

LEVY • VON BECK
& ASSOCIATES, P.S.

SANFORD R. LEVY
DAVID VON BECK*
CHARLES P. MORTIMER*
KATIE J. COMSTOCK
SETH E. CHASTAIN
JUDY K. BROWN**
*Washington/Oregon Bars
**Washington/California Bars

ATTORNEYS AT LAW
600 University Street, Suite 3300
Seattle, WA 98101
(206) 626-5444
Fax: (206) 382-5527
www.levy-law.com

OFFICE MANAGER
DOLORES EVANS
LEGAL ASSISTANTS
TED LEVY
REBECCA BOWERS
KIRSTEN KENNING
CHESSA TACHIKI

LIEN PERFECTION SERVICES AGREEMENT

January 17, 2014

Dear Client:

This Lien Perfection Services Agreement describes the Firm's procedures for processing preliminary notice, lien and bond claim requests, and sets out our mutual responsibilities. We will attempt to process all requests for preliminary and final notices of claims and stop notices using the appropriate state forms, and with notice to the correct parties, following the procedures and subject to the limitations described in this Agreement. Please note that our firm is only licensed to practice law in the States of Washington, Oregon and California. Levy von Beck & Associates does not provide legal advice or interpretation of the lien statutes in other states. Rather, our firm will offer to verify construction project information and mail preliminary notices in accordance with the published statutory forms and requirements of the state where the project is located. The preliminary notice forms used by our firm reflect content and formatting requirements as set forth in applicable published statutes. The deadlines for sending preliminary notices are set forth in the Lien Law Summaries on our website, which in turn also reflect information and guidelines that are available as a matter of public record. The summaries do not reflect an analysis or interpretation of the statutes and are meant solely as a guide for you to decide if and when you would like to send a preliminary notice or proceed with a claim of lien.

With regard to lien claims, there are a number of states that restrict the drafting of lien claims to attorneys that are licensed to practice law in the state where the construction project is located. There are also states that require an appearance in court by a licensed attorney as part of the process for the court to authorize a claim of lien. In those instances, our firm will need to forward your referral to associate counsel practicing in the applicable state for further processing. With regard to states where non-attorney agents are allowed to prepare lien claims, we can accept your referral and will draft the lien by completing the required elements of the lien form as required by the state statutes. However, in all such instances, the client must verify and sign the lien claim before transmittal for recording. Also, please be aware that our firm cannot provide specific legal advice relating to your legal rights for construction projects outside of Washington and Oregon.

The information in this Agreement is provided to ensure that you understand and acknowledge the procedures the Firm follows for verification and production of preliminary notices, lien and bond claims and stop notices, and the limitations that apply. The topics reviewed include:

1. Verification of project information
2. What happens when we cannot achieve reasonably complete verification
3. How much lead-time is necessary when referring a lien claim
4. Clarification of our liability in the event that a lien or bond claim is not enforceable
5. Fraudulent or frivolous lien filing

Please note again that lawyers at Levy • von Beck & Associates, P.S. are licensed to practice law only in Washington and Oregon. Requirements that relate to transacting business in the state where your projects are located should be addressed by and through your corporate counsel or an attorney in the state where your project is located before you perform services or ship materials.

As you know, lien and bond claims provide an effective mechanism for enhancing your security when selling to or performing on a construction project. This credit tool is available for federal construction projects as well as for private and state projects. In most instances, suppliers contracting with at least a first tier subcontractor will be able to take advantage of these protections. It is the client's responsibility to ascertain at what level its customer is participating. If your customer is a supplier, then lien rights may not be available. Levy • von Beck & Associates will attempt to gather this information at the time of verification and report any issues we identify. It is not, however, the main focus of the Firm's efforts, and we do so only as a professional courtesy.

Before proceeding to the Verification information listed below, it is important for clients to understand that the lien statutes vary significantly from state to state. This is true not only for notice requirements and timelines, but also with regard to **WHO** can file a lien. For example, Mississippi only gives lien rights to those parties contracting directly with the property owner. North Carolina generally limits lien rights against real property to the general contractor, but also permits a first tier subcontractor to file under certain circumstances. Washington has expanded the right to file a real property lien to any level of subcontractor as well as a supplier to any level of subcontractor. Oregon's statutes give lien rights to parties contracting with at least a first-tier subcontractor, but do not address the rights of parties contracting with second tier subcontractors.

Our firm cannot verify the tier level of your customer on a project because that is a contractual issue as between your customer and their customer. It is the client's responsibility to make that determination before granting credit and to check the above listed site. In the alternative, we would be glad to field a question by telephone or email to help you determine whether lien rights are available.

At the end of the day, however, the fact that we have sent a preliminary notice based on your request should not be construed as assurance that you will have lien rights on a particular project.

1. Verification of project information. It is essential for clients to recognize that the Firm must have a certain amount of reliable project information at the time of referral of a preliminary or final notice of claim. That information includes:

1. Name, address and telephone number of the client's customer
2. First date that labor, services and/or materials were furnished
3. Type of services or materials furnished, and total projected sales
4. Project name and location in the form of a street address, city and state
5. Name and telephone number or address of the prime (general) contractor

At the present time, only six (6) states require a Notice of Commencement ("NOC") on construction projects. This is a notarized document providing the names of all parties who must receive a copy of the preliminary notice and/or lien claim. The six states are Florida, Georgia, Michigan, Nebraska, Ohio and South Carolina. To the extent that an NOC has been signed by the property owner and properly recorded, the Firm can rely on the information for purposes of producing the preliminary notice and notifying required parties.

In states not requiring NOCs, the process for gathering reliable project information, including ownership, is problematic at best. Sources that may provide project information include but are not limited to:

- Title policies
- Building permits
- General contractors
- Property owners
- Tax assessors
- Posted notices of construction at the job sites
- Copies of construction contracts, if available

The Firm will attempt to utilize more than one of these sources to secure reliable information; however, none of the information gathered from third parties can be considered infallible. Additionally, if a client asks the Firm to refrain from contacting one or more of these sources of information, the verification process may be compromised.

We strongly recommend that clients authorize us to purchase, at their expense, title policies on important projects, *i.e.*, projects in excess of \$35,000 or an amount that they consider too significant to lose. Title policies insure that we have the correct owner, lender(s) and legal description of the property. Without a title policy, the Firm must rely on information that you, your customer, or other third parties provide. If any of that information is inaccurate, the notice or the lien may not be enforceable.

2. Proof of Mailing the Preliminary Notice. As you know, many states many require proof of mailing the preliminary notice to certain parties as a pre-condition of asserting a claim of lien. The Firm personally delivers all sealed preliminary notices to the Seattle Post Office and receives a proof of mailing verification stamp. We also subscribe to a postal service that returns a digital copy of the signed return receipt for any party that received and signed for certified mail. However, the Firm does not check for confirmation that every certified letter was received and signed for by the addressee, because it would be cost prohibitive. As such, the Firm cannot accept responsibility for instances where the postal service has lost or misplaced preliminary notices.

3. When reasonably complete verification cannot be achieved. The Firm will notify the client by email or an attachment to your copy of the preliminary notice if we are unable to secure what appears to be reliable project information.

4. Amount of lead-time necessary when referring a lien claim. The earlier the Firm receives the client's request that a final lien claim be filed, the more likely it will be that we complete it on time and get it out to the correct parties. As a general rule, 10 business days should provide adequate time for filing claims in Washington, with 15 business days lead time for filing in other states. However, clients need to be aware that many recording offices are backlogged and do not record documents on the date they are received. The Los Angeles County Recorder, for example, can be 20 calendar days behind in recording. Levy von Beck & Associates cannot assume responsibility for ensuring recordation by a specific date and recommends that clients not wait until the midnight hour to refer lien claims.

5. Limitation of liability. For the Firm to ensure the accuracy of all project information, we would have to spend many hours per project to verify it, and we would have to charge far more than we do. Consequently, the Firm expressly denies any and all warranties and responsibility for the project information conveyed and not obtained due to an error or act of negligence on the Firm's part. Under no circumstances shall the Firm be liable for special, indirect or consequential damages.

The client understands and acknowledges that the Firm does not insure the collectability of client accounts. The client further acknowledges that it has read and understands the above information and is expressly waiving any and all claims against the Firm in connection with project information used in the production of preliminary or final notices of claim that results, directly or indirectly, in a loss from a compromised or defective claim, and that was not due to an error or act of negligence on the Firm's part. For value received, the client, its heirs, successors and agents acknowledge and consent to this limitation of liability.

Should a court determine that either a preliminary or final notice of claim or stop notice that the Firm prepared was defective and unenforceable due to an error or act of negligence on the Firm's part and resulted in a loss by the client after the client makes all reasonable efforts to recover the account from all other possible sources, the maximum liability of this Firm shall be \$2,500. Under no circumstance will the Firm will be liable to the client for compromised or defective lien rights resulting from inaccurate information gathered by or furnished to the Firm by the client or third parties, and in all cases, the client must first exhaust all efforts to recover the project balance owed by its customer as soon as the customer's job account is past due or out of terms.

6. Fraudulent or frivolous lien filing. Lien claims encumber property and potentially affect the property owner's rights. A bad lien, especially a frivolous lien, may lead to a claim for damages against the lien-filing party. Therefore, we make every attempt possible to verify the accuracy and validity of a claim before we prepare it. Before the Firm files a claim, we will ask for written documentation to support the claim and inquire about any specific facts or circumstances relating to a dispute with the client's customer, the general contractor, property owner, etc. We also reserve the right to reject a request to file a lien or bond claim if we are uncomfortable with the accuracy or quality of the project information, or the validity of the client's claim. It is the client's duty to bring to our attention any and all information related to the claim, including any alleged contractual breaches by the client. Failure to report such information to the

Firm at the time of referral may result in a counterclaim or claim for a fraudulent or frivolous lien against the client.

7. Hold harmless and indemnification agreement. In the unlikely event that a third party commences a legal proceeding against the Firm arising out of the Firm's work in preparing and sending either preliminary notices, interim or final notices of claim or stop notices, or any other work product, on the client's behalf, the client agrees to defend, indemnify and hold the Firm harmless from any and all liability, claims for damages, and losses of any kind, including but not limited to attorney's fees and costs, related to any such legal proceeding.

8. Severability. If any provision of this Agreement is or becomes invalid under any provision of federal, state or local law, such invalidity shall not affect the validity or enforceability of any other provision hereof.

9. Choice of law and venue. This Agreement shall be governed by the laws of the State of Washington, and the client agrees that the venue of any action against the Firm shall be laid in King County, Washington.

10. Effective date. All new requests for preliminary and final notices of claim will be governed by this Agreement, which shall take effect as of August 17, 2006. This Agreement is posted at www.Levy-law.com.

I have read and concur with the above description of services as well as the limit of professional liability assumed by Levy Ñ von Beck & Associates, P.S. I understand that perfection of lien rights is not always an exact science. Levy Ñ von Beck & Associates, P.S. requests that all lien and bond claims to be filed within the State of Washington be submitted at least 10 business days before the filing deadline to ensure adequate time for verification and document production. Claims filed outside of the State of Washington will require additional time for mailing and processing by the clerk/recorder.

Date: _____

Client: _____

By: _____

Print Name: _____

Title: _____