

The Risk Illuminator

A Quarterly publication for our clients by **Lender's Quality Assurance**, a *Critical Edge Group* company

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Dear LQA:

Q: I've been receiving current lien-waivers from subs on my project; why did I receive a lien notice from a supplier who is not a listed sub?

TS, Albuquerque, NM
A: Generally, anyone who supplies labor or materials to a jobsite is a potential lien claimant. Even though you are diligent in collecting lien waivers from subs, these subs are creating potential lien claimants thru parties that may supply them with materials and/or services. Even though you
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Don't Overlook Project Close-out Issues

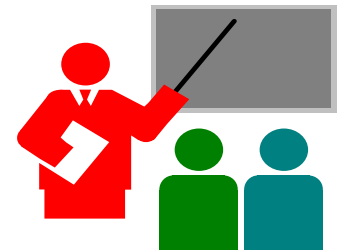
Certain issues should be addressed by a lender and owner as a construction project nears completion to help insure that: a) the lender's security interest in the collateral is perfected, b) the collateral value is not impaired, and c) asset carrying costs will be minimized and potential market value maximized in the unlikely event of a subsequent foreclosure.

Prior to disbursing the final draw and/or releasing retainage, the lender should receive a "Certificate of Substantial Completion" and an agreed upon Architect's "Punchlist" of remaining items to be completed. Both documents should be executed by the owner, Architect of record, and contractor. The project professionals will thus be opining as to the project's completion status, in addition to the lender's inspection firm; the lender will then have the necessary approvals from all neces-

sary parties, allowing it to advance the final draw proceeds. A copy of an irrevocable "Certificate of Occupancy" (C of O), ensuring that all governmental approvals and sign-offs have been received, should also be obtained by the lender.

Additionally, the owner & lender should receive a set of "As-Built" plans & specifications. The GC should provide copies of the equipment warranty, service, and operating manuals, as well as all equipment guarantees, warranties, and maintenance agreements. This information will prove to be invaluable to the lender if it is ever faced with the prospect of owning, operating, and/or marketing the property.

To insure that the lender perfects its security interest and that the owner has clear title, the lender
 see page 2 - Close-out



Hard-hat

"Preliminary Lien Notices"

Definition: Specific written statutory notice given to a project's actual or "reputed" construction lender, contractor, and owner which notifies them that labor and/or materials have been supplied to their project and, therefore, a potential lien has been created. It is NOT a lien, in and of itself, but an intent to lien. In most states, it is a condition precedent to filing a mechanic's lien.

Each state has specific statutes and each project &
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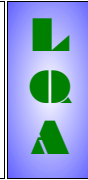
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THE RISK ILLUMINATOR

may have made the required subcontractor advances, they may have failed to pay their suppliers or vendors for same. Lenders do not need to respond to these notices; they do, however, need to add these names to a list of final lien waivers needed to appropriately close-out the subject project (See "Hard Hat University").

Call **LQA** @
(602) 604-8999

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should confirm that all necessary lien waivers have been received and that they are accurate, properly executed, and current. In addition, the Mechanic's Lien status should be confirmed via a title "Bring-down". A title company endorsement, insuring against any encroachment, right-of-way, boundary line, or zoning problems should also be arranged. The lender's counsel should be sure to obtain, and file in the county records, a "Notice of Completion" executed by the owner. This filing will initiate deadlines for any poten-

tial lien claimants. A fixed period of time, which varies by state, is allowed subsequent to the cessation of work for a subcontractor or supplier to file a lien. Finally, the lender should make sure that the Builder's Risk insurance will be satisfactorily replaced with "all-risk" property coverage.



Notice - from page 1

contract have unique conditions. In Arizona, a Preliminary 20 Day Lien Notice is required to be provided within 20 days of commencement of the potential claimant's furnishing labor, materials, machinery, or fixtures to

the jobsite. If necessary, a lien must then be filed within 90 days of completion of that job; generally, this may be the issuance of the Certificate of Substantial Completion or the recorded Notice of Completion, again depending upon the claimant's individual circumstances. Timeframes are strictly enforced with few exceptions. Notices must include the potential claimant's name, address, a description of the items supplied to the project, and the value of the labor and/or materials supplied to the jobsite.