



A Recession May Be Coming: Tips for the Contractor

Earlier this week, I heard on the radio that a recent study found a full 60% of CEOs surveyed believe the U.S. will fall into a recession within the next 18 months. Setting aside Mark Twain's views on statistics, a simple 10-minute watching of the nightly news these days would lead any seasoned business owner to believe those CEOs might be on to something. So, if you are a small business owner in the trades, what should you do to prepare?

Make Sure Your Documents Are In Order

For projects that are already awarded or in process, take a quick once-over and make sure your files are in order. Have you been given all project schedules and have they been entered into the system so that you can make sure they are being followed accordingly? Do you have a complete list of the materials you are supplying that has been approved by the GC and/or owner? Have those been paid for such that they should be billed? If the project is bonded, do you have copies of all payment and performance bonds? Does your contract have a pay when paid or pay if paid clause? In the event that payment becomes an issue, you will certainly need some or all of those to make a claim and protect your interest. As a lawyer who deals daily with subcontractors, I can tell you the best contractors are those that are highly organized and have systems in place that allow them to easily put their hands on key documents at a moment's notice.

If You Are Not Getting Paid, File A Lien

Yes, I know this sounds simple, but so many times I come across contractors that have haphazard internal systems in place or simply do not want to "rock the boat." They may be 45 days into a net-30 invoice, but "we've worked with these guys forever" and "trust them." 45-days after that, the time to send a lien notice or file a lien has passed and now they cannot perfect a claim.

My bottom line: do not wait to file a lien! Regardless of feelings or relationships, the threat of a lien is the best tool in a contractor's tool belt that will get them paid. If you need to add some niceties into the lien notice or the lien itself to "soften" the tone that is fine. Heck, make a call beforehand to let them know you are filing and explain the situation. Bottom line: Do Not Wait! If you do not know

the lien laws in your state (mainly the deadlines) engage a lawyer to talk you through the process or handle the filings altogether. Trust me, it will be money well spent when things go sideways.

Make A Plan To Navigate Bankruptcy

The bankruptcy lawyers in my office are expecting to see an uptick in owner and contractor bankruptcies toward the end of this year and well into 2023. If you find yourself involved into a project that is plagued with a bankruptcy, you should have a plan.

In bankruptcy there are the “haves”—the secured creditors—and the “have nots”—the unsecured creditors. Being secured is always better and, going back to my prior point, the best way to be secured is to have a properly perfected lien on the project. In the event an owner goes belly-up, the contractor with a lien will be automatically secured in the bankruptcy. However, if the general contractor falls into bankruptcy, you will then need to submit a proof of claim to the bankruptcy court and/or may also be entitled to reclaim some materials furnished to the project. In each of these instances, engaging a lawyer who can point you in the right direction is absolutely key, as deadlines for contractors under the bankruptcy rules can be short in many instances. If you hear someone ahead of you in the food chain is about to declare bankruptcy (or already has), call a lawyer. A couple of hours of their time may be well worth the amount you stand to recover!