

## Making Sure You Get Paid

by Quenda Behler Story

**W**hen it comes to getting money out of a client who can't or won't pay for the work you've done, you can do something that other creditors can't. You can use your construction lien rights — if you give the right kind of notices and meet all the required deadlines (see *Legal Adviser*, 5/01). In addition to those rights, which could allow you to foreclose on the client's property, you can use the same remedies that any other kind of creditor can.

But you probably don't want to do any of that. You don't want to sue your client, and you don't want to enforce your lien rights — you just want to get paid. Is there anything you can do in advance to help you ensure payment upon completion of a job?

### Proof of Financing

One of the best things you can do is put a clause in your contract that requires the property owner to show you proof of financing before you start. That way you will know that he or she has a pile of money available to pay you with. Most contracts to build a house already contain such a clause, but some modern remodeling jobs run up bills that get to be like house-building costs. To protect your interests, you should require proof of financing at least as part of larger remodeling contracts.

By proof of financing, I don't mean the client saying, "Hey, the bank approved my loan." I mean contract language like this:

"This contract is contingent upon the buyer obtaining a construction loan in the amount of \$\_\_\_\_\_ before the date of \_\_\_\_\_, when work is scheduled to begin. The builder is not required to start work until the buyer provides the builder with written notice from the lender confirming the loan."

### Credit History

Another thing you might do to protect yourself in advance is check your client's credit history. Before you can do that yourself, however, you have to ask your client for permission, which you ought to get in writing, and you would need your client's social security number. Given the problem of identity theft, which has become endemic, you may find clients more reluctant to give you that information than they might have been in the past. I myself advise people never to release their social security numbers. As an alternative, you can ask your client to get a copy of his own credit report and give it to you. That way, you also avoid the cost of getting the report yourself.

### Previous Lawsuits


Whether or not you ask for a credit report, you could also check your client's county legal records to see if anyone your client has done business with in that county has felt the need to sue. It's not at all difficult to find out whether people have been sued — or have sued others. If you discover that your client has sued other builders, you might decide you'd be better off not doing business with him, no matter how good his credit is.

Here's how you check for lawsuits: Go to the county offices in the county where your client lives and find out where the lawsuit records are kept. It's usually in the same building as the courts. In Michigan and most other states, the court clerk in every county keeps two lists: a list of plaintiffs and a list of defendants. Looking at those lists is usually free. If you find the name of your client on one of the lists, you can ask to see the papers filed in that lawsuit. With rare

exceptions, none of which involve construction, all the papers filed in a lawsuit are a matter of public record and are open to anybody to read them.

### Trustworthiness

One of my clients once said to me, "I only do business with people I trust. If I had a job where I thought I needed to do all that before I could sign the contract, I just wouldn't work for them."

A nice thought, but not realistic. The truth is that even trustworthy people can get into financial trouble, especially these days, when nearly everybody is maxed out to their credit limits and when the average mortgage payment is 50% of the family's income. One missing bonus, one job layoff, one major illness could tip many people right over the edge. If one of those people owes you major money when the crunch comes, you could go over the edge with him. 

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