.

Carrier Insolvency and Restrictive Endorsements

What it means:

Some carriers writing construction risk:

Are undercapitalized

Exit the market mid-policy

Add endorsements limiting defense or duty to indemnify

Why it matters:

The paper policy looks good until the carrier can't perform or won't defend.

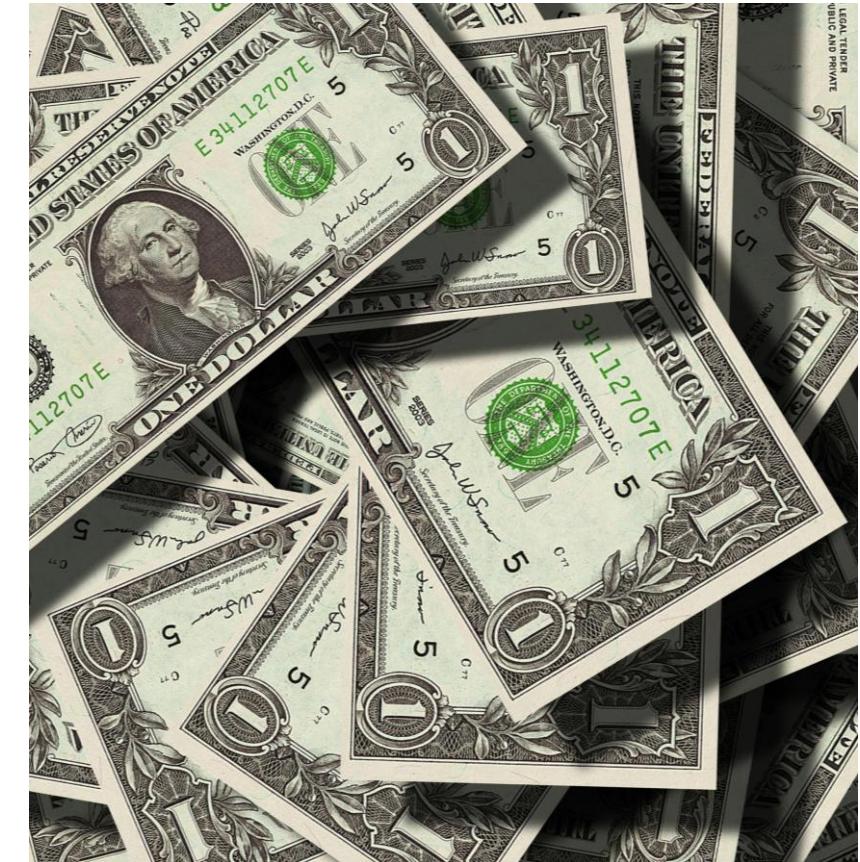
Payment Risk & Project Financing Instability

What's Happening

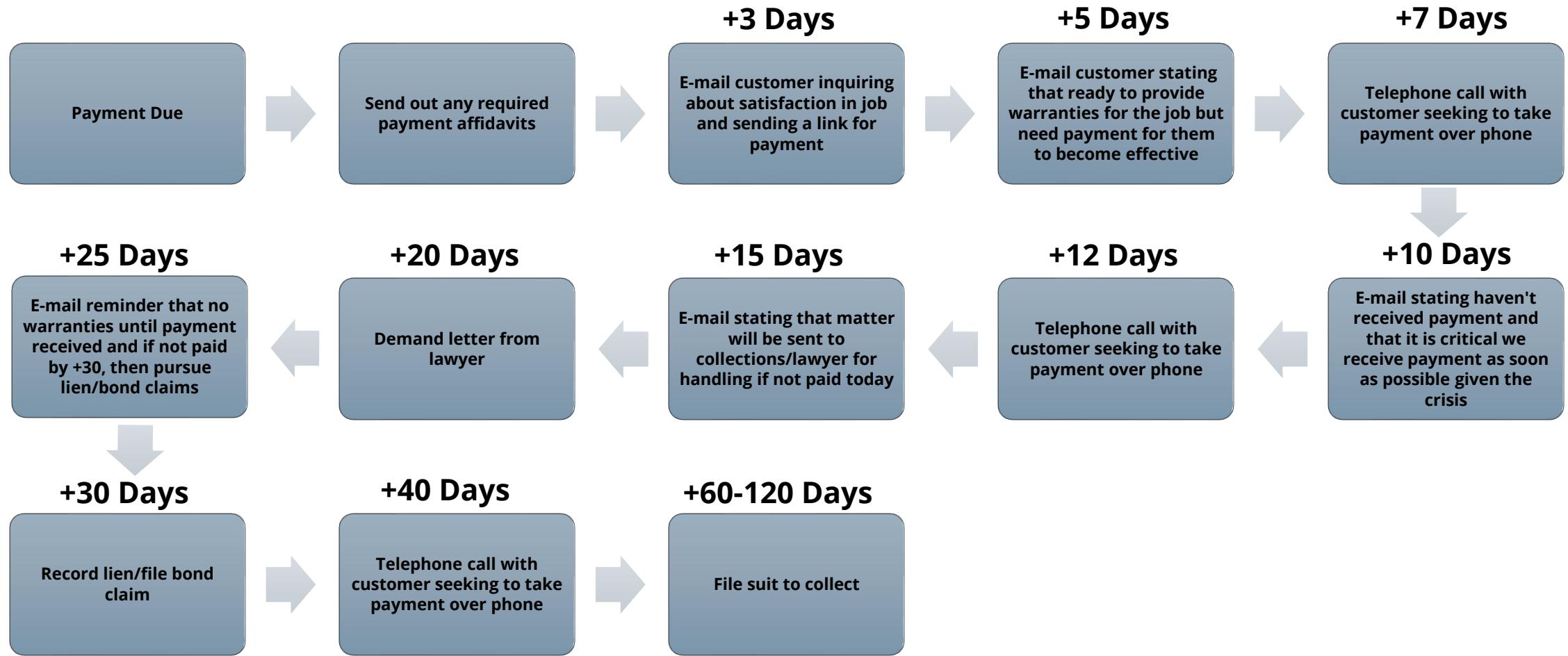
- Delayed owner funding
- Pay-if-paid clauses resurfacing aggressively
- Retainage misuse
- Disappearing project lenders

Takeaway

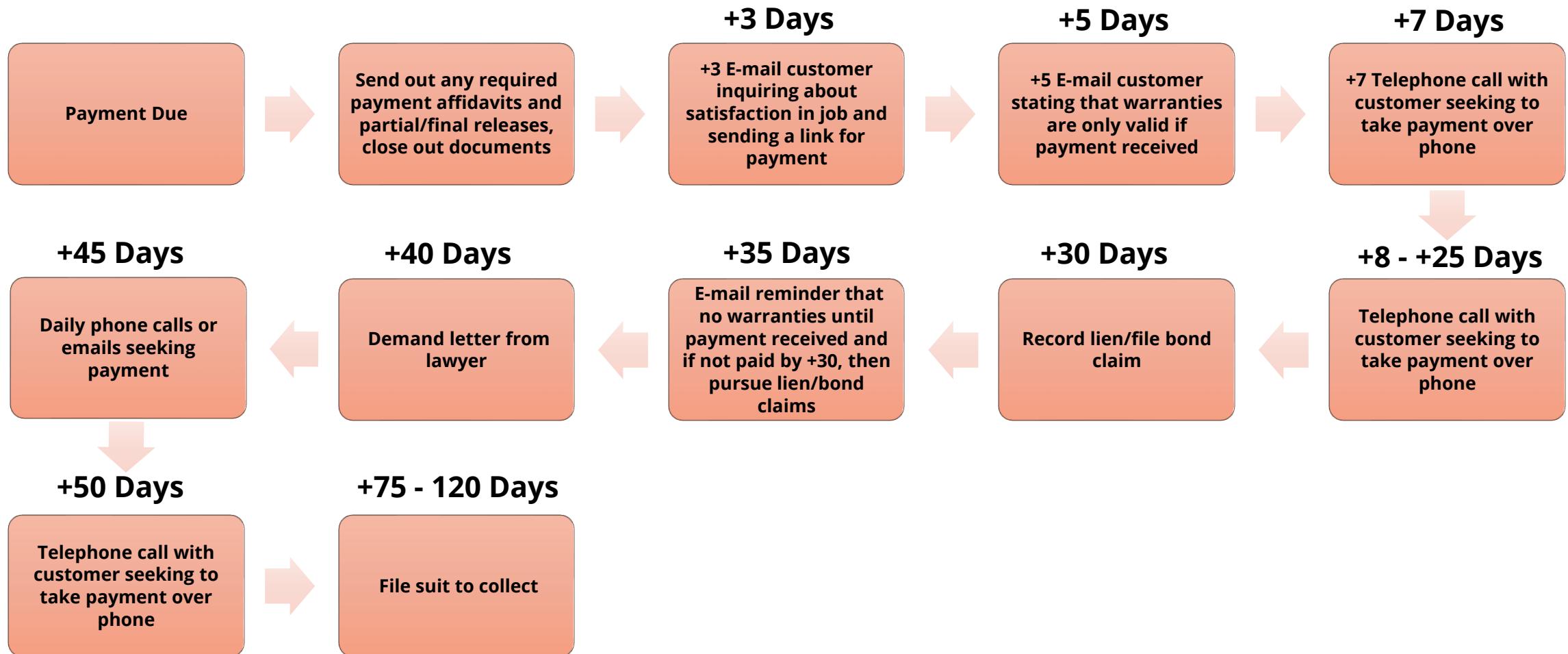
Monitor AR and implement a SOP for collections



Residential Collection Timeline



Commercial Collection Timeline



Scope Creep, Change Orders, & Design Responsibility Drift

A. Industry Reality

- Verbal directives
- “Just get it done” culture
- Contractors absorbing design responsibility by default

B. Legal Risk

- Defective workmanship claims
- Professional liability exposure without coverage
- Loss of change order rights

C. Contract Provisions That Save You

- Written change order requirements
- No design responsibility disclaimers
- Constructability review limitations
- Weather and material escalation clauses
- **Takeaway:** Silence in the contract equals assumption of responsibility.

Design Responsibility Disclaimer

- Contractor is not a licensed architect or professional engineer and does not provide architectural or engineering services. Any plans, specifications, drawings, details, recommendations, shop drawings, or suggestions provided by Contractor are offered solely for the purpose of facilitating construction and are not intended as professional design services. Responsibility for the adequacy, accuracy, and code compliance of all design documents rests exclusively with the project owner and/or the owner's licensed design professionals. Contractor shall not be responsible for errors, omissions, or deficiencies in the plans, specifications, or other design documents provided to Contractor.

Impact of AI and Automation

What's Being Adopted

- AI integration: estimating and measurement platforms, scheduling, inventory, customer service, and more.
- Drone and satellite roof inspections
- Automated scheduling, pricing, and proposal tools
- Digital job logs, photos, and sensor-based reporting

How This Changes Risk

- Estimates increasingly treated as guarantees
- Drone imagery and digital logs become litigation exhibits
- Algorithms create undocumented assumptions and biases
- Faster decisions reduce human review and verification



Key Legal Exposure for Contractors

Misrepresentation
and reliance
claims tied to AI
outputs

Expanded
discovery of raw
data and
metadata

Responsibility for
third-party
software errors

Inconsistent
documentation
across jobs and
crews

AI Use Disclaimer

- The Contractor may utilize artificial intelligence-assisted tools, including software used for measurements, estimates, reports, photographs, drone imagery, and documentation. Such tools are intended solely to aid efficiency and do not replace professional judgment, on-site inspections, or manual verification. All scope determinations, pricing, quantities, recommendations, and conclusions remain the responsibility of the Contractor and are based on field conditions observed at the time of inspection. The Owner acknowledges that AI-assisted outputs may contain inaccuracies or assumptions and agrees that no reliance shall be placed solely on such outputs without independent verification. To the fullest extent permitted by law, the Contractor disclaims liability for errors or omissions attributable solely to AI-generated data not independently confirmed in the field.



Controlling Post Completion Liability

- Roofing contractor completes work and demobilizes.
- The owner, other trades, or third parties damages the roof
- Roofing contractor gets blamed
- Contract addresses but still an uphill battle where you have to prove the damages were not a result of your workmanship.
- Consider shifting the burden on the owner as part of service or warranty obligations.

Once substantial completion occurs, the owner assumes full control over roof access and maintenance.

Because unauthorized entry and poor maintenance are common causes of leaks and damage, the clause requires the owner to obtain the contractor's written approval before allowing non-exempt roof access, maintain a detailed access and maintenance log, and promptly report any leaks or damage.

If the owner fails to follow these requirements, claims for later roof problems may be waived or presumed to result from improper access or third-party activity.

The provision's purpose is to clearly define responsibility, create a documented chain of custody for roof access, and limit the contractor's exposure to post-completion damage outside its control.

Roof Access and Maintenance

1. Control of Roof Access.

Upon Substantial Completion, the Owner shall assume full responsibility for controlling and monitoring access to the roofing system. Because unauthorized traffic and maintenance failures are known causes of roof damage, flashing displacement, and warranty voidance, no person or entity may access, traverse, or perform work on or above the roof without the Contractor's prior written approval, except in the following circumstances:

- (a) emergencies affecting life safety or active water intrusion;
- (b) access by the roofing system manufacturer, insurer, or governmental authority in the exercise of their lawful duties; or
- (c) entry by building maintenance staff performing routine, non-intrusive observation, provided such activity does not involve mechanical equipment or roof penetration.

The Owner shall request approval for all other access at least three (3) business days in advance, identifying the name, company, and purpose of each person or entity seeking entry. The Contractor may reasonably condition or deny access to protect the roofing system or preserve warranty coverage.

2. Roof Access and Maintenance Log.

The Owner shall maintain a written or electronic Roof Access and Maintenance Log documenting each access event, including the date, name, company, purpose, and any work performed or roof condition observed. The Log shall include entries for emergency or authorized manufacturer visits as soon as practicable thereafter. The Owner shall retain all records for the duration of the warranty period and make them available to the Contractor upon request.

3. Notice of Access, Damage, or Leak.

The Owner shall provide written notice to the Contractor within three (3) business days of (a) any observed roof damage or irregular condition, or (b) any water infiltration or leak. Failure to provide timely notice may prejudice the Contractor's ability to inspect, mitigate, or maintain warranty coverage.

4. Waiver and Limitation of Claims.

If the Owner (i) fails to obtain the Contractor's prior written approval for non-exempt roof access, (ii) fails to maintain the Roof Access and Maintenance Log, or (iii) fails to provide timely written notice as required above, the Owner expressly waives and releases the Contractor from claims, damages, losses, costs, or expenses arising out of or related to roof performance, leaks, or defects occurring after Substantial Completion, but only to the extent such claims could have been prevented or mitigated by compliance with this provision. This waiver shall not apply to claims resulting from the Contractor's gross negligence, willful misconduct, or fraud.

5. Presumption of Responsibility.

In any dispute involving post-completion roof performance, the absence of a complete and contemporaneous Roof Access and Maintenance Log, or proof of prior written approval, may create a rebuttable presumption that the damage, leak, or defect was caused by post-completion access, misuse, or third-party activity. The Owner shall bear the burden of producing contrary evidence.

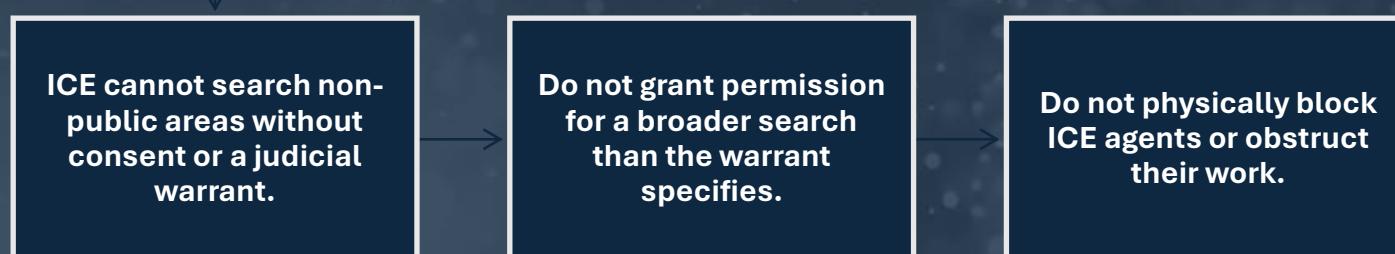
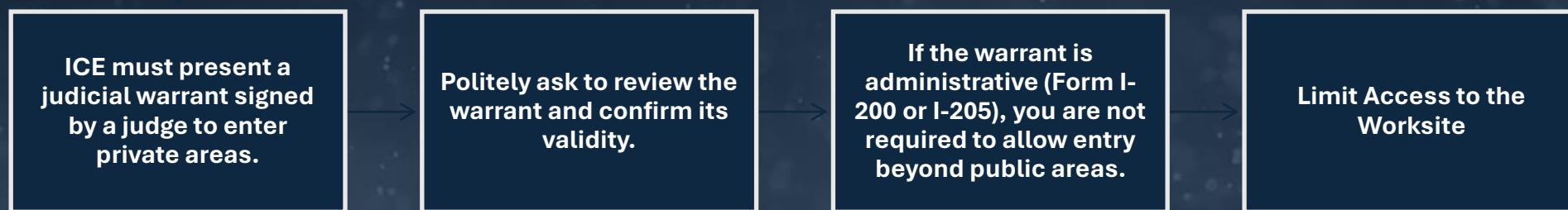
6. Limitation of Damages.

The Contractor's liability to the Owner for any claim arising out of or relating to the roofing work shall be limited to actual, direct damages proven to have been caused by the Contractor's breach of this Agreement. The Contractor shall not be liable for consequential, incidental, indirect, special, exemplary, speculative, or punitive damages, including, but not limited to, loss of profits, loss of use, loss of business reputation, or damage to the interior, equipment, or other property not part of the roofing system.

7. Survival.

This provision shall survive final payment, completion, and expiration of any warranty period.

How to Handle an ICE Raid



UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

)
)
)
)
)
)
Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(Identify the person or describe the property to be searched and give its location).

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (Identify the person or describe the property to be seized).

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)

in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____.

(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box).

for _____ days (not to exceed 30) until the facts justifying the later specific date of _____.

Date and time issued: _____

Judge's signature

City and state: _____

Printed name and title

Enforceable & Binding Warrant

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

the execution of a charging document to initiate removal proceedings against the subject;
 the pendency of ongoing removal proceedings against the subject;
 the failure to establish admissibility subsequent to deferred inspection;
 biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law, and/or
 statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service), and the contents of this

notice were read to him or her in the _____ language.

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-360 (Rev. 09/14)

Non-Binding ICE Warrant

Employee Support

Educate Workers on Their Rights

- Employees have the right to **remain silent** and **request an attorney** before answering questions.
- They are **not required** to sign any documents without legal review. Consider “rights cards.”

Notify Legal Counsel Immediately

- Do not make statements to ICE on behalf of employees without legal guidance.

Follow Up & Support Affected Employees

- If employees are detained, **coordinate with legal counsel** for next steps.
- Consider offering **legal resources or referrals** to impacted workers.

I-9 Audits

Review the Notice of Inspection (NOI)

- Employers typically have **3 business days** to respond.
- Identify the agency conducting the audit (DHS, ICE, or DOJ's IER).

Assemble I-9 Forms & Supporting Documents

- Gather all **Form I-9s** for current and past employees (usually past 3 years).
- Ensure records are **organized and complete** before submission.

Conduct an Internal I-9 Review

- Identify **missing, incomplete, or incorrect forms**.
- Make allowed corrections (initial and date changes).
- Do NOT backdate or falsify documents.

Consult Legal Counsel

- Consider **immigration or employment counsel** to guide the response.
- Review potential liability and strategy for handling errors.



Best Practices for I-9 Audits

Limit Communication with Investigators

- Assign a **single point of contact** for interactions with auditors.
- Do not allow ICE to interview employees without legal guidance.

Know Common I-9 Errors & Fix Them in Advance

- Missing employee signatures
- Incorrect document verification
- Failure to reverify work authorization

Avoid Discrimination & Retaliation

- Do not selectively target employees for I-9 review based on nationality.
- Avoid retaliation against employees with discrepancies—correct them properly.

Establish an Ongoing I-9 Compliance Process

- Conduct **annual internal audits** to catch issues early.
- Train HR personnel on proper I-9 completion & storage.
- Use **E-Verify** where required for additional verification.



Final Notes on the Form I-9

- Record Retention:
 - Employers should keep I-9 files separate from employee files (not part of employee's general personnel file).
 - Employers must keep a copy of the Form I-9 for the **entirety of the employee's employment** and for a **period of time after employment ends**. After employment ends, the employer must keep the Form I-9 for the longer of (a) 3 years after employment started; or (b) 1 year after ended, whichever is longer.
- Errors in I-9 Form: When filling out the Form I-9, it's easy to make minor, technical errors. However, if those technical errors aren't correct and the government audits your I-9 files, each error can be grounds for a monetary penalty of at least \$288 per deficient Form I-9.
 - **TIP:** Periodically audit your I-9 files for compliance (e.g., annual audit). Most of these technical errors can be corrected to avoid a penalty.

Questions?

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