

## Pitfalls of a Down Economy

by Quenda Behler Story

**M**y husband, my brother-in-law, and I were sitting around reminiscing about construction slow-downs we've been through. (What can I say? We're old.) My brother-in-law talked about the '70s, when to avoid laying off his crew he sent them to his mother's house to paint. He was hoping that by the time they finished he'd have some other jobs lined up. Instead, he wound up sending them to the homes of his mother's friends, too.

My husband talked about 1991, when he loaned a truck to a friend running for office, who needed it for putting up campaign signs. At least that way the truck was on the road, where potential customers could see the company's name printed on the side. Otherwise, it just sat in the driveway — business was that bad.

It's a painful truth: Sooner or later every construction company goes through hard times. And when that happens, you can't get away with the things you could when times were good. Here are some of the problems you have to watch out for when business is slow.

### Cash Flow

The first is reduced cash flow, especially when tax payments come due. If you don't have the cash to make your self-employment payments, you might be able to work something out with the IRS — or maybe you'll just clench your teeth and pay those mafia-style penalties and interest. I don't recommend it, but sometimes there are no other options.

**Withholding.** But here's what you absolutely do not want to do: be late sending in your employees' withholding. This is not your money; it's money held back from employees to pay their taxes — so the IRS will not be interested in letting you work something out. If you don't pay, the agency can freeze your bank accounts or show up on the job site and shut you down. You could also be charged with a crime. So even if you have to borrow money to do so, pay that withholding.

**Payment schedule.** Poor cash flow can be especially hard to avoid in states that limit the amount of cash contractors can collect before doing the work. I'm all in favor

of protecting consumers, but you should not finance jobs for customers by paying for their materials yourself. When you do that, you're essentially loaning them money — and you're not a financier. So when you write contracts, schedule payments carefully. In states where it's allowed, you can tie payments to particular events — after materials are ordered, after the permits are in place, and then upon various milestones, such as when you start the foundation, when you start drywall, and so forth.

If you don't want to demand payments at the beginning of tasks, make them due as items are completed.

### Underbidding

When business is slow you're more likely to underbid. Naturally you want to keep working — but remember, there's a big difference between working without your usual profit margin and losing money on jobs.

**Contract clauses.** It's important to protect yourself with clauses about unexpected cost escalations and hidden conditions: When you're bidding low, your margin for error is very small. The clauses don't have to be elaborate. To address cost changes, say something like this: "The offered price is dependent upon current market prices. Unexpected increases in the present market rate for labor or the present market rate for materials will be reflected in price adjustments." For hidden conditions, use the following: "The cost of conditions on the site that could not be revealed upon ordinary inspection, and that impact the cost of the job, will be reflected in price adjustments."

### Increased Competition

When employment is down there's even more competition than usual from fly-by-nighters with a pickup and a hammer. Explain to prospects why hiring an unlicensed person to fix their roof or wire their house is a bad idea. Talk about fires, leaks, liability, and the like. Share stories about owners who wound up spending more because the work wasn't done right the first time. Remind customers that with unlicensed contractors it's hard to get warranty work done, and licensing authorities can't help

with disputes. And tell them they can forget suing one of those guys — because even if they can find him, he probably won't be collectible. Unlicensed contractors typically don't carry insurance, which means the customers could end up getting sued for problems he caused.

### Getting Paid

When the economy falters, you're bound to have more trouble collecting, and not just from people who have lost their jobs. A certain kind of customer seems to come out of the woodwork — the kind who signs a contract and then decides he's entitled to a better deal, or who delays paying just because he can.

You need a well-written contract to protect yourself, one that spells out the circumstances under which you could walk off the job — when you've given

notice it's time for a payment but haven't received it, for instance. Never let yourself get to the end of the job with the customer still owing you a lot of money.

Use contract language that says something along these lines: "Payment is due within seven days [or however many you want] upon completion of [whatever milestone you're talking about]. If payment is not received as required, the contractor, at the contractor's option, may cease further work until the payment is received. If required payment is not made within [this is where you insert your drop-dead date] the contractor, at the contractor's option, may treat the contract as breached."

Be sure to include the "at the contractor's option" language. Even if you don't want to treat every late payment as a breach of contract, you shouldn't give

up the right to do so — which is what can happen when you don't enforce these late-payment penalties.

### Shape Up

Here's the most useful advice I can offer about hard times: Don't be careless. In the past you may not have been very businesslike; you were making too much money to waste time counting pennies. But now you can't afford to make mistakes. It's time to get those computer programs that track costs up and running, and to attend those conferences and association meetings where you learn how to be a good businessperson. The survival of your company may depend on it.

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*Quenda Behler Story has practiced and taught law for more than 25 years.*

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