



Nuts & Bolts of Notices, Lien Waivers, and Mechanic's Liens

Reduce DSO and Payment Risk



Marla Zurlo

mzurlo@ncscredit.com

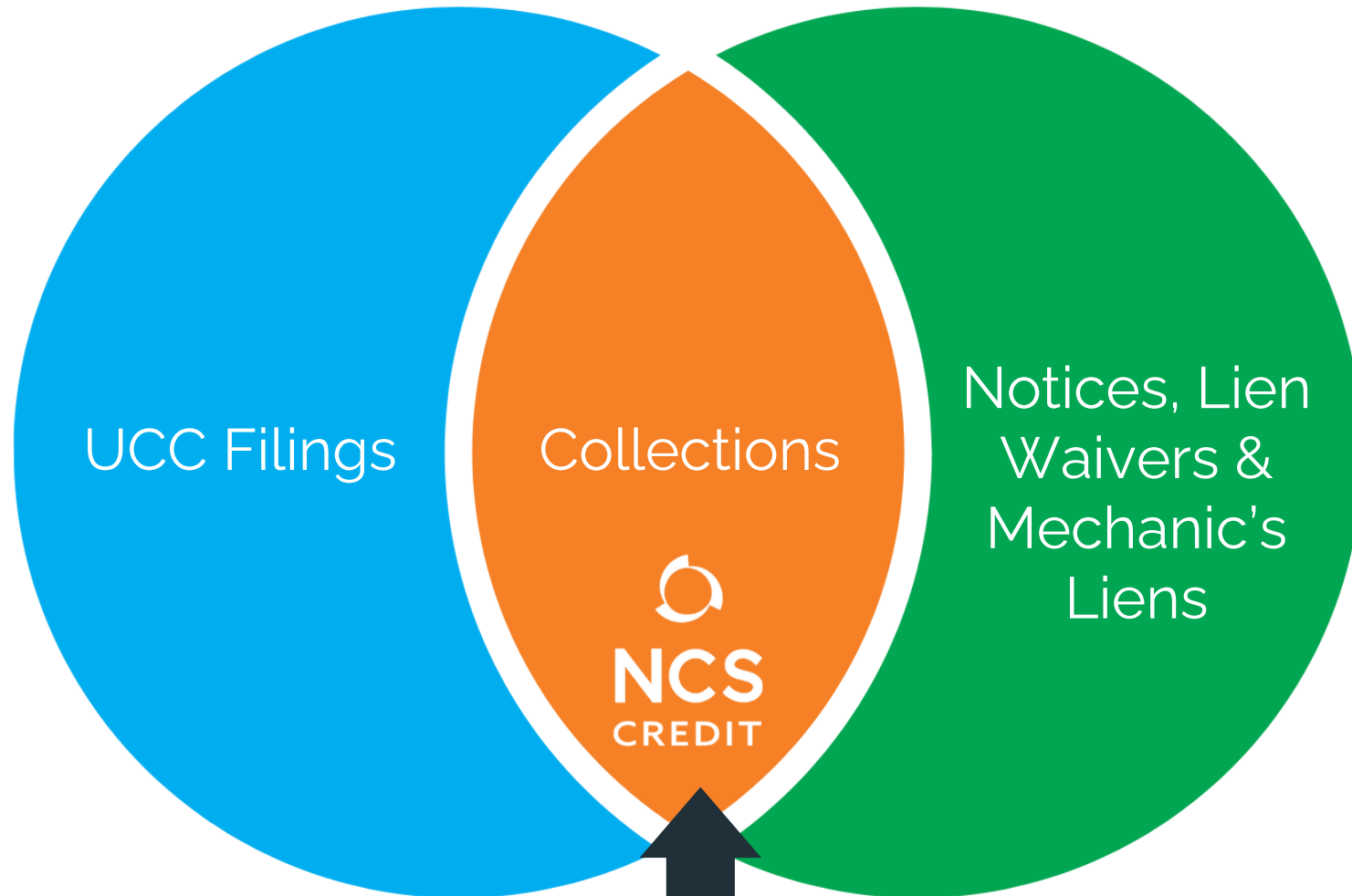
800.826.5256 x 133

Agenda:

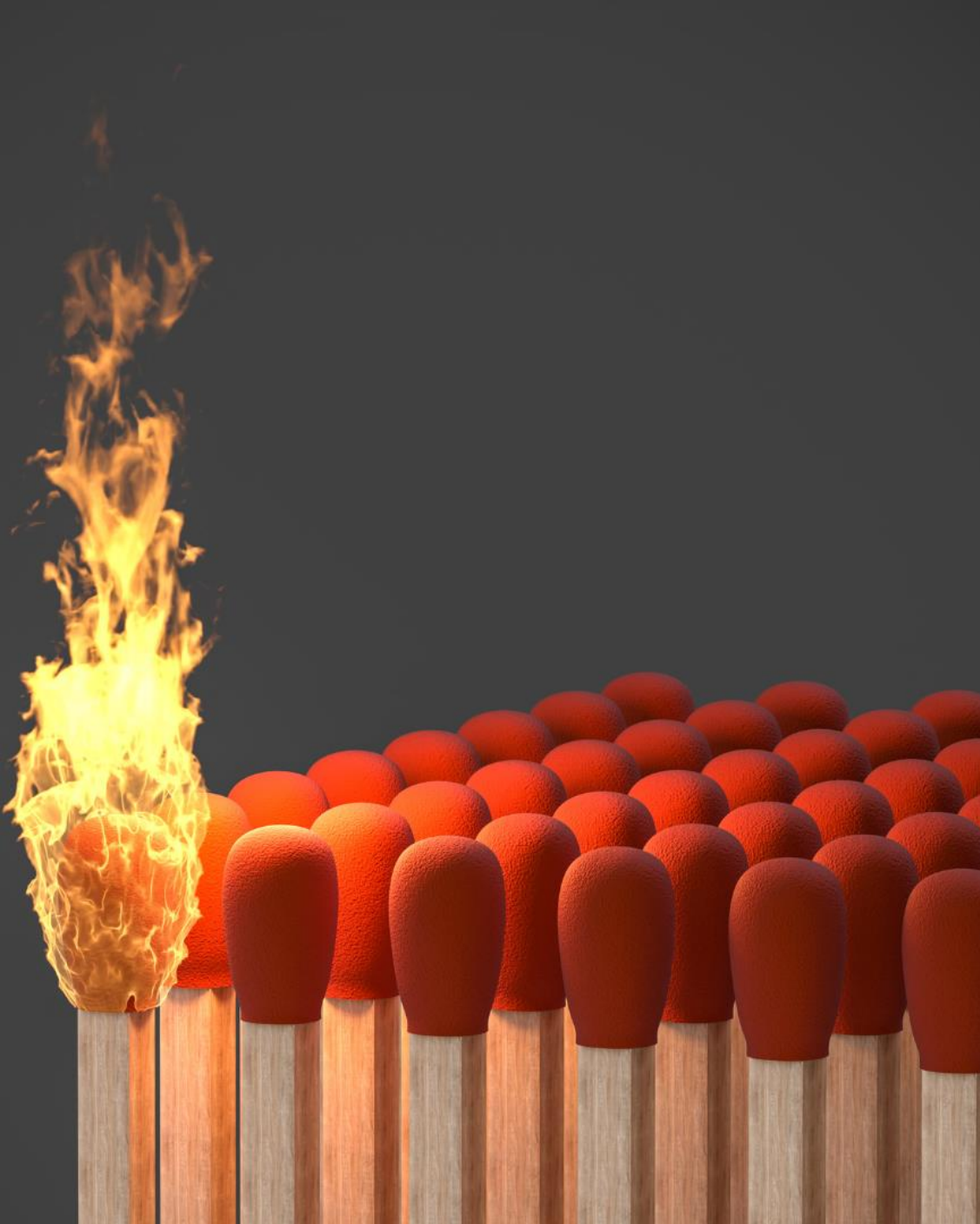
- Secured Transactions
- Notices & Lien Waivers
- Construction Technology
- Mechanic's Liens and Bond Claims
- Foreclosure
- Advanced Construction Topics

Secured Transactions

"We believe everyone deserves to get paid for the work that they do."



Secured Party



Did you know,
secured creditors
recovered an
average of 77%
more than unsecured
creditors?

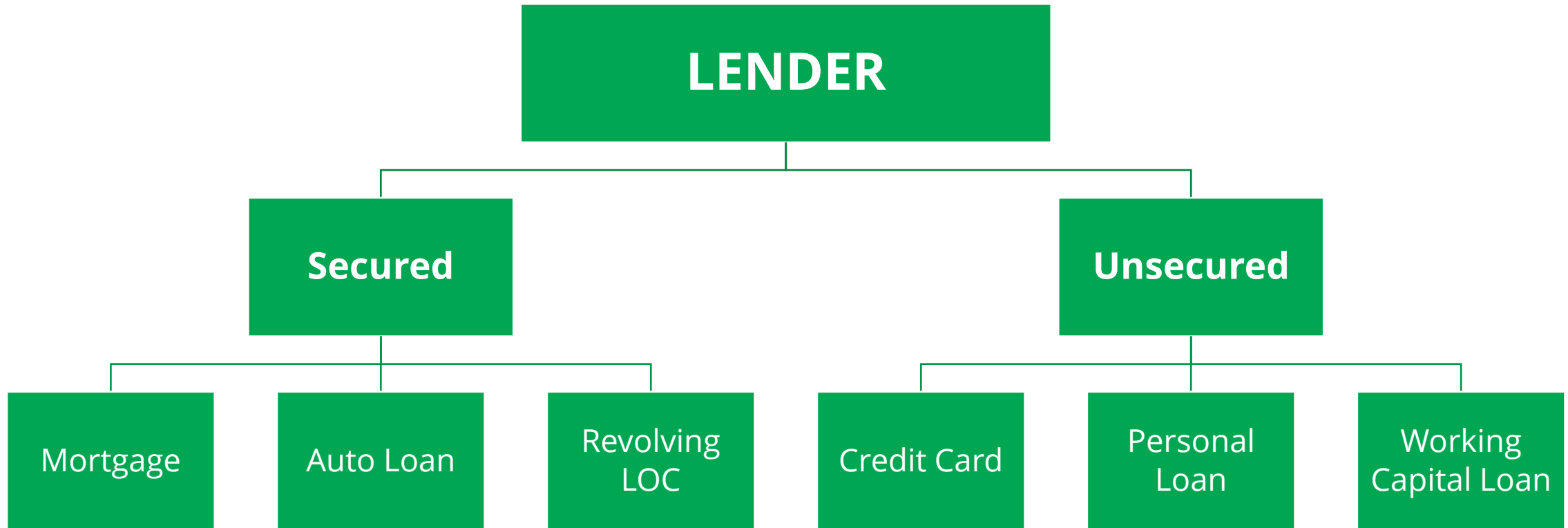
Collateral

Security in our personal lives



Collateral

Property pledged as a guarantee of payment for an obligation or loan



The Value of Money

Margin %	Write Off	Sales to Recover
25%	\$50,000	\$200,000
20%	\$50,000	\$250,000
15%	\$50,000	\$333,333
10%	\$50,000	\$500,000
5%	\$50,000	\$1,000,000

Construction Credit

“I can't pay you until I get paid!”

- It's difficult to maintain integrity of A/R. Back charges and disputes are prevalent.
- Very long payment cycles. It's not unusual to see days sales outstanding of 60 or more.
- Lean profit margins. Low bid gets the job
- Undisciplined cash flow — good tradesmen, tend to be poor administrators
- Business can be exited quickly and easily — no recourse unless you have filed notices and possibly liens
- Very thinly capitalized — “Pay when paid.”



Notices & Lien Waivers

History of Notices/Liens

In 1791, Thomas Jefferson enacted the first mechanic's lien law in Washington D.C.

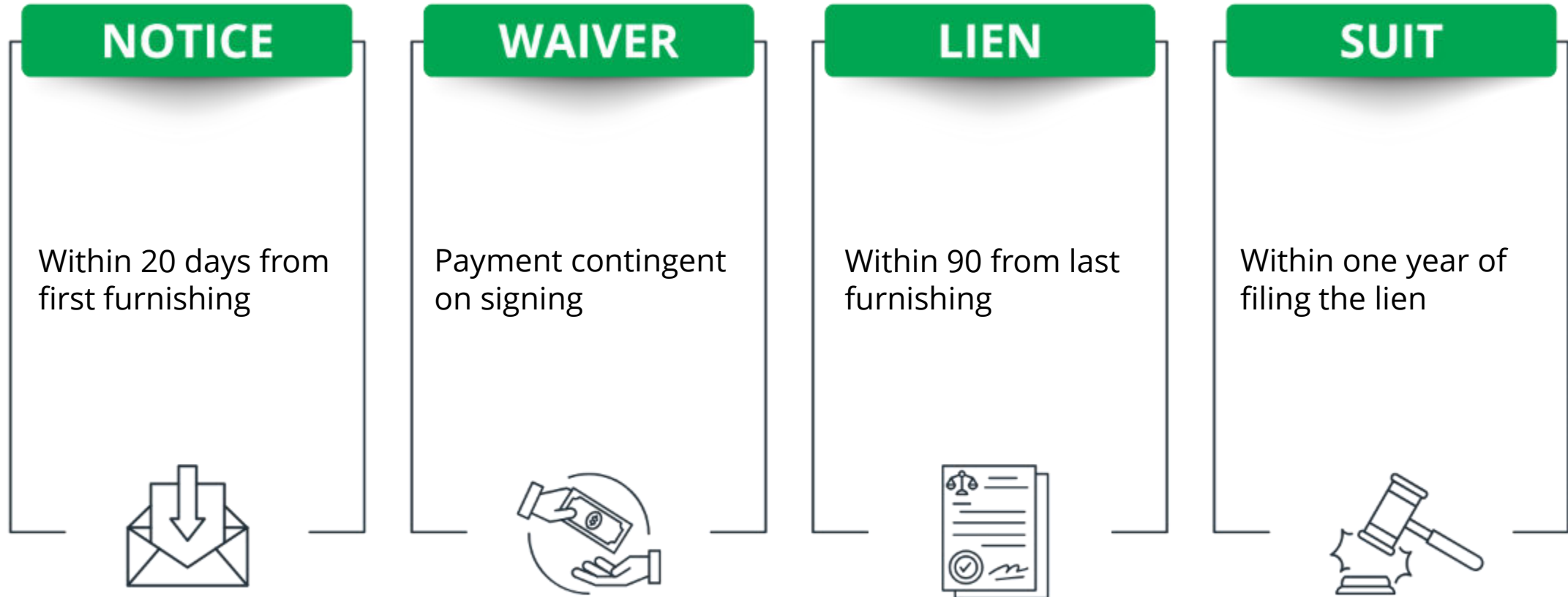
- Ladder of supply could file a lien against property as collateral if they were not paid
- During the 1800s, other states developed their own version, tailoring to local needs and legal traditions
- Liens became essential tools for contractors, subcontractors, and material suppliers to secure payment, especially across state borders



History Center

Photo Credit: West Virginia University / West Virginia History OnView
<https://wwhistoryonview.org/catalog/050362>

Notice & Mechanic's Lien Process: 4 Steps

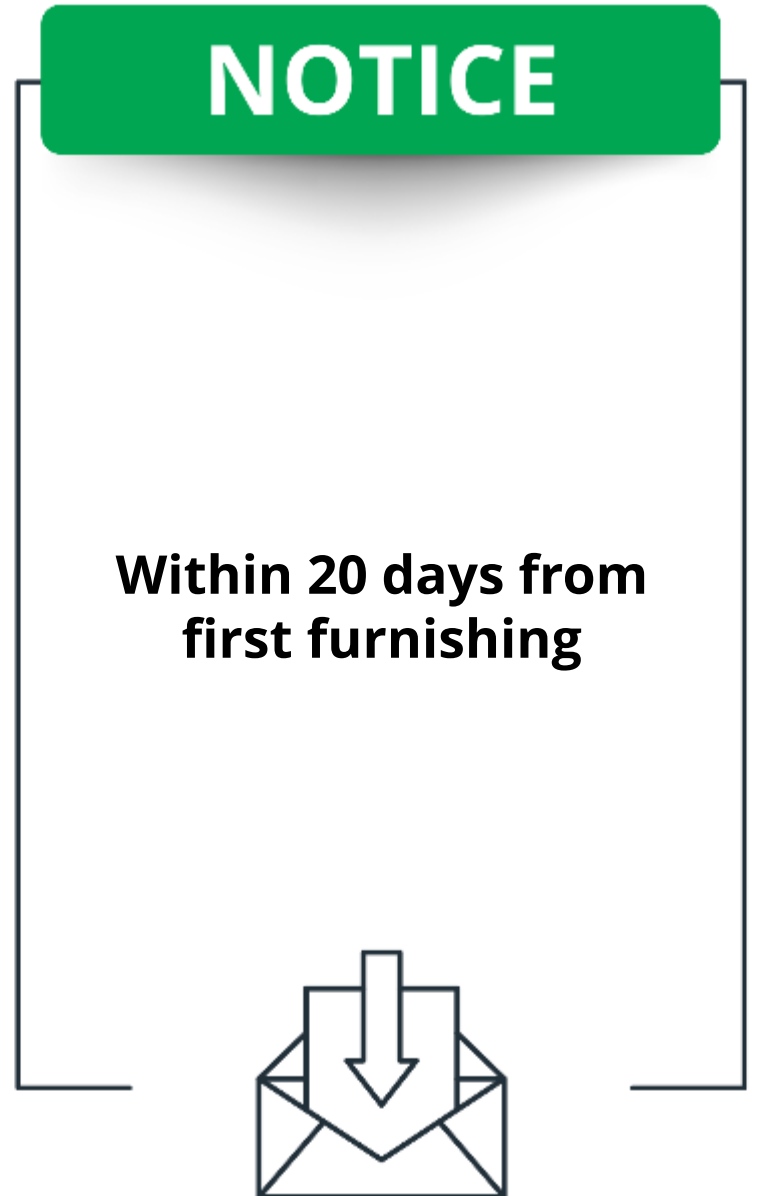


**Above deadlines are examples*

Notice & Mechanic's Lien Process

What is it? How does it work?

- **Notice:** Notice (required by statute) given to the owner and/or prime contractor as a precondition to filing a lien or serving a bond claim.
- Lien Waiver: Signed document in which the would-be lien claimant agrees to waive rights to its claim based on payment received.
- Mechanic's Lien: Lien against real property by one providing materials or services to the project.
- Bond Claim: Written notice informing prime contractor or surety that claimant, e.g., subcontractor, supplier, or materialman, looks to them for payment.
- Suit/Foreclosure: An action in a court of law to enforce a claim.



Become a Payment Priority



SECURED



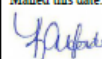
UNSECURED

Preliminary Notice

“It will upset my customer.”

“I can’t keep track of my projects.”

“I don’t have the staff or time to research next steps.”

PRELIMINARY NOTICE CALIFORNIA USE PROOF OF SERVICE AFFIDAVIT OF CALIFORNIA 20-DAY PRELIMINARY NOTICE (PRIVATE AND PUBLIC WORK) IN ACCORDANCE WITH SECTIONS 8102, 8200-8202 AND 9300-9303, CALIFORNIA CIVIL CODE	
CONSTRUCTION LENDER (Or Reputed Construction Lender, if Any)	YOU ARE HEREBY NOTIFIED THAT...
Construction loan no. _____ (if known)	Inventory Manufacturers dba The Construction People **DEMO CLIENT** 729 Mimer Road Cleveland, OH 44143 (Ms. Kristin Alford Telephone: (440) 461-9661; Email: kalford@nccredit.com) (name and address of person or firm - sender)
OWNER Or PUBLIC AGENCY AND DISBURSING OFFICER (On Private Work) (On Public Work)	has furnished or will furnish specially fabricated materials and labor of the following general description: pieces, parts and thingamajigs for the building, structure or other work of improvement located at: The Officer's Building 123 Main St. Beverly Hills, CA 90210
Office Beverly Hills, CA 90210	The name of the person or firm who contracted for the purchase of such labor, services equipment or materials: Those Subcontractor Guy's
DIRECT CONTRACTOR (Or Reputed Direct Contractor)	NOTICE TO PROPERTY OWNER EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances. This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or the person employed by you on the construction project. If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.
The GC 456 Out Way Lane Beverly Hills, CA 90210	Claimant's Notice of unpaid compensation & employer payments owing to laborers & entities (described in Civil Code § 8302(b)): The names and addresses of the laborer(s) and the Trust Fund to whom compensation and employer payments is/are due and payable are: (Names) _____ (Addresses) _____
SUBCONTRACTOR (Or Reputed Subcontractor)	Mailed this date: July 30, 2024  Our Reference:
Those Subcontractor Guy's 1234 Labor Ave. Beverly Hills, CA 90210	
SUB-SUBCONTRACTOR (Or Reputed Sub-Subcontractor)	
SUB-SUB-SUBCONTRACTOR (Or Reputed Sub-Sub-Subcontractor)	
BOND COMPANY	
An estimate of the total price of the labor, services, equipment or materials furnished or to be furnished is: \$150,000.00	
Statement or estimate of the Claimant's demand for sums currently due after deducting all just credits and offsets: \$0.00	

Preliminary Notice

Softening Letters

- Buffering tactic to explain the notice in plain English
- Customizable for both statutory and non-statutory notices
- Can contain Company logo, payment instructions, and phone # to call with any questions
- Placed in the same envelope as the notice



To Whom It May Concern:

The sending of the following Preliminary Notice is prescribed by the construction lien laws of WI. **This is NOT a Lien** but a statutory requirement and needs to be done as a matter of law.

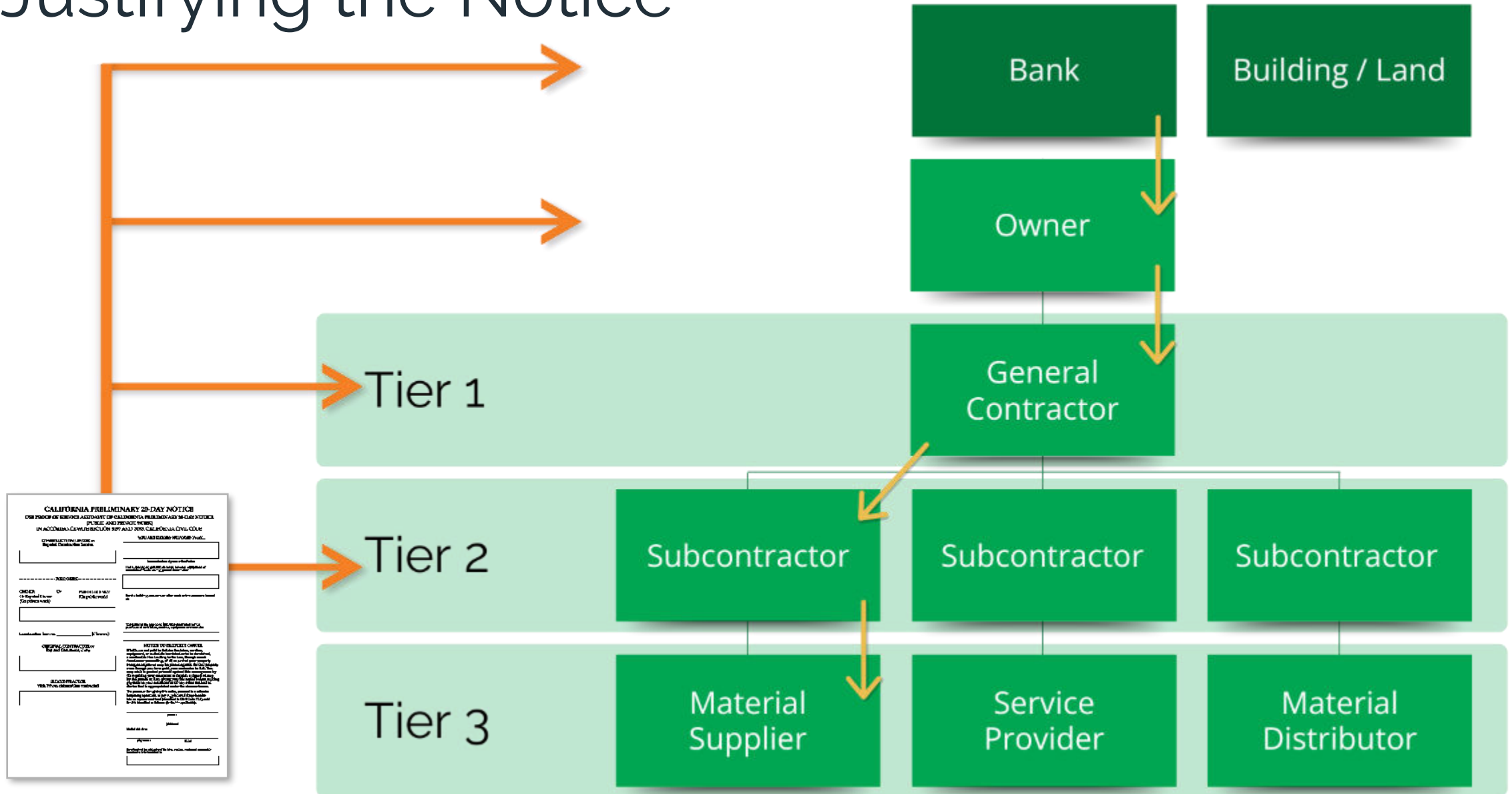
The sending of this notice should not reflect on the creditworthiness of JUST-IN-TIME HVAC, INC.'S customer or any other party to the project nor does it indicate any expected problem in the payment of JUST-IN-TIME HVAC, INC.'S invoices.

Sincerely,

JUST-IN-TIME HVAC, INC.'S
123 COOL DRIVE
MILWAUKEE, WI 53209
Contact: MS. JANE DOE
Telephone: 555-555-5555

File (D1234567) 9843616R

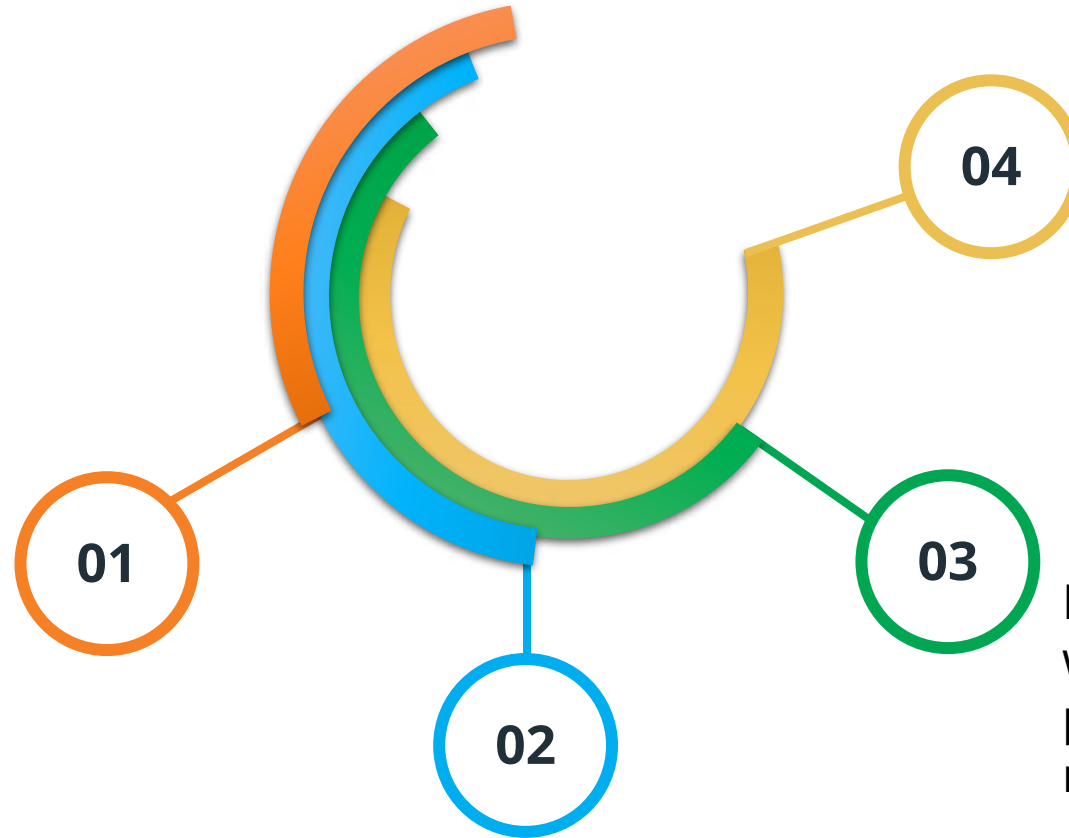
Justifying the Notice



Claims filed below this line may be questionable.

Reasons to Serve a Notice

Notices make you a priority for payment from your customers.



04 Notices identify you to the owner of the property, who wants to ensure you receive payment.

03 Notices initiate compliance with state lien laws and preserve your right to lien if needed.

98% of the time, serving a preliminary notice will be enough to get you paid.

Preliminary Notice

NCS Guarantees



Prepared
Correctly



Served
Timely



Accurate
Information



Required
Parties



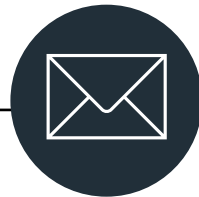
Served
Correctly

Preliminary Notice

Case Study: IGA Aluminum Products, Inc. v. Manufacturers Bank



IGA sent Welch a Preliminary Notice via first class mail



California Statute says notice must be delivered by personal service, certified, or registered mail.



Court found that the statute was unambiguously clear, and that IGA's notice was fatally defective.

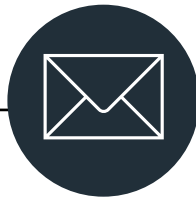


Preliminary Notice

Case Study: Niewind v. Carlson



Chuck Niewind dba C&N Construction filed lien for work which he was unpaid.



Minnesota statute: "must be in at least 10-point bold type"



Niewind's prelien notice was in 11-point font, complying with the first requirement, *but* it was not in bold or capital letters.



Ohio Requirements

From NCS' National Lien Digest

The National Lien Digest®

My Bookmarks

You can bookmark any pages you frequently access to appear in this box for quick navigation. Simply click the Gold Star found at the top of each page.

State Provisions Last Accessed

- FEDERAL (MILLER ACT) Miller Act Bond Claim (Federal)
- OHIO Bond Claim (Public)
- OHIO Public Improvement Lien (Public)

Select A State / Province

-- Please Select --

Digest / Legislation Updates

[View All Updates](#)

Louisiana-- LA HB209




Effective 8-1-2025 Louisiana HB209 amends R.S. 38:2241 (A)(3) by increasing the bond threshold for projects in excess of \$250,000 in Ascension Parish.. [More](#)

ARIZONA--B2110--20-DAY NOTICE

Effective 9-14-24, Arizona HB2110 provides a new form for the Twenty-Day Lien Notice.. [More](#)

Ohio Requirements

Private Projects - Liens

		
NOTICE	LIEN	SUIT
<p>1. OBTAIN COPY OF NOTICE OF COMMENCEMENT</p> <p>NOTICE - within 21 days from first furnishing</p>	<p>2. LIEN -</p> <p><u>Commercial</u> - within 75 days from last furnishing</p> <p><u>Residential</u> - within 60 days from last furnishing</p> <p>RELEASE - within 30 days from satisfaction</p>	<p>3. SUIT - within 6 years from filing lien</p> <p>RELEASE - within 30 days from satisfaction</p>

Ohio Requirements

Private Projects - Liens

NOTICE

- Serve notice upon the owner, lessee, designee, and prime contractor after the filing of a Notice of Commencement, but within **21 days** from first furnishing materials or services.
- A late notice may be served, but the lien, when later filed, will only be effective for materials and services provided **21 days** prior to serving the notice and thereafter.
- No notice is required:
 - when contracting directly with the owner,
 - if a Notice of Commencement is not filed, or
 - if a written request for a copy of the Notice of Commencement is ignored.
- See NCS Notes 1-3.

LIEN

- Residential Projects:
 - File the lien within **60 days** from last furnishing materials or services.
- Commercial Projects:
 - File the lien within **75 days** from last furnishing materials or services.
- Serve a copy of the lien upon the owner, lessee, or designee within **30 days** from filing the lien.

Ohio Requirements

Private Projects - Liens

SUIT

- File suit to enforce the lien within **6 years** from filing the lien, and within **60 days** from being served with a notice to commence suit.

RELEASE




- A lien must be released within **30 days** from satisfaction.

NCS Notes

1. The lien is enforceable for the full amount owed regardless of payments made by the owner. (Commercial projects)
2. The owner is required to record a Notice of Commencement containing the legal description and the information needed to serve the Notice of Furnishing and file the Mechanic's Lien.
3. The Notice of Commencement is filed in the County Recorder's office where the project is located. Suppliers and subcontractors are to be furnished with a copy of the Notice of Commencement by the owner within 10 days from written request.

Ohio Requirements

Public Projects – Bond Claims

		
NOTICE	BOND CLAIM	SUIT
<p>1. OBTAIN COPY OF PAYMENT BOND</p> <p>OBTAIN COPY OF NOTICE OF COMMENCEMENT</p> <p>NOTICE - within 21 days from first furnishing</p>	<p>2. BOND CLAIM - after last furnishing and within 90 days from acceptance</p> <p>RELEASE - satisfied bond claim promptly</p>	<p>3. SUIT - within 1 year from acceptance</p> <p>RELEASE - satisfied bond claim promptly</p>

Ohio Requirements

Public Projects – Bond Claims

BOND

- Always attempt to obtain a copy of the payment bond from the public entity which contracted the project.
- Generally, payment bonds are required for Construction Manager at Risk or Design Build projects.
- Generally, on single-prime or multi-prime projects, payment bonds will be required for contracts where bidding is required (general contracts exceeding \$200,000.00.)
- Exceptions apply; obtain a copy of the payment bond.

NOTICE

- Serve notice upon the prime contractor within **21 days** from first furnishing materials or services.
- A late notice may be served, but the bond claim, when later served, will only be effective for materials and services provided **21 days** prior to serving the notice and thereafter.
- No notice is required:
 - when contracting directly with the prime contractor.
 - when supplying materials and services that cost less than \$30,000.00.

Ohio Requirements

Public Projects – Bond Claims

BOND CLAIM

- Serve bond claim notice upon the surety after last furnishing materials or services, but within **90 days** from acceptance of the project.

SUIT




- File suit to enforce the bond claim after 60 days from serving the bond claim notice, but within **1 year** from acceptance of the project.

RELEASE

- It is recommended to withdraw a satisfied bond claim.

Ohio Requirements

Public Projects – Public Improvement Lien

		
NOTICE	LIEN	SUIT
<p>1. OBTAIN COPY OF NOTICE OF COMMENCEMENT</p> <p>NOTICE - within 21 days from first furnishing</p>	<p>2. LIEN - within 120 days from last furnishing</p> <p>RELEASE - satisfied lien promptly</p>	<p>3. SUIT - within 60 days from notice to commence</p> <p>RELEASE - satisfied lien promptly</p>

Ohio Requirements

Public Projects – Public Improvement Lien

NOTICE

- Serve notice upon the prime contractor within **21 days** from first furnishing materials or services.
- A late notice may be served, but the lien, when later filed, will only be effective for materials and services provided **21 days** prior to serving the notice and thereafter.
- When contracting directly with the prime contractor, no notice is required.

LIEN

- Serve the lien upon the public entity within **120 days** from last furnishing materials or services.
- File the lien with the county recorder within **30 days** from serving the public entity.
- When contracting with a subcontractor, serve a copy of the lien upon the subcontractor within **20 days** from serving the public entity.
- The claim is a lien on the funds the public entity is required to withhold from the prime contractor. Serve and file the lien as soon as possible to trap the funds.

SUIT

- File suit to enforce the lien within **60 days** from receiving a notice to commence suit.

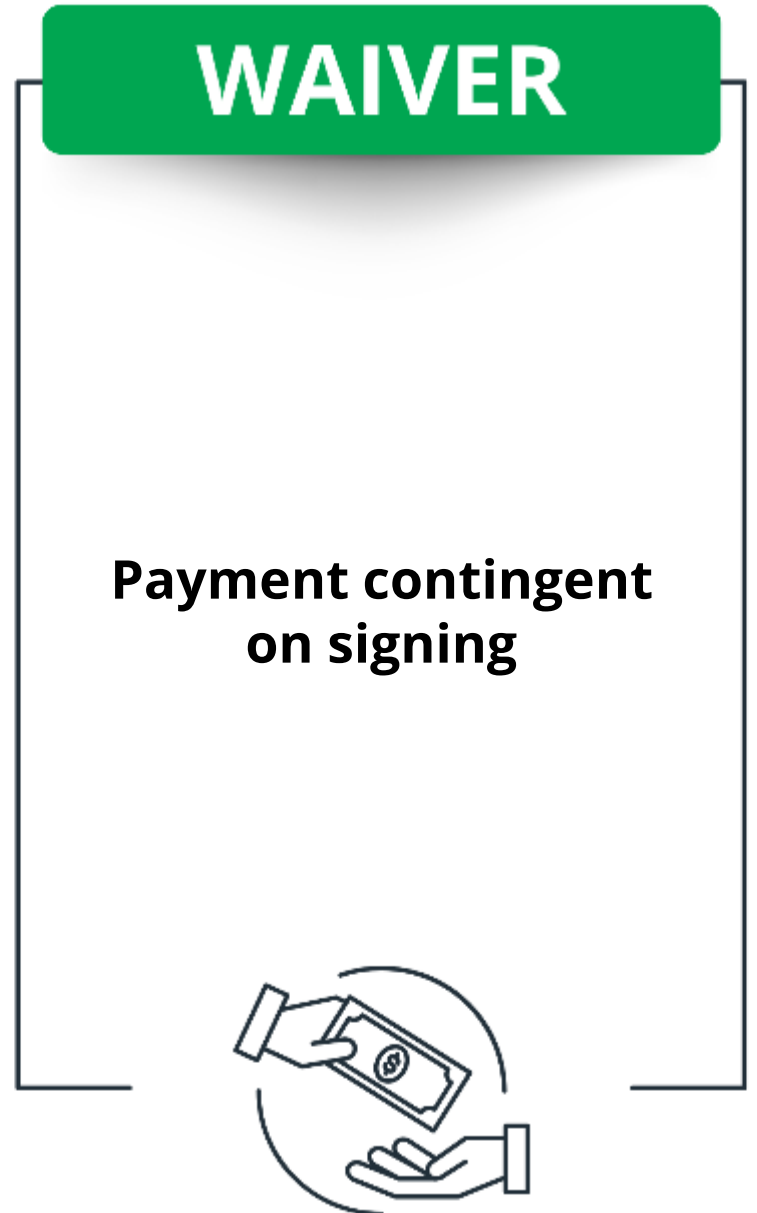
RELEASE

- A satisfied lien should be promptly released.

Notice & Mechanic's Lien Process

What is it? How does it work?

- **Notice:** Notice (required by statute) given to the owner and/or prime contractor as a precondition to filing a lien or serving a bond claim.
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- **Suit/Foreclosure:** An action in a court of law to enforce a claim.

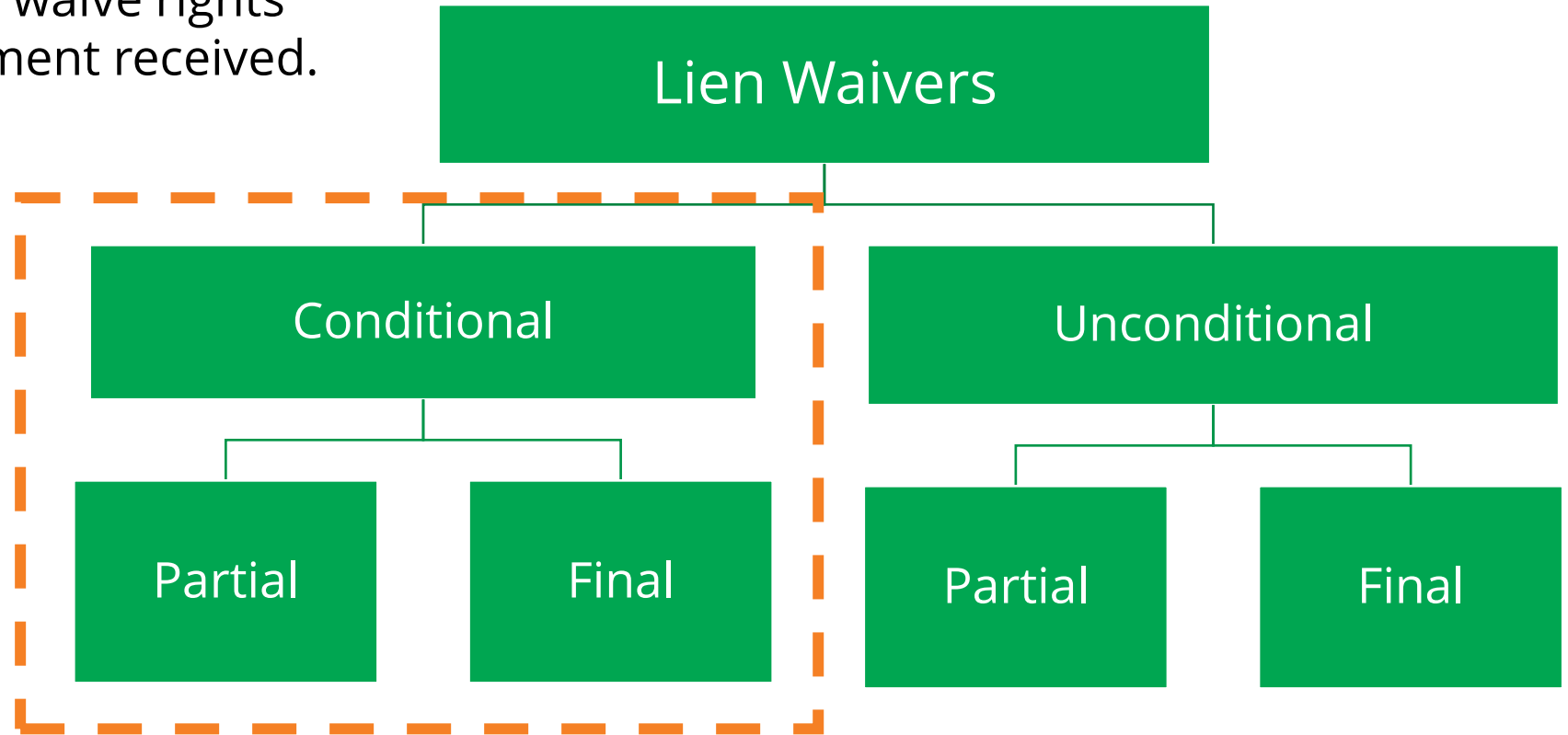


Understanding Lien Waivers

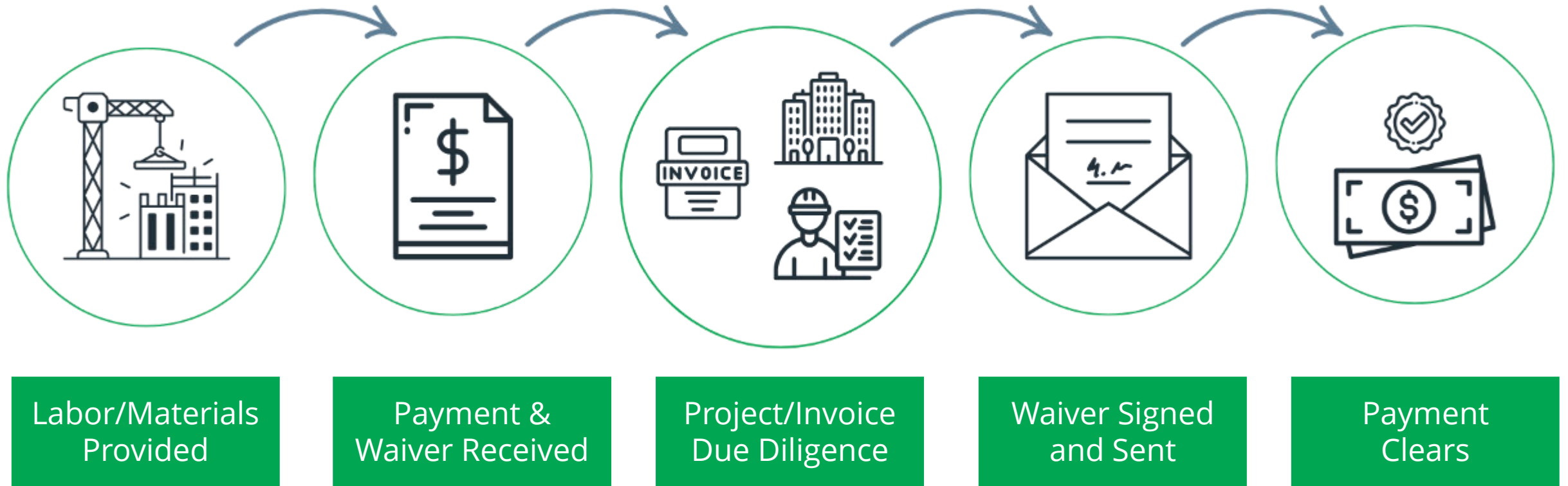
Conditional or Unconditional?

A signed document in which the would-be lien claimant agrees to waive rights to its claim based on payment received.

Conditional lien waivers are preferred, because the **“conditions” provide the creditor with leverage**, in the event payment is not received or does not clear.



Understanding Lien Waivers

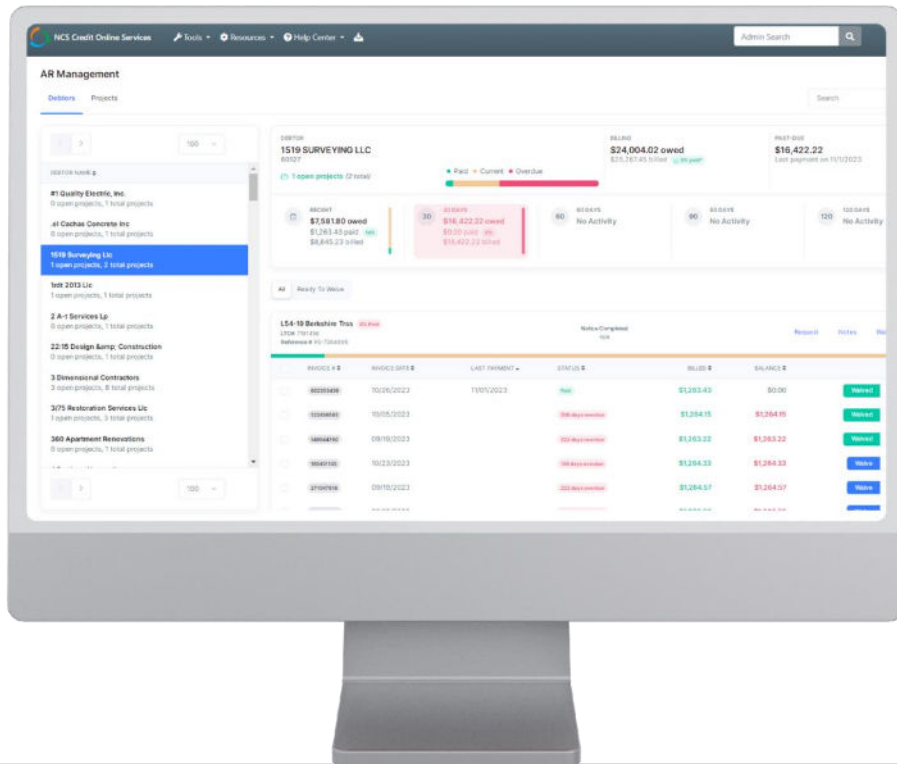


Construction Technology

Construction Technology

The Future of the Credit Department

- Smaller teams
- Less time
- More work



Empowering through Automation

Construction Credit Technology Evolution



Job Info App

Digital Job Information Sheet



Import File

Export CRM or ERP to Project Portal



API

System to system communication



A/R Management

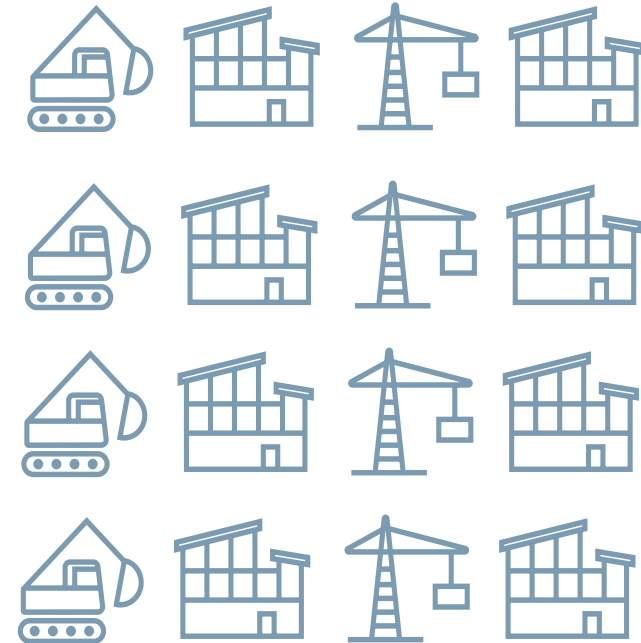
System to system communication with A/R

A/R Management

When your customer remits payment.

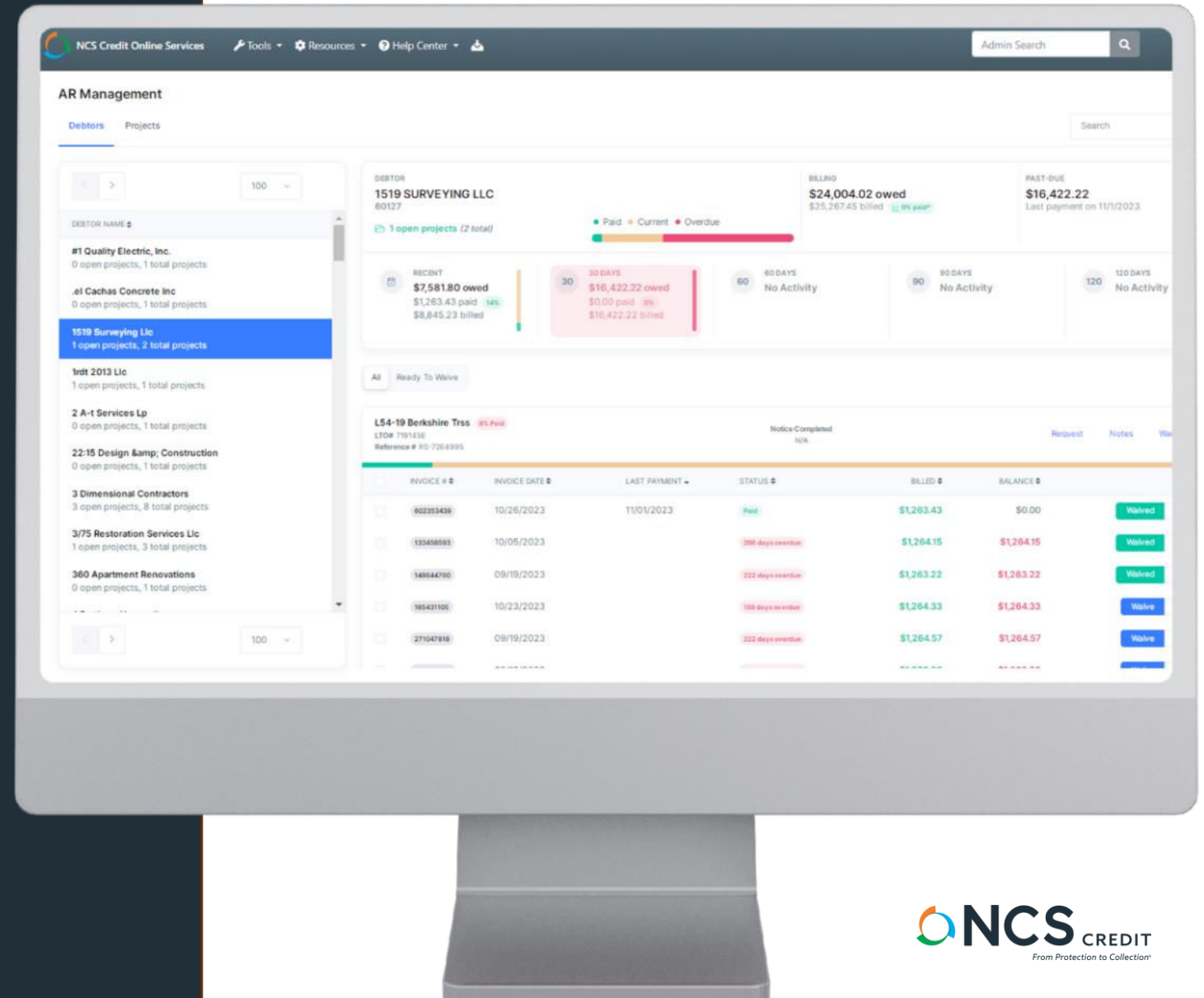
Except, you have 20 projects with that customer...

- Which project should the payment apply to?
- How many **systems** do you have to search to find the right information?
- How much **time** will you spend matching the payment to the project?



NCS Technology

- Live A/R Balances
- Notice/Lien Waiver Automation
- Simple Project Management
- 1-Click Project Escalation



The Choice Is Yours

TECHNOLOGY



**NO
TECHNOLOGY**



Mechanic's Liens, Bond Claims, and Suit

Notice & Mechanic's Lien Process

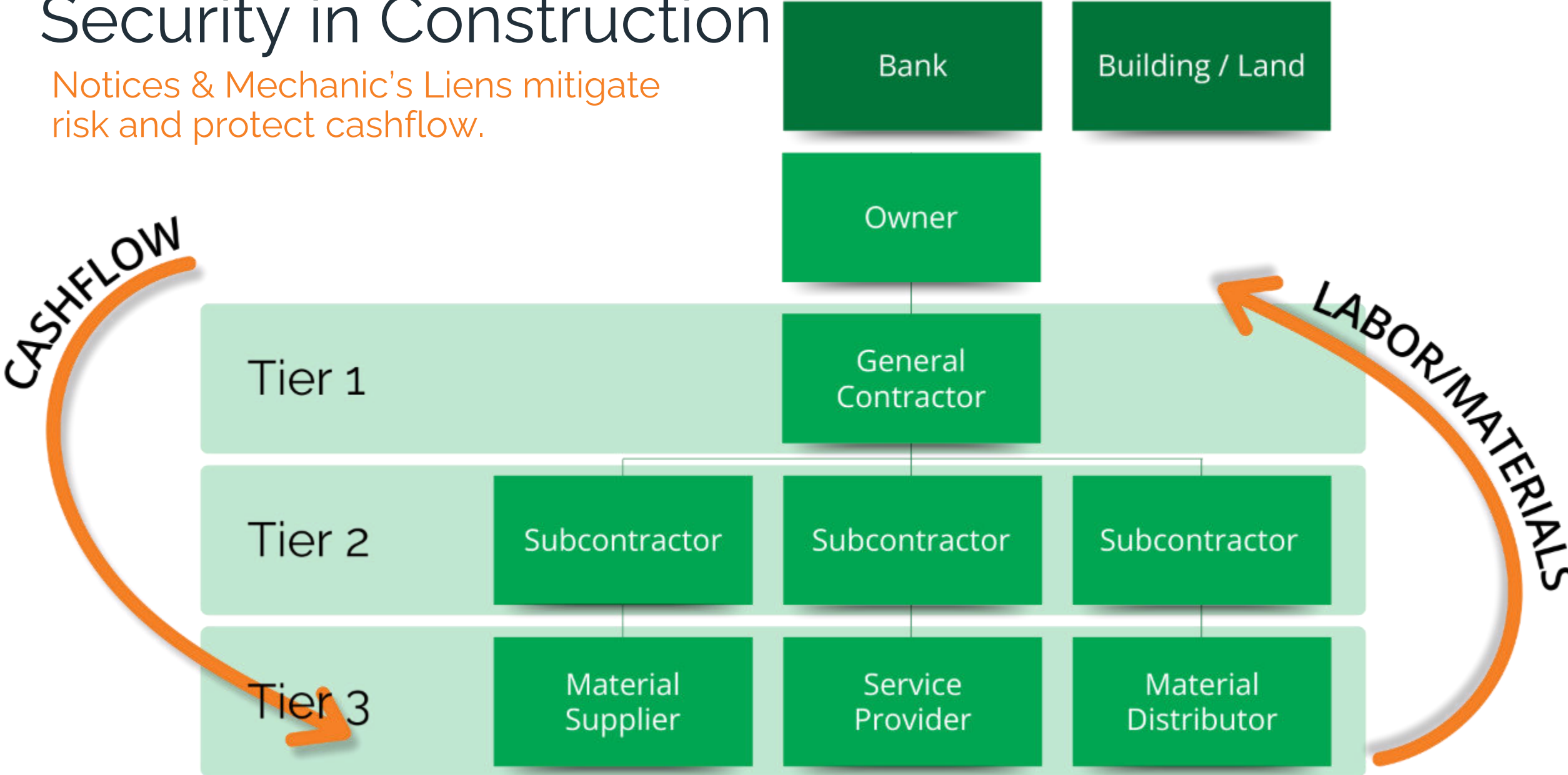
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Security in Construction

Notices & Mechanic's Liens mitigate risk and protect cashflow.



Notice & Mechanic's Lien Process

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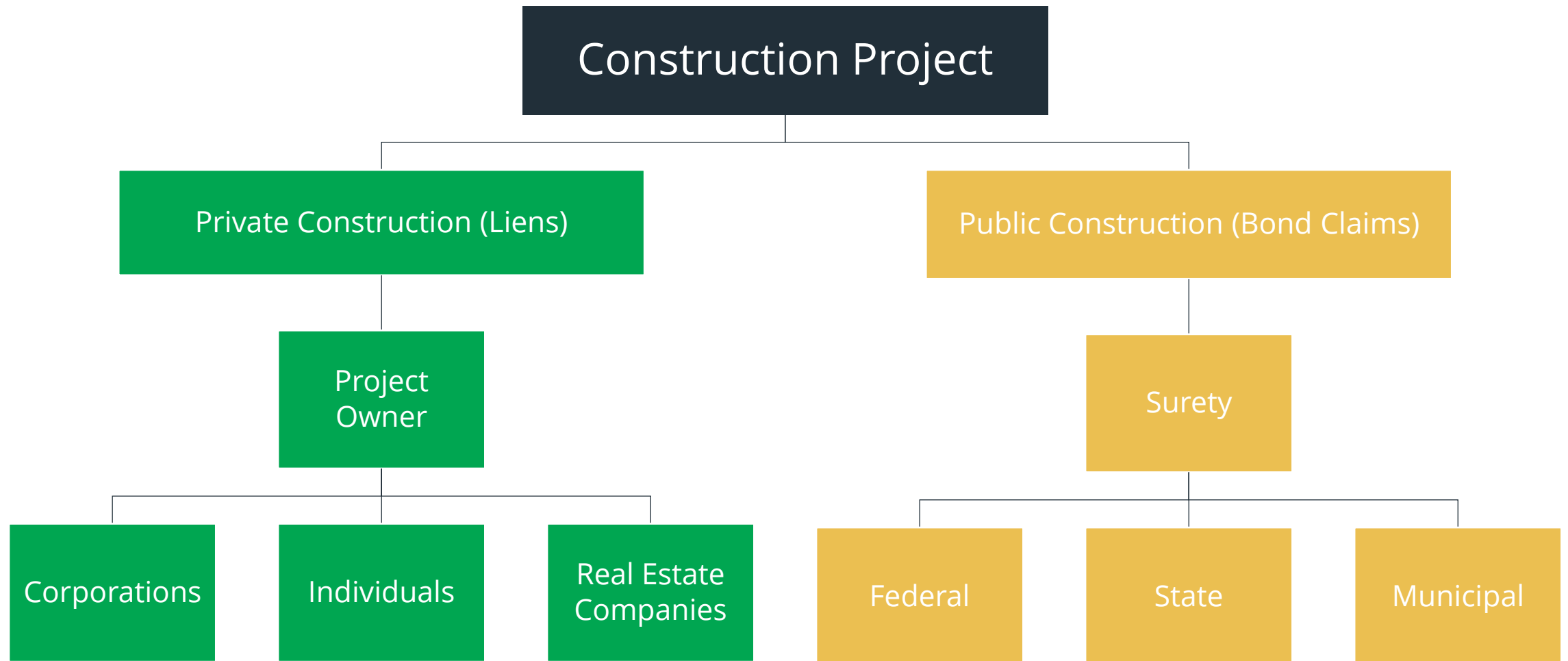
BOND CLAIM

**Within 90 from
last furnishing**



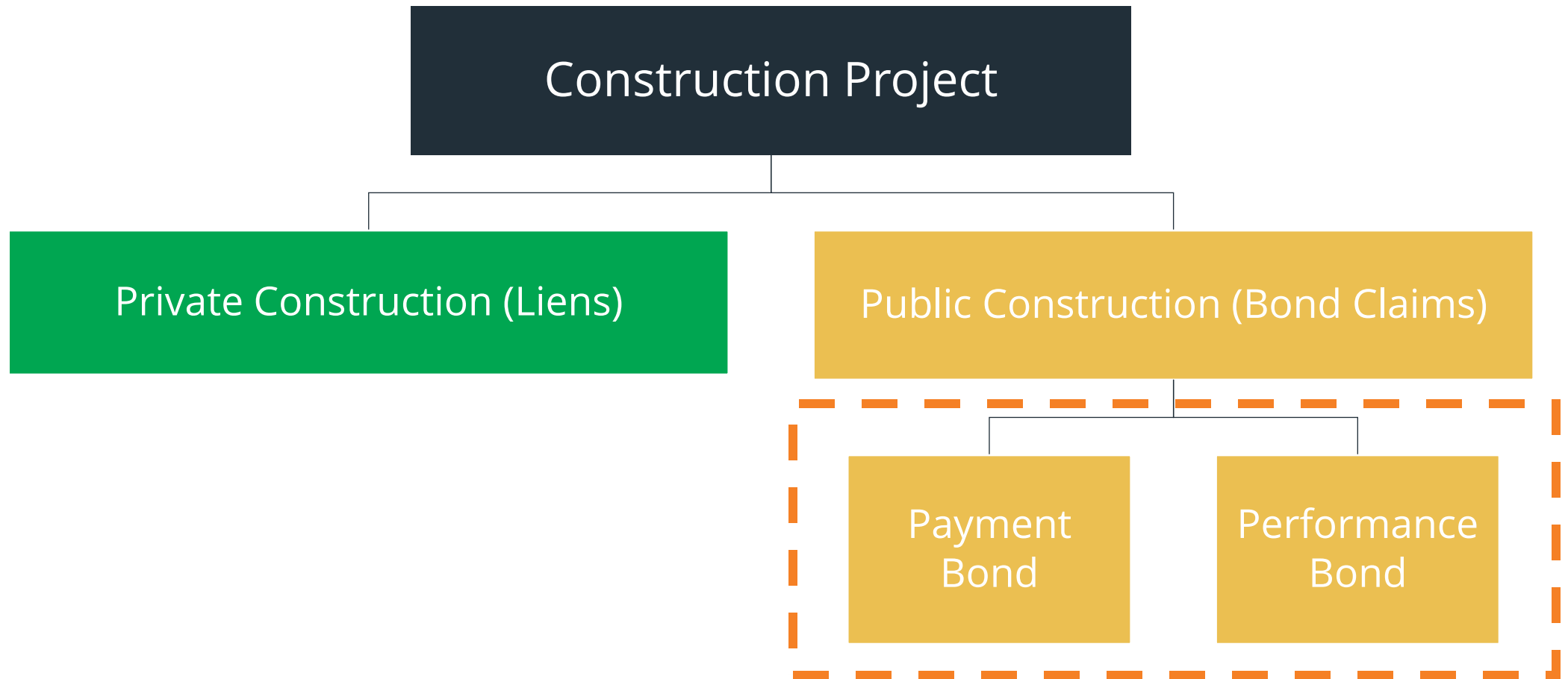
Private versus Public Projects

How do I know?



Private versus Public Projects

What is a Bond?



Payment Bonds

Thresholds for Payment Bonds on Public Projects

Thresholds for Payment Bonds on Public Projects

Each state has its own statutes requiring payment bonds on construction projects. Some statutes may require that the general contractor obtain a payment bond on every construction project, and other states may only require a payment bond when the total value of the construction project exceeds a certain threshold. Additionally, the states vary in their requirements for the penal sum of the bond. The following is a guideline for public and federal projects. Please be aware that in some states, special statutes may apply for governmental entities not listed below.

State	Payment bonds are generally required for general contracts:	The partial sum of the payment bond must be:
Alabama	\$100,000 or more	at least 50% of contract price
Alaska	> \$100,000 (municipalities may exempt bond requirement on projects not exceeding \$400,000)	50% of contracts < \$1,000,000 40% of contracts < \$5,000,000 \$2,500,000 on contracts > \$5,000,000
Arizona	\$50,000 or more	equal to contract amount
Arkansas	> \$50,000	equal to contract amount

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Alaska	> \$100,000 (municipalities may exempt bond requirement on projects not exceeding \$400,000)	50% of contracts < \$1,000,000 40% of contracts < \$5,000,000 \$2,500,000 on contracts > \$5,000,000
Arizona	\$50,000 or more	equal to contract amount
Arkansas	> \$50,000	equal to contract amount
California	> \$25,000	equal to contract amount
Colorado	> \$50,000 (local public works projects) > \$150,000 (state projects) > \$150,000 (local public-private partnerships)	50% of contract price
Connecticut	> \$100,000	equal to contract amount
Delaware	> \$100,000	equal to contract amount

Kentucky
> \$40,000 state projects
> \$100,000 local projects

	equal to contract amount
	equal to contract amount
	50% of contract price
(partnerships)	equal to contract amount
	equal to contract amount
	equal to contract amount
Procurement	Contracts less than \$1,000,000, 50% of contract Contracts more than \$1,000,000, but less than \$5,000,000, 40% of contract Contracts more than \$5,000,000, \$2,500,000
	equal to contract amount
Portation ation Authority	equal to contract amount
	equal to contract amount
	equal to contract amount
	85% of contract amount
	amount fixed by public entity
	equal to contract amount
	75% of contract price
	equal to contract amount
	equal to contract amount

The above is designed to provide a quick comparison of the requirements by state and does not address all variables. It is provided with the understanding that the publisher is not engaged in rendering legal advice. Action required in perfecting a claim varies from state to state and from case to case. NCS Credit recommends retaining an attorney for each case.

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Bankruptcy Petition

Fill in this information to identify the case:

Debtor name Zachry Holdings, Inc.
 United States Bankruptcy Court for the: Southern District of Texas
 (State)
 Case number (If known): _____

Check if this is an amended filing

Official Form 204

Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders

12/15

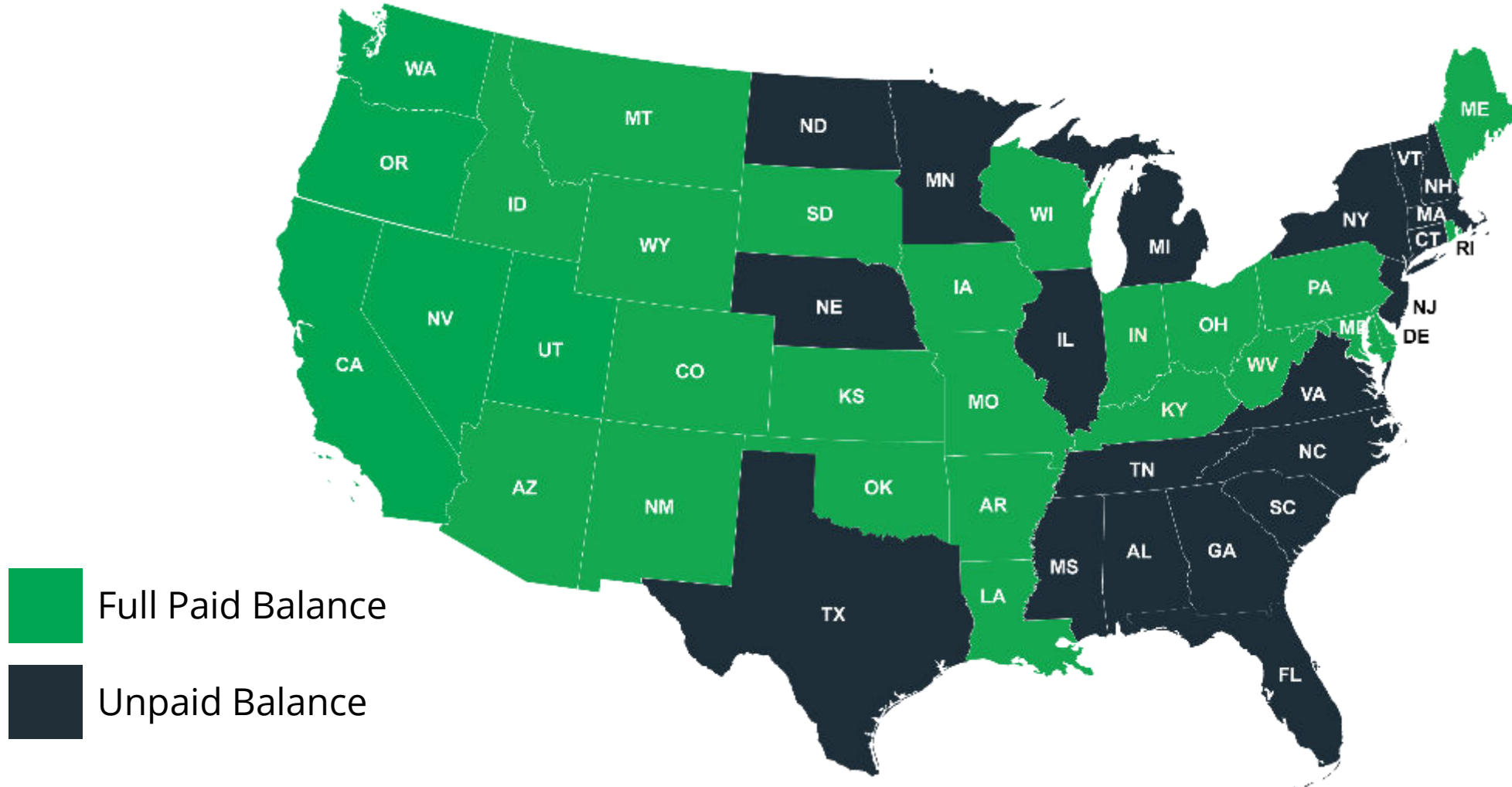
A list of creditors holding the 20 largest unsecured claims must be filed in a Chapter 11 or Chapter 9 case. Include claims which the debtor disputes. Do not include claims by any person or entity who is an insider, as defined in 11 U.S.C. § 101(31). Also, do not include claims by secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

	Name of creditor and complete mailing address, including zip code	Name, telephone number, and email address of creditor contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	SUNBELT RENTALS, INC. 1799 Innovation Pl, Fort Mill, SC 29715	Michael Christian, michael.christian@sunbeltrentals.com, (803) 578-9413	Trade	CUD			\$133,310,610
2	D REYNOLDS COMPANY, LLC 2680 Sylvania Cross Dr, Fort Worth, TX 76137	Scott George, sageorge@reynco.com, (210) 862-1148	Trade	CUD			\$17,576,934
3	BO-MAC CONTRACTORS LTD 1020 Lindbergh Drive Beaumont, TX, 77707	Dan Brown danbrown@bo-mac.com (409) 842-2125	Trade	CUD			\$15,608,639
4	BIGGE CRANE AND RIGGING CO. 2400 Maury Street Richmond, VA 23224	Eric Jones, ejones@bigge.com, (804) 271-9358	Trade	CUD			\$14,746,479
5	RUSH RESOURCES, LLC 2781 County Road 639 Buna, TX, 77612	John Rush Jr., jrush@rushllc.com, (409) 781-5911	Trade	CUD			\$12,566,163
6	MAMMOET USA, INC. 20525 FM 521, Rosharon, TX 77583	Mike Hamic, mike.hamc@mammoet.com, (281) 369-2200	Trade	CUD			\$10,836,424

Advanced Construction Topics

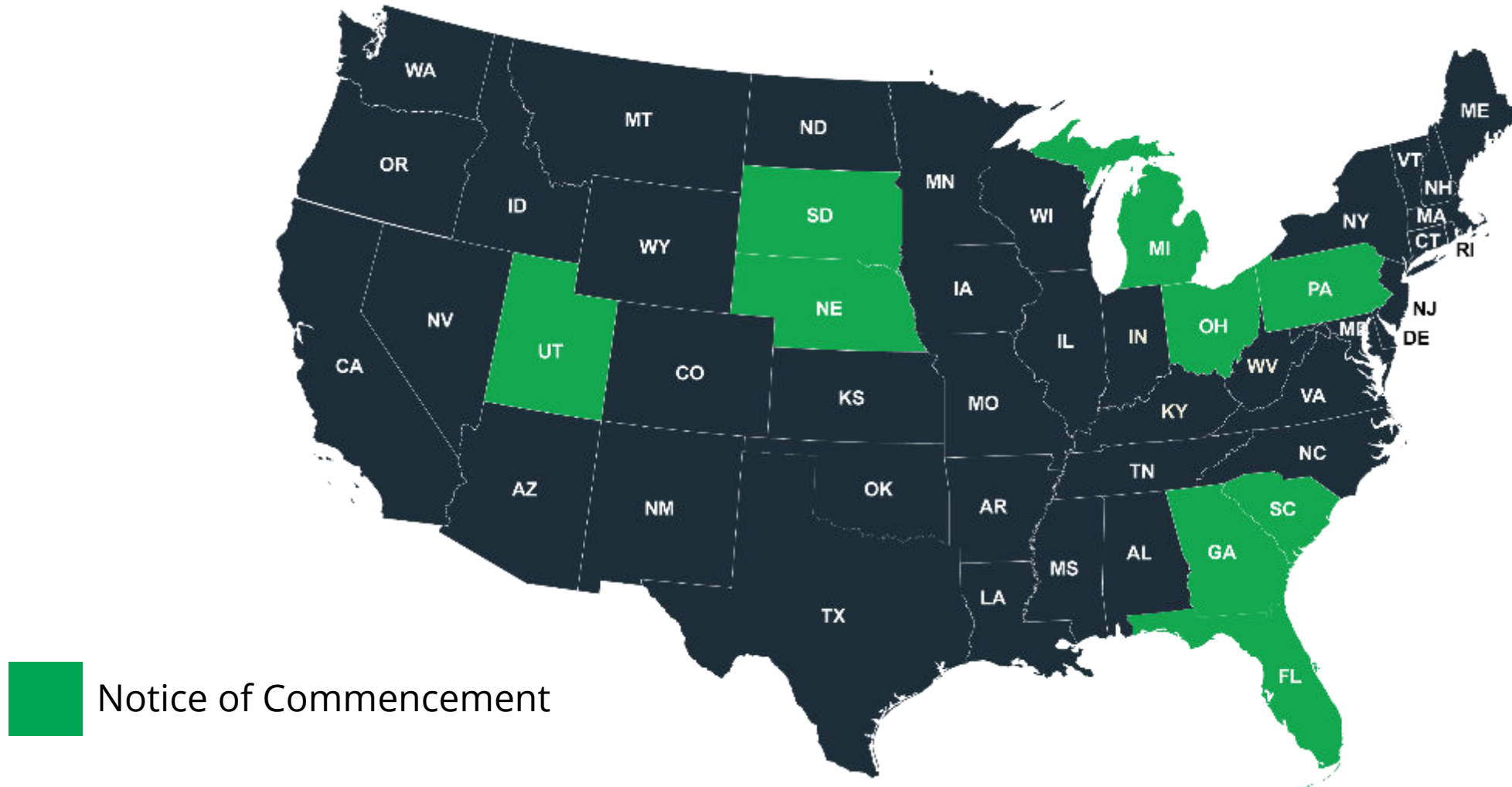
Full Paid & Unpaid Balance Lien States

- File the lien/Serve the notice as early as possible to “trap” the unpaid funds
- The lien is limited to the unpaid portion of the contract

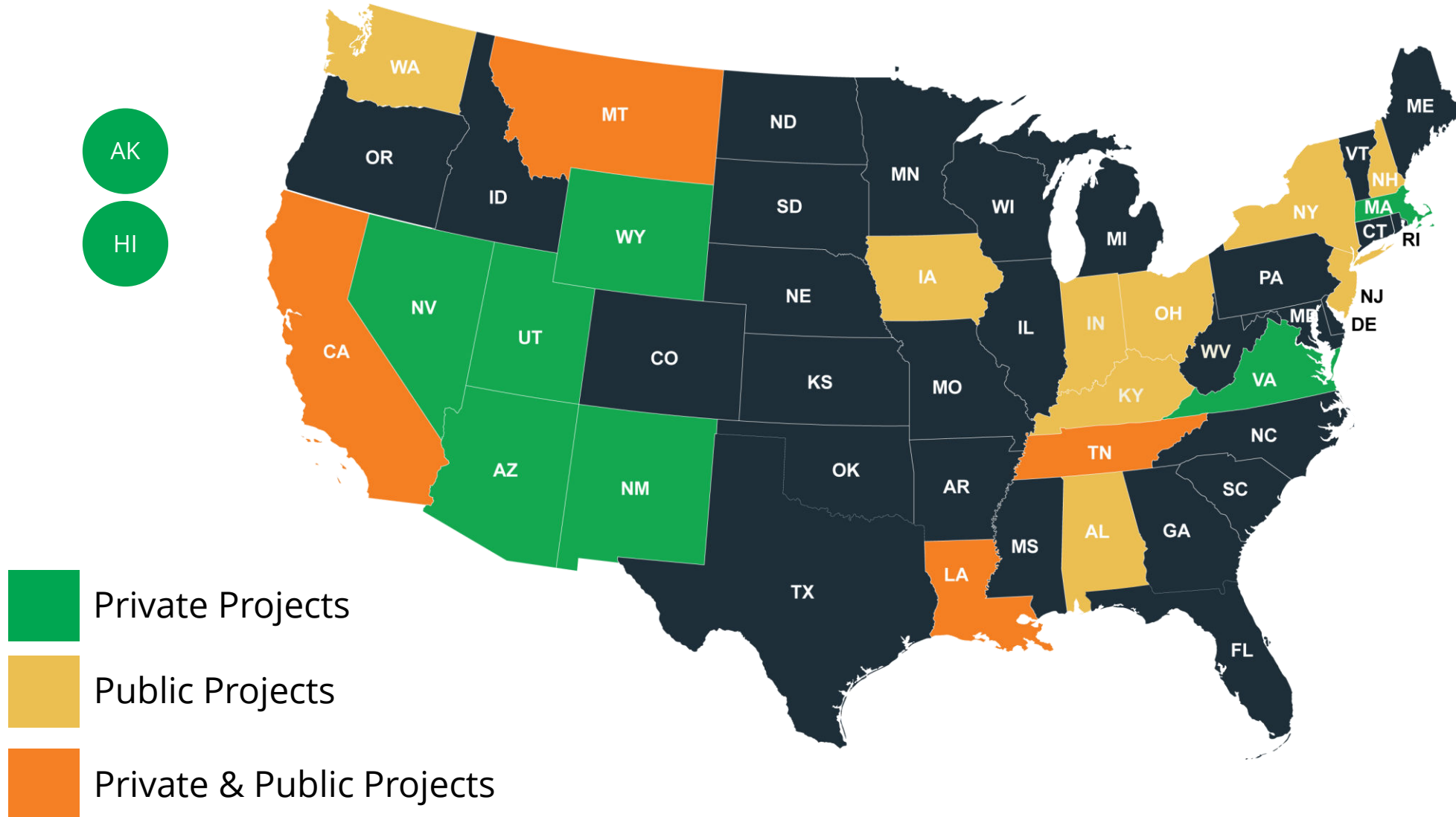


Notice of Commencement States

- FL, GA, OH and SC have a NOC for both private & public projects
- NE NOC relates to the priority of the lien, as opposed to the notice requirements



Deadlines Calculated from Completion



Recap of Protections Discussed

- Secured Transactions
- Notices & Lien Waivers
- Construction Technology
- Mechanic's Liens and Bond Claims
- Foreclosure
- Advanced Construction Topics

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Thank You!

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