

A NEWSLETTER OF CURRENT BUSINESS AND LEGAL MATTERS

An Important Message to Our Clients & Friends

By Vann Attorneys



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We are excited to announce that the name of our firm is now Vann Attorneys. While our name has changed, we look forward to continuing to provide the highest quality legal representation to our clients. By now, many of you have learned that some of our attorneys have decided to depart and start a new firm. This was as much a surprise to us as it probably was to you. To avoid any potential confusion, rest assured that the attorneys and staff here remain dedicated to serving you and your legal needs now and in the future.

Of course, you may notice a few small changes. For now, we will practice under the Vann Attorneys name, and you may see a new name in the near future. However, our firm is as strong now as ever - with excellent paralegals and administrative staff supporting three attorneys with over 35 years combined experience in representing the business interests of our clients. You have your choice of legal counsel and we are honored that you have chosen us. We will constantly strive to justify the faith you have placed in us.

- Vann Attorneys



Landlord Tenant Law Changes

By Joseph A. Davies



In 2012, the North Carolina legislature enacted House Bill 493, which changed some sections of the landlord-tenant statutes. The new law changed a variety of aspects of the landlord-tenant relationship, but two of the important changes are: (1) allowing landlords to accept partial rent and retain the right to evict a tenant; and (2) changing some permitted uses of security deposits.

Accepting Partial Rent

The legislature added a new clause to Section 42-26 of the General Statutes which states that “the lease may provide that the landlord’s acceptance of partial rent ... does not waive the tenant’s breach”. In simpler terms, this changes what had been a longstanding rule – if you as the landlord accepted any rent with knowledge of a breach of the lease for which you could evict the tenant, then you waived your right to evict for that breach. This included a failure to pay rent in full – if the landlord accepted any rent payment, then he or she would have to wait until the next month for the tenant not to pay in order to be allowed to pursue a summary ejection. It is important to understand exactly what the new law says, however. In order to be protected when taking partial rent, the provisions of the lease must specifically provide for that situation. Otherwise, the general rule will prevail. Unless you are certain that your lease contains such a provision, the safer course will continue to be to refuse to accept any rent following a breach of the lease, if the goal is to pursue an eviction.

Security Deposits

The new law also rewrote part of the Tenant Security Deposit Act, although the actual changes are relatively minor. Specifically, the “Permitted Uses” of security deposits have been changed to exclude expenses for electrical service, but to specifically include costs for damage to smoke detectors and carbon monoxide detectors, fees and commissions paid to a licensed real-estate broker to re-rent the premises, and certain fees (late fees, complaint-filing fees, court-appearance fees and second trial fees). The obligations of a landlord with respect to security deposits remain unchanged, and these obligations are regularly overlooked. The security deposit must be held in a separate trust account with a North Carolina bank and the landlord must inform the tenant of where the security deposit is held. As an alternative, the landlord can obtain a bond with a licensed North Carolina insurance company in the amount of the security deposit. At the end of lease term, the landlord must provide at least a preliminary written itemization of the charges applied against the security deposit within thirty days, along with the refund amount, if any. Willful noncompliance with these requirements can lead to a forfeiture of the entire security deposit, as well as an award of attorneys’ fees to the tenant.

There are other changes to the landlord-tenant statutes, including establishing a process for removing personal property belonging to a deceased tenant and changing the dollar thresholds for donating and disposing of personal property left behind by tenants. If you have questions about these changes, or any other aspect of landlord-tenant law, please feel free to con-



What Does Your Facebook Wall Say About You?

By James A. Beck

By now I am sure everyone has heard stories of how some inept criminal posted incriminating photos of a recent criminal exploit on Facebook, and those photos led to their arrest. Most people probably wonder how someone could be so dumb as to post that kind of information online. However, even though most Facebook users are not posting evidence of crimes on their Facebook walls, there is a lot of very private information being exposed, and Facebook makes no guarantees that your information will be kept private.

In fact, according to Facebook’s terms and conditions, which you must agree to in order to create an account, Facebook has a “non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook”. While the privacy of your information can be restricted by adjusting your specified privacy settings, Facebook is still

able to sell information you post, and it does so on a regular basis. This information is how Facebook generates revenue, as it sells marketing data to businesses, politicians, and anyone else that is willing to pay for it. So, is there any way that you can protect yourself while still using Facebook?

The quick answer is no; you should assume that anything you post on Facebook will be read by anyone and everyone. You can help guard information by adjusting Facebook’s security settings to ensure your information is as private as possible. However, the real key to using Facebook safely and securely is to understand that information posted on Facebook is like sharing it with a friend that loves to gossip, the more embarrassing and private the information the more likely it is that the information will get out. Therefore, if you want something kept private, don’t put it on Facebook.



How Your Business Can Cash-In On Federal Government Spending

By James A. Beck

The American Recovery and Reinvestment Act of 2009 (ARRA) is a stimulus package aimed at easing the effects of the latest recession by creating jobs through federally funded projects. The ARRA budgeted 255 billion dollars for various stimulus projects, including over 100 billion dollars for work to improve the nation's infrastructure, such as transportation improvements, water and waste disposal, as well as railroad and aviation construction projects. These projects are incredibly varied and offer significant opportunities for businesses in every state. However, before a business can participate in one of these projects they must have completed certain steps and know how to apply.

The first step is to register as a Federal contractor. In order to complete the registration you will need to obtain a Dun & Bradstreet Number (D-U-N-S), which is a location specific identification number for your business. Also, you should register with the System for Award Management database as this an excellent resource for what projects are available and includes previous government databases such as the Central Contractor Registration and Online Representations and Certifications Application. This website is available at www.sam.gov. Additional information regarding the registration process can be found online at www.sba.gov.

The second step is to determine how your business is classified. The Fed-

eral government uses the North American Industry Classification System (NAICS) to code businesses and obtaining this number will allow you to efficiently search through the government database for projects relevant to your expertise. The NAICS codes for your business may be obtained online at <http://www.census.gov/eos/www/naics/>.

Third, you should search for opportunities in your area. There are various websites that allow you to search for Federal contracts. However, the two most useful sites can be found at www.fedbizopps.gov and www.sba.gov. Both allow businesses to search for projects based on their NAICS code and in a particular geographic region. The two sites differ in that www.fedbizopps.gov lists all Federal projects valued over \$25,000, while www.sba.gov pertains to subcontracts for small businesses. Depending on your business both sites are likely to be very useful resources.

Last, you must submit a bid on the Federal project. Please keep in mind that there are a variety of restrictions and conditions that must be followed when performing a Federal project and these can impact your costs. Therefore, please do not hesitate to contact us with any questions regarding what is required of your business prior to submitting a bid, and we will do our best to make sure your business profits from the ARRA stimulus package.



Common Questions Regarding the Lien Law Revisions: Lien Agents and Payment Bonds

By Joseph A. Davies

Question 1: What happens when a supplier that requests a copy of the contractor project statement (CPS) from a customer does not receive the CPS form or receives an incomplete CPS form?

Answer: The supplier is not supposed to perform until the CPS has been delivered; however, there are no direct consequences for the party that fails to complete the form. Subsequently, the supplier should send out a certified letter with return receipt request directly to the general contractor asking for a copy of the payment bond and a completed CPS form. If the general contractor fails to return a copy of the payment bond within seven days of written request, they may then have to pay twice (similar to the old law) and if the payment bond is returned, all of the information necessary to complete the Notice of Public Subcontract should be present.

Question 2: What happens when a CPS form is received but it states that there is no payment bond for that particular state project?

Answer: Remember that a payment bond is not required if the state project is less than five hundred thousand dollars. In these cases the only option in the event of non-payment is a lien on funds, as it is not usually possible to file a lien on real property for state projects. Also, since you may not know the total contract amount of the project, any notice you receive stating that there is no payment bond on the project should be retained, as this could be evidence of failure to provide the payment bond after a written request.

Question 3: When a tenant is supposed to upfit a leased space, is it the tenant or the landlord's responsibility to obtain a lien agent?

Answer: The brief answer is that it does not matter who obtains the lien agent so long as there is a designated party to receive notices from subcontractors and suppliers. Essentially this duty should be discussed and agreed upon by the landlord and tenant prior to starting construction work on the leased space.

Question 4: Can I continue to sign partial lien waivers?

Answer: Yes, but many partial lien waivers are being revised to try to incorporate changes pursuant to NCGS § 44A-11.2. Furthermore, these releases often purport to relieve all rights per the aforementioned code section. This will likely cause confusion if these documents are presented in court, as that section does not create lien rights and does not even create the right to receive payment. Instead, NCGS § 44A-11.2 establishes the priority of payment, and therefore, there is a chance a partial lien release could be read to relinquish the right to receive priority payments. This is an important distinction as agreeing to a reduced priority based on past payments may impact the right to receive priority payments for future work as well. Therefore, these releases should be reviewed carefully to make sure you are fully protected and that you have not relinquished any rights to future payments. A better way to structure these releases would be to assure that the right to priority payments is withdrawn only at the point you receive payment in full on the project.

Question 5: What should I do when I hear conflicting advice from different attorneys about how to proceed under the revised lien laws?

Answer: The latest lien law revisions have changed a lot and have created a lot of uncertainty that courts have yet to address. This will inevitably lead to conflicting advice being given by various attorneys. This will in part be due to some attorneys naturally being more conservative than others. Unfortunately, there may not be a right or wrong answer at this point, just differing interpretations of the law. The best approach is to make sure your attorney is aware of the level of risk you would like to take on, and that your procedures under the revised lien law reflect that level of risk. In the future the procedures will become clearer as cases make their way through the courts, but until then there is likely to be a certain degree of confusion and difference of opinion as to what should be done under the revised lien law.



Renewing a Judgment for Money in North Carolina

By James R. Vann



Suppose your business was awarded a substantial money judgment eight years ago and it has never been collected or only a portion was collected. You know that your judgment is valid for ten years from the date it was awarded by the Court, and you do not want it to expire without being paid. Besides, being an experienced business person, you realize that although execution and other post-judgment collection efforts can take awhile, if a judgment debtor needs to refinance existing real estate, buy a new house, or trade in an old car, you just may have some leverage. What should you do?

Many creditors have probably heard that judgments may be renewed in North Carolina. The benefit of renewing a judgment is that it extends the validity of the judgment for another ten years. The procedure by which the creditor of a judgment may renew the judgment is to file a completely new and independent action and have the debtor served with the summons and complaint. Additionally, you must file the action within ten years of the date your original judgment was rendered. Typically, this procedure is not as difficult as it may sound; once the debtor is served, few reasons exist as to why the judgment should not be renewed.

There is another reason why it is important to know that judgments are not simply renewed in North Carolina: the lien created by the original judgment is not continued. In other words, the new judgment does not become a lien until it is docketed in the county where the debtor owns real estate. If there is any gap period between the expiration of the original judgment and the docketing of the new judgment, and the debtor happens to sell his real property during that time, your opportunity to have the judgment satisfied out of the sale is lost. As unlikely as this situation may seem, it has occurred.

In evaluating whether to sue on a former judgment, a creditor should consider how judgments operate, as well as the likely effectiveness of collection efforts after the new judgment is obtained. Judgments operate as a lien upon all the debtor's real property then owned or later acquired once the judgment is dock-

eted. If a judgment is obtained in one county and the debtor owns real property in another, a transcript of judgment should be sent to the latter county so the judgment lien attaches. The judgment and the lien are valid for ten years following the rendition of the judgment. After a judgment becomes a lien upon the debtor's real property, any subsequent change in ownership is subject to the lien. If your lien became effective before other encumbrances, you have a higher possibility of being paid from the proceeds of a sale.

Additionally, unsatisfied judgments reflect poorly on credit reports, and most reputable lenders will not grant credit when an unsatisfied judgment exists. Since we are largely a credit-driven society, many debtors become anxious about their credit histories. A debtor may, after all, wish to buy a house or car sometime in the future, and twenty years is a long time to wait. In this respect then, you may have a higher likelihood of being paid if the debtor's credit history is at least salvageable.

Familiarity with post-judgment collection procedures is also important in evaluating whether to sue on a former judgment. Individual debtors have the right to claim a certain amount of real and personal property exempt from execution by the sheriff. Executions and proceedings supplemental to executions are oftentimes time-consuming but eventually may be highly effective tools for collecting a judgment.

Once you make the decision to obtain a new judgment, however, it is at least encouraging to know that in most cases the procedure is a relatively simple matter. As long as the former judgment was rendered by a court with jurisdiction over the parties and the subject matter, a new judgment should be granted.