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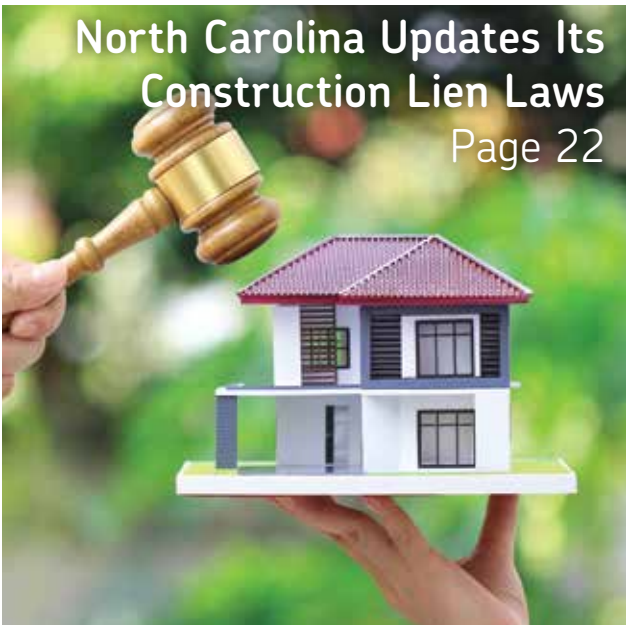


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Letter from the **PRESIDENT**

As we head towards the end of 2019 and rapidly approach the holiday season, I hope that our hearts turn to gratitude. We have all been blessed with work in a competitive industry and expect to see that continue into 2020. May we all continue to see growth in our business and the roofing industry. During the upcoming season take time to reflect and spend needed time with friends and family.

The CRSMCA Planning Committee and staff are finalizing the details of the upcoming Carolinas Mid-Winter Roofing Expo and preparing to return to the Hyatt Regency Hotel in Greenville, SC. Booths continue to sell and contractor registration is in full swing. Don't wait to get your booth or register your company to attend. Visit CRSMCA web page to register online.

The association prides itself on providing a breadth of education opportunities for our members. The Carolinas Mid-Winter Roofing Expo will have several exciting options including the Master Installers Certification Program and OSHA 10-Hour. New this year to the list of educational opportunities, **A.C.T. Metal Deck** will be hosting a Metal 101 class and **GAF** will be hosting a Roof Maintenance Class.

Looking ahead to the spring of 2020, plans for our 3rd Annual Spring Golf Tournament are already underway, and details are being finalized. If you are interested in being involved or sponsorship opportunities, please contact the CRSMCA office for more info.

I would like to personally encourage you to get involved in the association and the district meetings. The association is a product of what our members and supporters make it. The more involvement we have the better it is for our industry and for us. CRSMCA Board and Staff members are always ready to help your business and our industry!

On behalf of the CRSMCA Boards, thank you for your support to see the roofing industry prosper and allowing CRSMCA to bring YOUR companies more opportunities to grow and learn! I look forward to seeing you all in Greenville, South Carolina.

—Mickey Childress, Triad Roofing Company



CAROLINAS ROOFING & SHEET METAL CONTRACTORS ASSOCIATION

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THE CRSMCA MISSION STATEMENT

To promote and safeguard the common business interest of its members and to improve conditions by educating all persons concerning the roofing and sheet metal business and industry. To work for the development and progress of the roofing and sheet metal business industry and to work with individuals' organizations and governmental agencies toward the achievement of a stronger profession of the roofing and sheet metal industry.



Letter from the ASSOCIATE GROUP PRESIDENT

In 2013, North Carolina changed its lien laws to implement the use of lien agents to protect property owners. These changes are very similar to what the state of Florida had been using for many years prior and has been a proven system.

One of the major changes is that suppliers now have a verifiable way to establish lien rights on a project through a lien agent. That probably sounds scary to most contractors. However, it can be utilized as a tool for collections on the contractor's behalf.

The ability for multiple companies to have registered lien rights under your trade could be the difference on who is paid and in what order if something were to go wrong on a project. It's an easy process to add to your contracts for some extra security.

See additional information on lien laws in this issue!

—Erik Hauck, ABC Supply

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Association **IN ACTION**

We are quickly approaching the fourth-quarter of 2019 and everyone continues to stay busy out there. It's a great thing to see how the economy is continuing to do well and sustain our livelihoods. However, I can't help but think about the relationships that get lost when we are hard at work.

Have you been involved with your organization lately? Do you encourage other employees within your company to attend? In the past few months, CRSMCA has hosted an annual conference in Myrtle Beach, SC and several District meetings around the Carolinas that provide attendees an opportunity to network and learn from top roofing industry experts. These events are designed to provide you (the roofing industry) the opportunity to gain and grow your professional relationships. Keep these important facts in mind when you decide to (or not to) attend a CRSMCA event in the near future:

· Our business relationships have a great affect on our commu-

nication skills and boost our confidence in the workplace.

- Our business relations help us to gain friendships that can last a lifetime and provide you a personal fulfillment of joy.
- Our business relationships help us to improve our teamwork between colleagues and customers.
- Our business relationships help us to market our company and keep the business moving forward.

As always, if your company needs any form of training, please contact the CRSMCA office to discuss how CRSMCA can help your company stay safe and educated when on the job!

I look forward to seeing you all at the next CRSMCA events that are coming up. There is always growth and strength in numbers and opportunities to grow not only YOUR CRSMCA, but YOUR roofing industry!

—Carla B. Sims, CRSMCA Executive Director

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Additionally, the CRSMC-SIF is large component of support for the CRSMCA through sponsoring the CRSMCA Annual Meeting/Summer Convention and attendance of Trustees at the event. **HAVE YOU CONSIDERED CRSMC-SIF FOR YOUR WORKERS COMPENSATION NEEDS?**



WHAT IS THE CRSMCA MASTER INSTALLER CERTIFICATION?

The CRSMCA Roofing Academy Master Installer Certification Program is designed to promote safety issues and concerns in the application of the roof systems to prepare the employee for best practices in their job performance. It is intended for the use by anyone with an interest in these roof systems, from roofing workers to foremen to

supervisors. It is a culmination of efforts by contractors, manufacturers, suppliers and others who are dedicated to promoting safety.

Enrolled students will learn and train the basics of roofing, increasing their knowledge and skills to make them more valuable to their respective companies, as well as build future leaders in the roofing industry.

HOW CAN YOU GET INVOLVED?

The CRSMCA Roofing Academy Committee is always searching for instructors of the classroom material and the hands-on demonstration. View the class and hands-on courses in this issue. Should you wish to be an instructor, donate materials, and/or be a hands-on instructor; please contact the CRSMCA office at 704.556.1228 or cbsims@crsmca.org or the Committee Chairman, David Griffin, at dgriffin@coastalcommercialroofing.com.

EVENTS

NRCA’s Qualified Trainer Conference (Charlotte, NC) | November 12-13

CRSMCA’s Master Installers Certification Class 16 & 1 (Greenville, SC)
January 14, 2020

Carolinas Mid-Winter Roofing Expo (Greenville, SC) | January 14-16, 2020



SC DEPARTMENT OF LABOR, LICENSING AND REGULATION/ SC OSHA

General Information

803-896-7665 askscosha@llr.sc.gov

FREE! Training Classes are available for employers and employees of both the public and private sector; please contact Van Henson at (803) 896-7769.



The **Dorothy Nagle Scholarship Program** is available to assist employees of CRSMCA contractor and supplier members. Employees and their families who plan to pursue post-secondary education in college or vocational programs are eligible for the merit-based scholarships. Scholarship recipients will receive funding for one year of full-time study at any accredited post-secondary institution of the student’s choice.

The purpose of the Dottie Nagle Scholarship Program is to assist individuals seeking to further their education and pursue a career. **NOW ACCEPTING APPLICATIONS FOR SCHOLARSHIP FUNDING FOR 2020-2021!** Visit the CRSMCA website for the application. Deadline to submit is January 31, 2020!



SPRI ELECTS NEW DIRECTORS

SPRI, the trade association representing sheet membrane and component suppliers to the commercial roofing industry, elected four Directors to its Board and honored members at the association's 37th Annual Conference and Business Meeting, held in January in Tucson, AZ.

During the meeting, SPRI's membership elected the following slate of Officers and Directors for the association's 2019-2021 membership years:

ASSOCIATE DIRECTORS

- Scott Carpenter, SFS Intec
- Stan Choiniere, Stan Consulting
- Bob LeClare, ATAS International
- Ron Reed, Intertek

SPRI OFFICERS

- Zebonie Sukle, Johns Manville, President
- Brad VanDam, Metal-Era, Inc., Treasurer
- Mike Hubbard, Firestone Building Products Co., LLC, President-elect
- Jim Rubenaker, Sika Sarnafil, Immediate Past President



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Training information, registration and training course and dates can be found at https://www.labor.communications.its.state.nc.us/OSHPublic/ETTA/class_regist/calendar.cfm

DEADLY MISTAKES

by Judyth Niconieko, State Plan Coordinator

Fatal Event: On October 16, 2014, an 82-year-old man died from complications related to a fall from a roof.

Investigative findings: The employee was working as part of a three-man crew to remove two 4-by-4-foot roof curbs on a $\frac{1}{4}$ inch-per-foot pitched roof. When the curbs were removed, a new section of roof was to be installed. The building was about 50,000 square feet and had a metal roof, 22 feet above a concrete slab. The metal roof consisted of multiple 24-gauge roof panels which were 16 inches wide with a 2-inch lip on the edges to interlock the panels.

On the first day of the job, materials were staged onsite and the roof was prepped for work to begin. On the second day, one curb was removed, and the new section of roof was installed. On the third day, the second roof curb was removed and while

the area was being prepared to receive the new roof panels the employee stepped to the edge of the opening. The metal buckled slightly causing the employee to lose his balance and fall about 22 feet to the concrete slab below. The employee broke numerous bones and later died from medical complications related to the fall.

Discussion: When the company owner was asked about his employees wearing fall protection, he indicated that fall protection was not being used the day of the incident and had not been used on either of the previous two days because he did not think fall protection was required when working in the middle of a flat roof.

When the curbs were removed, a large hole was created and no protective measures were in place to assure the employees did not fall through the hole.

Training information, registration and training course and dates can be found at https://www.labor.communications.its.state.nc.us/OSHPublic/ETTA/class_regist/calendar.cfm

TRAINING EVENTS

- Complying with OSHA General Industry Standards (Raleigh) October 2-3
- Walking Working Surfaces (Webinar) | October 10
- Struck By/Caught Between (Webinar) | October 22
- Electrical Safety (Webinar) | October 25
- Personal Protective Equipment (Webinar) | October 29
- Stairways and Ladders (Webinar) | November 7
- Lockout/Tagout (Webinar) | November 13
- Hazard Communication (Webinar) | November 19
- Complying with OSHA General Industry Standards (Raleigh) December 4



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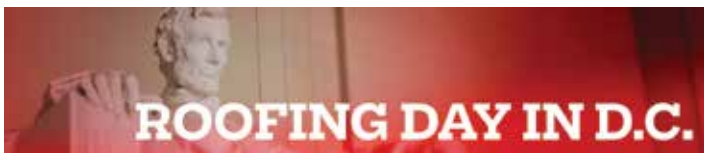
Are you sure your business interests are protected in your contracts? NRCA's attorneys and the National Roofing Legal Resource Center have joined forces to compile seven volumes of contract provisions with plain-language explanations you can understand—and use immediately.

Save thousands of dollars in attorneys' fees by inserting these provisions directly into your contracts!

Each volume includes contract provisions for key issues, such as payment terms; various obligations of the parties, representation and warranties; compensation for delay; cash flow and retainage; conditions to closing the deal; liability issues; remedies; termination rights; and more.

These are just a few of the resources provided by NRCA. Visit NRCA's bookstore for additional products designed to help you save time and legal fees!

Did you know? If your company is doing great work to help an organization, you can nominate the project for a CAN/NRCA Community Involvement Award. The winning project will receive \$5,000 payable to the charity. To view a video about the most recent winning project, go to www.professionalroofing.net. For more information and a nomination form, contact Jaime Sessions, NRCA's communications manager, at (847) 493.7537 or jsessions@nrca.net.



ROOFING DAY IN D.C.: HYATT REGENCY WASHINGTON ON CAPITOL HILL APRIL 21-22, 2020

Join fellow roofing industry professionals in Washington, D.C., as we take our message to Capitol Hill! It is important members of Congress see you and hear from you about the critical issues

facing your company. To be seen and heard, we need the industry speaking with one voice in Washington, D.C.! Don't miss this opportunity to make a difference for your business and our industry!

Questions? Call NRCA's Washington, D.C. office at (800) 338-5765.

EVENTS

- METALCON 2019 (Pittsburgh) | October 16-18
- NRCA's Qualified Trainer Conference (Hayward, CA) November 6-7
- NRCA's Qualified Trainer Conference (Charlotte, NC) November 12-13
- NRCA Fall Committee Meetings (Chicago, IL) November 12-15

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NRCA is continuing their popular series of FREE WEBINARS on the third Thursday of each month. These new and innovative webinar topics and presenters have been selected to expand your knowledge by giving you new ideas that you can implement into your company immediately. Each webinar offers a unique experience specifically tailored to roofing professionals. Don't miss out on these live opportunities to stay up to date with industry issues affecting your business.

For upcoming webinars and all previous webinar recordings, visit www.nrca.net/webinars.

UP AND DOWN EASTERN U.S.

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- Tennessee Association of Roofing Contractors, www.tarcroof.org
- Kentucky Roofing Contractors Association, www.krca.org
- Roofing & S/M Contractors Association of GA, www.rsmca.org
- Florida Roofing & Sheet Metal Association, www.floridarroof.com

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CHARLESTON APPROVES 'HISTORIC' CONTRACTS FOR AFRICAN AMERICAN MUSEUM CONSTRUCTION



By Emily Williams ewilliams@postandcourier.com

A highly-anticipated project to build an internationally recognized museum to African American history and culture on Charleston's waterfront achieved a milestone this week.

City Council voted Tuesday to approve critical contracts for Charleston's International African American Museum, allowing the project to start construction after almost two decades of planning and fundraising.

"It's a very exciting moment in the history of the museum and our community," former Charleston Mayor Joe Riley said shortly before Tuesday's vote.

The contracts total \$60.2 million, about \$58.46 million of which would go to the contractor, Turner-Brownstone, for the first phase of construction. Other smaller contracts include electrical work and project management services.

The contracts were approved unanimously, with an abstention from Mayor John Tecklenburg who serves on the museum's board.

IAAM president and CEO Michael Moore and Riley, who first announced plans to build the museum in 2000, spoke to council members during Tuesday's meeting and thanked the project's supporters and donors.

About 2,200 different contributors have given money to the museum, Riley said, including the state of South Carolina, Charleston County and the city of Charleston. More than \$90 million has been raised to support the museum's creation.

Tecklenburg described Tuesday's vote as "historic," and council member Keith Waring said it was a "wonderful experience" to

see the museum ready to break ground.

"It's really beginning in a large way," Waring said.

Before voting, council member Carol Jackson recognized that some community members have not been satisfied with the museum's direction, but she said she felt that approving the contracts would not be a "smoothing over" of those concerns.

"I don't think anything that we're going to decide today is going to take away from opportunities to make this museum something that we can all believe in," Jackson said.

On Monday, a group of community members who go by the name "Citizens Want Excellence at IAAM" gathered a few dozen supporters for a meeting at the International Longshoremen's Association headquarters.

There, they laid out demands for IAAM leadership and asked attendees to support them in asking council to defer an approval of the contracts until their concerns are addressed.

The group is opposed to the current building design — its supporters have asked that it be changed to "reflect specific elements of African and African American culture." They also have voiced concerns about how the narrative of enslavement will be told at the museum.

The waterfront museum site was once part of Gadsden's Wharf, a place where thousands of enslaved people first landed in Charleston.

Several of the group's members addressed council Tuesday, though the meeting's public comment period came after council already had voted unanimously to approve the contracts during its meeting of the Ways and Means Committee, just before the full council meeting.

MEMBER AFFINITY PROGRAMS

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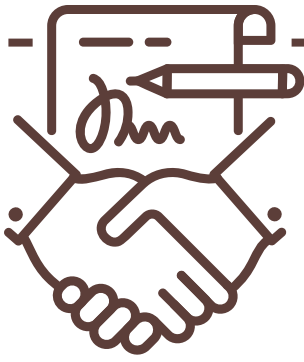


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CRSMCA CONTINUES TO UPDATE YOUR MEMBER BENEFITS.

QUESTIONS?

CARLA SIMS, EXECUTIVE DIRECTOR
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WHEN CONTRACTORS CAN WALK OFF THE JOB

By Kim Slowey, *ConstructionDive*

This feature is a part of “The Dotted Line” series, which takes an in-depth look at the complex legal landscape of the construction industry. To view the entire series, click here. (<https://www.constructiondive.com/news/construction-contracts-resource/429229/>)

When general contractors or subcontractors sign on to construction projects, they usually start off believing everything will run smoothly. But, during the course of the work, issues sometimes arise that force all parties to go running back to their contracts in order to evaluate their options.

One of those options for construction companies is to simply stop work, but contractors

need to take care when making such a big decision.

“Stopping work and ultimately terminating the contract is one of the most radical things you can do,” said Joseph McManus Jr., attorney and shareholder at law firm Carlton Fields.

Luckily, most of the circumstances under which contractors are clearly entitled to stop work are included in the most popular standard forms of contracts.

NONPAYMENT

The most common reason that contractors find it necessary to stop work, McManus said, is that they haven’t been paid for approved invoices.

In that scenario, he said, contractors have the right to pull off the job as long as their contracts allow for it, providing they’ve complied with all of the notice requirements.

For example, in the American Institute of Architects’ A201-2017, “General Conditions of the Contract for Construction,” which is incorporated by reference in most AIA owner-contractor agreements, a contractor has the right to stop work under two conditions.

One circumstance is if the architect does not certify the contractor’s payment application within seven days of receipt, barring some fault of the contractor. The other is if the owner does not pay

the approved pay application within seven days of the date established in the contract.

If one of these events occurs, then the contractor can stop work after providing the owner an additional seven days’ notice.

The AIA’s A401-2017, “Standard Form of Agreement Between Contractor and Subcontractor” has a similar provision. The subcontractor can stop work after providing a seven-day notice if it has not received payment from the general contractor within seven days of the payment date set out in the subcontract.

In all of these cases, McManus said, the contractor or subcontractor that hasn’t been paid is entitled to a schedule extension for the period of time work was stopped plus reimbursement for demobilization and mobilization costs.

It’s important, however, for contractors and subcontractors to read their contracts before they sign to make sure there are some protections for nonpayment. Not everyone uses AIA or ConsensusDocs forms, and contracts drawn up in-house by an owner or general contractor might not include favorable terms or recourse for late payments.

“Due diligence,” said attorney



Karl Frederic with Windels Marx Lane and Mittendorf LLP, "is the No. 1 line of defense."

Short of walking off the job, which is certainly a disruptive action, there is also the mechanic's lien option, Frederic said, or even just the threat of one in order to induce the owner or general contractor to pay. A mechanic's lien creates an encumbrance on the project property, and the dollar amount that the lien represents typically must be paid or otherwise resolved before the owner can sell or refinance the property.

"The mechanic's lien is a powerful tool that can be used against the owner in any number of ways," he said. For instance, if the project is financed, a mechanic's lien could put the owner in default of its mortgage on the property.

A subcontractor lien carries the same consequences for the owner and can also get wheels moving when it comes to past due payments to specialty contractors.

Really, though, Frederic said, good business practices on the part of contractors can reduce the chance that payment issues will cause problems on the job.

Contractors, he said, should check out their customers' credit and payment history with other construction companies. They should also insist on using AIA contracts because judges and arbitrators are most familiar with them if a dispute makes its way to court. Finally, he said, don't let the customer get too far behind in payment before addressing the deficiency.

THE OWNER HAS NOT GIVEN EVIDENCE OF ABILITY TO FINANCE THE PROJECT

This might surprise some general contractors, but, according to McManus, their contracts could allow them to stop work if the owner does not give them evidence that it has made financial arrangements or has the wherewithal to pay bills associated with the project.

Contractors, however, can only request that proof under certain circumstances, at least for those using AIA 201 or another form that includes that right.

If using AIA 201, the contractor can ask for proof that the owner is able to pay its bills on that job after work has started if the owner does not make timely payments, if the contractor has a "reasonable concern" that the owner won't be able to meet its financial obligations on the project, or if the owner makes changes to the work that materially increases the contract amount. If the owner fails to provide that information, then the contractor can stop work.

If such contractor requests are ignored prior to the job starting, the contractor doesn't have to start the project at all until the owner hands over the necessary information.

In both scenarios, contractors, again, are typically entitled to

most expenses incurred due to the stoppage.

CARDINAL CHANGE

A cardinal change, McManus said, is a type of change so extreme that when added to the scope of work, it alters the very nature of the contract. "It really isn't the same contract anymore," he said.

For example, if a contractor is hired to only demolish a building for \$50,000 and then is handed a change order for \$500,000 to build a new one, that would be a cardinal change.

Most changes, however, McManus said, are difficult to prove as a cardinal change versus a change order, with which contractors typically are contractually bound to perform.

Even a cardinal change, though, doesn't affect the contractor's obligation to complete the original scope of work outlined in the contract.

Continued on next page

Commercial, Industrial



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If the contractor declares that a change is cardinal, changing the essence of the original contract, and the owner — or the general contractor in the case of a subcontractor — disagrees, then the matter could end up in court, which does not mean a slam dunk for the contractor. Cardinal changes, McManus said, are decided on a case-by-case basis and are very difficult to prove.

SURPRISE FINDS

Discovery of unexpected hazardous conditions, underground storage tanks, culturally significant artifacts or human remains — these are all examples of when contractors can legally stop work in the affected areas or as directed by authorities, McManus said.

However, according to some contracts like the AIA's A201, contractors can't walk off the project if they can find a way to work safely around these hazards.

This is another situation when contractors are usually eligible for reimbursement for the expenses that come with

halting and restarting work, as well as an appropriate extension of the schedule for the days lost to remediation or removal of items from the site.

Then there are the disputes that aren't so clear cut.

In these circumstances — i.e. arguments over which company is responsible for a construction error, a constant struggle to get change orders approved, an overall contentious relationship — there is typically no clear path to being able to rightfully walk off the job.

They can be frustrating, said Jim Gallagher, a principal with Resolution Management Consultants, but, still both parties must adhere to the contract and the rules it sets forth for stopping work and possibly terminating the contract.

And, he said, one can't underestimate the ability of an honest, straightforward negotiation to head off a court battle or, at the very least, a contractor walking off the job.

"You have to step back and take a look at what you may be responsible for and how

you may have contributed [to the issue]," he said, "because, more often than not, it's very rare that things are black and white. You have to evaluate the shades of gray."

There are usually three sides to every story, Gallagher said, and contractors, as well as owners, sometimes overlook that. What both parties need to keep in mind is how their case will look to the eventual decider, be it in a courtroom, arbitration or mediation.

"If you've already gone through that [process] and the situation has no other recourse, then you need to follow what the contract requires," he said.

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USING LEADING INDICATORS TO IMPROVE SAFETY AND HEALTH OUTCOMES

EXAMPLE LEADING INDICATORS: Number of workers who attend a monthly safety meeting

GOAL: 97% worker attendance rate at monthly safety meetings

SPECIFIC: Does your leading indicator provide specifics for the action that you will take to minimize risk from a hazard or improve a program area?

GOOD EXAMPLE

Workers will attend a safety every month.

This is specific because it clearly identifies what the activity is and who needs to attend.

BAD EXAMPLE

Safety meetings will be held monthly.

This is not specific because it does not describe who needs to attend.

MEASURABLE: Is your leading indicator presented as a number, rate, or percentage that allows you to track and evaluate clear trends over time?

GOOD EXAMPLE

Workers will attend a safety every month.

This is measurable because you can track the number of workers that attend every month.

BAD EXAMPLE

Safety meetings will be held monthly.

This is not measurable because it does not track a number, rate, or percentage with respect to your goal.

ACCOUNTABLE: Does your leading indicator track an item that is relevant to your goal?

GOOD EXAMPLE

Workers will attend a safety every month.

This indicator is relevant to your goal because it asks workers to attend the meeting.

BAD EXAMPLE

Safety meetings will be held monthly.

This indicator is not relevant to your goal because it does not specify that your workers would be asked to attend.

REASONABLE: Can you reasonably achieve the goal that you set for your leading indicator?

GOOD EXAMPLE

**Workers will attend a safety every month.
Your goal is a 97% attendance rate.**

Your 97% goal is achievable because it takes into account that you will not have a make-up meeting and workers missing work will not be able to attend on the day the meeting is scheduled.

BAD EXAMPLE

**Workers will attend a safety every month.
Your goal is a 100% attendance rate.**

Your 100% goal is not achievable because you know that some workers will occasionally miss work on the day the meeting is scheduled.

TIMELY: Are you tracking your leading indicator regularly enough to spot meaningful trends from your data within your desired timeframe?

CAROLINAS MID-WINTER ROOFING EXPO

products solutions services vendors
 guest speakers free demos and more!



CRSMCA hosts one of the largest regional roofing trade shows in the southeast. With over 80 exhibiting companies providing details for the roofing industry, from safety tools to equipment to the latest technology; and over 400 contractors, architects, consultants, etc. attending for education and networking. CRSMCA also offers educational opportunities with up-to-date roofing industry seminars and top professionals leading the education. This event will be held at the Charlotte Convention Center and host hotel accommodations at the Omni Charlotte Hotel. Don't miss the opportunity to be a part of the latest in the roofing industry, whether exhibiting or attending.

EXHIBITORS, WHAT IS INCLUDED WITH YOUR BOOTH PURCHASE?

Exhibitors that purchase at least ONE booth will receive two complimentary attendees for their booth. EACH booth purchase will come with: carpet, drapes, (1) 8x10 skirted table, (2) chairs and (1) wastebasket. Should you need additional items or services, you will need to arrange this through the exposition service provider.

CONTRACTORS, WHAT IS INCLUDED WITH YOUR REGISTRATION FEE?

Contractors have an amazing opportunity to pay ONE fee for as many employees to attend the

conference. You will have the opportunity to attend the education sessions (with the exception of the Master Installer's Certification Program, as there is an additional fee for this session), networking receptions, trade show and receive a complimentary lunch. You may also register for the OSHA 10-Hour Class at NO ADDITIONAL FEE!

CONSULTANT, ARCHITECTS, ENGINEERS, WHAT IS INCLUDED WITH YOUR REGISTRATION?

Your complimentary registration will provide you the opportunity to attend the education sessions (except for the Master Installer's Certification Program, as there is an additional fee for this session), networking receptions, trade show and receive a complimentary lunch.

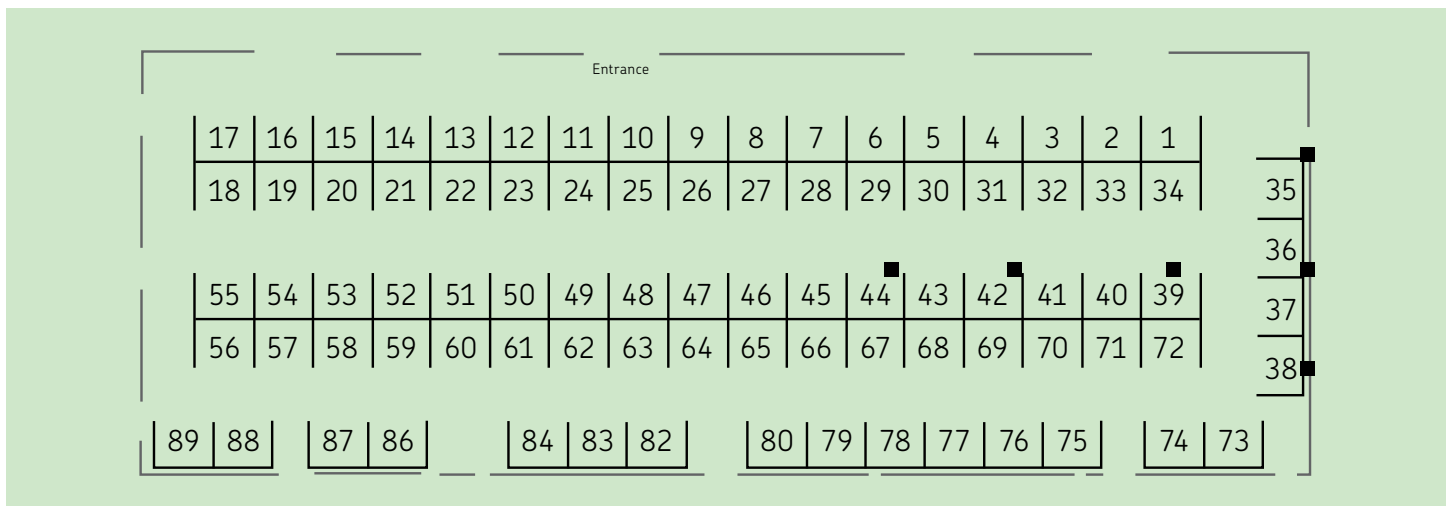
HOST HOTEL

Hyatt Regency serves as the host hotel for the Carolinas Mid-Winter Roofing Expo. The hotel is located at 220 N. Main Street, Greenville, South Carolina. CRSMCA has a special room rate at \$179 plus applicable tax. Reservations can be made by phone at 864.235.1234 or via online at www.hyatt.com.

Group rate will be available until December 23, 2019 or until the room block is sold out, be sure to book early!

CURRENT EXHIBITORS LISTING

- A.C.T. Metal Deck Supply
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- APOC
- AssuredPartners
- Beacon Roofing Supply
- Berridge Manufacturing Company
- d7 Marketing Solutions
- Dunn & Abee, Inc.
- GAF Materials Corporation
- Mid-States Asphalt
- Mule-Hide Products, Inc.
- NBHandy Company
- Petersen Aluminum Corporation
- Premier Building Products
- Pro-Active Sales & Marketing, Inc.
- R.K. Hydro-Vac, Inc.
- Roofing & Tools Equipment
- Royal Adhesives & Sealants
- Tropical Roofing Products
- W.R. Walsh, Inc.





This year's Mid Winter Expo will be held in Greenville, SC.

Carolinas Mid-Winter Roofing Expo

TENTATIVE CONFERENCE AGENDA

TUESDAY, JANUARY 14, 2020

7 AM–4 PM

CRSMCA Master Installer Certification Class

8 AM–5 PM

Exhibitor Setup

9–11 AM

CRSMCA Associate Group Liaisons Meeting

11 AM–6:30 PM

REGISTRATION DESK OPEN

11:30 AM–1:30 PM

CRSMCA Executive Committee Meeting

2–5 PM

CRSMCA Board of Directors & Associate Group Liaisons Meeting

5:30–6:30 PM

Exhibitor's Welcome Reception & Open Play for Cornhole Tournament

WEDNESDAY, JANUARY 15, 2020

7:30 AM–5 PM

REGISTRATION DESK OPEN

8 AM–4 PM

OSHA 10-Hour Training

8:45–9 AM

Welcome Announcements from Convention Expo Chairman

CRSMCA Business Session; Most Valuable Employee Award Recognition

9–9:45 AM

NRCA Technical Updates

9–10:45 AM

Residential Education Session 1

Commercial Education Session 1

11 AM–6:30 PM

Exhibit Hall Open

11:30 AM–1 PM

Lunch In Exhibit Hall

12:30–1:30 PM

Residential Education Session 2

Commercial Education Session 2

2:30–3:30 PM

Residential Education Session 3

Commercial Education Session 3

2–5 PM

Cash Bar Open & Cornhole Tournament

4–5

PM Live Demo

5:30–7:30 PM

Networking Reception

THURSDAY, JANUARY 16, 2020

7:30–10 AM

REGISTRATION DESK OPEN

7:30 AM–12 PM

Exhibitor Dismantle/Move-Out

7:45–8:15 AM

CRSMCA Associate Group/Exhibitors Pre-Selection Meeting

8 AM–12 PM

OSHA 10-Hour Training

CAROLINAS MID-WINTER ROOFING EXPO
JANUARY 14 – 16, 2020
 HYATT REGENCY GREENVILLE
 220 N. Main Street | Greenville, SC 29601



EXHIBITORS BOOTH & ATTENDANTS CONTRACT/REGISTRATION FORM

**For each booth purchased, exhibitors will receive two (2) complimentary contractor company passes for trade show entrance for customer/clients... Tickets will be mailed with confirmation letter. Be sure mailing address is accurate!*

Company Name		Contact Name	
Company Address	City	State	Zip Code
Phone	Fax	*Email for confirmation	

SELECT MEMBER TYPE:

- CRSMCA Booth Price (1) \$900 Includes 2 *COMPLIMENTARY* Booth Attendees
Each additional \$500 each (*no complimentary attendees*)
- Non-Member Booth Price (1) \$1500 Includes 2 *COMPLIMENTARY* Booth Attendees
Each Additional \$650 each (*no complimentary attendees*)

PLEASE REVIEW THE RULES AND REGULATIONS, FORWARD YOUR ACKNOWLEDGMENT TO CRSMCA

BOOTH SELECTION(S): (1) _____ (2) _____ (3) _____

TOTAL BOOTH COST: _____

Please Register the Following Attendants:

FIRST TIME EXHIBITOR **-\$50.00**

- | | |
|----------------------------------------------------|----------------------------------------------------|
| 1. _____
NAME (<i>COMPLIMENTARY</i>) CITY, ST | 2. _____
NAME (<i>COMPLIMENTARY</i>) CITY, ST |
| 3. _____
NAME (\$95.00) CITY, ST | 4. _____
NAME (\$95.00) CITY, ST |
| 5. _____
NAME (\$95.00) CITY, ST | 6. _____
NAME (\$95.00) CITY, ST |
| 7. _____
NAME (\$95.00) CITY, ST | 8. _____
NAME (\$95.00) CITY, ST |

TOTAL ATTENDANTS COST: _____

FINAL TOTAL: _____

PAYMENT INFORMATION: Check Enclosed MasterCard/VISA American Express

Credit Card Number _____ Expiration Date _____ CVV Code _____

Name on Card _____ Signature _____

FOR OFFICE USE:

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Entered By _____

PLEASE RETURN FORM WITH REGISTRATION FEES TO:

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CANCELLATIONS MUST BE SUBMITTED IN WRITING AND RECEIVED BY THE CRSMCA OFFICE BY DECEMBER 1, 2019. A 50% CANCELLATION FEE WILL BE APPLIED TO THE REFUND.

CRSMCA WILL NOT GRANT ANY REFUNDS AFTER DECEMBER 1, 2019.

CAROLINAS MID-WINTER ROOFING EXPO
JANUARY 14 – 16, 2020
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Company Address	City	State	Zip Code
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COMPLIMENTARY REGISTRATION FOR COMPANY JOINING CRSMCA AT TIME OF REGISTRATION!

<input type="checkbox"/> Contractor \$75.00 <u>PER COMPANY</u>	<input type="checkbox"/> Non-Exhibitor [Mfr/Dist] \$325.00 <u>PER PERSON</u>
<input type="checkbox"/> Architect/Engineer/Consultant (<i>COMPLIMENTARY REGISTRATION</i>)	AIA RCI NO. _____
1. _____ NAME <input type="checkbox"/> I WILL BE ATTENDING THE OSHA 10-HOUR CLASS	2. _____ NAME <input type="checkbox"/> I WILL BE ATTENDING THE OSHA 10-HOUR CLASS
3. _____ NAME <input type="checkbox"/> I WILL BE ATTENDING THE OSHA 10-HOUR CLASS	4. _____ NAME <input type="checkbox"/> I WILL BE ATTENDING THE OSHA 10-HOUR CLASS
5. _____ NAME <input type="checkbox"/> I WILL BE ATTENDING THE OSHA 10-HOUR CLASS	6. _____ NAME <input type="checkbox"/> I WILL BE ATTENDING THE OSHA 10-HOUR CLASS

PAYMENT INFORMATION

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Credit Card Number	Expiration Date	CVV CODE
Name on Card	Signature	

FOR OFFICE USE:
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\$3,000 PLATINUM

Opening Reception

ONE complimentary booth; complimentary $\frac{1}{2}$ page ad in the *Carolinas Contacts Magazine*; signage at the Carolinas Mid-Winter Roofing Expo; listing in the *Carolinas Contacts Magazine* and on the CRSMCA website

\$2,000 DIAMOND

Wednesday Reception

Wednesday Lunch

TWO complimentary attendees; complimentary $\frac{1}{2}$ page ad in the *Carolinas Contacts Magazine*; signage at the Carolinas Mid-Winter Roofing Expo; listing in the *Carolinas Contacts Magazine* and on the CRSMCA website

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Wednesday Breakfast

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\$ 750 BRONZE

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\$ 300 CONTRACTOR GOODWILL

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Return by **12/1/19** to be listed in *Carolinas Contacts Magazine*

**PLEASE SUBMIT YOUR COMPANY LOGO VIA EMAIL TO CBSIMS@CRSMCA.ORG TO BE PRESENTED DURING GENERAL SESSIONS.

CRSMCA's 2020 Most Valued Employee Award Nomination Form



This program is designed to honor one outstanding employee from North Carolina and one from South Carolina to be recognized during the Carolinas Mid-Winter Roofing Expo. Each state will select their MVE of the Year. The purpose of the award is to recognize excellence within CRSMCA and allow recipients to serve as role models for other employees, as well as increase professionalism and attract additional employees to the roofing industry. *Only one employee per branch office of a company may be nominated for the MVE of the Year Award.*

Judges will include CRSMCA members. Judges' decisions will be based on evidence of professionalism; uniqueness or significance of a nominee's contribution; and benefit to a nominee's company and co-workers or community.

Award recipients will receive a plaque, free registration to the Carolinas Mid-Winter Roofing Expo, and one-night lodging during the Carolinas Mid-Winter Roofing Expo. Winners will be formally honored and presented the award during the Business Session on Wednesday, January 15, 2020 in Raleigh, North Carolina.

Nominations must be received by the CRSMCA office by DECEMBER 31, 2019. For more information or to obtain additional nomination forms contact Carla Sims at CRSMCA, at cbsims@crsmca.org or call 704-556-1228.

NOMINEE DETAILS

Name of Nominee

Employer

Title/Position with Employer

Submitted By

Company

Describe below or attach your reason for the nomination. Several issues to consider and discuss, if appropriate, are:

- on-the-job performance
- attracting new employees and helping retain existing employees
- contributions to a team effort
- leadership
- community service and volunteerism
- other noteworthy contributions and activities



NORTH CAROLINA UPDATES ITS CONSTRUCTION LIEN LAWS

WHO IS INVOLVED?

The first step to understanding the North Carolina construction lien system is recognizing the different parties and the roles they play;

- An Owner is the person who owns Real Property that is being improved.
- A “contractor” under the statutory scheme, commonly referred to as and referred to in this article as a “General Contractor,” is the contractor who has a direct contractual relationship with the Owner to complete the improvements.
- Other contractors hired by the Contractor to complete smaller portions of the work are either First-Tier Subcontractors (meaning they have a contract directly with the General Contractor but no contract with the Owner) or Lower-Tier Subcontractors hired by the First-Tier Subcontractor (a Second-Tier Subcontractor), or hired by the Second-Tier Subcontractor (a Third-Tier Contractor, and so on.). The relationship between these parties can be visualized as a ladder with the Owner at the top, the General Contractor on the first step down, and each level of subcontractor below them.

THE GENERAL CONTRACTOR’S DIRECT LIEN ON REAL PROPERTY

There is an important distinction between a General Contractor’s lien on Real Property, and a subcontractor’s lien on funds due from the Owner to the General Contractor or in the hands of, or owed to, a subcontractor higher in their contractual ladder. A General Contractor’s lien on Real Property (“Direct Lien”) is a security interest in the Real Property itself, not unlike a mortgage or a deed of trust. To qualify for a Direct Lien the General Contractor has to meet four elements:

- The General Contractor must perform work or furnish labor or design services;
- Pursuant to a contract;
- That the General Contractor has with the Owner of Real Property;

For the purpose of constructing an improvement on the Owner’s Real Property.

An “Improvement” covers traditional construction activities like building, repair, alteration, and even demolition. But it also applies to grading work, excavation, landscaping, and providing materials like lumber or shrubbery for the Real

Property. Even some unexpected services like providing rental equipment to a jobsite or supplying design advice can qualify for a construction lien.

A Direct Lien is secured not only by the improvements themselves, but extends to the title of the Real Property on which the improvement is constructed (assuming the Owner has an interest in the title to the Real Property rather than a lesser interest such as a tenant under a lease of the Real Property, in which case the Direct Lien would be secured by the tenant’s interest in the “leasehold”). So even though Gary is only building a single bedroom, his construction lien will be a lien against Olivia’s entire home and lot; the Real Property.

The timing and procedure necessary to file a construction lien are important. They determine if the lien has been properly created and if it has, what priority the General Contractor has against other security interests on the same Real Property.

A construction lien is “perfected” when the General Contractor:

- Follows the statutory Lien Agent notice requirements discussed below;

- Serves a copy of the lien on the Owner of the Real Property; and,
- Files a lawsuit to enforce the lien.

But, a critical point is that the priority of the General Contractor's Direct Lien with respect to the priority of the liens with other lienholders, such as a bank that has a recorded construction deed of trust, may be determined based on a date well before the date all the steps above are completed!

A construction lien, called a "claim of lien," has to be filed with 120 days after the last furnishing of work, materials, or services to the construction project. If it's filed within that time, the priority of the General Contractor's lien will «relate back» to the latter of the date the General Contractor first furnished work, materials, or services to the Real Property or the date the General Contractor filed a Notice to Lien Agent, which is discussed below—meaning that the lien will be perfected from that time and «jump in front of» liens, including deeds of trust, filed or recorded after that relation backdate.

Work, materials, and services are "last

furnished" when they are last provided as required by the General Contractor's contract with the Owner. The deadline cannot be extended by doing additional work or providing additional materials that were not originally required.

A claim of lien cannot be amended under the rules except to partially release a portion of the claim if the amount due to the claimant is determined to be a lower amount, but it can be canceled and refiled assuming the claimant's new filing is also made within the 120 day period after the last furnishing of labor or materials.

General Contractors should be aware of the requirement that they serve their claim of lien on the Owner by personal delivery or a properly identified and post-paid letter. E-mail, fax, or regular mail will not accomplish proper service.

Enforcing a Direct Lien requires a lawsuit against all the necessary parties. The lawsuit must be filed within 180 days of the last furnishing. It's important to note that this is not 180 days after the claim of lien is filed. However, once filed, the lawsuit can be voluntarily dismissed and

then refiled within one year after the dismissal without the claim being lost.

A SUBCONTRACTOR'S CLAIM UPON FUNDS

North Carolina law treats subcontractors differently from General Contractors. The General Contractor's Direct Lien on Real Property is a direct security interest in the Real Property, but subcontractors can typically—with some specific exceptions—only obtain a lien on the funds that are in the hands of, or still owed to, a party higher on their «ladder» than they are («Lien on Funds»). Subcontractors are also tiered; there's no limit to the number of tiers, but funds flow down a particular ladder in order, although subcontractors lower than the third tier have limited rights.

Generally, to qualify for a Lien on Funds a subcontractor must:

- Have a contract with the General Contractor or another subcontractor higher up their ladder;
- To improve Real Property; and,

Continued on next page

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· The subcontractor must furnish labor or materials to the site of the improvement.

If a subcontractor meets the requirements for a Lien on Funds, then a lien securing funds they are owed will “attach to” any funds in the hands of, or owed to, the General Contractor or subcontractor with whom the subcontractor contracted. Put another way, a subcontractor’s Lien on Funds is a lien on the funds in the hands of, or owed to, the contractor on the next rung up the subcontractor’s ladder. Thus, a First-Tier Subcontractor will get a lien on the funds owed to the General Contractor, and a Second-Tier Contractor will get a lien on the funds owed to the First-Tier Contractor.

Liens on Funds will create a security interest in the applicable funds as of the time that the labor or materials are furnished and are perfected upon delivery of notice to the Owner or the General Contractor and subcontractors higher in the ladder in writing that the subcontractor is asserting a Lien on Funds in the hands of, or due to a higher-level contractor in the ladder leading up to the Owner. North Carolina provides a statutory form in North Carolina General Statutes, Section 44A-19 for that notice.

Liens on Funds are not filed in the office of the Clerk of Court like Direct Liens on Real Property, but they must still be served on the party against whom the subcontractor is asserting the Lien on Funds. Unlike a Direct Lien, there is no specific time frame within which a subcontractor must serve a claim of Lien on Funds, but it must be served within all applicable statutes of limitations and delay may result in funds being paid and disbursed, so subcontractors need to consult an attorney as soon as possible to ensure compliance with the law and to prevent the loss of a viable claim.

Enforcing a Lien on Funds depends on the willingness of the up-the-ladder parties to voluntarily comply with the lien. If the Owner or up-the-ladder contractor pays the subcontractor in order to re-

move the lien, there’s no need for additional legal action. However, if the parties do not resolve the issue on their own, the subcontractor is left to file a lawsuit to foreclose the Lien on Funds.

In some cases, there may be multiple subcontractors asserting claims of a Lien on Funds against the same funds. In those situations, the funds will be distributed on a pro-rata basis.

Enforcing a Lien on Funds depends on the willingness of the up-the-ladder parties to voluntarily comply with the lien.

SUBCONTRACTORS AND SUBROGATION

Subcontractor liens also introduce the concept of “subrogation.” Simply put, subrogation allows a subcontractor to “step into the shoes” of an up-the-ladder party (or parties) and assert the higher-positioned party’s rights against an even higher rung party. Critically, although subrogation may allow a lower party to assert rights of higher parties, it can never improve or enlarge the rights of the subrogating party. This means that a particular claimant’s Lien on Funds will only exist to the extent of the amount of funds the subrogating party is owed.

As discussed in the next section, subrogation is also the method by which a subcontractor, originally limited to a claim of Lien on Funds, can assert a Direct Lien on Real Property by “stepping into the shoes” of the General Contractor and asserting the General Contractor’s right to a Direct Lien the Real Property.

This right to assert a Direct Lien by way of subrogation is contingent on the subcontractor complying with all of the Lien Agent rules discussed below, and file a claim of Direct Lien on Real Property with an attached Notice of Claim of Lien upon Funds that has been served on the

Owner and any other appropriate party, as well as an affidavit demonstrating proper service.

THE “DOUBLE PAYMENT PROBLEM”

A subcontractor’s Liens on Funds presents a unique, and dangerous, problem for Owners that has been termed the “double payment problem.” The double payment problem occurs when an Owner receives notice that a subcontractor has claimed a Lien on Funds owed by the Owner to the General Contractor.

Once an Owner has received that notice, they have an obligation to withhold from their payments to the General Contractor with whom they contracted sufficient funds to pay the subcontractor’s Lien on Funds.

That “double payment” presents a scary scenario for an Owner or any higher-tier contractor who may think they have fully discharged their obligations by paying the funds they received to their subcontractors after they have received notice of a claim, only to find out they still owe a down-the-ladder party money. If an Owner or contractor pays the amount they are owed in full but remain obligated to a subcontractor because they paid with notice of a claim of Lien on Funds, the Owner or contractor will have a right to seek reimbursement from the contractor they paid, but that right may not be much solace if the contractor has disappeared or spent the money and doesn’t have replacement funds available.

Even more dangerous for an Owner is the fact that if the Owner fails to comply with a Lien on Funds, the subcontractor’s Lien on Funds can become a Direct Lien on the Real Property and threaten the Owner’s entire ownership of the Real Property unless the Owner makes the “double payment” before the subcontractor forecloses on its new Direct Lien. This concept is discussed further below.

Double payment can be avoided by careful attention to notices and proper withholding after notice is received.

LIEN AGENT REQUIREMENTS

Because of the fact that a construction lien had the ability to “relate back” to the date of first furnishing of work or materials to improve real property, and that date would not appear in any public record, real property titles in North Carolina, particularly for lenders expecting first lien deeds of trust, were bedeviled by the “hidden” or “secret” liens available to contractors.

In 2012, North Carolina created the concept of a Lien Agent. A Lien Agent is required to be appointed for construction projects having an estimated cost over \$30,000 at the time the building permit is issued. An exception exists for improvements to an existing single-family residence which do not require the appointment of a Lien Agent regardless of the cost of the improvements.

The Lien Agent process was discussed in detail in a previous Ward and Smith article.

CONCLUSION

Olivia, Gary, and Steve all have responsibilities and rights under the North Carolina construction lien laws. By knowing the rules and following the guidelines, they can put themselves in the best possible position.

Construction liens can seem like a complex system, but with attention to detail and help of an experienced attorney, each party can ensure themselves the best chance at securing all of their rights.

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SOUTH CAROLINA CONSTRUCTION LIEN LAW

Source: USLegal.com

Note: This summary is not intended to be an all-inclusive discussion of South Carolina's construction or mechanic's lien laws but does include basic provisions.

What is a construction or mechanic's lien?

Every State permits a person who supplies labor or materials for a construction project to claim a lien against the improved property. While some states differ in their definition of improvements and some states limit lien claims to buildings or structures, most permit the filing of a document with the local court that puts parties interested in the property on notice that the party asserting the lien has a claim. States differ widely in the method and time within which a party may act on their lien. Also varying widely are the requirements of written notices between property owners, contractors, subcontractors and laborers, and in some cases lending institutions. As a general rule, these statutes serve to prevent unpleasant surprises by compelling parties who wish to assert their legal rights to put

all parties who might be interested in the property on notice of a claim or the possibility of a claim. This by no means constitutes a complete discussion of construction lien law and should not be interpreted as such. Parties seeking to know more about construction laws in their State should always consult their State statutes directly.

Who can claim a lien in this State?

A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him.

How long does a party have to claim a lien?

Such a lien shall be dissolved unless the person desiring to avail himself thereof, **within ninety days** after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession and files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf and shall be recorded in a book kept for the purpose by the register or clerk who shall be entitled to the same fees therefor as for recording mortgages of equal length.

How long is a lien good for?

Unless a suit for enforcing the lien is commenced, and notice of pendency of the action is filed, within six months after the person desiring to avail himself thereof ceases to labor on or furnish labor or material for such building or structures, the lien shall be dissolved

Does this State require or provide for a notice from subcontractors and laborers to property owners?

Yes. South Carolina law allows for a party to file with the Clerk of Court or Register of deeds a Notice of Commencement when work begins. Any party who provides labor or materials and was employed by someone other than the owner is required to furnish a notice to that effect to the owner. Finally, a lien claimant must provide the property owner with a copy of a filed Statement of Account.

Does this State require or provide for a notice from the property owner to the contractor, subcontractor, or laborers?

South Carolina law does provide that a property owner may furnish a notice to contractors, subcontractors, and other parties that the owner will not be responsible for the cost of improvements on the property. (Please see below.)

Does this State require a notice prior to starting work, or after work has been completed?

Any person entering into a direct agreement with, or with the consent of, an owner for the improvement of real property may file with the Clerk of Court or Register of Deeds in the county or counties where the real property is situating a Notice of Project Commencement. The notice must be filed within fifteen days of the commencement of work and must be accompanied by a filing fee of fifteen dollars to be deposited in that county's general fund.

Does this State permit a person with an interest in property to deny responsibility for improvements?

Yes. The owner of any such building or structure in process of erection or being altered or repaired, other than the person by whom or in whose behalf a contract for labor or materials has been made, may prevent the attaching of any lien for labor thereon not at the time performed or materials not then furnished by giving notice, in writing, to the person performing or furnishing such labor or furnishing such materials that he will not be responsible therefor.

Is a notice attesting to the satisfaction of a lien provided for or required?

No. South Carolina statutes do not provide for or require that a lien holder who has been paid produce or file a notice to that effect.

Does this State permit the use of a bond to release a lien?

Yes. At any time after service and filing of the statement required under SECTION 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed and shall be subject to the lien.

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EMPLOYER OR EMPLOYEE: WHO'S TO BLAME FOR OSHA VIOLATIONS?

Construction firms can fight OSHA violations that stem from employee misconduct.

Author Kim Slowey, ConstructionDive

Although Sarasota, Florida-based Crown Roofing has been subject to multiple OSHA inspections on its project sites during the last four years, company executives say they are not completely at fault.

The firm has contested the more than \$500,000 in fines it has received since 2017 for failure to provide adequate fall protection for its employees. In an interview with NBC2 News last month, Crown Roofing Safety Director Aleksey Mendez said the incidents occurred because some employees were not obeying company safety rules.

He told a reporter that the company believes it is being unfairly targeted by OSHA, adding that it spent more than \$1 million dollars last year to provide safety training for its employees, particularly those working on roofs.

“We train our workers on the safety program and provide the necessary equipment for them to work safe,” Mendez said. “The notion that Crown Roofing does not care about employee safety is not only factually incorrect but intellectually dishonest. To keep fining the employer for actions that are [wittingly] done by the employee is not making them safer.”

LACK OF COMPLIANCE

The Crown Roofing case raises interesting questions: What if a contractor has trained its employees on safety rules and a few workers simply refuse to follow procedures? Is the employer still responsible?

As it turns out, this could be considered employee misconduct, which can be used as defense against an OSHA violation. In fact, while the vast majority of OSHA standards deal with employer responsibilities for workplace safety, section 5(b) of the Oc-

cupational Safety and Health Act of 1970 requires employees to comply with jobsite safety rules and regulations.

But to mount a successful defense against an OSHA citation using employees’ lack of compliance as the basis, employers need to make sure they’ve incorporated four distinct elements into their safety policies, said Edwin G. Foulke Jr., partner in the Atlanta and Washington, D.C. offices of law firm Fisher Phillips and former assistant secretary of labor for OSHA under President George W. Bush.

The first part, Foulke said, is to provide employees with a written policy that outlines general safety policies and procedures and those that deal with the alleged violation the employer is contesting. So, for example, if an employer is fighting an OSHA citation issued after an inspector observed an employee not wearing adequate fall protection equipment, the company must be able to point to one of its written regulations showing that the employee was required to wear it.

The second part is training. Employers, Foulke said, must educate all employees on its safety policies and procedures and then have them sign a statement affirming that they have received the training.

The third part is a system of verifying that the rules are being enforced. This is usually accomplished, Foulke said, by documenting the visual observations made by the contractor’s staff.

For example, the foreman might make several passes around the job each day to make sure employees are following the rules, while the superintendent might make two trips and the project manager one. They must put their notes from these inspections in writing and maintain them as part of the job record.

Last, Foulke said, is written documentation that proves employees are

routinely disciplined when they violate the rules. Discipline according to company policy is important, Foulke said, even if the employee is injured as a result of his or her actions.

“There is case law that says if you don’t discipline the person who was observed [committing] the violation by the OSHA inspector, then you don’t have that [employee misconduct] defense.”

PREVENTING VIOLATIONS

Most large construction companies have these types of procedures in place. At St. Louis-based McCarthy Building Cos., said corporate vice president of safety Kevin Maitland, the disciplinary process entails three steps.

We expect our workers to follow safe work practices, and those performing work in an unsafe manner will be disciplined or terminated.

Kevin Maitland, Corporate vice president of safety, McCarthy Building Cos.

After a first offense, the company issues the worker in question a written warning. Before returning to the jobsite, the employee is also required to attend the same mandatory safety orientation session — including the exam — that he or she went through when first starting work at McCarthy.

The second breach will earn the worker a two-day suspension without pay and another orientation session. A third safety violation requires that the worker be barred from working on any McCarthy project for at least 12 months.

In cases of “imminent-danger,” violations like exposing oneself or others to a fall by not using proper personal protective equipment, Maitland said, the company could accelerate the disciplinary process by moving directly to a second- or third-step action even for first offenses.

“We expect our workers to follow safe work practices, and those performing work in an unsafe manner will be disciplined or terminated,” Maitland said. “This policy applies to both management

and field workers across the board.”

If an employer has followed and performed the four steps correctly, Foulke said, and OSHA is presented with the proof, then the chances are that the agency will either withdraw the citation or an administrative judge will throw it out.

CRIMINAL CHARGES

But while the employee misconduct defense can be used to successfully fight OSHA citations, that argument could lose credibility and effectiveness if used too often, said attorney Phillip Russell with Ogletree Deakins Nash Smoak & Stewart in Tampa, Florida.

You can’t use a tight hiring market and a good economy as the reason you cannot enforce the safety rules.

Phillip Russell, Attorney, Ogletree Deakins Nash Smoak & Stewart

“If this is happening over and over again,” he said, “the defense becomes weak and irrelevant.” This is especially true in a high-risk trade like roofing, where the dangers are wellknown, and employers in that business are under pressure to make their jobsites safer.

If, in fact, an employee consistently breaks the safety rules, Russell said, the answer might be termination, even though it’s hard to find qualified tradesmen these days. “You can’t use a tight hiring market and a good economy as the reason you cannot enforce the safety rules,” he said.

While there is no mechanism for OSHA to issue a citation to employees who refuse to follow company safety rules, said attorney Benjamin Briggs, partner in the labor and employment department at Seyfarth Shaw LLP in Atlanta, they can be charged criminally in some cases.

One such situation is if an employee learns of an impending OSHA inspection and provides advance notice of it. “Under those circumstances,” he said, “an individual employee can be penalized financially and even imprisoned.”

Another scenario, Briggs said, is when an employee knowingly makes a false statement to OSHA during the course of an inspection. This can also leave the employee with the prospect of steep financial penalties and potential jail time.

Workers can also be criminally charged, he said, if their willful violation of a standard results in a fatality. In these cases, in addition to incarceration, the business can be penalized up to \$500,000 and the individual up to \$250,000.

AVOID BEING A TARGET

Construction sites are more vulnerable to inspections than other industries because the work takes place outside and often is in plain view of those passing by, unlike work that happens in the relative privacy of a factory floor.

“So, if an OSHA compliance officer is driving by a construction site and sees somebody working at [a certain] height without fall protection or sees somebody in a trench that doesn’t have a trench box, they are going to stop and have a conversation,” Briggs said. “And they might start an inspection under those circumstances.”

But what about claims that OSHA is unfairly targeting one employer with multiple, consecutive inspections, along with a slew of citations and fines?

“If you have OSHA repeatedly showing up on your jobsite, figure out why,” Russell said, “and do what you can on your jobsite ... to show them that you take [potential violations] seriously.”

If all violations have been addressed, and the agency still continues to make what seems to be an unreasonable number of inspection visits, he said, then there are some remedies, like escalating the issue up the OSHA ladder, all the way to Washington, D.C., if necessary.

“But I can’t go make an argument to the agency that you take it seriously if you’re having problems on your jobsite,” Russell said. “And, if they’re showing up, and they’re finding things, that’s on you. That’s not on the agency.”

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Annual Service Fee	\$744.00
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Thank you for your

Payment Due
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Pay in full

INVOICE #1234

Qty.	Item#	Description	Unit Price
1	KP178315	Past Due Balance	\$100.00
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INVOICE #22535-4

Billing Cycle: 1/2012-12/2012
Please Send Payment to Billing Office

Bill To

Customer

Customer Invoice # 916262-JTC

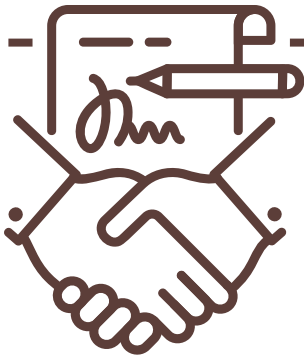
Amount Payable: 22

Minimum Balance \$1436.00

due \$150.00

Qty.	Item#	Description	Unit Price	Line To
1	101397	Annual Service Fee	\$1436.00	\$1
Total Discount				
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7 INVOICE MISTAKES THAT WASTE TIME, MONEY

By Kim Slowey, *ConstructionDive*

This feature is a part of "The Dotted Line" series, which takes an in-depth look at the complex legal landscape of the construction industry. To view the entire series, click here. (<https://www.constructiondive.com/news/construction-contracts-re-source/429229/>)

Submitting an invoice for completed work and then getting paid is about as straightforward as the construction business gets. Or at least it should be. Getting paid on time is the lifeblood for contractors, but many consistently make the same mistakes over and over when handling this vital process.

Here are the biggest mistakes many contractors make when it comes to invoice management.

NOT KNOWING WHAT'S IN THE CONTRACT

Reading a contract and knowing its terms are the first steps to getting invoices right. The contract contains information on which forms to use, billing and payment timelines and what information must accompany each payment request — this is important to know if you want to be able to pay bills and make payroll.

"As basic as it sounds," said Carl Oliveri, partner and construction practice leader at New York City accounting and consulting firm Grassi & Co, "that's where it all starts and stops. If you're not billing within the terms of the contract, you're not going to get paid."

Mostly, the confusion arises in the relationship between subcontractor and general contractor, but GCs need to be aware of the requirements attached to their invoicing procedures with the owner.

General contractors and subs "don't review [the requirements] prior to the contract formation, and then are shocked as to what is in there." Timothy DeHaut, Co-chair, construction law practice at Giordano Halleran & Ciesla, New York City area

When a project uses construction loans, for instance, there could be specific requirements that flow down from loan terms into the general contract, said attorney Timothy DeHaut, co-chair of the construction law practice at Giordano Halleran & Ciesla in the New York City area. For instance, prior to payment,

the GC could be asked to sign away the right to any claims against the project through the date of payment so as to minimize the owner's and lender's exposure to change orders or unexpected costs.

This can happen to subcontractors as well, he said, and recommends that all contractors try to negotiate terms of lien waivers or other documents that could cut into their rights to bill for extra work.

General contractors and subs "don't review [the requirements] prior to the contract formation," DeHaut said, "and then are shocked as to what is in there."

NOT PAYING ATTENTION TO CLIENTS' BILLING PROCESSES

Some of the problems that subcontractors, particularly smaller ones, have with compliance to the terms of a contract are sometimes due to their limited experience with a wide variety of clients. These companies have spent years doing business with just a few general contractors and just assume other general contractors conduct business the same way.

Oliveri said subs should try to make a concerted effort to get to know the billing process and schedule of each client. There might even be a contract clause that allows billing twice a month instead of just once, which is most common in subcontracts. For cash flow, that could be a game changer.

Sarah Rowe, accounting director for general contractor Gray Construction in Lexington, Kentucky, said the company, which performs work in several states, requires that most subcontractors use Textura, which is a popular payment processing software. Using Textura, she said, has streamlined Gray's subcontractor pay application process because all of the required documents — including lien waivers — must be uploaded with the electronic pay request. This cuts down on the confusion that accompanies the typical monthly paper swap at billing time and gets Gray's subcontractors paid about five days earlier.

Even so, some subcontractors will not submit the required documents, and Rowe said she believes that it's because they're just not aware of the contract requirements.

Continued on next page

FAILING TO COMMUNICATE WITH SUBS

This lack of communication, Rowe said, usually starts at the beginning of a project between the subcontractor's project management team and accounting department. Many times, a sub's accounting team is not involved with contract negotiations and is not made aware of billing procedures until it isn't paid.

"So once [our accounting department] gets past the [subcontractor's] project team to the accounting group," she said, "they know what's required, and then it becomes part of the monthly process, and their payments are not held up."

"What you really need to do in that instance is create a bridge between project management and accounting," Oliveri said. "You need to break down the silo between office and field, and the best kind of position [for that] is a project accountant, who is going to be able to work with all the project managers on financial data."

SUBMITTING INVOICES LATE

Another big mistake contractors make when it comes to pay applications is not turning them in at all, although this is a problem that really applies to subcontractors that don't have the administrative support staff to handle invoicing, Oliveri said.

The individuals who run those companies, he said, don't look at projects as the profit centers they are but instead see the billing function as a burdensome task. Filling out paperwork takes away from what they're doing, he said, which is running their jobs. What they don't understand, however, is that each project has to sustain itself, and the only way it's going to be successful is to get cash into the business.

However, if a subcontractor does neglect to turn in a bill, the general contractor, which must submit a pay requisition to the owner for all work completed, might have it covered and then turn in a bill for the sub's work so the GC can get paid on schedule.

One reason a general contractor would

pay the subcontractor anyway, said Oliveri, is because of the "pay when paid" clauses that are in many subcontracts. This obligates the general contractor to pay a subcontractor if it has received payment from the owner for the subcontractor's work.

Another reason, he said, is that general contractors don't want disruptions caused by a cash-poor subcontractor —i.e. material suppliers refusing to deliver because they haven't been paid or employees not showing up because they haven't seen a paycheck.

SUBMITTING INCORRECT INVOICES

Even when construction firms do submit their billing on time, sometimes the invoices aren't for the right amount.

Subcontractors especially, DeHaut said, may try to front-load a pay application to get a little extra cash flow by stating that they have completed a higher percentage of work than they actually have. "That's never a good idea," he said. Sometimes those applications sail through, but if the architect or a bank inspector checks the project paperwork to verify the numbers, it can lead to a loss of the sub's credibility and delays the payment process.

But one area where contractors can often bill legitimately in advance of work performed — but don't — is when the necessary materials have been delivered to the site or to an approved offsite storage location. That issue, DeHaut said, should be worked out before subcontractors sign their contracts. Depending on the trade, the materials could represent a significant portion of the subcontract amount, and the subcontractors' suppliers might not wait until after installation to be paid.

MAKING CHANGE ORDER MISTAKES

And then there are change orders. Mistakes here tend to happen more on subcontractor applications and are often a result of miscommunication in the field.

Contractors might think additional work they have performed is approved, even

though they haven't received a fully executed change order from the customer yet, so they bill for it anyway.

In a system like Textura, Rowe said, unapproved change orders won't process, so it brings the issue to the forefront right away.

In order to help avoid confusion around change orders, DeHaut said, using the American Institute of Architects' G702 Application for Payment and the accompanying G703 Continuation Sheet forms help keep paying status and change order information organized.

"It's an accurate reflection of the work," he said, "and makes the job [of tracking them] easier. [The forms are] upfront and tend to help avoid disputes at the end."

NOT NEGOTIATING RETAINAGE

Subcontractors also miss opportunities to apply for a reduction in the amount of retainage that general contractors often hold out of their payments because they don't realize they can. Typically, 10% of the contract amount is withheld, but that is sometimes reduced to 5% or lower when the project hits a certain percentage of completion milestone.

"I definitely feel like the subcontractor community should become very well educated in that because there are certain states that have very specific retainage rules, and if they're not aware of that, they could be missing out," Rowe said.

The real lesson here, Oliveri said, is that contractors and subcontractors should be billing as often as they can for as much as they can within the limits of their contracts.

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According to OSHA general industry standards, every employee who operates a forklift should be trained in the safe operation of the specific forklift that he or she will be using. However, injuries to forklift operators are relatively rare. Instead, the greatest hazard related to forklifts is simply being a pedestrian in an area in which someone else is operating a forklift. Just ask Greg.

Greg is a fabricator in a sheet metal shop that had been in business for 40 years. The company he works for is a family-operated business that had grown over the course of the company's history, but the location of the business remained the same. Over the years the company had several building expansions projects, but some areas of the facility, including the fabrication area, were relatively cramped. One day last month one of Greg's coworkers was moving metal stock from a storage area into the fabrication area. Certain that the forklift operator saw him, Greg tried to squeeze by the forklift to get to the phone that was ringing, but at that moment the forklift operator backed-up. Fortunately, Greg was able to leap out of the way before he was struck by the forklift, but he was literally inches away from being struck by the forklift and possibly thrown against a nearby press brake.

Forklifts are very heavy because of the counterbalance weight needed to carry large loads. Because they are so heavy, when a pedestrian is struck by a fork-

lift, the injury is often very serious and sometimes fatal. For that reason alone, people who work in areas in which others operate forklifts must have a fundamental understanding about how forklifts function and the inherent hazards associated with their operation.

First, forklifts have rear-wheel steering, which causes the rear of the forklift to swing wide when it is turning. For that reason, always give a forklift plenty of room to maneuver.

Second, the heavy weight means that a forklift can't stop quickly. So, don't step into the path of a forklift in operation thinking that the operator has plenty of time to stop.

Third, forklifts afford limited visibility for the operator. The forks and the forklift mast block the line of sight for the driver, and if there is a load on the forklift visibility is even more limited. So, it's up to you (the pedestrian) to watch for and avoid forklifts. Don't rely on the forklift driver to see you. If you must be near a forklift that is being operated, always maintain eye contact with the driver, and always provide enough space for the forklift to move safely out of your way.

DISCUSS WITH YOUR CREW

- In what circumstances have you (or do you currently) work near a forklift that is in use?
- In those situations, what precautions do you take to avoid an injury?
- Never stand near or under loaded or unloaded forklift tines, as forklifts can not only drop their load, but also knock over an object that could fall onto you.
- Are there areas of our facility that we might benefit by installing convex mirrors to help pedestrians and forklift drivers keep track of each other?
- Are there areas of our facility that we might improve lighting to better enable forklift operators and pedestrians see each other?

Do backup alarms and horns on all our forklifts work?

**THE GREATEST
FORKLIFT HAZARD**



EL MAYOR PELIGRO DE MONTACARGAS



CHARLAS
De Seguridad

De acuerdo con los estándares generales de la industria de OSHA, cada empleado que opera una carretilla elevadora debe estar capacitado en la operación segura de la carretilla elevadora específica que utilizará. Sin embargo, las lesiones a los operadores de montacargas son relativamente raras. En cambio, el mayor peligro relacionado con los montacargas es simplemente ser un peatón en un área en la que alguien más está operando un montacargas. Solo pregúntale a Greg.

Greg es un fabricante en un taller de chapa que había estado en el negocio durante 40 años. La empresa para la que trabaja es una empresa familiar que había crecido a lo largo de la historia de la empresa, pero la ubicación de la empresa seguía siendo la misma. A lo largo de los años, la compañía tuvo varios proyectos de expansión de edificios, pero algunas áreas de la instalación, incluida el área de fabricación, fueron relativamente estrechas. Un día, el mes pasado, uno de los compañeros de trabajo de Greg estaba trasladando existencias de metal desde un área de almacenamiento al área de fabricación. Seguro de que el operador de la carretilla elevadora lo vio, Greg trató de apretarse por la carretilla elevadora para llegar al teléfono que estaba sonando, pero en ese momento el operador de la carretilla elevadora retrocedió. Afortunadamente, Greg pudo saltar fuera del camino antes de ser golpeado por la carretilla elevadora, pero él estaba lit-

eralmente a centímetros de distancia de ser golpeado por la carretilla elevadora y posiblemente arrojado contra una plegadora cercana.

Las carretillas elevadoras son muy pesadas debido al contrapeso necesario para transportar grandes cargas. Debido a que son tan pesados, cuando un peatón es golpeado por una carretilla elevadora, la lesión suele ser muy grave y, a veces, mortal. Solo por esa razón, las personas que trabajan en áreas en las que otros operan carretillas elevadoras deben tener una comprensión fundamental sobre cómo funcionan las carretillas elevadoras y los riesgos inherentes asociados con su operación.

Primero, las carretillas elevadoras tienen dirección en las ruedas traseras, lo que hace que la parte trasera de la carretilla se balancee ampliamente cuando está girando. Por esa razón, siempre dé a la carretilla elevadora mucho espacio para maniobrar.

En segundo lugar, el peso pesado significa que una carretilla elevadora no puede detenerse rápidamente. Por lo tanto, no se interponga en el camino de una carretilla elevadora en funcionamiento pensando que el operador tiene mucho tiempo para detenerse.

Tercero, las carretillas elevadoras ofrecen visibilidad limitada para el operador. Las horquillas y el mástil de la carretilla elevadora bloquean la línea de visión

del conductor, y si hay una carga en la carretilla elevadora, la visibilidad es aún más limitada. Por lo tanto, depende de usted (el peatón) vigilar y evitar los montacargas. No confíe en el conductor del montacargas para verte. Si debe estar cerca de una carretilla elevadora que está siendo operada, mantenga siempre contacto visual con el conductor y siempre proporcione suficiente espacio para que la carretilla elevadora se salga de su camino con seguridad.

DISCUTA CON TU EQUIPO

- ¿En qué circunstancias ha trabajado (o trabaja actualmente) cerca de una carretilla elevadora que está en uso?
- ¿En esas situaciones, ¿qué precauciones toma para evitar una lesión?
- Stand Nunca se pare cerca o debajo de los dientes de la carretilla elevadora cargada o descargada, ya que las carretillas elevadoras no solo pueden dejar caer su carga, sino que también pueden derribar un objeto que podría caer sobre usted.
- ¿Son sus áreas de nuestras instalaciones que podríamos beneficiarnos instalando espejos convexos para ayudar a los peatones y conductores de montacargas a mantenerse al tanto?
- ¿Son sus áreas de nuestras instalaciones donde podríamos mejorar la iluminación para permitir que los operadores de montacargas y los peatones se vean?
- ¿Funcionan las alarmas y bocinas de respaldo en todos nuestros montacargas?

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