

NAED
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How does a Supplier get paid in these Economic Times?

Credit tight with lenders;
Owners paying slowly;
GC's holding onto funds longer than ever; and
Subs are pinched.

Terms should require the sub to pay even if it has not been.
How does it do that when the jobs are few and far between?

Lien, bond rights in this climate:

30,000 foot view.

What does filing a lien do to a job?

What does filing a bond claim do to a Principal
from the surety's perspective and
how does it affect its ability to get new work?

To know Supplier's Rights, how to use them,
need to start at the beginning, understand Payment Risks,
and who holds what portion of that Risk.

Go Back to Fundamentals (T's and C's) and Rethink Security

Review the Account and Review the Jobs
Where are the Materials Going?
Minimize the Credit Risk
Secure Full Payment
Don't Compromise Rights

Managing Risk Based on Front End Decisions

Who is Taking What Risk?

What's Smart Risk and what is not?

Caution on Sales, since a Tougher Climate Means Riskier Sales:

Is it better to not sell than to sell and not get paid?

What can we do on the Front End?

Terms and Conditions:

- Goal is to make sure your terms and conditions control the sale of any of materials (retainage, pay when paid).
- Ideal world:
 - Credit App., Quote, Customer PO with no exceptions, or different or additional terms.
- Unfortunate Occasional Reality:
 - Battle of the Forms, Credit Application First, Different PO Second.
- If a PO comes in with different terms (escalation, indemnity, offset, change orders, pay when paid, claims), we need to object to the different terms. If we don't object, we've agreed to the new terms.

The Golden Rule For 2011 and 2012 : Get In Even Earlier!

Leverage depends on project completion, and why, in this economy, not contacting owners is worth more than ever.

Who has been paid;
Whether bond rights exist;
Whether lien rights exist;
Whether timely notices can be made.

Discussing Secondary Rights,
In addition to Breach of Contract

Other Alternatives: How do you move something from the unsecured bucket to a secured bucket?

Mortgages
Corporate Guarantees, Personal Guarantees
Joint Checks
Lines of Credit
Letters of Credit

Your rights depend on the job

Is it secured or unsecured?
Public or private?

Lien rights?
Bond rights?

Invoice Dates v. Last Ship Dates:

- Bond deadlines are controlled by state's laws and the bonds.
- Lien deadlines are not the same as bond deadlines.
- Lien deadlines are controlled by each state's laws.
- In each case, though, deadlines run from last ship dates, not invoice dates.

PRIVATE

Bonds Possible
Liens Permitted

PUBLIC

Bonds Required
Liens Prohibited

Once we lien, what happens?

Once we file a bond claim, what happens?

BONDS

Payment Bonds: Supplier is claiming it has rights against a customer's bond or a GC's bond, and their respective sureties under a payment bond. There is no reason not to ask your customer if the job is bonded, and, if it is, to get a copy.

What is a Bond? It's simply a contract, but you should assume they are different. Who are the parties?

- Surety
- Principal: GC?
- Principal: Customer?
- Claimant (Supplier)

What are the Most Important Bond Rules?

- Get a copy, read it. – Whose bond is it? Upstream?
- Are you sure it is not bonded?
- Deadlines are not the same as mechanic's liens.
- Notice: Last Ship Date.

Different Types of Bonds:

Bid, Mechanic's Lien Discharge, Performance, Payment.

What is indemnity?

Why doesn't anyone want you to call their surety?
(Bond Ceilings, Bondability, Bond Ratings)

If you make a claim, what happens?

What is the surety's obligation (Brambles)?

LIENS

Mechanic's Liens:

What is a lien?

It's a claim against the building, and the property it sits on for the improvements which have been made as a result of our materials.

Generally, if a job is a private job (a shopping center, or a commercial building) you will have lien rights. You are claiming rights in the actual real property.

If the job is a public job (high school, post office, or waste water treatment plant, for example), you will not have lien rights.

- Timing
- Notices
- Balance of Contract or Full Value
- Leverage

Examples: TN Lien 72k v. 36k
Brewing company lien 48k + 2 other jobs

Lien Priority Question:

We file a lien. / We foreclose on the lien. / Run a title search.
Have to name the banks. Find banks, mortgages.
Question becomes one of priority.
Whose lien is in first place on the property?
Relevance is falling property prices, less equity.

Relation Back

Filing a lien though will almost always put the mortgagor in breach of its mortgage financing, even if the mortgage is for financing unrelated to the construction. As far as generally selling to a property with a loan, even where you can't relate back, the fact that the lien will always put a customer in breach of its financing, and force a foreclosure is still strong leverage.

Miscellaneous

What to do when a customer is in trouble and red flags showing they are.

- How do you figure out if a customer in trouble?
- Red flags.
- Shop visits.
- Calls to GC's, Order of calls.
- Willingness to share figures, balances owed.
- Willingness to sign acknowledgments.

Review of Stock Accounts

- If there a stock account, carefully review the stock invoices.
- Job? What ties out? And the flip of that: Don't put invoices on a job that don't belong there.

E-mail as Evidence

Contract Drafting