

No one works for free— why should you?

BY EARLE GOODWIN

Tips for getting what you are owed

When you decided to become an electrical contractor, did you think your most important qualification would be your ability to interpret the electrical code, or perhaps your technical skill? Maybe it was your ability to accurately bid on jobs, or your talent for planning a job and installing it quickly and efficiently?

When you decided to become an electrical contractor, did you consider that perhaps your most important qualification would be your ability to get paid? As simple as it sounds, your ability to get paid for work ultimately determines your success as a contractor and, unfortunately, this important business skill is not taught at trade school.

The money showed up every week when you were a field technician, but all that changed when you became a contractor.

When you're lucky, the process of getting paid is simple: you submit an invoice and a cheque arrives in the mail. But things don't always follow the prescribed path. Ask any contractor who has been in the business any length of time and you'll hear horror stories about non-paying clients who sound like schoolboys explaining why their homework isn't done: "The cheque's in the mail," or "It must be in accounting," or "Our computers are down and I can't cut the cheque," or any one of a million other excuses.

There's one thing you can be sure of when their 'reasons' are questionable: you cannot let your receivables get ahead of you. It will inhibit your ability to finance future jobs and, for small contractors in particular, is a quick road to bankruptcy.

Adopt a business mentality

It is right and fair to expect prompt payment from your customers. If you've explained your billing schedule to them at the outset, they should not be surprised to receive a bill. If you haven't heard from them within a couple of weeks, either with a complaint or a cheque, you should start following up. If the bill is based on the progress of the job, you will have to decide how far you want to go before you stop work. If it is the final bill, you have to keep in mind that you have a fixed period to act before you forfeit your right to collect.

So, what are your options when you are not getting paid?

Quite often, collection problems are the end result of laxity when setting up the contract (provided you established one in the first place). Before any work begins, be clear about what payments are due and when (such as various stages in the construction process).

Also, do yourself a favour and keep detailed and accurate records—of everything. A daily journal that records jobsite manpower, materials on hand, weather conditions and progress of the work on a daily basis can be invaluable when enforcing your claim. Also, don't forget to document all changes with change orders and render all invoices promptly.

Be very careful about proceeding with a job if the payment schedule isn't being adhered to. It's extremely unlikely that someone who is slow paying at the beginning of the project is going to start paying quickly at the end.

Doing all of the above helps eliminate possible defences if you find you have to take further steps to collect.

You're still not getting paid

So they're still not paying. What now?

The route you take depends on a number of factors, such as whether your contract is with an individual for a single property or a general contractor for a subdivision, and how much money is owed.

If the amount owing is relatively small, you may decide to go to small claims court, which limits the amount of the claim. Legal fees are often prohibitive, and because of the small amounts involved, parties often represent themselves or use paralegals. When the amount of your claim exceeds the small claims court's maximum amount, you may elect to file a civil



suit. This is much more expensive, largely due to legal fees.

Or, if you've basically given up on the debt but it continues to bother you, you may look to a collection agency. They will collect the debt on your behalf, often for a commission.

The usual route in construction claims, however, is to lien the property for monies owed. When filed, it encumbers the property so that the owner cannot sell it or renew his financing until the claim is settled. Enforced to its limits, the lien could force the sale of the property.

Deciding to file a lien is not something anyone takes lightly: it costs time and money, and you run the risk of developing a reputation as a 'liener' if you appear to have liened one too many jobs. This won't have any bearing on the job you've liened, but could affect your ability to get future business.

That said, sometimes there is no alternative. For example, if your contract is with a general contractor and he is liening the job, you may be wise to follow suit for any money still owed to you. You can't rely on the general's lien because deficiencies created by another trade may wipe out his claim.

The lien process was developed to speed up the settlement of construction claims. But speeding it up doesn't necessarily make it fast. Depending on the complexity of the case, it could take years to settle.¹ Unfortunately, any other remedy you adopt could take just as long.

The process has evolved over many years and has developed a long history of case law. This is to say that it can be quite complex to wade through the process, which means that you will need a lawyer who specializes in construction claims to help you.

In any case, you'd be wise to keep your lien rights in order and be familiar with all their nuances—preferably before you have to use them. (Remember, some people will promise to pay just to delay you past your lien date.) Liens are similar from province to province, but each jurisdiction has its own eccentricities, so pay attention to their timelines and required documentation. Information is available on the Internet and in libraries. If you belong to an association, this could make a good topic for a meeting.

The specific process is set out in the lien act for your jurisdiction but, in general, there are several steps, each involving a timeframe (and usually a lawyer):

1. The action is initiated. This is called 'perfection' of the Claim for Lien.
2. The plaintiff then serves the defendant with a Statement of Claim.
3. The defendant then provides the plaintiff with a Statement of Defence.
4. Lawyers representing both sides then conduct a settlement meeting where items that can be easily dealt with are settled. Then, if there are remaining issues, the next step is...
5. Setting the Action down for trial.

Staying out of court

In a perfect world, everyone would receive an honest day's pay for an honest day's work. But the world is not perfect, so you need to take precautions when performing work. For example, before entering into a contract with someone, check out the word on the street. Find out how long they've been around and what kind of reputation they have. Do they have a reputation for promptly paying their contractors, or leading them on? If the reputation is bad, consider walking away, but even when the reputation is good, follow the steps outlined above for documentation and explaining payment schedules.

Collections are among the most difficult aspects of contracting but, unless you are extremely lucky, they are something you will most likely have to face. While there is no way to avoid the anguish attached to the process, knowing your options can help minimize the pain. **EB**

Note

¹ See also EB August 2005, "Your right to lien is under attack!" by J. Stephen Tatrallyay.

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