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Pursuing Delinquent Accounts Receivable: When to Contact an Attorney

INSIGHTSARTICLE

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In the construction industry cash flow is imperative to keep projects moving and your company profitable. Unfortunately, sometimes a project is slow to pay, for whatever reason. As a rule of thumb, it is generally wise to consult your attorney as soon as an account has aged 45 days from the invoice date. Often, contractors and subcontractors are surprised to discover that there are a gauntlet of notice requirements and deadlines that must be met in order to recover payment on a delinquent account. This article covers some of the key deadlines.

Notice Provisions under Statute or in the Contract

The first potential deadline is noticing the claim. Some contracts require notice of the claim prior to filing suit or within a certain time period. For example, many AIA contracts envision a period of escalation, where a claim is first noticed to the other party and then submitted to an Initial Decision Maker (often the Architect of Record). Other contracts might require mediation prior to filing suit.

Additional notice requirements might also be applicable if you seek to file a payment bond claim or a mechanics' lien. If the Pennsylvania Construction Notices Directory is utilized on the project, then, a notice of furnishing may have been required at the start of your work. Also, depending on your tier in the contract chain, a notice prior to filing a bond claim or lien may be required. These notices can arise quickly, and it is typical for payment bond claims to require notice of non-payment within 90 days of last furnishing labor or materials.

If notice is not given in timely fashion, the claim may be lost. Because notice provisions can arise very quickly, it is wise to consult your attorney as soon as an account has aged 45 days past invoice date, to give sufficient time to make notices as required by contract or statute. Of course, if your contract requires more immediate notice deadlines, then you should be addressing those deadlines or consulting your attorney even earlier.

Deadlines for Filing Suit

In addition to notice requirements, all claims for payment have a drop-dead date for filing a lawsuit. Generally, the outermost limit is the default statute of limitations which tends to run three or four years from the breach of contract. But that can be deceiving and inaccurate. Some contracts specifically shorten the statute of limitations. For example, payment bonds often have a one-year deadline for filing suit. These shortening of deadlines are generally enforceable.

Also, some causes of action have different statutes of limitation. Mechanics' liens are controlled by the statutes in each specific state. It is common for mechanics' lien statutes to have a deadline for filing suit somewhere in the range of four to six months. Additionally, once you prepare to file suit, it might occur to you that some of the claim arises from lack of payment, but other parts of the claim might arise from other losses such as negligence or other claims. Some of those claims might have a statute of limitations deadline that is shorter than breach of contract.

Ultimately, each project has its own challenges. One significant problem is cash flow, and contractors often mistakenly believe that there are long deadlines for pursuing payment. As noted above, that is not always the case, and a good rule of thumb is to contact your attorney to review the situation as soon as your invoice date has aged 45 days, to ensure that all notice and claim deadlines are satisfied. Saxton & Stump attorney Ron Pollock is available to discuss how our Construction Law Group can advise and assist on disputes arising from construction projects, including slow pay situations.

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