

**GETTING PAID – YOUR COMPANY GOT THE JOB,
NOW HOW DO YOU MAKE SURE YOU ARE GOING TO GET PAID?**

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One of the most difficult challenges in today's economy, once you find the work, is to make sure that you get paid for the work that you do. It has become an all too common story in recent times to see a company disappear, leaving behind a string of material suppliers, subcontractors and vendors with worthless accounts receivable and a suddenly severe cash flow problem. Other companies engage in predatory payment practices such as extensive delays on payment, denying liability simply to leverage the costs of collection or asserting fictitious defects and faults that are expensive to challenge. While there is no real protection from the failing company that just disappears overnight, there are a series of steps you can take to improve your chances of being paid for the work that you do.

1. Review your contract terms. The ability to collect is often determined by the terms of your offer for work. Does it specify when payment is due? Do you include the right to charge interest in the event of late payment? Does it state you have the right to stop work in the event payments are not timely received? Most critically, does it include the right to collect your attorney's fees and court costs in the event you need to begin a collection action? A claim for \$10,000 is difficult to collect if you have to pay an attorney to do it for you. On the other hand, if someone owes you \$10,000 and they know they could be liable for another \$10,000 in attorney's fees if you start collection proceedings, that will make you a more important vendor to pay.
2. Have your customers complete a short financial statement. When the project is significant enough, consider having your clients provide you with a short financial statement that identifies where they do their banking and what type of credit standing they have. One of the most difficult parts of the collection process is that once you get a judgment against someone, you need to find where they have their funds. By obtaining that information before you begin the relationship, you dramatically shorten the time it takes to get access to their funds.
3. Consider use of liens, personal guarantees and security statements. On construction projects, mechanics' liens are extremely valuable tools because of the ability to force the sale of the underlying real estate as well as the ability to collect attorney's fees and court costs. It is important to timely file your liens however (within 90 days of the last date of work) and timely begin any lawsuit to enforce those rights (within 1 year of the last date of work). Material and equipment suppliers should similarly become familiar with their lien rights. When dealing with companies that are closely-held, consider asking the owners for personal guarantees of payment. Another alternative that is less frequently used is a security agreement which gives you secured rights in whatever assets the purchaser is willing to pledge. By filing a UCC-1, those rights can then be protected from having the assets sold.
4. Confessions of Judgment. If your customer has gone into default and you are negotiating for payment, make any discount you give conditioned on obtaining a confession of judgment that will allow you to immediately obtain a judgment for the full original amount due. The customer then has the incentive to pay the discounted amount to avoid a judgment for the

larger amount. That will give you a quick mechanism to get a judgment that will allow you to levy on identified assets. If you haven't already obtained their banking information, you should do so at that time and also attempt to get a personal guarantee on the discounted amount. A confession of judgment and knowledge of where they do their banking will give you a strong start towards collecting what is owed to you.