

The Contractor's Collections Toolkit

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About the Toolkit

A manual for use by contractors of all sizes to learn about the collection process and help them develop good collection practices. The toolkit includes: (a) a summary of collection laws; (b) common collection mistakes and pitfalls; (c) common construction contract provisions to avoid overdue accounts; (d) collection letter templates; (e) when its time to hire an attorney; (f) guide to litigating a collection action.

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Introduction

In a construction business, an organization's accounts receivables can get really high, really fast. The reality is that construction projects move at a fast pace and carry high stakes, and these characteristics of every construction project frequently result in unpleasant collection scenarios.

Accordingly, it's critical to be prepared for non-paying accounts by having good collection practices.

Good collection practices can result in two positives for your organization: (1) Disciplined collections procedures will decrease your non-paying accounts, as the consistent and pointed follow-through will result in influencing more of your clients to pay open invoices; and (2) The more payments you receive, the less money you'll spend with collection agencies and attorneys chasing debtors.

This *Collections Toolkit* aims to help the construction professional understand the collection process, and to use good collection procedures to more successfully collect on non-paying accounts, avoiding expensive legal disputes and write-offs.

This *Collections Toolkit* also provides the reader with some instructions on how to proceed when in-house collections procedures are not successful, such as a brief explanation of construction liens, hiring an attorney and litigating a collections lawsuit.

INTRODUCTION

Summary of Collection Laws

A basic understanding of the laws that affect “collections” is important whenever any company ventures to tackle its unpaid accounts. A small misstep in your method of collecting can arm your adversary with a legal argument for damages *against you* for unfair collection practices, and if you fail to say the right things you can waste precious time without collecting interest. There are also laws in place that may restrict when you can file suit against a non-paying party.

While each state’s collections laws are different, there are common themes that run throughout the country. Nevertheless, it is important to consult the law in your state. Furthermore, nothing can replace the advice of a competent attorney.

In Louisiana and in most other states, the law that applies to a particular debt depends in large part on the debt itself. Sometimes your best theory for recovery will be under common contract law principles, while in other circumstances, a specific theory of recovery may apply (i.e. open account law, NSF check recovery, etc.).

General Theory of Recovery

Whenever you perform services or provide a product, there is an assumption you are doing it to be compensated. Further, whenever someone agrees to make payment for your product or services, there are mechanisms within the law for you to enforce that agreement.

The Louisiana Civil Code stipulates how obligations are formed, when they are breached and how they are proved. While it's not the purpose of this *Toolkit* to summarize the Louisiana theories of contract and obligations, it will touch on the subject to give you a general understanding of the laws in place that provide you a remedy when a party does not pay for services rendered or products provided.

The Louisiana Civil Code states that a "contract is an agreement by two or more parties whereby obligations are created, modified or extinguished." *Article 1906*. Contracts have the "effect of law for the parties" and "must be performed in good faith." *Article 1983*.

You can recover damages for a party's failure to perform on a contract from the time that person fails to perform. However, the Louisiana Civil Code specifies that any damages for delay in performance (i.e. interest, effect delay has on your business, etc.) is due only from the time the non-performing party is put in default. *Article 1989*. Accordingly, it is very important to put a non-paying party in default immediately.

Putting someone in default can be done automatically (without any action by you) or manually (with action by you).

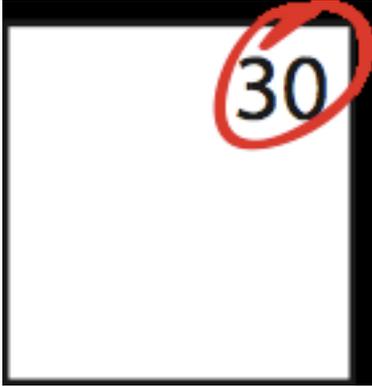
Default is automatic whenever there is a term associated with the contract. For example, if you have a contract and agree that payment is due on January 25th, the person who fails to make payment is automatically placed in default on January 26th.

However, when there isn't a term, or when the term is less clear, you are required to put the person in default by making a request in writing or by making an oral request in front of two witnesses. *Articles 1990-1991*.

There are many possible scenarios in the course of a construction project when a party may not get placed in default automatically. Oftentimes parties to a construction project deal with one another informally, thus clouding exactly when and if one party placed the other in default in the case of non-performance. Also, construction contracts sometimes specifically require one party to formally place the other in default.

Finally, when bringing a suit on a contract, you will likely allege that the non-performing party has caused you damages in accordance with Civil Code Article 1994 *et seq.* The measure of damages in these articles is very lucid, but they specifically do not include the recovery of attorneys' fees unless the other party acted in bad faith or your contract provided for its recovery. The recovery of attorneys' fees is discussed later in this *Toolkit*.

"Open Accounts"



The Louisiana Open Account law is codified in LA R.S. 9:2781. The Open Account statute provides that if a debtor does not pay a debt within thirty (30) days after written demand is sent, the debtor will be liable to the creditor for attorneys' fees and costs.

This is a great asset when moving forward on a collection.

There are a few important things, however, to keep in mind:

1) To take advantage of this statute, your debt must be considered an "open account." What qualifies as an "open account" under the statute is pretty broad, and includes "any account for which a part or all of the balance is past due."

Material Suppliers who give contractors an "account" with their business, whereby the contractor purchases supplies and runs up a balance, is a good example of an "open account." A good rule of thumb is that an open account exists whenever you require your customers to sign a credit application, or whenever you allow them to carry a balance and make partial payments on the balance.

Case law is clear that construction contracts do not qualify as open accounts. There may be some extraordinary circumstances whereby an arrangement between a contractor and subcontractor could qualify the account as an open account, but in general, you'll have very little luck arguing that your construction contract is an open account.

While material suppliers and contractors generally create open accounts, and contractors and subcontractors generally do not, there is some question as to whether leasing movable equipment would qualify as an open account. The classification of an account between a equipment lessor and its lessee will depend upon the specific agreement between the parties.

Nevertheless, if you're uncertain as to whether your debt qualifies as an open account or not, sending a demand letter that meets the requirements of the Open Account law is a good collection practice. It protects your rights if you do qualify under the statute, and if you don't, there is no harm to your claim and your demand letter should suffice as notice under general contract notice laws.

2) To take advantage of the "open account" statute you are required to send your notice via U.S. Mail. To prove that the letter was sent, you should send the letter certified mail with return receipt requested, and keep record of the certified mail number used. Further, it's sometimes a good idea to send the message via ordinary mail *and* certified mail, so the notice is delivered even if the recipient refuses to sign for the parcel.

3) Before qualifying for attorneys' fees and interest under the statute, you must give the debtor thirty (30) days to pay after the demand.

4) To take advantage of the statute, you should enclose with the demand letter some evidence of the debt. Evidence of the debt includes either and/or all of the following: (a) contract; (b) invoices; (c) receipts; (d) proposals; (e) etc.

NSF Checks and Your Options

When a check is returned NSF (Non Sufficient Funds), the drafter of the check is required by law to pay to the creditor a NSF fee that equals \$25.00 or 5% of the check amount (whichever is greater). If the NSF check is not re-written and/or paid to the creditor within fifteen (15) working days of being put on notice that the check went NSF, the creditor is entitled a penalty of double the amount of the check or \$100.00 (whichever is greater).



to

This is a very substantial penalty under the law for writing NSF checks.

If handled correctly, when a check is returned to you NSF, you can apply great pressure to the drafter of the check by threatening these large penalties.

Furthermore, if a check is returned NSF and not re-paid by the drafter, your lawsuit against the drafter of the instrument is substantially less complicated. Instead of being required to prove that you performed work as contracted, or that some controversial change order was approved, you simply need to demonstrate that the drafter wrote you a check and that it was not honored.

It's very important to properly notify the drafter of a NSF check of the instrument's problem to protect your claim to these penalties.

In some cases, collecting on an NSF check will be unlikely or not worth the costs. An unpaid NSF check for \$75.00, for example, is not worth an aggressive pursuit. Likewise, it might not be worth the costs to pursue an NSF check of a greater amount when you know that the drafter is insolvent.

In these situations, you have the option of reporting the NSF check to a Parish District Attorney's office.

Making a DA complaint should be reserved for those occasions when you have a NSF check and your chances of collecting the check are minimal. Once you file a DA Complaint, you are unable to move forward to collect payment through civil avenues. The DA can press charges and attempt to get you "restitution" through the criminal process. After making the complaint you are unable to file suit civilly against the drafter of the check and the decision of whether to pursue the criminal charges is left completely to the DA's whims.

A DA complaint is a simple and inexpensive attempt to collect on a NSF check. However, it is also generally unsuccessful. As such, you should use it as a last resort, and only when you do not want to proceed further through civil avenues.

Suits Against Contractors by Other Contractors or Suppliers

If you are contracting with another contractor to perform construction services or provide construction materials to a construction project, non-payment by that contractor may qualify you to recover attorneys' fees and statutory penalties.

Louisiana Revised Statute Ann §§ 9:4814 attempts to prevent contractors from "misapplying" payments. In other words, if a contractor has received money on a project, they must apply those payments to its subcontractors and material suppliers. If the contractor fails to properly apply its payments, the unpaid party may seek the amount due in addition to statutory penalties and attorneys fees.

The statute requires that the misapplication of funds be done "knowingly" by the contractor.

Rules Regarding Collection of Attorneys Fees

Frequently referred to as the "American Rule," in nearly every state it is the general rule that attorneys' fees are not recoverable by the party bringing suit. In other words, everyone involved in a legal action are responsible for the payment of his or her own attorneys fees.

This "American Rule" will apply to every situation, unless a clear exception applies.

There are many statutes in Louisiana (some of which are above-discussed) where the party who prevails in litigation can recover attorneys' fees. There are obvious benefits to you in your attempts to collect when you fit within one of these exceptions. While not an exhaustive list, here is a list of a few circumstances in Louisiana when attorneys' fees are in play:

- When the debt is an "Open Account," and the non-paying party was provided with notice and did not pay after 30 days
- When a party writes a NSF check, and fails to pay the funds to the creditor within 15 working days
- When a contractor misapplies funds as per LA RS 9:4814
- When the parties stipulate within their contract that attorneys' fees are recoverable
- When a party performs on a contract in "bad faith"

SUMMARY OF COLLECTIONS LAWS

Common Mistakes and Pitfalls

1. Taking a reactive approach to collections instead of a proactive approach

Unfortunately, sometimes the best collection procedures and attorneys on earth cannot fix a collections problem. An insolvent company who owes you \$100,000.00 may owe you that amount forever.

Good collection procedures, therefore, begin before you are owed any money. They begin at the time of contracting.

“An ounce of prevention is worth a pound of cure” rings true for those seeking to avoid high receivables. Starting with a good contract and following through with smart project management can help keep your uncollected accounts low. Common contract provisions that may help avoid a collection scenario is discussed in this toolkit.

2. *Don't get "too deep"*

The worst collection problems are usually the most avoidable. Oftentimes, a construction company will continue dumping materials and resources into a project without compensation.

It's important to reject the urge to perform your services upon a "promise" to pay. These promises are all too common between contractors, and in most cases, they are all too empty as well.

Learn to notice cues from your prime contractors or customers that money is tight, and react by demanding exactly what you're entitled to: payment. You may fear that the paying party will seek someone else to do the work, but anyone else will certainly expect payment as well.

3. *Not Being Prepared for a Non-Paying Customer*

The longer an account goes unpaid, the less likely you'll ever collect. One of the biggest mistakes you can make when faced with an overdue account, therefore, is to delay your attempts to collect.

It's easy to put off collection work when you're not prepared to send demand letters and make other attempts to obtain payment. However, with a collection procedure in place, you can automatically and easily start your collection attempts as soon as an account becomes overdue.

Standardized collection procedures, therefore, will keep you proactive, consistent and more successful at collecting on overdue accounts.

4. *Be Organized, or be Sorry*

Finally, the most common and avoidable collections mistake is being disorganized, and specifically being unable to prove what you are owed.

As soon as an account goes into collections, it will likely become disputed. The paying party will likely disagree with the amount of work performed, the quality of work, its scope, the project's change orders, etc.

In construction, as you likely know, there's no such thing as a perfect project, and so it's not difficult for an adversary in collections to dispute the quality of your work because of seemingly inconsequential items like tiny paint chips or an incorrect doorknob.

Organization and a detailed record of the work performed will help you avoid these time-consuming and expensive arguments. If you have photographs, time sheets, job logs, etc., you'll have the evidence necessary to combat these arguments and keep your overdue account from turning into a settled account.



Common Construction Contract Provisions To Avoid and Prepare For Collections

Preparing and signing a comprehensive construction contract is your construction company's best way to take a proactive approach to collections.

A good contract can help your company avoid collection scenarios by:

- Clarifying the scope of work and its costs, to avoid disputes;
- Stipulating that one party can recover attorneys fees from the other in the case of non-payment, to give your company some leverage against the non-paying party (as above-discussed, the general rule in America is that attorney fees are *not* collectible);
- Providing for monetary penalties in the case of non-payment to give non-paying parties an incentive to pay on time;
- Providing for the recovery of interest on overdue accounts, to avoid losing interest on money owed to you and to offer non-paying parties an incentive to pay on time;
- Providing for Alternative Dispute Resolution to ensure that disputes over payment are resolved as quickly and inexpensively as possible.

There are many "form" construction contracts out in the market, with the most common form contracts being the contract documents periodically updated by the American Institute of Architects. The Association of General Contractors and ConsensusDocs produce other form contracts.

COMMON CONSTRUCTION CONTRACT PROVISIONS

These sets of contract documents are equal in quality.

They are prepared by and for their respective trades with input from members of the industry and construction attorneys. In general, the documents are comprehensive and completely adequate to meet the goals discussed in this section.

The parties can also alter the contract documents to include extra language establishing an agreement on issues such as non-payment penalties and alternative dispute resolution mechanisms.

While the industry-standard form contracts are good in many cases, the documents are also long, complex and expensive, and it's quite clear that they do not meet the needs of every project. The documents might not be affordable to some generals or subcontractors, and the scope of the documents may be too complex for smaller projects. In these situations, contractors, generals and material suppliers will turn to less complex and more custom documents.

The following contract provisions may be incorporated into a construction contract in attempt to avoid collection situations. Contract provisions are in *italics*.

Attorneys Fees Provisions

Recovery of Attorneys Fees

The Parties hereby agree and stipulate that in the event of a dispute, and regardless of whether or not the dispute matures into formal litigation or any alternative dispute procedure, and further regardless of whether or not a judgment is rendered or the matter is settled, the non-prevailing party will pay the attorneys fees and legal costs of the prevailing party.

As previously mentioned, the general rule in America is that each party in a legal dispute is to bear the burden of its own attorney's fees. In other words, whether you win or not, and whether you're completely right or not, you'll likely have to pay your own way through litigation unless you either fall into a small category of cases where attorneys fees are recoverable by law *or* you stipulate in your contract that attorneys fees are recoverable.

When added to your contract the above provision will do the latter. It's language aims to accomplish two things: First, to contractually stipulate that attorneys fees are recoverable in the event of a dispute; and Second, to allow recovery of attorneys fees regardless of whether your dispute matures to a lawsuit.

In certain situations, a court may find that attorneys' fees are not recoverable because the matter did not mature into a lawsuit, or because it was settled instead of fully litigated. This provision makes it clear that the parties intend to pay the other's attorneys fees regardless of whether or not the matter escalates to any particular level. In other words, you'll have the legal right to collect attorneys' fees from your adversary even when you only hire an attorney to send a single collections letter.

Attorneys fees can add up very quickly, and without a provision like this, it will be hard to justify employing an attorney to collect a \$5,000 - \$10,000.00 account. However, with the ability to recoup some of these costs, the proceeding might be worth it.

Another common dispute over attorneys' fees concerns the cost of the attorney employed. Did you

agree to a \$400 per hour attorney, or a \$150 per hour attorney? Did you agree to pay an attorney working on a contingency, whereby he or she would receive 33% or more of the debt?

The courts normally resolve this type of dispute by awarding a “reasonable” attorneys fee to the other party. The judge or jury *arbitrarily* decides what is “reasonable”.

You can seek to limit this uncertainly through contract as well, and perhaps add the following language to your “Attorneys Fees Provision:”

The amount of attorneys fees shall be equal to the amount actually paid or to be paid to the attorney(s) employed by the prevailing party, and shall specifically include compensating that attorney(s) under an hourly fee agreement, a fixed fee agreement, a contingency fee agreement, and/or any mixture of these agreements.

Do remember, of course, that these types of provisions can backfire. If you’re not the prevailing party, for example, you will foot the hefty bill.

Penalties For Non-Payment & Interest

Unlike the Attorneys Fees Provisions, this is a component of the contract that will not likely backfire on you. This provision will only apply to the party who has the duty of making payments to the other party.

These types of provisions can work wonders for your collection practices if employed correctly. Many construction companies will include them in their contracts, and offer non-paying customers a “last chance” opportunity to pay the bill without the penalties to entice prompt payment. If the non-paying party continues its failure to pay, it increases the amount owed giving your company more reasons to continue its attempts to collect.

One caution in using these types of provisions is that courts will strike them down if they find the provision to be “unjust,” or above a certain legal threshold. For example, if you have a \$10,000.00 contract, you cannot make a \$1,000,000.00 non-payment penalty. You also cannot charge an absurd amount of interest on an account (such as 50%). There are federal laws that restrict the amount of interest you may charge on an overdue account, and drafting a contract charging more than this amount will be stricken down and read out of the contract by a court.

The following suggested language might be used in your construction contract to provide for a “penalty” for non-payment of an invoice:

The Parties agree that if the [Owner | Contractor | Subcontractor | etc.] fails to make any payments when due, a late payment penalty of ___% of the unpaid amount will be immediately assessed against the non-paying party. Furthermore, the Parties agree that interest will be charged on the unpaid amount in the amount of ___% per annum or the maximum rate allowed under state and federal law, whichever is greater.

Alternative Dispute Resolution Provisions

Perhaps more than any other industry, the construction industry can benefit greatly from the use of Alternative Dispute Resolution programs. Construction projects both big and small are very prone to dispute, and they are usually complex in nature.

The traditional litigation of these claims is lengthy, costly, and heard before a judge or jury with little to no technical knowledge to aid them in understanding the merits of the case.

Accordingly, an ADR option - although still at an expense - will result in a resolution procedure that is faster, less expensive and tried before someone who has construction experience and/or knowledge.

For these reasons, it's normally quite beneficial to you to enter into a contract electing to resolve disputes through ADR.

Making this election is quite simple. Generally speaking, to subject the parties to ADR you can simply add a one-line sentence at the end of your contract that provides "the parties will resolve any disputes through arbitration." The provision, of course, can also get more detailed. It can go into the type of arbitration, the number of arbitrators, the rules governing evidence and discovery, the location of the arbitration, the name of the arbitrator, etc., etc.

One simple, yet complete arbitration provision is as follows:

The Parties hereby agree to resolve all claims and disputes through binding arbitration. The arbitration shall be governed by the Construction Industry Rules of the American Arbitration Association. The parties agree to hold the arbitration in the city where the project job-site is located.

It is also common to require mediation (an informal process whereby the parties attempt to reconcile their differences without the threat of a binding judgment) prior to arbitration (a more formal proceeding that ends in a binding judgment). This is usually more beneficial to those involved in a larger construction project than those in a smaller project, as the extra procedure would come at extra expense. Nevertheless, you would simply add the following sentence before your arbitration provision:

The Parties hereby agree that as a condition precedent to arbitration, they will mediate all claims and disputes through the American Arbitration Association.

Note that you can choose any arbitration provider, but that for the purposes of this *Toolkit* we have used the AAA, a popular national outfit.

Conclusion

One of your most successful collection practices - smart contracting - requires work before the construction project even begins, and doesn't seem at all like a "collection practice."

In reality, however, strong construction provisions can properly position you against your adversaries in the event of a dispute over payment. The better your position, the more leverage you have, and the more leverage you have the easier it is to find success recovering on non-paying accounts.

Section Summary.

Using Your Contract To Make Collection Problems Less Common

The most effective way to fight bad collection situations is a proactive remedy: by contracting smarter.

This section provides your organization with some common contract provisions it can use to contract with your customers and vendors more effectively, including the following provisions:

- Attorneys Fees
- Non-Payment Penalties
- Alternative Dispute Resolution

Of course, these are only three provisions of *thousands* that can be used to make your construction contracts better. It's best to speak with an attorney whenever drafting any contract, as counsel can best aid you to draft a contract to meet the needs of your organization.

Further, this *Collections Toolkit* only scratches the surface regarding how a construction contract can be structured to meet your contracting goals. You can also refer to our more in-depth publication, the *Contracting Toolkit*.

COMMON CONSTRUCTION CONTRACT PROVISIONS

Demand Letter Templates

When an account is unpaid and overdue, you do not want to rush into filing a lawsuit. Litigation is an expensive, and oftentimes unnecessary remedy. A well-drafted demand letter should be sent to non-paying parties before proceeding forward with legal action.

Although this *Toolkit* recommends sending a demand letter, it is not a requirement under Louisiana law to establish a commercial debt action (it is in some states). It's logical, however, that if the debtor may pay within 10 - 30 days of demand, there is little benefit to spending the time and money on initiating a lawsuit.

This *Collections Toolkit* provides a few sample demand letter templates.

In reviewing these templates, it's important to remember that different situations call for different measures, and specifically that one demand letter may apply more correctly than another. Furthermore, in certain circumstances (when a check is returned NSF, when an account is an open account, etc.), there are statutory requirements for sending a demand letter in order to qualify for statutory penalties.

The counsel of a qualified attorney is recommended when taking a past-due account to the next level, however, there is some benefit to sending a demand letter in-house before handing off the reins to your attorney (see "When To Hire An Attorney").

DEMAND LETTER TEMPLATES

Once you hire an attorney, he or she will likely begin the representation with a new demand letter, but your letter will not be in vein. The in-house demand letter, when prepared and sent correctly, may qualify you for collection of interests and penalties from the time of its sending, and as mentioned above, may even result in payment. The attorney letter will ensure that the statutory requirements are met, and they are generally more threatening than in-house letters.

Finally, regardless of the correspondence you are prone to send, there are some essential considerations you should have when sending a demand letter.

Be sure to enclose information about the debt with your letter, which may include invoices, estimates, contracts, photographs, etc.

This not only gives creditability to the recipient of your demand letter, showing you are able to prove your debt, but it gives the recipient less of an excuse for non-payment. While not bulletproof, if the matter goes to court and you have a well-written demand letter with documentation proving the debt, you'll have a better position to argue that the debtor was *wrong* for not making payment.

From a practical standpoint, there are other things you want to keep in mind. Most importantly, sending a demand letter is of little use unless you can *prove* it was sent and received.

Send the letter Certified Mail with Return Receipt Requested, and keep track of the Certified Mail Number. Follow-up to ensure the letter is delivered, and if needed, even make an effort to have the letter hand delivered by courier (who should sign an affidavit of delivery).

Not only should you keep proof of the sending of the document, but you want a good and reliable copy of what was sent. If you have a letter and enclosures, mention the enclosures within the letter so you can prove that they were in fact enclosed. Scan a copy of all the documents together with the certified mail number, bates stamp the documents or put page numbers at the bottom of each page (1 of 6, 2 of 6, etc.).

General Collection Letter Template

Contractors who are seeking to collect accounts owed to it from a property owner should use this basic collection letter template.

GENERAL DEMAND LETTER TEMPLATE

Date

To: Name of Debtor
Address of Debtor
City, State, Zip of Debtor

Re: Your Company v. Name of Debtor
Amount Due: \$_____

**SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL**

Dear Debtor:

This letter shall serve as formal written demand for immediate payment in full of the above-captioned past due amount.

Documentation verifying this debt is enclosed with this correspondence. Should payment in full not be forthcoming or should arrangements for payment not be made within thirty (30) days from your receipt of this letter, appropriate collection procedures may be commenced against you.

[If your contract has provisions about penalties and/or attorneys fees, you will want to insert a paragraph warning the debtor that you will seek penalties, interest and attorneys fees in accordance with the contract terms].

Sincerely,
YOUR COMPANY

Your Name

Enclosures

Demand Letter on an Open Account Template

If you have an "open account" with the debtor, you will want to send a demand letter substantially similar to the template below. Open Accounts are provided special treatment under Louisiana law, with the benefit to creditors being that they are able to collect interest and attorneys fees as a matter of law.

The critical questions when collecting an open account are: (1) Is the debt an open account?; and (2) Has the creditor taken the correct steps to collect on it, preserving its rights to obtain attorneys fees and interest?

The answer to this first question is discussed in the earlier sections of this *toolkit*. In general, however, contractors are infrequently able to capitalize on the open account laws in Louisiana, which are more ordinarily preserved to other professions and types of accounts. However, construction material suppliers are frequently able to use the open account laws.

Regarding the second question, the Louisiana Open Account law requires that you send a demand letter before qualifying to collect attorneys' fees and interest. The demand letter must give the debtor information regarding the debt (invoices, contracts, estimates, photographs, etc.), and it must provide them with a certain amount of time to make payment on the account (30 days).

A demand letter in substantially similar form to the following should suffice to start the clock for your company under Open Account laws. Be sure, however, to enclose evidence of the debt with the letter, and to keep documentation to prove that it was sent and to prove exactly what was sent.

DEMAND LETTER ON OPEN ACCOUNT TEMPLATE

Date

To: Name of Debtor
Address of Debtor
City, State, Zip of Debtor

Re: Your Company v. Name of Debtor
Amount Due: \$ _____

**SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL**

Dear Debtor:

This letter shall serve as formal written demand for immediate payment in full of the above-captioned past due amount.

Documentation verifying this debt is enclosed with this correspondence. Should payment in full not be forthcoming or should arrangements for payment not be made within thirty (30) days from your receipt of this letter, appropriate collection procedures may be commenced against you.

Furthermore, should you fail to make payment in full on this past due account within thirty (30) days as requested, please be advised that in addition to the principal due amount, we will seek attorney fees for the prosecution and collection of this claim in accordance with Louisiana Revised Statute Ann §§ 9:2781.

Sincerely,
YOUR COMPANY

Your Name

Enclosures

Demand Letter on NSF Check

The penalties for writing an NSF check can be severe. If your company seeks re-payment of the NSF check in accordance with Louisiana statutes, it will be positioned to take advantage of these penalties, applying great pressure to the party who wrote the NSF check to make payment.

The following is a sample template letter that may be sent after receipt of a NSF check.

DEMAND LETTER ON NSF CHECK TEMPLATE

Date

To: Name of Debtor
Address of Debtor
City, State, Zip of Debtor

Re: Your Company v. Name of Debtor
Amount Due: \$ _____

**SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL**

Dear Debtor:

You are hereby notified that a check number _____ issued by you on ____/____/_____ drawn on _____ (Bank Name) and payable to _____ has been dishonored.

Pursuant to Louisiana law, you have fifteen (15) working days from receipt of this notice to tender payment in full of the amount of the check plus a service charge of \$25.00 or 5% of the amount of the check, whichever is greater, the total amount due being \$_____.

Unless this amount is paid in full within fifteen (15) working days, the holder of check may file a civil action against you for two times the amount of the check, or \$100, whichever is greater, plus any court costs and reasonable attorneys' fees incurred in taking this action. *See Louisiana Revised Statute Ann §§ 9:2782.*

In order to avoid the substantial additional costs and consequences associated with issuing worthless checks, please immediately redeem this check by delivering us a cashier's or certified check or money order in the amount indicated.

Sincerely,
YOUR COMPANY

Your Name

District Attorneys Complaint

When someone issues you a NSF check, you may attempt to recover it as explained in this *Toolkit*. However, in some cases, recovery might be too expensive in relation to the check amount, or may not be worth the effort because of the financial condition of the check's drafter.

A district attorney complaint should be reserved for those occasions when your chances of collecting on a check are minimal. Once you file a DA Complaint, you are unable to move forward to collect payment through civil means.

The following is the DA Complaint Form. You can fill this out and deliver it to the DA to initiate criminal proceedings against the drafter of the NSF check. You should first attempt to collect the debt by sending demand letters, and then decide not to pursue this debt any further before deciding to make a DA Complaint.

DISTRICT ATTORNEY'S COMPLAINT FORM

Date

To: Parish District Attorneys Office
Address of DA Office
City, State, Zip of DA Office

RE: District Attorneys Complaint
Worthless Check Information and Statement

WORTHLESS CHECK INFORMATION AND STATEMENT

The undersigned affiant after being duly sworn by me, makes the following statements under oath: I have good reason to believe and do believe that PERSON ISSUING CHECK(S) hereinafter called the accused, did commit the offense of Issuing Worthless Checks. My belief is based on the following facts, as shown by the appropriately completed information as set out below:

Reporting Company [Your Company Information]:

Company Name
Phone Number
Street Address
City, State, Zip
Reporting Person: _____
Title: _____
Phone: _____

Facts about the Accused:

Name Given: _____
Date of Birth: _____
Address Given: _____
Driver's License / State: _____ / _____
Social Security Number: _____

Race: _____ Sex: _____ Height: _____
Weight: _____ Hair: _____ Eyes: _____

Employer: _____
Telephone: _____

Facts about Transaction:

Employee Receiving Check: _____
Business Telephone: _____
Residence Telephone: _____
Address where check received: _____
Parish: _____

Did Accused:

Write check in presence of you or employee: YES NO

CONTRACTOR'S COLLECTIONS TOOLKIT - LOUISIANA

Personally deliver check? YES NO If no, who did: _____
Request check to be held or post dated: YES NO

Purpose of Check (CIRCLE ONE)

CASH MERCHANDISE PAYMENT FOR CONSTRUCTION SERVICES

OTHER _____

Check Number: _____
Date Issued: _____
Amount: _____
Can Accused be Identified? YES NO
Check Given for Invoice No. _____
Account Closed? YES NO

NSF Date: _____
Copy of NSF Check Enclosed? YES NO

IT IS / IT IS NOT a regular policy of The Reporting Company to require identification (i.e. date of birth, drivers license number, or social security n umber) by check writers in exchange for accepting their checks.

I hereby swear or affirm that the above-information is true and correct to the best of my knowledge; that I personally received said check or checks or that by virtue of my employment I have the authority to make this affidavit. I agree not to accept any restitution directly from the accused. I acknowledge that restitution may now be made solely through the Economic Crime Division of _____ Parish District Attorney's Office; I understand that the decision to prosecute in the matter will lie solely with the _____ Parish District Attorney's Office.

Company Name _____ by:

Title:

Sworn to and subscribed before me, this
_____ day of _____, 20____, in
_____, Louisiana.

Notary Public
Notary No: _____
Commission is for _____

Demand Letter against Contractor who Misapplied Funds

When a contractor misapplies funds as above discussed, you may send this template letter to put that contractor on notice of its default and to demand payment under the statute.

Date

To: Name of Debtor
Address of Debtor
City, State, Zip of Debtor

Re: Your Company v. Name of Debtor
Amount Due: \$_____

**SENT VIA U.S. CERTIFIED MAIL
PARCEL NUMBER _____
& US FIRST CLASS MAIL**

Dear Debtor:

This letter shall serve as formal written demand for immediate payment in full of the above-captioned past due amount.

Documentation verifying this debt is enclosed with this correspondence. Should payment in full not be forthcoming or should arrangements for payment not be made within thirty (30) days from your receipt of this letter, appropriate collection procedures may be commenced against you.

Please be advised that Louisiana Revised Statute Ann §§ 9:4814 provides that "no contractor, subcontractor or agent of a contractor or subcontractor, who has received money on account of a contract for the construction, erection or repair of a building, structure, or other improvement...shall knowingly fail to apply money received as necessary to settle claims to sellers of movables or laborers due for the construction or under the contract."

Failing to properly apply any money you have received for the work in controversy is a violation of this statute, and should you fail to make payment within seven (7) days of the above-stated amount, we will seek attorneys fees and statutory penalties in accordance with Louisiana Revised Statute Ann §§ 9:4814.

Sincerely,
YOUR COMPANY

Your Name

DEMAND LETTER TO CONTRACTOR WHO MISAPPLIED PAYMENTS TEMPLATE

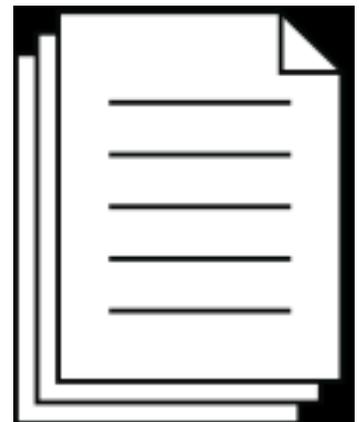
A small note on Collection Practices Acts and Laws

Provided throughout this *Toolkit* is information about collecting debts owed to *you*, and letter templates to help you collect the same. Whenever you are attempting to collect a debt, you must be careful to comply with all provisions of the Fair Debt Collection Practices Act 15 U.S.C.A. §§ 1692(a) *et seq.* and La. Rev. Stat. Ann. §9:3562 and any other consumer legislation.

While these statutes are of great importance to anyone attempting to collect a debt, they are not discussed in great detail in this *Toolkit* because they are generally not applicable to the creditor itself.

In other words, most of the Debt Collection Practice regulations are applicable only to third party debt collectors, and not to the company or person who is actually owed the money. Accordingly, if you are a debt collector or third party agent for the creditor, it is important to familiarize yourself with the applicable consumer legislation. Otherwise, most of the rules will not apply.

One exception to this general rule about debt collection legislation regards Louisiana Revised Statute §9:3562, which clearly *does* apply to the creditor. This Louisiana statute is titled "Unauthorized Collection Practices" and prohibits the company attempting to collect a debt from doing any of the following:



SMALL NOTE ON COLLECTION PRACTICES AND LAWS

1) Contacting any person not living, residing or present in the household of the debtor regarding the debtor's obligation to pay a debt, except in certain limited circumstances; and

2) If the debtor has given specific notice in writing by registered or certified mail, instructing the creditor to cease further contacts with the debtor in regard to the indebtedness, the creditor shall immediately limit its mail contact with the debtor with 1 notice per month, and a maximum of 4 total contacts per month.

It is also important to remember that you may only threaten legal action of which you are entitled to pursue. Making any other threats upon the debtor is illegal and may compromise some of your rights to collect the unpaid account.

Aside from La Rev. Stat. §9:3562, however, most of the regulations on debt collection practices will not apply to you if you are simply attempting to collect a debt that is owed to you or your company. If you are a third party debt collector, however, or involve a third party debt collector, there are many strict regulations that apply, and its important to get familiar with these regulations as violation of them may result in stiff fines and consequences.



The Construction Lien

The construction lien is one of the most effective - and inexpensive - collection tools in your company's arsenal. Unlike in any other industry, when a bill goes unpaid in the construction industry, the law affords the contracting company an express lane remedy: the mechanic's lien.

With a privilege on the property where you performed work or delivered materials, your company will have a substantial amount of leverage in its negotiations.

Accordingly, it's important that you understand the lien laws and requirements, that you preserve your rights to lien with every project, and that when a bill goes unpaid, you execute and file the lien timely.

This section intends to provide you with some preliminary information about the construction lien. However, for a more detailed understanding of construction liens, you will want to obtain a copy of our *Liening Toolkit* and/or read through our blog at <http://www.wolfelaw.com>.

Three Reasons It's Critical to Lien

Number One: You Can Only Have One Chance to Lien a Construction Project

Contractors have a unique and powerful legal remedy in construction liens...but not for long. Once your lien period has expired, you'll never get the chance to put a lien on that project again.

If you want to pursue your legal remedies without filing a lien, you'll be required to file a regular lawsuit for breach of contract - a process that may take years and cost you thousands. A construction lien is an adverse legal step against the non-paying party without the legal expenses associated with ordinary procedures, and it places a restriction against the property that you can normally only achieve after years of litigation.

You only get one shot at filing your construction lien.

In Louisiana, the general rule of thumb is that your company has 60-days from the project's date of substantial completion or date of abandonment. The time period is only 30-days if the general contractor files a "notice of contract" with the proper parish before any work begins.

Number Two: Liens Freeze Funds

Are you a subcontractor afraid that the contractor is getting paid from the property owner but not disbursing the funds down the ranks? Do you have to pay your material suppliers and subcontractors while being told from the contractor that the owner hasn't paid it?

Although the law does not require a freeze in funds, as a practical matter, filing a lien as a subcontractor against the property owner almost always causes the property owner to stop making further payments to the contractor. As a result of this "freeze" in funds, there is pressure on the contractor to pay the lien sub.

Many construction projects run into cash-flow concerns. Filing a construction lien is one way to prevent that cash-crunch from affecting your company.

Number Three: Get All Parties Involved

If you're unable to get paid on a construction project, you have a legal remedy under contract law against the person who hired you. If you contracted with a general contractor, for example, you could sue the general contractor for payment if it refuses to pay your company for its services. Since you did not contract with the property owner, however, you would be unable to sue him or her.

Construction liens, however, completely changes who is liable to you for your construction services. With a properly filed construction lien in the above example, you'd be able to file a lawsuit not only against the general contractor, but also against the owner. The owner may even be liable to you regardless of whether the general contractor had been paid for your work!

Clearly, this is a very powerful legal tool for contractors. Instead of relying on just one party to make payment to your company, a construction lien can make it possible for many parties to have liability for one party's non-payment.

What You Need to Know About Liens

Lien statutes are complex and technical in every state, but throughout the country common themes and policies emerge.

If you're in the construction industry, it's important to know these policies, and specifically it's important to know how to use a lien and how liens can help your business.

1. Steps in liening a project starts before work even begins

The urgent need to lien a project usually strikes a company after a job's completion, but in many situations preserving lien rights requires serious consideration before work even begins and any dispute arises.

While pre-lien requirements are not applicable to every project and organization, one of the most common liening mistakes is for an organization to neglect pre-lien requirements and thereby abandon their lien rights.

The most common pre-lien requirement is the need to give the property owner notice of the lien laws. Simply stated, the laws in most states require a contractor to notify the property owner that it may lien the project if it is not paid. The notice requirements in Louisiana are discussed in more detail under the next sub-heading in this *Toolkit*.

The notice must be delivered - in most cases - before services are rendered or materials are delivered.

One common misunderstanding about lien notices is that they are only required to be sent before liening a project.

Do not fall prey to this myth.

Lien notices, when required, most always require delivery before work begins, and not simply before the lien is filed. If you fail to preserve your lien rights with the proper notices, you'll forever lose your right to lien that construction project.

2. Your lien rights won't last forever, or for very long

If there is any delay in getting paid on a construction project consider filing a lien immediately. Many companies lose their right to lien a project because they wait too long to file.

The window of opportunity to file a lien is short, and once you're time expires, you lose this powerful collection tool forever. If payment isn't on time, protect your company's interest in the property, and file your lien immediately.

In Louisiana, the general rule of thumb is that your company has 60-days from the project's date of substantial completion or date of abandonment. The time period is only 30-days if the general contractor files a "notice of contract" with the proper parish before any work begins.

3. A lien is the first step, not the last step

After filing a construction lien, you will certainly have more work ahead in attempting to collect.

In many cases, a construction lien by itself will result in prompt payment. In these cases you will likely be charged with the duty of canceling the lien.

This can be as simple as drafting a final letter and sending it to the property owner, or executing and notarizing a formal lien cancellation certificate (depending on state requirements). In Louisiana, the party who placed the lien must file a notarized and formal lien cancellation certificate. This can actually cost your company more than \$200-300.00, so your company may want to consider factoring this cost into any settlement made with the debtor.

If the lien does not produce payment, it will be necessary to take an additional collections step. Contrary to popular belief, construction liens are not permanent. In fact, they normally don't last very long at all and they cannot be renewed.

After filing a lien, if not immediately paid you will need to bring an action in court to "foreclose" or "enforce" the lien in some way. This process essentially converts your construction lien into more formal and permanent "judgment." The judgment can be executed by seizing property and through other techniques.

In Louisiana, the construction lien remains effective for a period of 1 year. After the one-year period, if payment has not been received and further legal proceedings not commenced, the lien will expire. If legal proceedings are brought against the non-paying party, the privilege on the property can be extended until the end of the lawsuit by the filing of a "lis pendens."

Notice Requirements in Louisiana

It's difficult to stress how beneficial filing a lien can be for your company when attempting to collect on a non-paying project. However, this begs the very important, and sometimes difficult to answer question: Are you legally entitled to lien?

In Louisiana, the lien statutes are drafted with a certain balance. On the one hand, the statutes were created to grant those involved with the construction of a project a privilege on the properties they build or improve. On the other hand, however, the statutes have mechanisms within to protect the property owners from being liened improperly, or otherwise without notice.

Unfortunately, the notice requirements are oftentimes confusing and technical. It is important, however, that your organization understand the notice requirements of the Private Works Act.

If you lien a project without following these notices procedures, you will have filed an improper lien. Filing an improper lien subjects you to owing the property owner damages and attorneys fees.

Contracting with the Owner / Resident

Notice is required whenever you are working on a residential project, and you contract directly with the owner of the property, who also lives in the residence.

The type of notice required is called the "Notice of Lien Rights." A copy of an example of this notice follows after this section in this *Toolkit*.

The Notice of Lien Rights to be sent to owners in residential projects is very important, because the law requires that it be provided *before* work begins, and not as a condition to your construction contract.

Lessor of Equipment or Other Movable

If you are leasing equipment or other movable items to any party in a construction project, you are required to deliver a copy of the lease agreement to those who are not parties to that agreement within 10 days of the equipment's delivery.

For example, if you lease equipment to a subcontractor, you are not required to deliver an additional copy of the lease to the subcontractor within 10 days of delivery because they will - presumably - already have a copy of the lease. However, you would be required to send a copy of the lease to the general contractor and the owner.

This puts those other parties on notice that you have leased equipment/movables to someone for the work at the jobsite, and if such notice is sent, you will have preserved your right to file a lien in the case of non-payment.

Seller of Movable / Materials / Equipment / Etc.

Whenever you sell supplies, or any type of movable property, you are entitled to file a lien on the property where those supplies are incorporated (if they are used in construction of the improvement).

THE CONSTRUCTION LIEN

If the materials sold are incorporated into a commercial project, there are no notice requirements.

If the materials sold are incorporated into a residential project, and you would be liening a residence, LA RS 9:4802(G)(2)-(3) requires that you deliver a notice of nonpayment to the owner of the property at least ten (10) days before filing the lien.

The notice must:

- A) Be served by certified mail, return receipt requested.
- B) Contain the name and address of the seller of movables (you);
- C) Contain the general description of materials / movables provided;
- D) Contain a description sufficient to identify the immovable property against which the lien may be placed;
- E) Contain a written statement of the seller's rights (your rights) for the total amount owed, plus interest and recording fees.

If you sold the materials/movables to a subcontractor on the project, the notice must be sent certified, return receipt mail to both the owner and the general contractor.

Notice of Lien Rights

The Louisiana Truth in Residential Construction Act (La. R.S. 9:4851 et seq.) requires that a "Notice of Lien Rights" be provided to certain parties *before* work begins.

Applicable Projects

This notice is only required for certain construction projects. Specifically, it applies to all projects that fall under this statutory definition: "All improvements or construction which enhance the value or enjoyment of any real property occupied by the owner thereof principally as a single-family dwelling or residence."

In sum, an "owner-occupied" single-family dwelling or residence. Note that the act only requires notice when the work is "enhancing the value" of the real property, and therefore, applies to renovation projects as opposed to new construction..

Applicable Parties

Only certain types of "contractors" are required to provide notice to the property owner. The Trust in Residential Construction Act uses the generic term "contractor," but La. R.S. 9:4807 defines a "contractor" as one who contracts with the owner.

Therefore, the party who contracts with the owner must give this type of notice.

When and How to Provide The Notice

The Notice of Lien Rights must be provided to the owner prior to or at the time of entering into the contract.

The owner or the owner's agent must sign the notice of lien rights, but it must not be a "condition" to the contract. Furthermore, each person who may be entitled to lien against the property (i.e. subcontractors, suppliers, etc.) must be provided a copy of the signed notice upon request.

Penalty for Violation

If a lien is filed without the sending of this notice, the property owner has an action against the contractor for reasonable damages and attorneys fees.

NOTICE OF LIEN RIGHTS

Delivered by _____, "Contractor" to
_____ "Owner," for work being performed at the
following address:

By signing below, the Owner of residential property located at the address shown above acknowledges that the above-named contractor has delivered this notice to me, the receipt of which is accepted, signifying my understanding that said contractor is about to begin improving my residential property according to the terms and conditions of a contract, and that in accordance with the provisions of law in Part I of Chapter 2 of Code Title XXI of Title 9 of the Louisiana Revised Statutes of 1950, R.S. 9:4801, et seq.:

(1) A right to file a lien against my property and improvements is granted to every contractor, subcontractor, architect, engineer, surveyor, mechanic, cartman, truckman, workman, laborer, or furnisher of material for the improvement or repair of my property, for the payment in principal and interest of such work or labor performed, or the materials, machinery or fixtures furnished, and for the cost of recording such privilege.

(2) That when a contract is unwritten and/or unrecorded, or a bond is not required or is insufficient or unrecorded, or the surety therefore is not proper or solvent, I, as owner, shall be liable to such subcontractors, materialmen, suppliers or laborers for any unpaid amounts due them pursuant to their timely filed claims to the same extent as is the herein-above designated contractor.

(3) That the lien rights granted herein can be enforced against my property even though the contractor has been paid in full if said contractor has not paid the persons who furnished the labor or materials for the improvement.

(4) That I may require a written contract, to be recorded, and a bond with sufficient surety to be furnished and recorded by the contractor in an amount sufficient to cover the cost of such improvements, thereby relieving me, as owner, and my property, of liability for any unpaid sums remaining due and owing after completion to subcontractors, journeymen, cartmen, workmen, laborers, mechanics, furnishers of material or any other person furnishing labor, skill, or material on the said work who record and serve their claims in accordance with the requirements of law.

Owner Signature: _____

Owner Print Name: _____

Date: ___ / ___ / 20___

Notice of Non Payment

Whenever you sell supplies, or any type of movable property, you are entitled to file a lien on the property where those supplies are incorporated (if they are used in construction of the improvement).

If the materials sold are incorporated into a commercial project, there are no notice requirements.

If the materials sold are incorporated into a residential project, and you would be liening a residence, LA RS 9:4802(G)(2)-(3) requires that you deliver a notice of nonpayment to the owner of the property at least ten (10) days before filing the lien.

The notice must:

- A) Be served by certified mail, return receipt requested.
- B) Contain the name and address of the seller of movables (you);
- C) Contain the general description of materials / movables provided;
- D) Contain a description sufficient to identify the immovable property against which the lien may be placed;
- E) Contain a written statement of the seller's rights (your rights) for the total amount owed, plus interest and recording fees.

If you sold the materials/movables to a subcontractor on the project, the notice must be sent certified, return receipt mail to both the owner and the general contractor.

NOTICE OF NONPAYMENT

Date: _____

To: Name of Debtor
Address of Debtor
City, State Zip of Debtor
SENT VIA CERTIFIED MAIL # 0000 0000 0000 0000 0000
RETURN RECEIPT REQUESTED

To: Name of Contractor (if applicable)
Address of Contractor
City, State Zip of Contractor
SENT VIA CERTIFIED MAIL # 0000 0000 0000 0000 0000
RETURN RECEIPT REQUESTED

Re: _____ v. Name of Debtor
Amount Due: \$0000.00

Dear Debtor and Contractor (where applicable):

In accordance with Louisiana Revised Statute 9:4802(G)(2)-(3), please accept this letter as a formal and legal notice that the above-stated amount is due to _____ (Seller) immediately.

According to the Louisiana Private Works Act, codified in La. R.S. 9:4801 et. seq., Seller will file a statement of claim and privilege, commonly referred to as a "lien," against the below identified property if payment of the above-statement amount is not made by you within ten (10) days from the date of this correspondence.

The "lien" will be filed against the below-identified property to secure Seller's privilege on the supplies incorporated therein.

Name and Address of Seller of Movables incorporated into the Property:

General Description of Materials and Movables Provided

Description / Address of Property against Which Lien May Be Claimed

Furthermore, by signing below, the Seller herein formally states that the materials and movables described in the attached Exhibit A have been provided as contracted, and upon information and belief, have been incorporated, consumed and/or otherwise used in, on and/or about the property above-described. The Seller further states that the above-stated amount is due, unpaid and owing, and that the Seller has rights to said payment immediately.

Upon recordation of the claim and privilege against the above-described property after ten (10) days from the date of this letter, inclusive of holidays and weekends, the Seller will seek the total amount owed, plus interest, recordation fees and any other damages, penalties, fees, costs and amounts entitled to it.

Sincerely,

Company: _____

Name & Title: _____

Enclosures

Notice of Lease

La R.S. 9:4802 (G) provides that ""the lessor of the movables shall deliver a copy of the lease to the owner and to the contractor not more than *ten days* after the movables are first placed at the site of the immovable for use in a work."

1. Within ten (10) days of delivering equipment or movables to the site of an immovable for the use in a work, deliver this notice to (a) the property owner; and (b) the general contractor.
2. Attach with this form a copy of the Lease Agreement.
3. Properly fill out the empty sections within the table at the top of the form, and sign and date the form at the bottom.
4. Serve the notice by (a) Certified Mail with Return Receipt Requested; and (b) Complete the affidavit of delivery.

NOTICE OF LEASE

Notice Provided To:

| | |
|---|--|
| Name and Address of Party Providing This Notice: | |
| Description of Movable or Equipment delivered to the improvement: | |
| Address where a lien may be later claimed: | |
| Date When Movable Delivered to Property Site: | |
| Term of the Lease: | |
| Agreed Rent: | |

This notice is provided to you as required by Louisiana Revised Statute 9:4802 (G). Accordingly, you are hereby notified that the above-named party as a lessor of movables has delivered the above-described equipment or movables to the above-identified property. The lease terms are provided above, and/or a copy of the lease agreement is enclosed with this notice.

The party providing this notice hereby reserves its right to lien the property in the event it is not paid for the lease of this equipment or movables. Please take steps to protect yourself from having a lien ("Statement of Claim and Privilege") placed against your property, and possibly having to pay for these movables twice.

This the _____ day of _____, 20____

Signature

Liening Services

While certainly a legal step, you may not be required to retain an attorney to file a construction lien. In most states, document preparation services are available to prepare and file construction liens for a fraction of what it would cost to hire an attorney.

In Louisiana, you do not need an attorney to file a construction lien for your company.

One document preparation service that prepares and files construction liens in Louisiana is Express Lien, L.L.C. A snapshot of their website is below. You can find more information on the company, and place an order to file your construction lien at <http://www.expresslien.com>

Express Lien 

CONTACT US TODAY - (866) 790-7881

[BLOG](#) [HOW EXPRESS LIEN WORKS](#) [GET STARTED](#) [GET AN ATTORNEY](#)

Legal Protection for Contractors
faster...and for less!

IT'S TIME TO GET PAID

- ☑ SAVE ON ATTORNEY'S FEES
- ☑ PROTECT YOUR COMPANY'S INTEREST IN THE PROJECT
- ☑ EXPERIENCE YOU CAN TRUST
- ☑ EASY AND CONVENIENT
- ☑ FAST
- ☑ GREAT CUSTOMER SERVICE
- ☑ PRIVATE AND SECURE

▶ [FILL OUT THE QUESTIONNAIRE](#)

▶ [PAY WITH ANY MAJOR CREDIT CARD](#)

▶ [LIEN FILED WITHIN 3 WORKING DAYS](#)

▶ [ONLY \\$235.00 PROCESSING FEE*](#)

CLICK BELOW TO ORDER ONLINE, BY FAX OR BY TELEPHONE

 **Fax**

 **Online**

 **Telephone**

FILE ONLINE NOW

FILING A LIEN IS THE **MOST POWERFUL** WAY TO PROTECT YOUR RIGHTS. EXPRESSLIEN IS THE FASTEST AND MOST AFFORDABLE WAY TO FILE A CONSTRUCTION LIENS.

SERVING WASHINGTON AND LOUISIANA, OUR SERVICE INCLUDES:

- PREPARATION OF LIEN DOCUMENT
- FILING LIEN WITH APPROPRIATE RECORDING OFFICE
- NOTIFICATION OF PROPERTY OWNER & INTERESTED PARTIES

When It's Time to Hire An Attorney

While good collection procedures and organization will give you more success in collecting overdue accounts, it's inevitable that despite well executed attempts to collect a debt, you're business will still encounter accounts that require additional measures.

Oftentimes, simply having an attorney to send a collection letter will do the trick. In other situations, however, you may have a genuine dispute on your hands, and it will be necessary to engage legal counsel to bring a lawsuit against the non-paying party.

It is never too early to involve an attorney with a non-paying account. Engaging an attorney at the beginning of the collection process will ensure you can take advantage of all remedies available to you, and position your company against its adversary.

When deciding on legal representation, it is important to remember that the earlier you retain counsel, the better. Furthermore, it's important to remember that some actions are barred by law after the expiration of a certain period of time. Depending on your circumstances, this "statute of limitation" will change, and can be as short as 1 year and as long as 10 years. Your contract may also impose a time limitation within it, and failing to bring your claim within that time period could jeopardize your rights to later bring the action.

If you are committed to doing some collection procedures in-house, a good time to retain an

WHEN IT'S TIME TO HIRE AN ATTORNEY

attorney might be after making the initial telephone calls and sending the initial demand letters discussed in this *Toolkit*. If your demand letter time periods expire without any action from the debtor, it is likely time to up the ante.

Contact an attorney and provide them with a copy of your file, your documentation on the debt and the demand letters you've delivered. They will send their own demand letter, and begin advising you on your options in litigating the claim.

Guide to Litigating a Collection Action

Litigation is risky, expensive and frustrating, and so if possible, it's best to avoid the proceedings. In moving forward with collections litigation, it will be important to consider the type of fee agreement you have with your attorney and whether the amount of the debt is worth the cost of the proceeding.

Regarding Attorney Fees

When you decide to take your unpaid account to the next level, you will decide on sending the account to a collection agency or to an attorneys' office. While there are pros and cons to both options, a collection agency does have certain limitations. Understand that when hiring a collection agency, you're essentially hiring an agent to pester the party owing you money. The collection agency will not counsel you on the strengths and weaknesses of your claim, nor will they intimately know the laws and time limitations affecting it. At the end of the day, if the collection agency is unable to collect on the debt, it will turn to the services of a qualified law firm.



As mentioned in the preceding section, it's best to hire an attorney as early as possible. In many cases, a company will hold an attorney on retainer, and immediately send non-paying accounts to him or her for handling. While a bit more expensive than doing the task in-house, these companies find success in adding pressure to the non-paying party

immediately after the account goes past due.

The type of fee arrangement made with an attorney will depend on the needs of your company.

Attorneys typically work on collection accounts on an hourly basis, a contingency basis or a "mixed fee" basis, which is a combination of the first two types of contracts.

On hourly fee contracts, an attorney will perform her services at an hourly rate. If the unpaid account, for example, gets paid after one telephone call, your company may only owe the attorney for 1/2 hour of work. If the account requires disputed litigation, however, the attorney may work many hours, and the case could cost your company thousands.

Contingency Fee contracts remove the burden of attorneys' fees during the litigation, but at the end of the suit the attorney fees may be very high. In these types of arrangements, an attorney will represent your company against an unpaid account without the payment of any attorneys' fees. At the end of the case, if the attorney is successful at recovering any amount from the non-paying party, the attorney will take a percentage of the collected amount as her attorney fee.

The benefit of this type of arrangement is obvious, as your company will not be shelling out thousands to litigate a risky lawsuit. The downside, of course, is that the contingency percentage can be as high as 40% or more. Especially in construction, where unpaid accounts can exceed hundreds of thousands of dollars and be based upon the payment of labor and materials to third parties, a 40% fee can be devastating and not accurate compensation for the work the attorney performed. What's more, however, is that the attorney may be entitled to the 40% fee even if only a minimal amount of work was performed.

A Mixed Fee contract is a mixture of the hourly and contingency fee arrangement.

The attorney will charge your company a lowered hourly rate for work performed, and a lowered contingency percentage. For example, instead of billing your company at \$200 per hour or entering a contingency fee agreement to take 40% of the collected amount, your attorney may agree to work for \$100 per hour and take a 20% contingency at the end of the case.

The type of agreement you reach with your attorney may vary, and may depend on the amount of the debt, the chance of being successful at recovering the debt and more. Speak to an attorney as soon as possible to discuss the uncollected amount and the options you may have in pursuing its collection.

Is it Worth It?

Obviously, if someone owes you \$500.00, your company shouldn't be interested in spending \$5,000.00 to recover it. At the same time, however, your company may struggle with the "principal" of letting the unpaid amount go without penalty.

A critical question every creditor must ask themselves is this: Is it worth it?

The process of collecting an unpaid account can be long, frustrating and expensive. Unfortunately, there are some circumstances when the healthy choice for your company is to "cut the loss" and not proceed forward in its collection.

To limit your company's encounters with these situations, you will want to make changes to your contract to provide for penalties, attorneys fee and interests in the event of non-payment (see discussion of contract provisions in this *Toolkit*). Regardless of how proactive your company is, however, there will still be circumstances where you are unpaid and the collection proceedings are simply not worth the amount of the debt.

The key question really is how much *good* money are you willing to put into *bad* money?

To answer this, you should consider three things: (1) The debtor and his solvency; (2) The amount of the debt itself; and (3) The worst-case scenario cost of pursuing the debt.

If your debtor is a multinational corporation, an established local business or some other type of company who will likely have the resources to pay the unpaid account, you should be more comfortable in pursuing your claim against it than against an individual with poor to mediocre credit. The more solvent your debtor, the more likely that debtor will be to make payment after the initiation of proceedings against them.



The amount of the debt also plays a critical role in determining how to move forward. Based on its financial situation, your company should define a "threshold" for itself. Whenever the amount of an unpaid account crosses that threshold, it should be your policy to take aggressive actions to collect on the account. The threshold may be as low as \$500.00 and as high as \$15,000.00 - \$20,000.00, or more.

Finally, your company should consider the "worst-case scenario." If worried about a non-paying party complaining about the work, then your worst-case scenario may be a lawsuit where the other party pulls in experts and other fact witnesses to prove their case. The cost for you to hire expert witnesses, and go through litigation can be daunting. It's not uncommon for a lawsuit to cost more than \$25,000.00, \$50,000.00 or \$100,000.00. If you're debt is \$30,000.00, but hotly contested, you may be presented with a difficult decision.

In regards to litigation costs, there are always two things to remember.

First, you may qualify to have your opponent pay for your attorneys' fees. This is the case when you win the argument, and you qualify for recovery of these fees under your contract or under the law. Once again, therefore, it's important to put these types of "attorney fee recovery" provisions into your contract.

Second, companies are oftentimes so worried about the legal expenses of a case that they forget an obvious element to the proceeding: the other party's concern.

No one, even multinational corporations, enjoy paying attorneys' fees. Just like your company will consider the costs and benefits of litigation, so too will your opponent. If your argument is better than your opponents, it very well may offer an amount to you to settle. Your opponent is facing the same costs, risks and frustrations, and may be willing to offer a settlement amount to avoid them.

What Happens Next? How long does litigation take?

Unfortunately, this is the big question mark for companies considering collection litigation. There simply is no way to accurately predict how much a lawsuit will cost, how contested it will be, how long it will take or what the outcome will be. For all the reasons you've heard before, and all the reasons above discussed, litigation is risky and unpredictable.

In some circumstances, a company may file suit against a debtor who fails to ever appear in court to defend his position. In this case, after just a few weeks your company may be entitled to a "default judgment" against the debtor. The judgment would appear on the debtor's credit report, and your company is entitled to execute the judgment as if it was received after a full trial on the issues.

In other circumstances, however, your suit may be hotly contested, and it may result in months or years of discovery requests, motions and hearings. It is not uncommon for a lawsuit to last more than 1 year, and the average lawsuit is about 3 years in length.

Conclusion

Every situation is different, and every debt requires a different analysis. Speaking to an attorney can help you consider the different scenarios discussed in this *Toolkit*, and can help your company decide how to best approach a non-paying account. While there are often drawbacks to litigation and the collection process, in general, the laws are crafted to protect those who are owed money.

If someone receives services or products from another, it is assumed that they have agreed to pay for those products or services. While there may be other disputes between the parties, there are mechanisms available to the creditor to recover payment from the other party for the products or services it provides.

Litigation is just one of the many ways your company may seek recovery of a non-paying account. It should be a remedy of last resort because of the risks and expenses involved. Without it, or at least the threat of it, however, some of the other collection tools would be of little use

Conclusion

The construction industry presents many challenges. Many construction projects involve risk of large sums of money, and sometimes requires that an amount of money get properly passed down from an Owner to a Prime Contractor, to a Subcontractor, to a Sub-subcontractor to a Supplier, and all within the course of just a few days, and all to compensate the other for work that is performed under a critical eye.

As anyone in the industry is of course aware, what one person may see as "good" work can be considered "poor" by someone else.

Disputes are commonplace, and a casualty of these disputes is non-payment. Oftentimes, your company may be required to continue work on other components of the project while waiting for payment on a disputed portion. The cash-flow implications are enormous, and sometimes, they are fatal.

More than in any other industry, therefore, those in the construction industry should be very considerate of their preparations for non-paying accounts.

CONCLUSION

Laws in virtually every state are favorable to the unpaid party in construction disputes, but its important that the unpaid party property preserve and litigate their claims to take advantage of these statutes. In Louisiana, for example, depending on its situation an unpaid party in a construction contract may file a construction lien, recover penalties and attorneys fees, and more.

The key is to poise your company to take advantage of these statutes and prepare itself for a collections situation. When you're faced with a non-paying account, its critical to execute your collections plan immediately. With preparation and discipline you'll avoid the worst collection nightmares.

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