

## When the Customer Won't Pay

by Quenda Behler Story

**B**ad things happen in the construction industry when the economy gets rocky. Work is scarce, and it's hard to get paid. I can't help you with the work part — but I can tell you how to get paid.

Let's assume you're about to send off that 60-day, 90-day, or 120-day invoice, and you decide you don't want to keep sending bills to this customer. It's a waste of time. But what's the alternative? Mediation? Arbitration? Or should you just sue the person?

### Arbitration and Mediation

Arbitration is the best choice when the dispute is the result of a misunderstanding — about the terms of the contract, for example. Does “paint-ready” refer to dry-wall or primer? What does “completion” mean? That the last worker is finished? That there's been a walk-through? That the occupancy permit has been issued?

A big advantage to arbitration is that you can find arbitrators who understand what these things mean. This is very different from litigating: You can't count on the judge knowing anything about construction.

Mediation usually works best when the problem revolves around a more global dispute, or a personality conflict. It's not that the parties don't understand each other; it's that they don't agree on the best way to go forward.

### Small-Claims Court

But what if the real problem is that the guy simply won't pay? Deciding exactly what is going on with the customer is a gut call on your part. Payment disputes often appear to be misunderstandings when they're actually something else.

Perhaps the customer is *saying* that you didn't do the job as directed, that the work isn't what was promised, or that it isn't good enough. But in reality, he may just want to renegotiate the price after the fact. He talked to his friends and neighbors and discovered that they got a better deal than he did.

I'm not talking about the person who really can't pay,

whether because of a layoff or an illness or some other overwhelming setback. I'm talking about the person who can pay but won't. When this is the case, your best bet is probably small-claims court.

Almost every jurisdiction in the country has something on the order of a small-claims court, where — if the debt is small enough — you can sue and represent yourself. You won't have to hire an attorney, pay expert witnesses, or start a lawsuit that can drag on for years. And you'll get a decision much faster than you would if you litigated, mediated, or arbitrated.

So how small is small enough for small-claims court? The qualifying amount could be as much as \$10,000 or as little as \$500. It depends on where you live. Call your county clerk and ask.

**Filing a complaint.** If you decide to take this route, you will have to pay a small filing fee and complete a form to describe the work you did, who you did it for, and how much the homeowner owes you. The court will set a trial date and notify the plaintiff that he needs to appear.

**What to bring.** When you go into court, take your records with you — every single piece of paper that relates to the job. That includes copies of the contract, the estimate, invoices for materials, and bills you have sent. You should also bring the notes from your phone conversations with the customer.

If it was a small job and you didn't bother with a written contract, don't despair. Not every contract has to be in writing — and most courts make it difficult for the property owner to raise this issue as a defense after the work is done.

Also, bring pictures. This is where that digital camera will be worth its weight in gold. Bring photos that show the job site before you started work and after you finished. (And if you didn't take those pictures, start doing so — now.)

Finally, don't forget your license. Some jurisdictions require you to be licensed before you can win a judgment against a nonpaying client.

**What to do in court.** The most important thing to

remember is that you can do this. You don't have to be Perry Mason — this isn't that kind of court. You already have the skills you need: You know your business, and you know what you did when you were on the job site. To help yourself relax, picture the judge as someone like an inspector or another customer, and then just tell him or her what happened.

*If you win.* If the judge finds in your favor, you'll still have to collect from the customer — which is the problem that brought you to small-claims court in the first place. But once you've won, the legal system can help you collect. You may be able to garnish the customer's wages or attach his property or bank account. The court clerk can explain how to do this.

*Quenda Behler Story has practiced and taught law for more than 25 years.*