



# Jacob A. Zahniser

 Partner

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**“Honest, accountable, knowledgeable, and genuinely concerned for my clients’ success, I build relationships with my clients based on trust, reliability, and an understanding of the clients’ needs to provide the best legal service possible.”**

For nearly 15 years, Jacob Zahniser has represented owners, contractors, subcontractors, material suppliers and design professionals in connection with public and private projects involving schools, infrastructure, industrial, commercial, and residential projects. Jacob’s practice focuses on two areas: construction law and litigation and commercial landlord/tenant disputes. Jacob advises clients on any number of issues that arise during a construction project, from drafting the construction contract, through project close-out, payment, and defect claims.

Jacob frequently advises clients on claim prosecution and avoidance, including change orders, delay/acceleration claims, liens, and liquidated damages. Jacob has considerable experience prosecuting and defending multi-million dollar extra work, delay/acceleration, design defect, differing site conditions, disruption and workmanship claims in state and federal courts and arbitrations.

## Construction Law and Litigation

Jacob uses his experience representing owners, contractors, subcontractors, designers, and material suppliers in a wide range of risk management counseling and construction disputes. On behalf of his clients, Jacob effectively and efficiently negotiates construction agreements for a variety of applications ranging from single-family home construction to master agreements covering public and private projects. Jacob is deeply knowledgeable and experienced with handling construction defect claims, delay/acceleration claims, and lien disputes in Oregon and Washington. He is well-versed in working with today’s construction professionals throughout the claim process and in identifying the key issues at the first opportunity to drive to resolution as quickly as possible.

## Commercial Landlord/Tenant Disputes

Jacob co-authored Chapter 35 of the Oregon State Bar’s 2015 *Real Estate Deskbook* entitled “Commercial Lease Disputes and Remedies.” He uses his superior knowledge of commercial landlord/tenant law to negotiate prompt

## Education

J.D., St. John’s University  
School of Law, *cum laude*,  
2007

B.A., University of  
Maryland, 1995

## Bar Admissions

Oregon, 2008  
Washington, 2007

## Court Admissions

U.S. District Court, District  
of Oregon

U.S. District Court,  
Western District of  
Washington

resolution of commercial landlord-tenant disputes. When negotiation fails, Jacob uses his deep understanding of civil practice and the tools of litigation to represent his commercial landlord-tenant clients in federal and state courts.

## Professional Activities

- Associated General Contractors (AGC), Oregon-Columbia Chapter
- Home Builders Association of Metropolitan Portland
- Oregon State Bar
  - Construction Law Section, Executive Committee, 2017-present
  - Construction Law Section, Annual CLE Committee Chair, 2020
  - Member-At-Large, 2016-2017
- American Bar Association, Construction Law Forum

## Representative Experience

### Construction Disputes

- Lead attorney representing subcontractor in a dispute with an out-of-state material supplier on a public project. Material supplier declared bankruptcy in its home state and claim resolved out of bankruptcy.
- Represented general contractor in close-out dispute with subcontractor over warranty terms in light of known design errors. Negotiated a settlement involving use of subcontractor's retention over life of warranty period.
- Represented general contractor involving subcontractor's violation of Davis-Bacon Act. Counseled client through Department of Labor process and had the subcontractor's lien for retention dismissed after administrative law judge found subcontractor violated Davis-Bacon Act.

### Landlord/Tenant Disputes

- Represent numerous property owners and tenants resolving breach of lease claims arising out of COVID-19.
- Represented owner of shopping center in dispute with tenant over unpaid common area maintenance charges (CAMs). Negotiated resolution wherein tenant would pay all back CAMs for prior 6 years and structured new CAM reconciliation process to avoid issue in the future.

## Publications

Jacob writes frequently on various topics. Following is a listing of publications since 2015. A complete list is available upon request.

- "What do the Rules of Evidence Have to Do With Documenting a Construction Claim? Everything." Miller Nash, *From the Ground Up* (Mar. 2022)
- "Court Grants Garnishment of Unlawful Distributions and Transfers to LLC Members" Miller Nash, *From the Ground Up* (Jan. 2022)
- "What is a Warranty?" Miller Nash, *From the Ground Up* (July 2021)
- "Addressing Material Price Escalation," Miller Nash, *From the Ground Up* (June 2021)
- "Potential First Amendment Protections for Disgruntled Bidders," Oregon State Bar Construction Law Section, *Construction Law Newsletter* (June 2021)
- "Addressing the Impact of COVID-19 on Current and Future Projects," National Association of Minority Contractors Oregon, *NAMC-Oregon Newsletter* (June 2020)
- "Steps Construction Attorneys Take to Assist Their Construction Clients in Addressing the Impact of the Coronavirus on Current and Future Construction Projects," Oregon State Bar Construction Law Section, *Construction Law Newsletter* (Spring 2020)
- "Preparing for Coronavirus' Long-Term Impact on Projects," Daily Journal of Commerce, op-ed (Mar. 2020)

- “ORS 701.640 May Not Void Forum-Selection and Choice-of-Law,” Oregon State Bar Construction Law Section, *Construction Law Newsletter* (Spring 2019)
- “So You Think You Have a Delay Claim? Prove It,” *Daily Journal of Commerce* (Aug. 2018)
- “The Contractors Special Conditions Endorsement,” Oregon State Bar Construction Law Section, *Construction Law Newsletter* (June 2018)
- “Enforcing Pre-suit Mediation Clauses,” *Daily Journal of Commerce* (Mar. 2018)
- “Unjust Enrichment: A High Wire Act of Uncertainty” Oregon State Bar Construction Law Section, *Construction Law Newsletter* (Mar. 2017)
- “Duty to Defend in Oregon,” *Daily Journal of Commerce* (Jan. 2017)
- “Avoiding Compliance Pitfalls of Prevailing Wage Laws,” *Daily Journal of Commerce* (Nov. 2016)
- “Troublesome Trucking Regulations,” *Daily Journal of Commerce*, coauthor (July 2016)
- “Know Your Default Statutory Timelines,” *Cascade Business News* (July 2016)
- “Top Tips for a Successful Design Build Project,” *Daily Journal of Commerce* (Apr. 2016)
- “Carefully Craft your Next Arbitration Provision,” Oregon State Bar Construction Law Section, *Construction Law Newsletter* (Mar. 2016)
- “Do I Have To Allow My Tenant’s Marijuana Use,” HFO Investment Real Estate, *HFO Real Estate Newsletter* (Dec. 2015)
- “A Restrictive Endorsement Could Discharge Your Dispute” (Sept. 2015)
- “How to Improve Your Construction Lien” (July 2015)
- “Five Must-Review Contract Provisions” (May 2015)

## Presentations

- “Evaluating Alternative Delivery Methods in 2021—What’s Working and Pitfalls to Avoid,” Miller Nash, Construction Webinar Series (Sept. 2021)
- “What’s Ahead? Key Legislative and Employment Updates,” Miller Nash Graham & Dunn, Construction Webinar Series (Mar. 2021)
- “Adopting Practices that Reduce Liability for Defects and Failures,” HalfMoon Education, webinar (Mar. 2021)
- “Construction Law Section CLE,” Washington State Bar Association (Aug. 2020)
- “Breakfast Roundtable: A 360° Discussion on Delegated Design,” Miller Nash Graham & Dunn (Oct. 2019)
- “Defining Trespass and Adverse Possession,” HalfMoon Education Inc., CLE presentation (Apr. 2019)
- “A Day in the Life of a Construction Defect Case and Legal Updates,” Oregon Paralegal Association, Annual Convention and Business Meeting (Nov. 2018)
- “Growing Issues: The Intersection of the Construction and Cannabis Industries,” Oregon State Bar, Contemporary Legal Issues from Project Conception to Resolution CLE (Oct. 2018)
- “Balancing Legal Risk in Contracts and Practice,” American Institute of Architects—Portland (July 2018)
- “AIA Contract Document Workshop,” HalfMoon Education Inc. (July 2018)
- “Contract Review—What’s in Your Contract?” Oregon Landscape Contractors Association (Dec. 2017)
- “Prevailing Wages,” The Seminar Group, Construction Law Seminar (Sept. 2017)
- “Contractors Roulette,” Associated General Contractors, Oregon Convention (Aug. 2016)
- “The Latest Legal Advice for Contractors,” Portland Homebuilders Association, 2016 BuildRight Conference (Apr. 2016)
- “Why Appraisers Get Sued,” Appraise Right (Nov. 2015)
- “Real Estate and Land Use,” The Seminar Group, Marijuana in Oregon (July 2015)
- “It Ain’t Easy Being Green: The Legal Issues of Green Construction,” Portland Homebuilders Association, Builder/Remodeler Breakfast (June 2015)

- “Measure 91: Residential and Commercial Real Estate and Land Use Issues,” Oregon Law Institute CLE (May 2015)
- “Impacts of Measure 91,” Spring Symposium, Oregon Casualty Adjusters Association (Apr. 2015)
- “Top Ten Rules of Risk Management,” Portland Homeowners Association, Contractor Business Management Series (Feb. 2015)

### Recognition & Honors

- Selected for inclusion as an Oregon Super Lawyer—Rising Star, 2014-2016
- Selected for inclusion in *The Best Lawyers in America*® in Construction Law and Litigation—Construction, 2019-present