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OP-ED: How to use a vendor's lien rights to prompt payment

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Typically, contractors are required to keep property free from downstream lien claims and, therefore, the contractor may instinctively refrain from assisting the vendor in preserving lien rights. Most material and equipment vendors, however, independently protect their lien rights. Thus, a contractor's failure to cooperate with a vendor in the lien process may be futile and, potentially, against the contractor's best interests.

If an owner stalls or refuses to pay the contractor due to issues that are unrelated to the vendor, the vendor's lien rights may become a tool for the contractor to use as leverage to prompt an upstream payment for that vendor's bills for the project. This payment benefits the contractor because it could absolve the contractor's liability to the vendor.

The contractor can facilitate preservation of the vendor's lien rights by providing the vendor with all necessary lien notice information for each project, including information regarding the general contractor, the property owner, the property address and any lenders. Of course, with this information, it is the vendor's responsibility to take all necessary measures to protect its lien rights such as sending pre-lien notices to all parties, including any known lender on Oregon projects.

Whenever possible, to preserve a



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vendor's lien rights, the contractor's purchases from the vendor should be identified for each specific project, even if the product is not being delivered directly to the job site. This enables the vendor to track delivery dates and outstanding balances for each particular project, for purposes of preserving lien rights.

If and when the contractor determines that payments may be delayed on one or more projects, the contractor should consider engaging in regular communications with the vendor regarding anticipated, approximate lien filing deadlines. With that information, the contractor can work with the upstream parties, including the owner and/or the lender, to attempt to facilitate payment to the vendor prior to the vendor's lien filing deadline.

Note that the vendor may still need to file its lien claim if the payment funds will not clear until after the lien filing deadline. If that is the case, the vendor can release the lien once the funds clear. Wired funds are usually preferable if a lien deadline is impending, because wired funds clear much faster than funds from a cashier's check or

personal check.

Sometimes, despite the parties' efforts to prompt payment, the vendor must record a lien. Filing a lien, however, does not necessarily mean that the contractor should stop cooperating. Rather, the contractor should continue to try to facilitate payment before the vendor's lien foreclosure deadline. Once a lien foreclosure lawsuit is filed, legal fees and expenses may be incurred very quickly, and the vendor may have the right to recover its legal fees and expenses under its lien claim or under its agreement with the contractor.

Thus, it is ideal to resolve the matter before the legal fees and expenses significantly contribute to the amount of the vendor's claim. To the extent the owner or lender understands this, one of them may be willing to pay the vendor to avoid a lien foreclosure, and address its issues with the contractor separately. If no upstream payment is forthcoming, to mitigate exposure to legal fees, the contractor should consider satisfying the lien amount or agreeing to prosecute the vendor's lien claim.

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