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**Welcome to the NCS 2018 Seminar Series**

**Today's Seminar:**  
Using UCC Filings and Mechanic's Liens to Make Your Company a Payment Priority




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**Collateral**

Property pledged as a guarantee of payment for an obligation or loan.

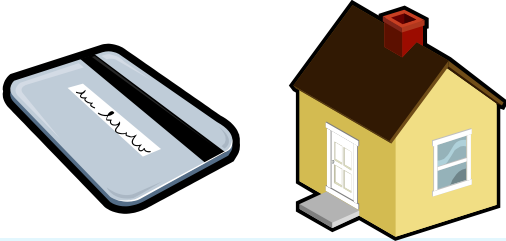


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Property pledged as a guarantee of payment for an obligation or loan.




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**Agenda**

- Uniform Commercial Code and Revised Article 9
- Types of UCC Filings
- Benefits in Bankruptcies
- Inventory vs. Equipment
- Security Agreement
- Financing Statement
- Construction Credit
- Steps of the Mechanic's Lien Process
- Public and Private Construction


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**Security: Consensual or Judicial**

- **CONSENSUAL SECURITY**
  - Provided with the consent of the debtor
  - Available to all types of lenders
    - Letters of credit
    - Security interests (UCCs) in A/R, inventory and/or equipment


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**Security: Consensual or Judicial**

- **JUDICIAL SECURITY**
  - Does not require consent of the debtor
  - Applicable under the mechanic's lien and bond claim statutes

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**The Value of Money**


Margin %	Write Off	Sales to Recover
30	\$50,000	\$166,666
25	\$50,000	\$200,000
15	\$50,000	\$333,333

**The cost of write-offs**

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**Evolution**



➔


One of the 10 of the 15...


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### Proven Strategies



**Reduce DSO**




**Improve Cash Flow**



**Improve Working Capital**

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### The Uniform Commercial Code

Article 1:	General Provisions
Article 2:	Sales
Article 2A:	Leases
Article 3:	Negotiable Instruments
Article 4:	Bank Deposits and Collections
Article 4A:	Funds Transfers
Article 5:	Letters of Credit
Article 6:	Bulk Transfers
Article 7:	Warehouse Receipts, Bills of Lading
Article 8:	Investment Securities
<b>Article 9:</b>	<b>Secured Transactions</b>

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### Personal Property Security Act




The same protections are available under Canada's PPSA.



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### Personal Property Security Act




- The PPSA and Article 9 of the UCC are extremely similar.
- Both have tried to make this process truly uniform.
- However, the nuances from state to state or province to province can be frustrating.


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 **The Expanding Code**


- Adopted by the General Assembly on December 11, 2008
- Goal is promote low cost credit by enhancing the availability of secured credit




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 **The Expanding Code**

- Canada
- Mexico
- Puerto Rico
- Australia
- New Zealand




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 **Revised Article 9**



After nearly a decade of study and preparation, the National Conference of Commissioners on Uniform State Laws unanimously approved a final draft of the Uniform Commercial Code in July 1998.

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 **Revised Article 9**

Revised Article 9 continues to deal with **consensual security interests in personal property and fixtures.**

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### Property Covered by Article 9

Tangible Personal Property	Intangible Property Rights
<ul style="list-style-type: none"> <li>• <b>Goods</b></li> <li>• Inventory</li> <li>• Consumer goods</li> <li>• Farm products</li> <li>• Equipment</li> <li>• Fixtures</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Payment rights</b></li> <li>• Accounts</li> <li>• Health insurance receivables</li> <li>• Chattel paper</li> <li>• <b>Instruments</b></li> <li>• Promissory notes</li> <li>• Commercial tort claims</li> <li>• Deposit accounts</li> <li>• Letter of credit rights</li> <li>• <b>General intangibles</b></li> <li>• Payment intangibles</li> <li>• Software</li> </ul>
Other Rights	
<ul style="list-style-type: none"> <li>• Investment property</li> <li>• Documents</li> <li>• Money</li> </ul>	

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### Revised Article 9

Revised Article 9 continues to deal with **consensual security interests in personal property and fixtures.**

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### Article 9

The National Conference of Commissioners on Uniform State Laws proposed changes that were implemented

- July 1, 2013


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### Secured Transactions


#### The Best Possible Position to Get Paid

If your customer (the debtor) goes out of business (defaults) before the goods or services you provided are paid for, you are in the best possible position of getting back some of the goods or some of the money due.

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### Benefits of Secured Transactions



- Secured creditor status in a Chapter 7
- Right of Repossession (PMI)
- Part of the secured creditor team in a Chapter 11
- Generally protected from preferential payment suits
- Public record of debt in case business is sold
- Public record of ownership of assets


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### Why is There Not a Greater Use of UCC Filings?



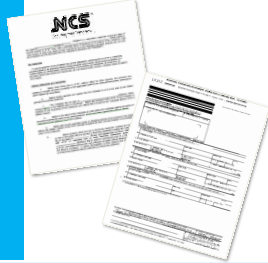
- Misconception
- Cumbersome
- Never been burned

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### Different Types of UCC Filings

1. Blanket, or Basic
2. Purchase Money Security Interest




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### Blanket, or Basic, UCC Filing

- A security interest covering nearly all types of collateral owned by the debtor



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**Blanket, or Basic, UCC-1 Filing**

**Two Characteristics:**




1. The filing covers all assets
2. The priority stacks

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**Who Has Application for a Blanket UCC-1?**

Those creditors who are:

- Providing **financing** only
- Providing **services** only
- Selling to General or Subcontractors

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**Who Has Application for a Blanket UCC-1?**

Those creditors who are:

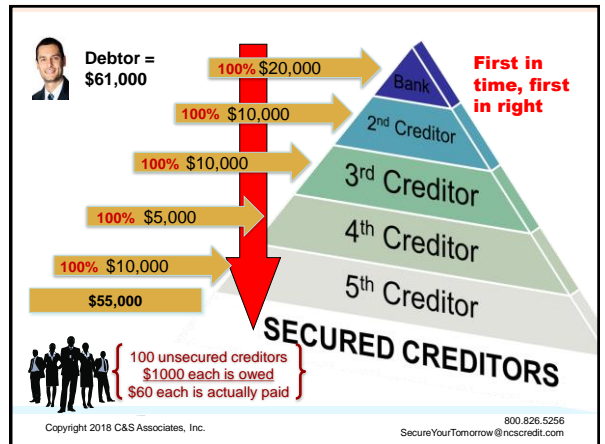
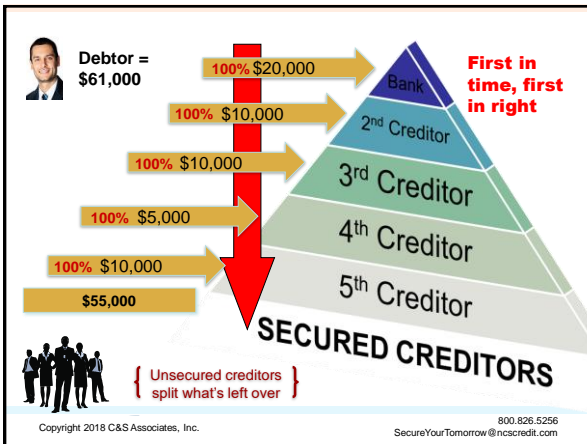
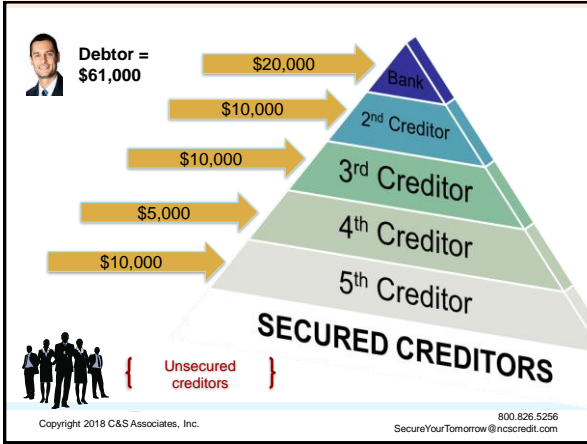
- Providing **materials, inventory, equipment or goods** that are quickly used up or resold by the debtor
- Structuring **notes**

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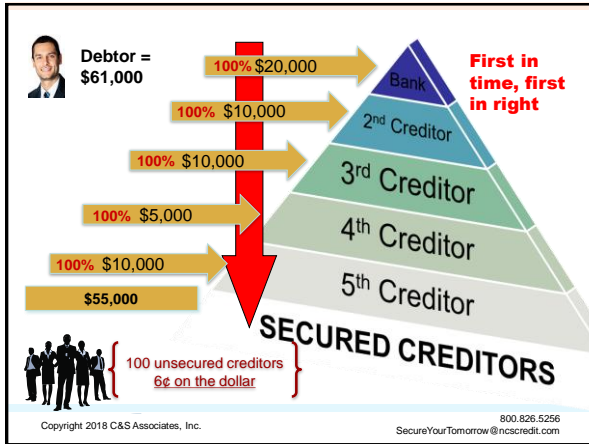
**Promissory Note**



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**Priority in UCC Filings**

Claims are paid based on where they are situated on the claims priority ladder.

Secured Creditors

Administrative Priority Claims

Lower Level Priority Claims

Pre-petition Unsecured Creditors

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**Purchase Money Security Interest**

A priority security interest in specific identifiable goods with a secondary non-priority interest in intangibles.

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**Purchase Money Security Interest**

**Two Characteristics**

- Creditor finances goods
- There is value in repossessing those goods

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### Who Has Application for a PMSI Filing?

Those creditors who are:

1. Selling to stocking wholesalers.
2. Selling to stocking resellers.
3. Selling on a **consignment** basis where title passes while inventory is still in the debtor's possession.
4. Selling inventory or equipment.

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### Inventory vs. Equipment

It depends on what your customer does with the goods you sell to them.



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### Equipment vs. Inventory

Is your customer **reselling** or **using** your products in their business?

INVENTORY (GOODS)	EQUIPMENT
Customer resells the goods to another entity	Customer uses the goods in the course of their business
Search	Contract
Notify	20-day Rule

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### PMSI: The Value of Repossession



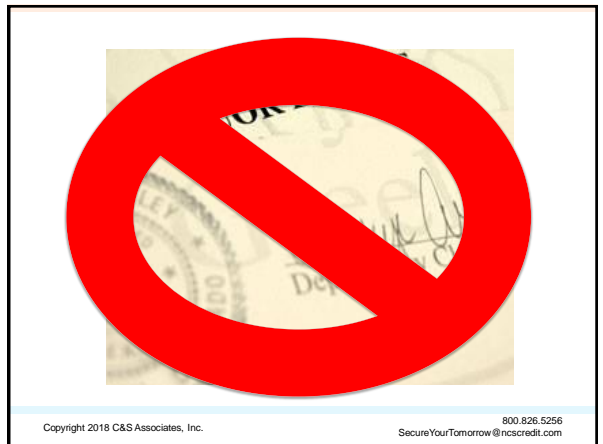
- Resale
- Differentiating your receivables

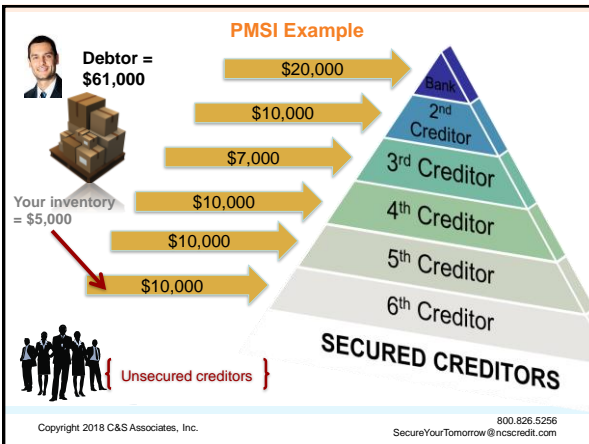
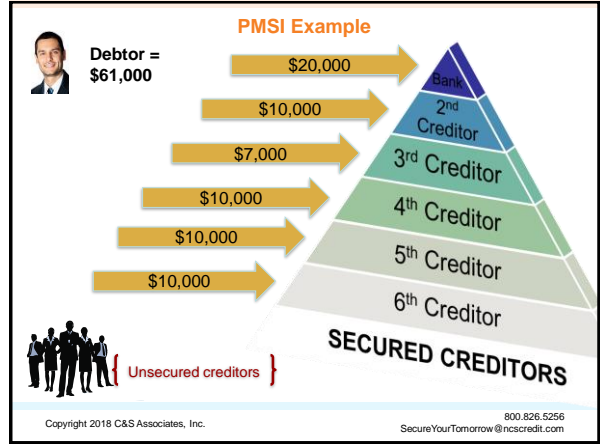
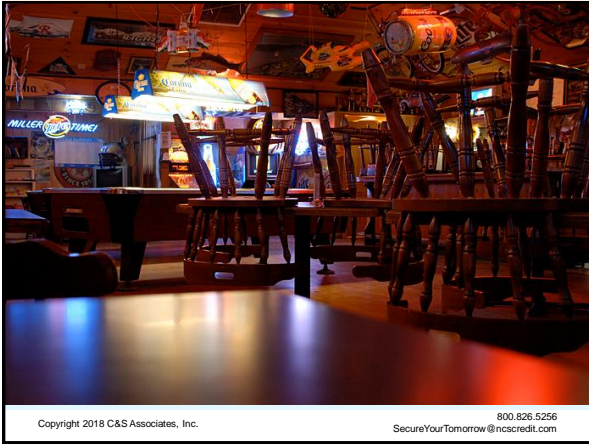
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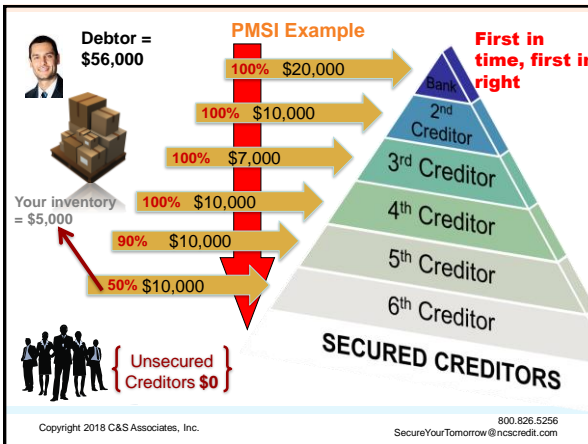
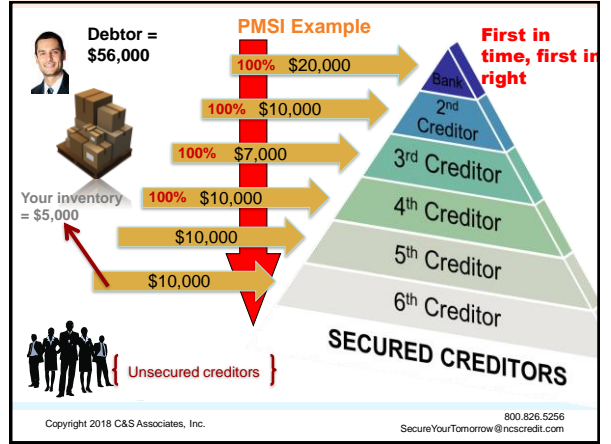
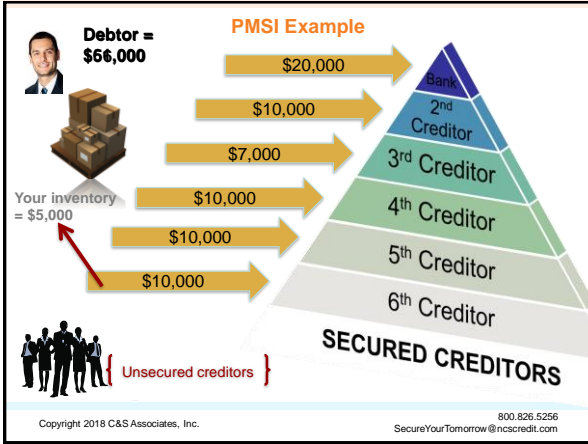
The Value of Repossession

Services interrupted

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**The Objection**


Do you really think there is going to be any inventory left to repossess in a Chapter 7?

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### The Objection

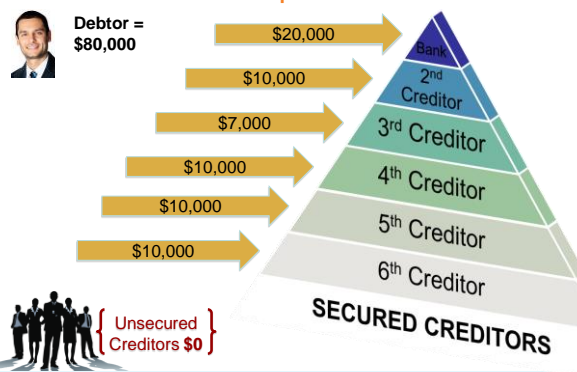
Come on, I ran a credit report, there are 15 previously secured creditors. What's the value in being 16<sup>th</sup>?



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### Chapter 11

Debtor = \$80,000



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### Two Teams...or Classes

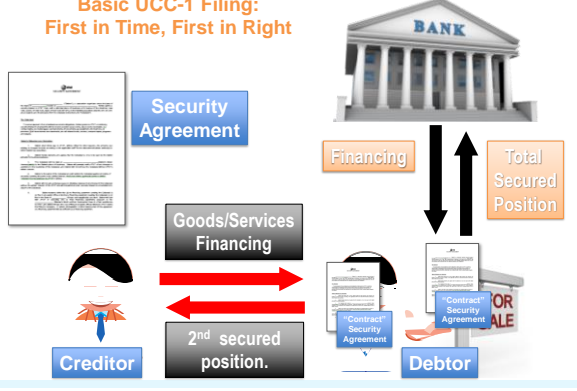



Secured Creditor Class

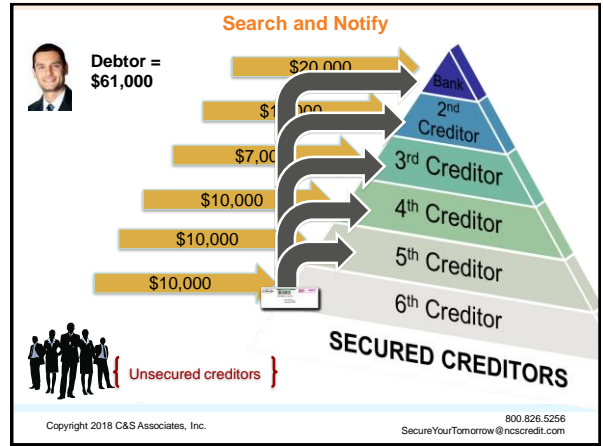
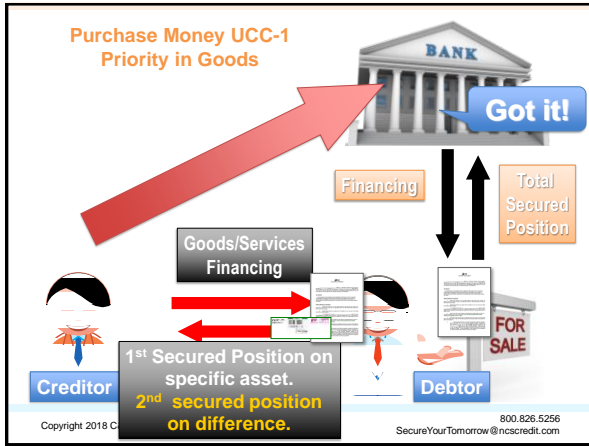
Unsecured Creditor Class

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### Basic UCC-1 Filing: First in Time, First in Right



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**Perfecting Purchase Money: Requirements 9-324-**

- The Security Interest is perfected when the debtor receives the inventory;
- The Secured Party sends notification to the holder of conflicting security interest;
- The holder of the conflicting security interest receives the notification within five years before the debtor receives the inventory.

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**UCC-11 Search**

03/20/2018 Secretary of State Page 2  
Uniform Commercial Code Request for Information Debtor Number 776322  
Report Date 11/01/2018 Period From 07/01/1966 to 06/29/2018

Filing number: 1998209084-11/01/1998 15:47 Expiration Date 11/01/2003  
Secured Party: ELAN JEWEL, INCORPORATED  
10 MANHATTAN AVE  
ROCKY HILL CT 06267

Filing number: 1998209082-11/01/1998 11:43 Expiration Date 11/01/2003  
Secured Party: H H FARMINGTON & SONS INC  
ONE ROCKYHILL PLAZA  
ROCKY HILL CT 06267

Filing number: 1998209081-11/01/1998 11:43 Expiration Date 11/01/2003  
Secured Party: AM-ORIG PRODUCTS INC  
ONE ROCKYHILL PLAZA  
ROCKY HILL CT 06267

Filing number: 1998209084-11/01/1998 11:43 Expiration Date 11/01/2003  
Secured Party: RIF  
1121 48TH ST  
CARD ROCKY CITY NY 11001

Filing number: 1998209084-11/01/1998 14:58 Expiration Date 11/01/2003  
Secured Party: CLOVER CORP  
ONE ROCKYHILL PLAZA 30TH FL  
ROCKY HILL CT 06267

Filing number: 1998209087-11/01/1998 14:04 Expiration Date 11/01/2003  
Secured Party: LEBB OBM LTD  
1 ROCKYHILL PLAZA  
ROCKY HILL CT 06267

Filing number: 1998209080-11/01/1998 14:24 Expiration Date 11/01/2003  
Secured Party: OBI & SONS INC  
10 ROCKYHILL PLAZA  
ROCKY HILL CT 06267

Filing number: 1998209089-11/01/1998 15:03 Expiration Date 11/01/2003  
Secured Party: BLUE STAR SKAT WFO INC  
8 W 1700 ST NEW  
ROCKY HILL CT 06267

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### Former Article 9 Filing Rules

Good Faith




Close enough!

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### Current Article 9 Filing Rules

One search...  
One answer...  
No exceptions



Close enough is not good enough!

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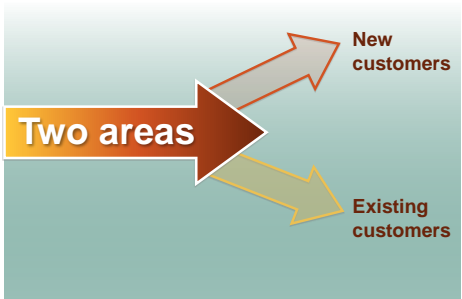
### Recognizing Opportunities To Take Security



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### Opportunities to Take Security



Two areas

New customers

Existing customers

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### Opportunities to Take Security

Two areas

New customers

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### New Customers and Security

- Thresholds of credit lines
  - Unsecured vs. Secured lines
- Credit scoring models
- Speed of credit approval
- Discounts

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### Opportunities to Take Security

Two areas

Existing customers


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### Recognizing Opportunities to Take Security

- Customer requests extended terms
- Customer is past terms or asks for more time to pay
- Customer is over the credit line and orders frequently go "on hold"

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### The Value of Security

Credit Line	Inventory Turnover	Monthly Sales	Annual Sales
\$20,000	1.5x per month	\$30,000	\$360,000
\$30,000	1.5x per month	\$45,000	\$540,000

**6 customers can grow your sales by over \$1 million!**

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### Recognizing Opportunities to Take Security




- Customer requests extended terms
- Customer is past terms or asks for more time to pay
- Customer is over the credit line and orders frequently go "on hold"
- Anytime you restructure debt
- Customer's financials are declining
- You get a particularly large order from an existing customer

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### Recognizing Opportunities to Take Security



Anytime someone asks for a favor!


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### Creating A Reason

- Declare the debtor in default of the terms of their security agreement
- Advise them they must cease and desist selling the inventory or using the equipment
- Set a cure period
- Inform debtor if payment isn't made by the cure period secured party will begin repossession proceedings
- Set a date and time for repossession
- Depending on what the security agreement calls out, advise the debtor they must assemble the inventory and have it conveniently available for pickup
- Inform debtor the next step is to send a notice of disposition of collateral to all other secured parties, which may include the bank

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## Disposition of Tangible Collateral




**§9-609. Secured Party's Right to Take Possession After Default.**

Secured party has the right to take possession of collateral upon default.

- Voluntary or legal
- May proceed without judicial process
- May not breach the peace
- **Recovery through stealth or deception is permitted!**

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## May Proceed Without Judicial Process. May Not Breach the Peace.

- Repossessor grabs keys from debtor and twists her wrist. *Pease v. Havelock Nat'l Bank*, 351 F. Supp. 118 (D. Neb. 1972).
- Repossessor pushes a door open and strikes debtor in the stomach. *Spangler-Bowers v. Benton*, 229 Mo. App. 919, 83 S.W.2d 170 (1935).
- Repossessor runs over debtor's foot with a car and flashes a gun. *McCall v. Owens*, 820 S.W.2d 748 (Tenn. Ct. App. 1991).
- Repossessor tows away debtor's car while she is inside it, notwithstanding her protests. *Sanchez v. MBank of El Paso*, 792 S.W.2d 530 (Tex. Ct. App. 1990), *aff'd*, 836 S.W.2d 151 (Tex. 1992).
- Repossessor uses violent and abusive language reasonably calculated to intimidate or lead to a breach of the peace. *In re Daniel*, 137 B.R. 884 (D.S.C. 1992).
- Secured creditor damages debtor's property during the repossession. *Quest v. Barnett Bank of Pensacola*, 397 So.2d 1020 (Fla. Dist. Ct. App. 1981).

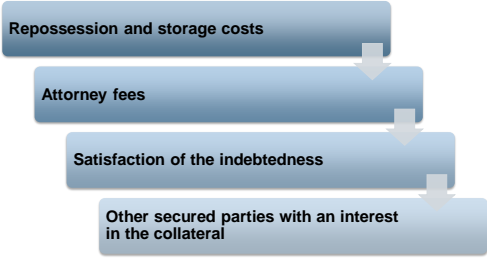
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## Disposition of Tangible Collateral

The proceeds of disposition shall be applied in the following order:




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## Disposition of Intangible Collateral



Upon default a secured party "may notify an account debtor to pay the account directly to the secured party and not the debtor." UCC 9-607(a)(1)

In addition, the secured party may collect **proceeds** to which it is entitled under 9-315 and may **commence legal action** against third parties to collect accounts and other obligations. UCC 9-607(a)(2)

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## Disposition of Intangible Collateral

These provisions are broader in scope than former UCC 9-502 because they not only apply to collection accounts but also permit **enforcement**.

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## Perfecting Consignment

1. Consignment Agreement
2. Financing Statement or UCC-1
3. Search and Notify

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## Two Required Elements

1. Security Agreement
2. Financing Statement or UCC-1


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## Security Agreement

- Creates the secured interest
- Spells out terms and conditions


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## Security Agreement

Can be a stand-alone document or exist in other forms



- Loan agreement
- Sales agreement
- Consignment agreement
- Promissory note
- Conditional sales contract
- Dealer agreement
- Or....



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## Security Agreement

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## Security Agreement



**Must include:**

- Identity of the debtor
- Identity of the secured lender
- A "granting clause"
- A collateral description
- Signature (if paper)

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## Security Agreement



**SHOULD include:**

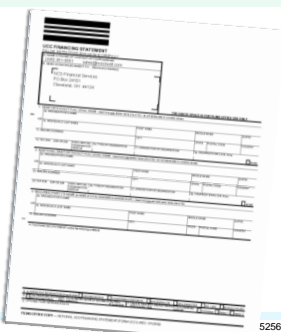
- Description of default
- Repossession plan
- Disclosure of corporate structure and name
- Requirement for future disclosure
- After-acquired property clause
- Authorization statement
- Requirement for insurance (fire, flood, etc.)

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### Financing Statement

- Records the secured interest and **makes it a public record**
- In effect for five years**, at which time can be continued for another five-year period
- Filed in locations **based on your customer's form of business**



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### Article 9



The National Conference of Commissioners on Uniform State Laws proposed changes that were implemented July 1, 2013

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### 2013 Amendments to UCC Article 9

The 2013 Amendments provide greater guidance as to the name of the debtor to be provided on a financing statement. This guidance falls under 9-503(a), the debtor name.

**1) For Registered Organizations:** The name will be what is found on the public organic record(s).

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### Articles of Incorporation


**Should be performed with each filing.**

Confirms:

- State of incorporation
- Corporate legal name of customer
- State organizational ID number




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 **2013 Amendments to UCC Article 9**


The 2013 Amendments provide greater guidance as to the name of the debtor to be provided on a financing statement. This guidance falls under 9-503(a), the debtor name.

- 1) For Registered Organizations:** The name will be what is found on the public organic record(s).
- 2) For Individuals:** The states have chosen between...

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 **The State's Two Choices for Individual Debtor's Name**


**Alternative A:** the name of an individual debtor, as it appears on the most recent unexpired driver's license.



**Alternative B:** Provides 3 ways for the name of individual debtor:

- as under current law - using the individual name of the debtor
- debtor's last name (surname) and first name
- unexpired driver's license

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 **Change to Debtor's Name and Location**

- All changes must be filed within four months
- If late... the security interest will become unperfected in assets the debtor acquired after that four-month period

The only exception to the **four-month** rule is for changes to state of incorporation.

The Secured Party has **one year** to correct the filing.

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 **Corporate Monitoring**

**Protect Your UCC Portfolio**  
**Monitor Your Customer for Change**

NCS offers a corporate monitoring option that will alert you to changes of a registered entity. This vital support provides the knowledge of when the State Corporation Division reports a change in your customer's corporate profile along with decision making information to keep the UCC Financing Statement in compliance with Article 9-507(c) which provides a 4 month window to amend the UCC Filing for a debtor name change.

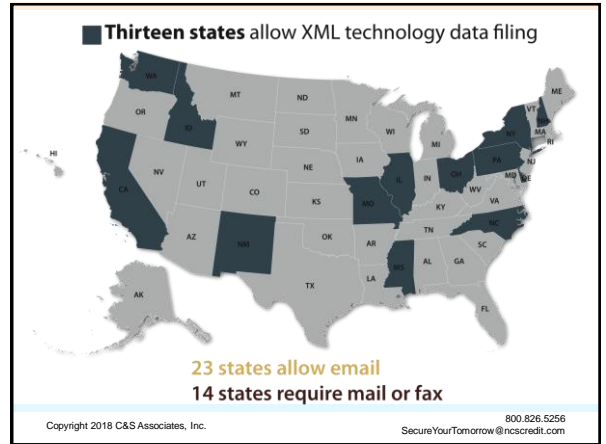
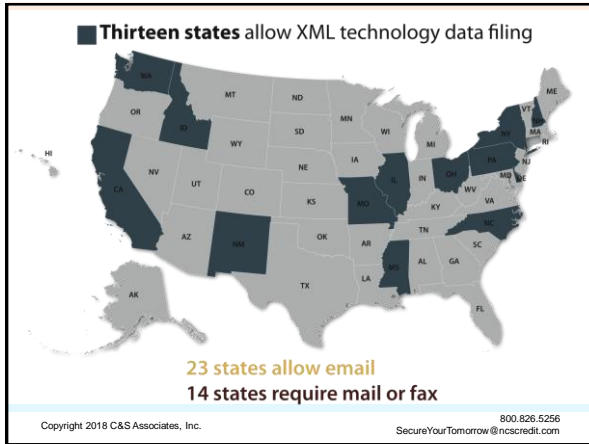
**With Corporate Monitoring, NCS will:**

- Monitor your customer for corporate compliance for the life of the filing\*
- Provide an email notification to alert you of an entity name or status change
- Recommend what you need to do to retain your secured position
- Post the updated Corporate Certificate to your NCS Online Services portal

**Other Advantages of NCS Corporate Monitoring:**

- Know the legal name of your customers and verify the type of entity (Corporation / Non-Profit / LLC)
- Maintain updated information if collection efforts are needed in the future
- Recognize status change can mean non-compliance of the state's corporate rules therefore piercing corporate veil
- Possess another tool to evaluate credit risk - Corporate Compliance (fails to file taxes or annual report)

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**Financing Statement Miscues**

**Hastings State Bank v Thomas D. Stalnaker**

Debtor: EDM Corporation

- Three Secured Creditors: Hastings State Bank, Tier One Bank, Huntington National Bank.
- Hastings State Bank filed a financing statement listing the debtor name as "EDM Corporation d/b/a EDM Equipment"

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**Financing Statement Miscues**


**Host America v Coastline Financial (UT)**

Debtor: K.W.M. Electronics Corporation

- The secured party listed the debtor name on the financing statement without periods.
- Court ruled seriously misleading

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## Financing Statement Miscues

### Receivables Purchasing Company v R&R Drilling (GA)

Debtor: Network Solutions

- Secured party listed debtor name as Net work Solutions, Inc
- Search did not reveal the financing statement

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## Financing Statement Miscues


### United States SEC v. ISC, Inc.

Debtor: ISC, Inc.


- Double Bubble took a secured interest
- Debtor name had an extra space on the financing statement
- Receiver was appointed for ISC, and argued that the error left the security interest unperfected.
- Double Bubble objected, court overruled.

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# Reflective Searches

## Due Diligence



- Pull articles of incorporation prior to lending
- Know the state nuances
- Do reflective searches
- Monitor for name changes


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 **Unified Registry of Moveable Property Collateral (RUG)**

In September of 2010, Mexico instituted amendments to their secured transaction law which bring it more in line with our Revised Article 9 and Canada's PPSA.




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 **Unified Registry of Moveable Property Collateral (RUG)**

Goals were to:

1. Create a mechanism that allows public disclosure of security interests, and
2. Establish priority rules for debtors



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 **Unified Registry of Moveable Property Collateral (RUG)**

Required documents:

1. Non-Possessory Pledge or Security Interest;
2. Promissory Note
3. Credit Application



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 **Rug Collateral**

There are three ways collateral is pledged:

1. All products that are sold by the debtor (PMSI)
2. All assets currently owned (Blanket or Basic)
3. Any specific asset that can be identified (Equipment)

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### Unified Registry of Moveable Property Collateral (RUG)

During the signing process the secured party will want to have a notary public present to verify authenticity of the parties.



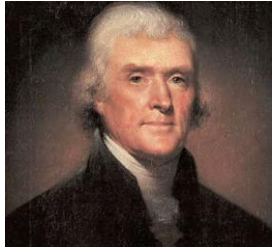
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### Mechanic's Liens

**Thomas Jefferson**

- Building was the future of the country
- Environment that embraced credit
- Created the concept of liens




**Created to Promote Commerce**

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### Benefits of Protecting Mechanic's Lien Rights on Construction Projects




- Allows creditor to factor additional non-customer assets into their lending decision
- Makes them a greater priority for payment by their customer
- Identifies them to the property owner, who then checks their payment status before releasing more funds
- Provides the opportunity to encumber the improved property in the event of non-payment
- Makes a public record of debt in case the property owner attempts to sell the property

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### The Objection



I can't pay you until I get paid!

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### What Are Credit Managers Saying?

Tendencies that seem consistent in the construction industry:

- It's difficult to maintain integrity of A/R. Back charges and disputes are prevalent.
- Very long payment cycles. It's not unusual to see days sales outstanding of 60 or more.
- Lean profit margins. Low bid gets the job.

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### What Are Credit Managers Saying?

- It's difficult to get audited financials, or other solid credit information.
- Insufficient assets—typically lease buildings, vehicles, etc.
- Business can be exited quickly and easily—no recourse unless you have filed notices and possibly liens.
- Undisciplined cash flow—good tradesmen, tend to be poor administrators.
- Very thinly capitalized—ergo, "Pay when paid."

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### How do you justify the credit?

No way!! You crazy?!

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**Mechanic's Lien Process**


Bank → Owner → General Contractor → Sub Contractor → Sub Contractor → Sub Contractor → Material Supplier, Service Provider, Material Distributor

Building/Land


The Ladder of Supply

Claims filed below this line may be questionable.

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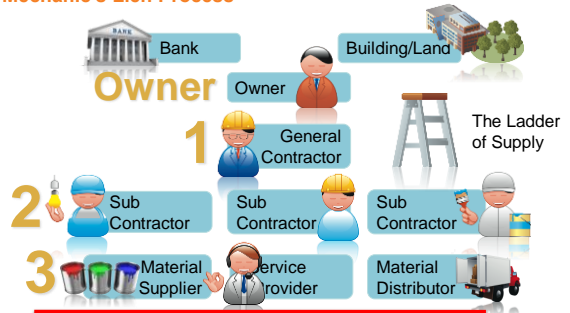
## Mechanic's Liens: A Defined Right



Within three tiers of the owner


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### Mechanic's Lien Process




Claims filed below this line may be questionable.


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## Mechanic's Liens: A Defined Right



Within three tiers of the owner



Tangible goods must be affixed (glued down, plumbed, not freestanding)



No suppliers-to-suppliers

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### Who Has Application for a Blanket UCC-1?





\$4,000



\$4,000



\$4,000



\$4,000



\$4,000

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### Mechanic's Lien Process

Construction credit is unique...  
The credit investigation does not begin and end with my customer.

Claims filed below this line may be questionable.

Material Distributor

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### Mechanic's Lien Process

Construction credit is unique...  
The credit investigation does not begin and end with my customer.

Claims filed below this line may be questionable.

Material Distributor

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### Mechanic's Lien Process

Know your customers.  
You don't know what risks *you're* taking until you know what risks *they're* taking.

Claims filed below this line may be questionable.

Material Distributor


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### Mechanic's Lien Filing Process: Three Steps


Notice	Lien	Foreclosure
20 days from <i>first</i> furnishing	90 days from <i>last</i> furnishing	One year from lien filing

Above deadlines are examples

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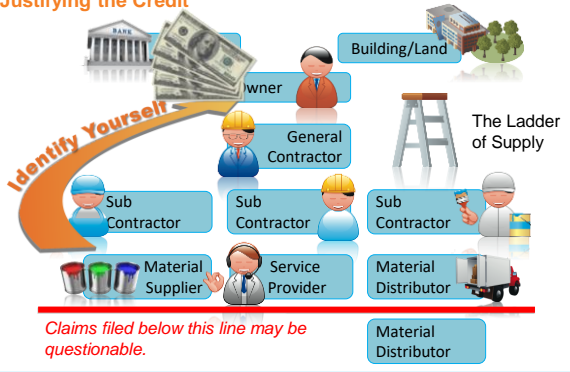
## Notice to Owner or Preliminary Notice?



A way for owners of construction projects to identify potential lien claimants and ensure they get paid


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## Justifying the Credit




Claims filed below this line may be questionable.

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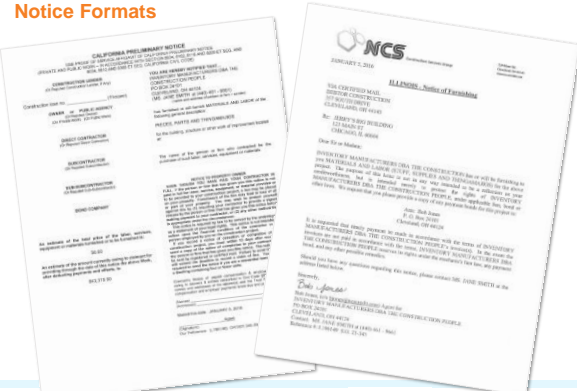
## Notice to Owner or Preliminary Notice?




- Notice given to various parties on the ladder of supply
- Prerequisite to filing a lien claim
- Typically required to be served 20 days after first furnishing or greater

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## Notice Formats



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## Preliminary Notices: Alternate Names

- Notice to owner
- Notice of furnishing
- Preliminary notice
- Notice of lien
- Notice to contractor
- Notice of unpaid balance
- Notice of intent
- Notice of non-payment

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### Justifying the Credit

How does it work?





**I trusted him!**

**I want to lien him!**




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## Do Notices Hurt?

- They are not recorded
- They do not cost your customer anything
- They only apply if your customer defaults




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## Preliminary Notice Considerations

- Attach buffering verbiage to the notices



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## Buffering Tactics


### XYZ Company

To whom it may concern:


The sending of the following Preliminary Notice is prescribed by the construction lien laws of [Project State]. This is a statutory requirement and needs to be done as a matter of law.

The sending of this notice should not reflect on the credit worthiness of [Claimant Name]'s customer or any other party to the project nor does it indicate any expected problem in the payment of [Claimant Name]'s invoices.

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## Preliminary Notice Considerations



- Attach buffering verbiage to the notices
- Mention the possibility of a notice being served in your form of quote

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## ABC Company


**Quote number: 12345**

Quantity: 400	Price: \$100,000
Delivery	Approx. 4 weeks upon receipt of PO
Validity of Offer	90 Days from date of offer
Terms of delivery	FOT Freight allowed
Payment Terms	Net 30, subject to credit approval


ABC Company reserves the right to ship defective goods. Our warranties are extremely limited. It is expressly understood that ABC Company has never completed a job or delivered an order on time. We pride ourselves on nonperformance. And, we don't really like you.

Please be advised that as a matter of procedure ABC Company retains its lien rights on all projects. The sending of a preliminary notice is required by the lien laws in most states. This is a statutory requirement and needs to be done as a matter of law. The sending of this notice does not reflect on your credit worthiness or any other party to the project.

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## Preliminary Notice Considerations



- Attach buffering verbiage to the notices
- Mention the possibility of a notice being served in your form of quote
- Educate your customers

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**NCS**  
The National Lien Digest

Select A State / Province:

**Digest / Legislation Updates** View All Updates

**SOUTH DAKOTA—886—REVISION OF SECURITY REQUIREMENTS**  
Effective 7/1/2018, the requirement of a performance and payment bond will no longer be waived on state projects when the awarded contract does not exceed \$50,000,000. [More](#)

**ILLINOIS—882635—SUBSTITUTION OF BOND FOR LIEN**  
Effective 1/1/2018, Illinois statute to include provisions for bonding off mechanic's lien. [More](#)

**MAINE—45337—REMOVAL OF LIEN**  
Effective 10/14/15, Maine statute specifies a time frame in which to release a lien. [More](#)

**RHODE ISLAND—80668—NOTICE OF POSSIBLE MECHANIC'S LIEN**  
Effective 7/15/15, Rhode Island statute now ensures the contractor's Notice of Possible Lien prior to furnishing. [More](#)

**LOUISIANA—88151—DEPT. OF TRANSPORTATION AND DEVELOPMENT EXCITED**  
Effective 5/29/2018, Louisiana has amended requirements under public contracts. [More](#)

**NEVADA—88254—RELATING TO CONSTRUCTION—RETAINAGE**  
The Nevada legislature has amended the amount of retainage authorized on public and private works of improvement. [More](#)

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### Two Line Option

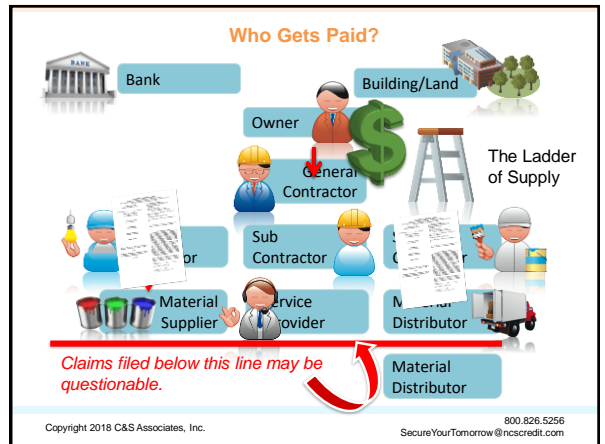
<p><b>Secured Line</b> <b>&gt;\$ 20,000</b></p>	<p><b>Unsecured Line</b> <b>&lt;=\$ 20,000</b></p>
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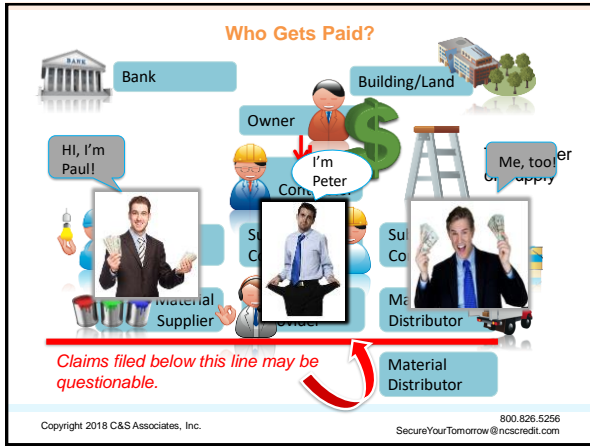
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### Two Line Option

<p><b>Job Account</b> <b>&gt;\$ 20,000</b></p>	<p><b>Unsecured Line</b> <b>&lt;=\$ 20,000</b></p>
--	--

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### Notice-Lien-Suit

- 96.5% of the time serving a notice will get you paid.
- 99% of the time a notice/mechanic's lien will get you paid.
- Only 1% of the time will it go to suit

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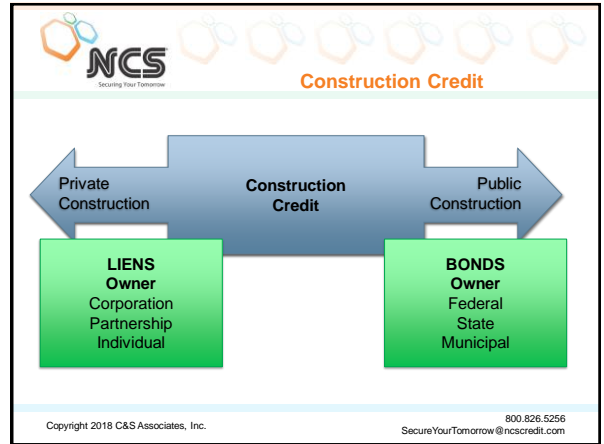
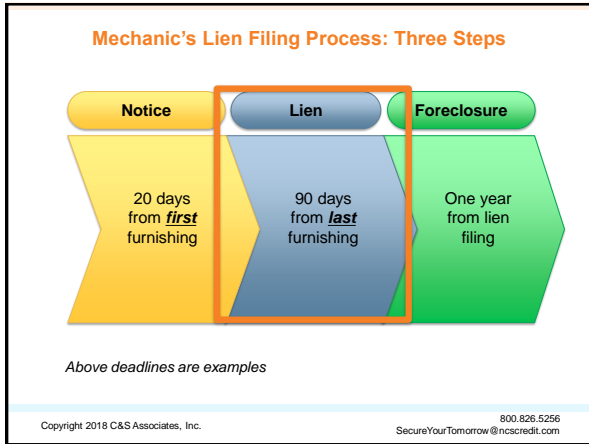
### Non-Statutory Preliminary Notices

Currently eight states do not require notices to preserve mechanic's lien rights.

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### Non-Statutory Notices

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### What is a Mechanic's Lien?

- A right given by **state law**
- Applies to suppliers of **goods or services**
- Allows supplier to impose (a lien) on property **improved** by their goods or services where payment has not been received
- Applies even if there is no contractual agreement between the owner and the creditor


The claim attached to the land as well as the buildings and improvements on that land..

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### How Much Can I Claim?

- In most states, you can claim the reasonable value of materials or work supplied to the project or the contract price, whichever is lower.


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### How Much Can I Claim?

- Typically you cannot claim attorney's fees, interest or court costs in a mechanic's lien
- You generally can, however, once you go to foreclosure/litigation

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### Over-claim Penalties

- Lien can be invalidated
  - May not be able to re-file if the deadline has passed
- Monetary penalties in some states
- Countersuit

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### Consistencies and Procedures

State	Deadline
OR	60 days of F.F.
CA	20 days of F.F.
MT	120 days of L.F.
ND	120 days of L.F.
WY	120 days of L.F.
NE	30 days of F.F.
CO	3 months of L.F.
UT	60 days of F.F.
NV	60 days of F.F.
MO	90 days of L.F.
OK	15th day of second month
AR	15th day of second month
LA	15th day of second month
MS	4 months 30 days of L.F.
AL	30 days of F.F.
GA	30 days of F.F.
FL	30 days of F.F.
IA	90 days of L.F.
MI	90 days of L.F.
IN	21 days of F.F.
OH	21 days of F.F.
PA	90 days of L.F.
MD	90 days of L.F.
DE	90 days of L.F.
VA	90 days of L.F.
NC	90 days of L.F.
SC	90 days of L.F.
WV	90 days of L.F.
ME	120 days of L.F.
NH	120 days of L.F.
MA	120 days of L.F.
RI	120 days of L.F.
AK	120 days of L.F.

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### When is your next deadline date? Consistency and Procedures

Invoice Date vs. Delivery Date

First Furnishing vs. Last Furnishing

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**When is your next deadline date?  
Consistency and Procedures**


**Strict Count, Count days... not months**


**Act early, avoid errors**

**Priorities/Policies**  
**Set 'em in stone. All jobs over.....**

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 **Ownership Verification**



The only true way to determine who owns a piece of property is to do a title search.

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 **Methods to Verify Ownership**

- Tax assessors' offices or websites
- Property ownership websites
- Sales staff
- Dodge reports



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 **Methods to Verify Ownership**

- Tax assessors' offices or websites
- Property ownership websites
- Sales staff
- Dodge reports
- Ask your customers?



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## Notice of Commencement


**Contains:**

- Property owner(s)
- Improvement
- Contractors
- Financing agent(s)
- Surety



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## Notice of Commencement



■ Notice of commencement states

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## NCS LienFinder™

- Database of recorded documents for construction projects
- Can be used to find construction project information
- Can also be used to determine creditworthiness of various parties on projects


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## Additional Methods to Verify Ownership

**Determining Factors**


- How much is at risk?
- How comfortable are you with the accuracy of the information you have?



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### Notice – Methods of Service



- Certified
- Registered
- Personal delivery
- Express mail or overnight delivery by an express mail carrier

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### California Case Law

**IGA Aluminum Products  
v.  
Manufacturer's Bank**

- IGA sent Welch a Preliminary Notice via first class mail
- California Statute says notice must be delivered by personal service, certified, or registered mail.
- Court found that the statute was unambiguously clear, and that IGA's notice was fatally defective

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**MLM Construction Co., Inc.  
v.  
Pace Corp.**



- “[i]n accordance with Arizona Revised Statutes § 33-992.01, this is not a lien and this is not a reflection of the integrity of any contractor or subcontractor.”

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**Niewind  
v.  
Carlson**




Chuck Niewind dba C&N Construction filed lien for work which he was unpaid.

***“must be in at least 10-point bold type.”***


Niewind's prelien notice was in 11-point font, complying with the first requirement, but it was not in bold or capital letters.

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### Construction Credit




**Three Critical Factors**

1. Credit Administration
2. Collection Efforts
3. Consistencies in Serving Notices and Maintaining Lien/Bond Rights

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### Critical Factors vs. DSO



# Factors "In Line"	DSO
3	45-55
2	65-75
1	85+



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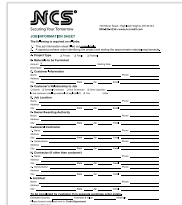
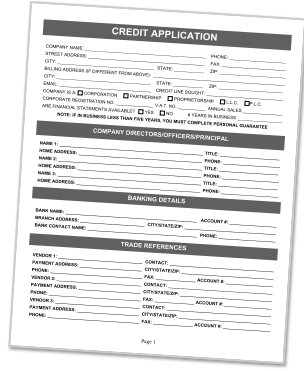
### Critical Factors vs. DSO

# Factors "In Line"	DSO
3	45-55
2	65-75
1	85+
0	

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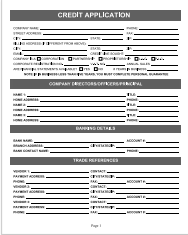
### Collecting Information

1. Credit Application
2. Job Information

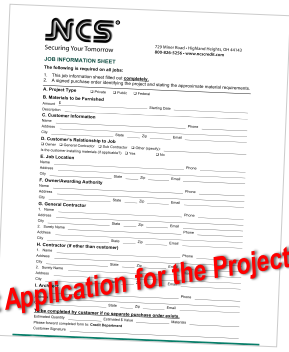
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### Collecting Information



**CREDIT APPLICATION**

1. Credit Application  
2. Job Information



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**JOB INFORMATION SHEET**

The following is required on all jobs:

1. The job information sheet must be completed.

2. A signed purchase order identifying the project and meeting the appropriate material requirements.

**A. Project Type**     New     Rework     Other

**B. Material to be Fabricated**     Steel Deck     Other

**C. Customer Information**

**D. Customer's Relationship to Job**

**E. Job Location**

**F. Ownership Authority**

**G. General Contractor**

**H. Contractor (if other than customer)**

**I. Lender**

**J. Architect**


Credit Application for the Project

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### Collecting Information

**UP front  
Accurate**

1. Credit Application  
2. Job Information



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**JOB INFORMATION SHEET**

The following is required on all jobs:

1. The job information sheet must be completed.

2. A signed purchase order identifying the project and meeting the appropriate material requirements.

**A. Project Type**     New     Rework     Other

**B. Material to be Fabricated**     Steel Deck     Other

**C. Customer Information**

**D. Customer's Relationship to Job**

**E. Job Location**

**F. Ownership Authority**

**G. General Contractor**

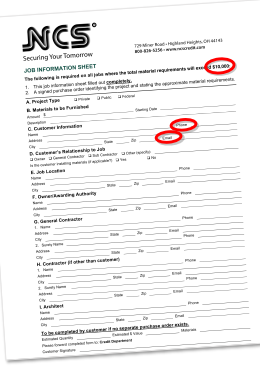
**H. Contractor (if other than customer)**

**I. Lender**

**J. Architect**

Credit Application for the Project

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**JOB INFORMATION SHEET**

The following is required on all jobs where the total material requirements will be \$150,000.

1. The job information sheet must be completed.

2. A signed purchase order identifying the project and meeting the appropriate material requirements.

**A. Project Type**     New     Rework     Other

**B. Material to be Fabricated**     Steel Deck     Other

**C. Customer Information**

**D. Customer's Relationship to Job**

**E. Job Location**

**F. Ownership Authority**

**G. General Contractor**

**H. Contractor (if other than customer)**

**I. Lender**

**J. Architect**

### The Project Credit Application

- Customer's legal name, address and relationship to the job
- Job location and owner or awarding authority
- Lender name and address
- General contractor's legal name and address
- Sub contractor's legal name and address
- Bonding company if public
- Architect's name and address

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### Construction Contract Administration


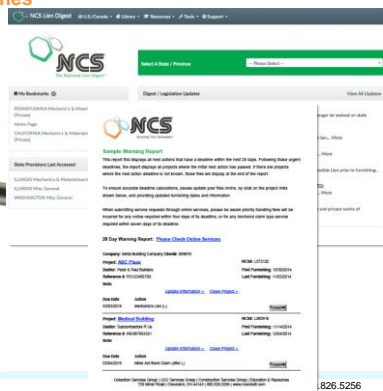


- Review Purchase Orders and Sub Contracts
- No lien clauses
- Pay when paid; pay if paid
- Other documents incorporated by reference

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### Lien Deadlines

= Leverage

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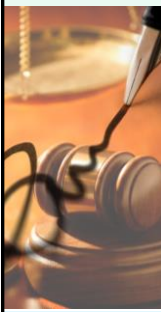
### Legislative Updates—Pennsylvania



1. Created a Construction Notices Directory
2. Added notice of commencement for projects over \$1.5M
3. Added notice of furnishing – within 45 days after first furnishing
4. Also adds a notice of completion
5. Residential goes unpaid balance

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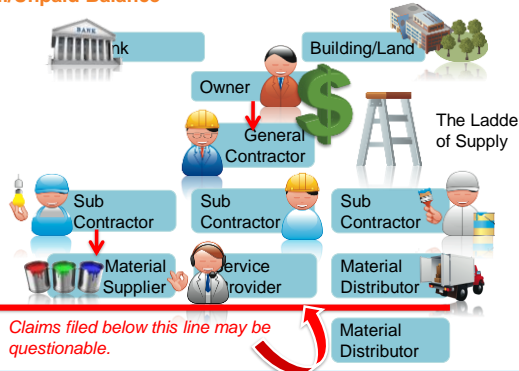
### Legislative Updates—Pennsylvania



- Subcontracts must contain notice that failure by a the subcontractor to timely file their Notice of Furnishing may result in forfeiture of their lien rights.
- They must also say that it is unlawful for an owner or general contractor to request or encourage a subcontractor not to file his Notice of Furnishing

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### Full/Unpaid Balance



Claims filed below this line may be questionable.

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### Unpaid Balance Lien States

- The lien is limited to the unpaid portion of the contract
- File the lien/Serve the notice as early as possible to "trap" the unpaid funds

Legend:  
■ Full balance lien states  
■ Unpaid balance lien states

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**FULL VS. UNPAID BALANCE LIEN STATES**

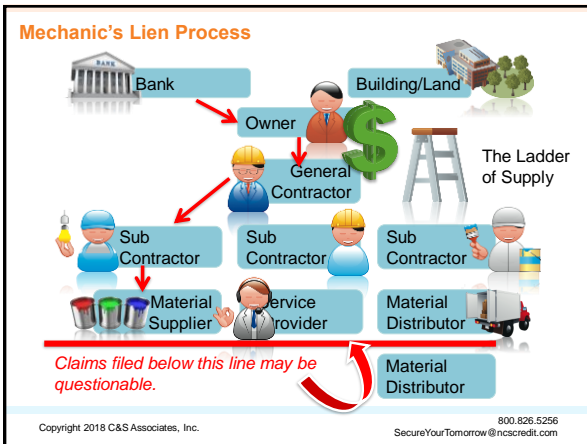
The following list pertains to Commercial Projects and provides general information. ALETS may vary based on the circumstances. Generally, state or local jurisdiction will be limited to the jurisdiction of the contract. Please refer to the state procedure page in the full lien collection information.

<b>FULL BALANCE LIEN STATES</b> The lien is generally enforceable for the full amount owed.	<b>UNPAID BALANCE LIEN STATES</b> The lien is generally limited to the unpaid portion of the contract. If for the lien is early applicable.
--	--

**Full Balance Lien States:** Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

**Unpaid Balance Lien States:** Alabama, Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.


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### Full Balance Lien States

- The lien is enforceable for the full amount regardless of payment made by the owner

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## Lien Waivers: General Guidelines




- Designate only certain people to have authority to sign a lien waiver.
- Have a standard lien waiver form, approved by legal counsel, for use.
- Like the lien statutes, lien waiver requirements differ in some states and a standard form is not always acceptable. Know the state requirements.

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## Lien Waivers: General Guidelines




- If your standard lien waiver form is not acceptable, make sure the language in the form you are being asked to sign does not put an undue liability on your company. Limit your acknowledgement only to the amount of money you received.

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## Lien Waivers: General Guidelines



- Make sure payment has been received before giving a lien waiver.
- Make sure the payment is good and that the check has cleared the bank.

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## Lien Waivers: Types

### WAIVER OF LIEN—FINAL

- **This says you have been paid in full** for all the material or services you provided under a specific purchase order.

### WAIVER OF LIEN—PARTIAL


- Need to put down the exact dollar amount you are relinquishing your claim for. **The partial amount is the amount for which you have received payment.**

### WAIVER OF LIEN—CONDITIONAL

- You provide the requestor the waiver for a specific amount with language stating the partial or final waiver is **conditional upon your receipt of payment.**

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## Mechanic's Lien Filing Process

### Foreclosure

**A legal action to enforce a Mechanic's Lien against real property. This usually involves a forced sale of the property at public auction with the proceeds of the sale being applied to satisfy lien.**

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## Lien Foreclosure Considerations



1. A process

2. Use a construction attorney

**Foreclosure**

3. Provide the whole file

4. Never say die!

5. Prepare to settle

6. Discuss strategy

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## Bankruptcy Considerations



- Who filed?
- Are there funds still held in trust?
- Is there equity in the property?
- Are there mortgages ahead of you?
- What is the date of your lien?
- Preference claims

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## Construction Credit

Private Construction

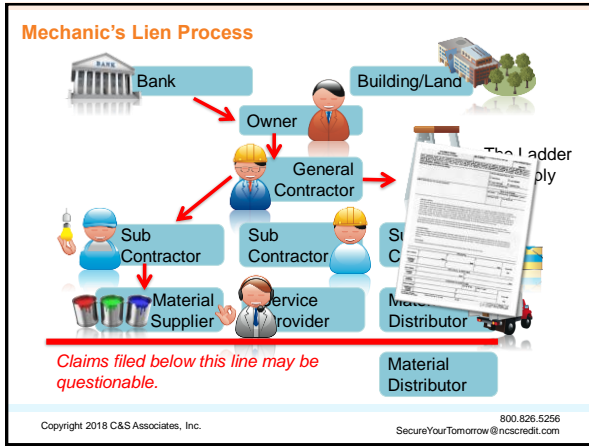
Construction Credit

Public Construction

**LIENS Owner**  
 Corporation  
 Partnership  
 Individual

**BONDS Owner**  
 Federal  
 State  
 Municipal

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### The Miller Act

Miller Act FEDERAL Projects      Little Miller Act STATE Projects

## Two Components

**1** Thresholds      **2** Time Frames/How to Claim

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Full or Unpaid Balance Lien States  
Notice to State  
Thresholds for Payment Bonds on Public Projects

My Bookmarks

California - Private Project

State Provisions List Accessed

MASSACHUSETTS Bond Claim (Public)

MASSACHUSETTS Mechanic's & Materialman's Lien (Private)

SOUTH CAROLINA Mechanic's & Materialman's Lien (Private)

REVISION OF SECURITY REQUIREMENTS

Part of a performance and payment bond will no longer be waived on state contracts when the amount of the bond does not exceed \$500,000. More

MINNESOTA - SUBJECT TO NOTICE OF BOND FOR LIEN

Effective 5/1/2015, Minn. statute to include provisions for bonding off mechanic's lien. More

MAINE - NOTICE OF REMOVAL OF LIEN

Effective 10/14/15, Maine statute specifies a time frame in which to release a lien. More

RHODE ISLAND - NOTICE OF POSSIBLE MECHANIC'S LIEN

Effective 5/15/15, Rhode Island statute now requires the contractor's Notice of Possible Lien prior to furnishing. More

LOUISIANA - NOTICE OF TRANSPORTATION AND DEVELOPMENT (NOTICE)

Effective 5/19/2015, Louisiana has amended requirements under public contracts. More

NEVADA - NOTICE RELATING TO CONSTRUCTION - RETAINAGE

The Nevada Legislature has amended the amount of retainage authorized on public and private works of improvement. More

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### Some Bond Thresholds

NCS The National Lien Digest

THRESHOLDS FOR PAYMENT BONDS ON PUBLIC PROJECTS

Each state has its own statutes requiring payment bonds on construction projects. Some states may require that the general contractor obtain a payment bond on their construction projects, and some states may require a payment bond when the total value of the construction project exceeds a certain threshold. Additionally, some states may have requirements for the parties on an all bonds. The following is a general list of public construction projects. There are many laws in some states, special rules may apply for governmental activities for some states.


State	Threshold	Requirement
Alabama	\$50,000 or more	at least 50% of contract price
Alaska	Amounting to \$10,000	50% of contract or \$1,000,000
Arizona	\$200,000 or more	40% of contract or \$5,000,000
Arkansas	\$50,000 or more	\$2,000,000 contract; \$1,000,000
California	exceeding \$25,000	equal to contract amount
Colorado	exceeding \$25,000	equal to contract amount
Connecticut	\$100,000 (not public works projects)	50% of contract price
Delaware	\$100,000 (not general contracts)	equal to contract amount
Florida	\$100,000	equal to contract amount
Georgia	\$100,000	equal to contract amount
Hawaii	\$100,000	equal to contract amount
Illinois	\$100,000	equal to contract amount
Indiana	\$100,000	equal to contract amount
Iowa	\$100,000	equal to contract amount
Kansas	\$100,000	equal to contract amount
Kentucky	\$100,000	equal to contract amount
Louisiana	\$100,000	equal to contract amount
Maine	\$100,000	equal to contract amount
Maryland	\$100,000	equal to contract amount
Massachusetts	\$100,000	equal to contract amount
Michigan	\$100,000	equal to contract amount
Minnesota	\$100,000	equal to contract amount
Mississippi	\$100,000	equal to contract amount
Missouri	\$100,000	equal to contract amount
Montana	\$100,000	equal to contract amount
Nebraska	\$100,000	equal to contract amount
Nevada	\$100,000	equal to contract amount
New Hampshire	\$100,000	equal to contract amount
New Jersey	\$100,000	equal to contract amount
New Mexico	\$100,000	equal to contract amount
New York	\$100,000	equal to contract amount
North Carolina	\$100,000	equal to contract amount
North Dakota	\$100,000	equal to contract amount
Ohio	\$100,000	equal to contract amount
Oklahoma	\$100,000	equal to contract amount
Oregon	\$100,000	equal to contract amount
Pennsylvania	\$100,000	equal to contract amount
Rhode Island	\$100,000	equal to contract amount
South Carolina	\$100,000	equal to contract amount
South Dakota	\$100,000	equal to contract amount
Tennessee	\$100,000	equal to contract amount
Texas	\$100,000	equal to contract amount
Utah	\$100,000	equal to contract amount
Vermont	\$100,000	equal to contract amount
Virginia	\$100,000	equal to contract amount
Washington	\$100,000	equal to contract amount
West Virginia	\$100,000	equal to contract amount
Wisconsin	\$100,000	equal to contract amount
Wyoming	\$100,000	equal to contract amount

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### What is a bond?




- A **contract**, a **surety**, or a **guarantee agreement** that contains the promise of a third-party (bonding company or surety) to pay a fixed sum if certain acts are not performed.
- The acts are typically non-performance or non-payment.

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### Defining Terms

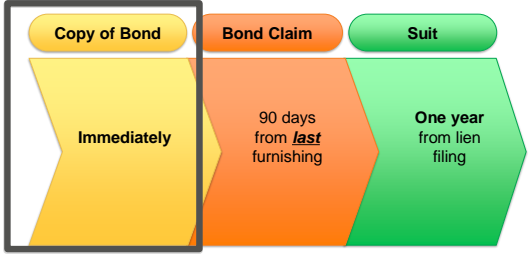


- Surety = Bonding Company
- Principal = General Contractor
- Obligee = Owner
- Beneficiary = Performance - Owner
- Beneficiary = Payment – Subs / Suppliers

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### Bond Claim Filing Process: Three Steps



**Copy of Bond** → **Bond Claim** → **Suit**


**Immediately**      90 days from *last* furnishing      **One year** from lien filing

*Above deadlines are examples*

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### Payment Bonds: Considerations



- Rules of the game. Get a copy up front. ←
- Bonding companies are in the business of collecting premiums not paying claims.

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### The Project Credit Application

- Customer's legal name, address and relationship to the job
- Job location and owner or awarding authority
- Lender name and address
- General contractor's legal name and address
- Sub contractor's legal name and address
- Bonding company if public
- Architect's name and address

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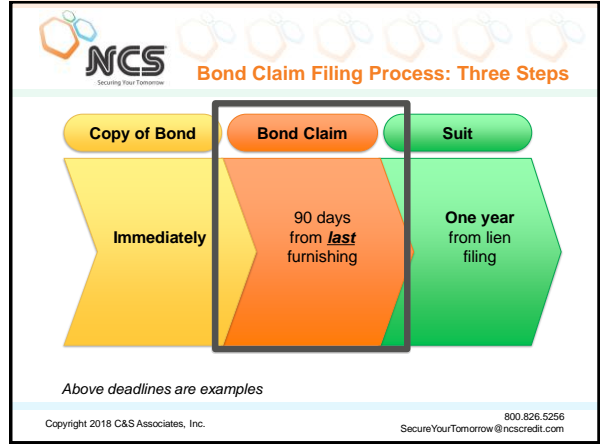
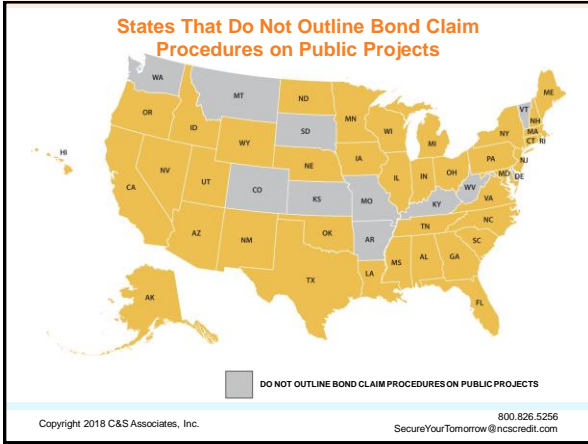
### Where can I get a copy?

- Owner
- General Contractor
- Surety
- Architect?
- LienFinder™

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### Payment Bonds: Considerations

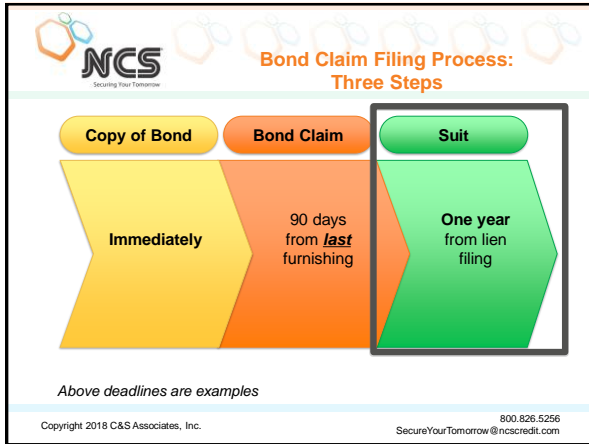
- Rules of the game. Get a copy up front. ←
- Bonding companies are in the business of collecting premiums not paying claims. ←

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### Payment Bonds: Considerations

- Rules of the game. Get a copy up front. ←
- Bonding companies are in the business of collecting premiums not paying claims. ←
- Sue me, sue you. ←

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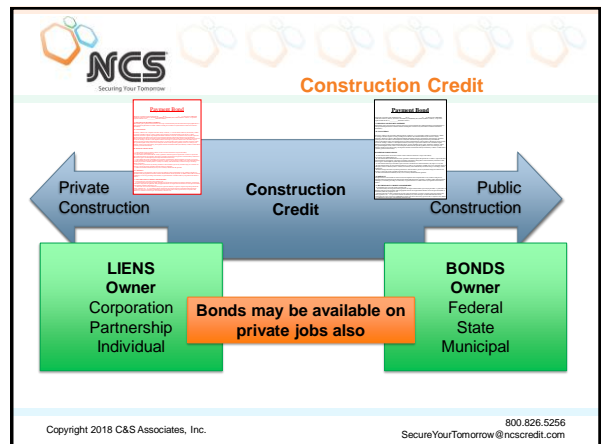


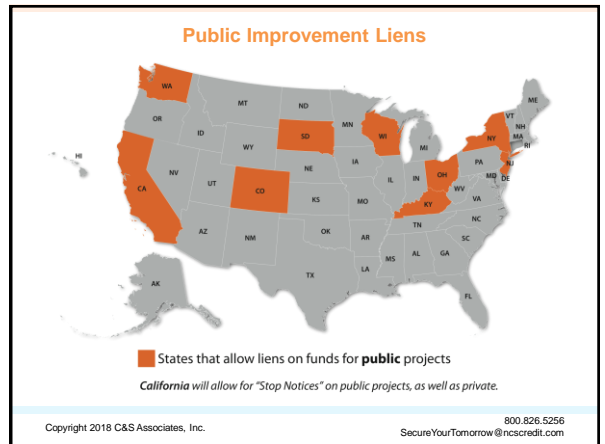
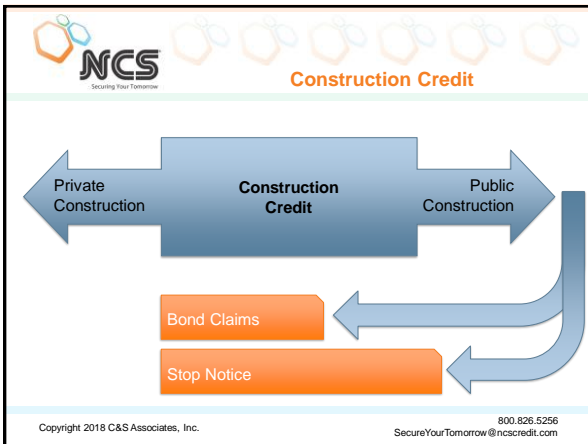
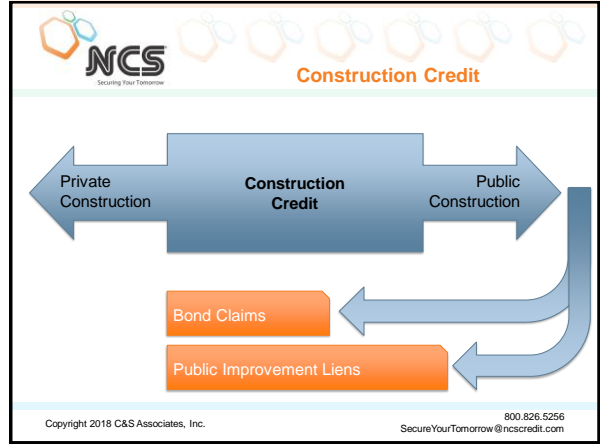
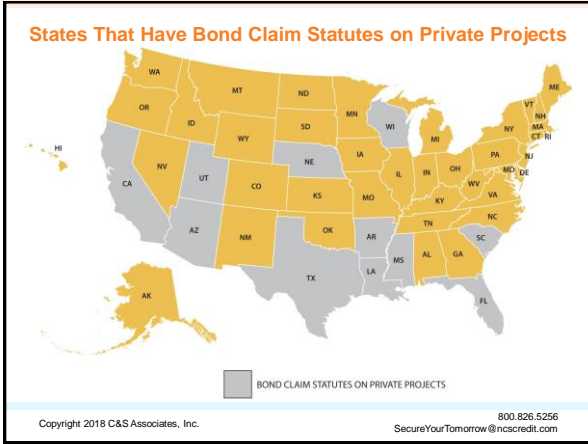
**Payment Bonds: Considerations**

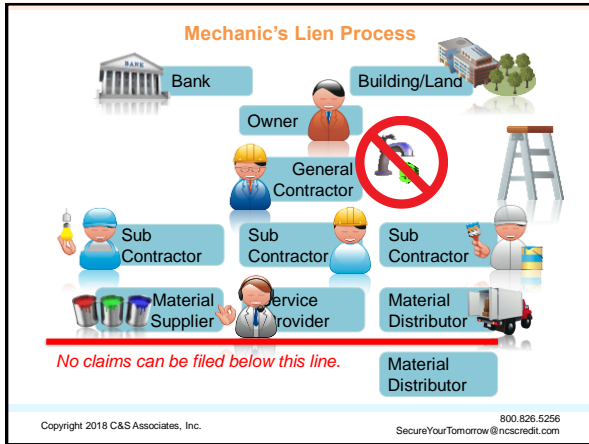
A construction worker in a yellow hard hat and safety vest holds a red octagonal **STOP** sign.




- Rules of the game. Get a copy up front. ←
- Bonding companies are in the business of collecting premiums not paying claims. ←
- Sue me, sue you. ←
- Good GC/Good Bond—Bad GC/Bad Bond ←
- Be careful who you trust. ←

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**Mechanic's Lien**  
Lien on property

- Building
- Land


**Bond Claim**  
Lien on insurance  
policy or  
guarantee

- Bond company

**Public Improvement Lien**  
Lien on unpaid  
funds

- Unpaid funds

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## Questions & Comments

*Thank you for your time!*


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**Jerry Bailey:** [jbailey@nscscredit.com](mailto:jbailey@nscscredit.com)

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## Questions & Answers

# Questions & Answers

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