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PROTECTING YOUR RIGHTS TO GET PAID

There are a number of ways small business owners can protect their right to be paid. The following is a review of some of the more common methods. This information is only a partial summary and is not legal advice. The reader is advised to seek the advice of a qualified attorney to advise them on the appropriate legal protections and the proper application of those protections. Seller should put the terms of the sale into a written agreement, be sure the agreement spells out what happens if the buyer fails to pay, and verify who the product is being sold to, a person, sole-proprietorship, partnership, or corporation and verify if the buyer is a partnership or corporation that it is an established legal entity. Trying to secure payment when selling to a not-legally established-buyer can greatly complicate protecting your interests.

There are primarily two major groups of protections:

SECURITY INTEREST

Where the seller retains title to the product sold until buyer has paid all or an agreed portion of the cost prior to the title for the product being transferred to the buyer.

COMMON APPLICATIONS OF SECURITY INTEREST

At the Time Of Sale Of A Product

At the time of the sale of a product, the buyer and seller execute a written "security agreement" which states the ownership of the product between the seller and the buyer.

This is done through a written agreement and the completion of either a UCC-1 or UCC-2 form (Uniform Commercial Code) A UCC-1 form is for personal property (not attached to real property) and filing the form with the Department of Licensing. A filing fee of \$12 must accompany the filing of a UCC-1 form (form available at most office supply stores). For more information on the filing of UCC-1 forms, call the WA Department of Licensing at 360-753-2523. A UCC-2 form is for items that become attached to real property (jetted bath tub for example). The UCC-2 form must be filed with the local county clerk or auditor where the property is to be located. The UCC-1 form has a life of 5 years unless renewed

Upon payment by the buyer of the agreed to amount where the title of the product is to transfer from the seller to the buyer, the seller is obligated to complete and UCC-3 form and file it with the WA Department of Licensing or county if it is to cancel a UCC-2. There is no filing fee to file a UCC-3 to terminate a UCC-1. There can be a penalty and a claim for damages for failure to file a UCC-3 form when due, if a UCC-1 form has previously been filed on a product.

When Securing The Payment Of A Debt

A person may request a security interest in items owned by another person to secure the payment of a debt of the other person. Both parties must agree to the security interest for it to be established. (Example: Person 1 owes Person 2 for previous work done and/or materials supplied. Person 1 is delinquent with their payment to Person 2. Person 2 can request a security agreement from Person 1 as part of a collection procedure.)

It is strongly recommended that prior to establishing a security agreement, the party who wants to have the security interest first do a search on the item(s) to be pledged as security. This is done by filing a UCC-11R form with the Department of Licensing (if the items to be used as security are located in Washington State - if they are in another state, file the UCC-11R form with the appropriate agency in that other state) along with a fee of \$17 or \$24 depending on the request. The Department will search its records to see if the item(s) pledged for security are already subject to a security agreement.

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LIENS

A lien is a claim by one person against the property of another person. In most cases, a lien is subordinate to a security interest or some other interests like a mortgage holder having a priority interest over that of lien holders on a house or other real property. There are many different types of liens, but they take primarily one of the two following forms:

- a. Some liens are statutory - meaning they have been established by a law passed by the Legislature and signed by the Governor. Most statutory liens require the filing of documents to claim a lien and a court action to enforce the lien.
- b. Some other liens are common law liens - meaning they exist as part of historic practices and procedures that have been in common use for a long time. Much of the U.S. common law dates back to practices and procedures in place in England before the Declaration of Independence.

We will summarize some of the more common liens used by small businesses to secure payment, but this is not a review of all forms of liens.

STATUTORY LIENS (Under Washington State Law)

Mechanics' and Materialmen's Liens - Commonly used by construction contractors, subcontractors and material suppliers to secure payment for construction work and construction materials supplied to the improvement of real property. The process to use these liens is quite complex. IBA Members can request a review prepared by IBA by calling 425-453-8621. The Mechanics' and Materialmen's Lien law can be found at RCW 60.04.

Chattel Liens - A lien against an item of personal property (an item not attached to real property) for which the person claiming the lien has provided labor or materials for. A car, television or other item is a chattel. State law does require the filing of documents with the appropriate county auditor and participation in court procedures to enforce a chattel lien. The Chattel Lien law can be found at RCW 60.08.

Other Types Of Statutory Liens In Washington State Other commonly used statutory liens are listed below with the appropriate reference to the portion of the state law dealing with the lien. There are over 50 statutory liens in Washington State, many to assure payment of various government taxes and fees.

Personal Property Lien - RCW 60.10

Lien of Vessels and Equipment - RCW 60.36

Liens for Transportation, Storage, Advancements, Etc. - RCW 60.60

Labor Liens On Franchise, Earnings and Property of Certain Companies - RCW 60.32

Lien on Dies, Molds, Forms, and Patterns - RCW 60.84

Landlord's Lien For Rent - RCW 60.72

Crop Liens - RCW 60.11

Processor and Preparer Liens for Agricultural Products - RCW 60.13

Labor for Labor and Services On Timber and Lumber - RCW 60.24

Liens of Doctors, Nurses, Hospitals, Ambulance Services - RCW 60.44

COMMON LAW LIENS

Possessory Lien - When a person who is owed money by another person holds an item owned by the person owing the money until the money is paid. Possessory liens are often used by auto repair businesses to assure payment for repair work done. **CAUTION** Auto repair firms must meet written estimate requirements before exercising a possessory lien. Other firms like computer repair firms, equipment repair firms, etc. may also exercise a possessory liens. **CAUTION** Seek the advice of a qualified attorney before exercising a possessory lien.

Other Types of Common Law Liens (most operate in the same way as a possessory lien)

Artisan's Lien

Vendor's Lien