

SMART DECISIONS MADE EARLY INCREASE THE LIKELIHOOD OF COLLECTING PROBLEM ACCOUNTS

In our current economy, electrical contractors need to take extra care in monitoring their accounts receivable, looking for red flags which give an early warning of potential collection problems.

There are a number of sources of information available regarding the financial strength and creditworthiness of your customer, the owner or general contractor. One such source is Wisconsin Circuit Court Access, more commonly known as "CCAP." CCAP can be accessed through the internet, and provides information regarding lawsuits and legal proceedings filed in the state (circuit) courts in Wisconsin. The web site is: <http://wcca.wicourts.gov/index.xsl>. Similar information is available from the federal court system, through a subscription service known as PACER. Most law firms subscribe to PACER.

When a concern arises regarding the collectability of an account, time may be of the essence. With private projects, one of the first questions which should be asked is whether the electrical contractor can (and whether it should) file a lien. Wisconsin's construction lien statute provides a powerful tool to enhance the prospects for collecting a problem account. However, the rules for perfecting a lien must be followed carefully. At least one, and in some cases two written notices must be served on the owner before a construction lien can be filed in Wisconsin. In some cases, a notice of lien rights must be served on the owner within 60 days of the date that the lien claimant first performs services or provides materials for the project. In all cases, a notice of intent to file lien must be served on the owner at least 30 days before the lien is actually filed. The lien itself must be filed in the courthouse of the county where the property is located, within six months from the date the lien claimant last performed services or provided materials for the project. Certain information must be included in the notices, and the Wisconsin statutes

dictate the manner in which the notices must be served on the owner. Failure to properly give required pre-lien notice(s) in most cases will result in a waiver of the right to file a lien.

The pre-lien notices and the lien itself require specific information regarding the identity of the owner, legal description, etc., which, if not properly completed, will result in the lien being invalid. We often obtain a title report to make sure that we know the true identify of the owner, and have the correct legal description for the property.

After the lien is filed, the lien claimant has a period of two years to take legal action to enforce its lien. However, the mere filing of the lien will in some cases result in payment of the amount owed.

Wisconsin law usually does not allow a construction lien to be filed against a public works project. However, subcontractors and material suppliers on public works projects may have the right to assert a lien on funds held by the public owner and payable to the prime contractor. On many public projects, and some private projects, there may also be a payment bond to which the electrical contractor can look for payment. However, the electrical contractor must be assertive in giving the proper notices and taking the required action within the specified deadlines.

Wisconsin has other tools available for enforcement of creditor's rights which should not be overlooked, including a collection lawsuit. The goal of filing a lawsuit is to either induce payment, or obtain a "judgment" for the amount owed. After a collection suit is filed and judgment is obtained, post-judgment collection remedies, such as garnishment, sheriff's execution and supplementary examinations of the debtor, are available. Once a judgment is obtained and docketed in the office of the clerk of court, it constitutes a "lien" against any real estate owned by the debtor in the county where it is docketed.

Wisconsin law provides a variety of tools for collecting delinquent accounts. However, the electrical contractor must take prompt action in asserting its rights in order for these tools to be effective. Smart decisions made early can often make the difference in whether a delinquent account will be paid.