

## DEALING WITH PAST DUE ACCOUNTS

In these tight economic times, business owners should consider all of the options for collecting and dealing with past due accounts.

One of the first questions which should be asked by an electrical contractor when dealing with a problem account, is whether lien rights exist. Preserving the right to file a lien requires prompt action, and it is easy to miss deadlines. The same goes for claims involving government projects and projects where a payment bond exists. The contractor needs to take prompt action to protect its rights.

Business owners are frequently asked to “work with” customers to allow more time for payment of a past due balance. When faced with such a request, the first question which should be asked is whether there is a logical plan for paying the balance owed. It often makes sense to require a written payment plan with a specific payment schedule, signed by the debtor. This can be accomplished by having the debtor sign a promissory note.

In exchange for allowing time for payment, the contractor should determine whether there are ways to enhance the prospects for collection.

One possibility is to require a personal guaranty signed by one or more of the principal owners of the business. Wisconsin’s statute of frauds (Section 241.02, Wisconsin Statutes) requires that a personal guaranty must be in writing and signed by the person guarantying the obligation.

Savvy creditors also will explore the opportunity to obtain collateral for the obligation, such as a mortgage against real estate. It is advisable for the creditor to work with its own attorney in obtaining a mortgage, to make sure that the document is properly drafted, signed and recorded, and also to make sure that the creditor knows and understands the priority of its mortgage with respect to other liens against the property.

Another form of collateral which may be available is a lien against assets other than real estate (such as equipment or inventory). This type of lien is obtained by having the debtor sign a security agreement and filing a UCC financing statement with the appropriate governmental entity (in Wisconsin, this is usually the Wisconsin Department of Financial Institutions). UCC liens in Wisconsin can be accessed and viewed on line at [www.wdfi.org](http://www.wdfi.org).

When obtaining collateral such as a mortgage or UCC security interest, the creditor who “perfects” its interest first usually has priority over other creditors. The rule is “first in time, first in line.”

Obtaining a personal guaranty and/or collateral to secure payment of an obligation will often make the difference in whether the creditor is ultimately paid, particularly if the debtor ends up in bankruptcy. One important note, however. If the debtor is a consumer who incurred the debt for personal, family or household purposes, the Wisconsin Consumer Act may apply. The

Consumer Act places limitations on the manner in which a debt can be collateralized, and includes penalties for violating those provisions. Competent legal advice should be obtained before proceeding.