

A short introduction to



**A New Movement that Removes Stress
from Construction Payment for Everyone**

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NATE BUDDE

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Introduction

Raise your hand if you know a construction business that would like better margins, more cash, repeat business with quality partners, and less financial risk.

Chances are your hand is up.

There are millions of construction businesses that want more stability, less risk, and stronger performance, and since you're reading this book, chances are your business is one of them.

Now, raise your hand if you love complex legal documents, arduous paperwork, abusive retainage practices, slow payment, lawyers, and lien filings.

No hands up? Well, that's not very surprising.

No one starts a construction job hoping that payments are slow, money is lost, leverage is asserted, and liens are filed. One hundred percent of companies hate these things.

Yet, they persist.

This book will help you understand why and will help you get all of the mess out the way so you get paid faster, make payments with less risk, and always have peace of mind that you're going to have good outcomes.

Who This Book Is For (and, More Importantly, Who It Is *Not* For)

This book is aimed at business owners, office managers, and financial professionals in the construction business who want a better way to manage the growing complexity of construction payment, *and who specifically want better outcomes for everyone on the job.*

That means it's *not* for some others.

- Do you play hide the ball?
- Are you going to hide your supplier from the GC because you're marking up invoices more than you should?
- Do you hold back as much retainage as the other party will bear?
- Do you front-load your contract to get ahead of the retainage curve?
- Do you get mad or aggressive when someone sends you a preliminary notice?
- Do you try to suffocate other parties' lien rights?
- Are you unbearable when it comes to paperwork?
- Are you besties with your collection agency and attorney, and do you jump straight to making the big-chested threat whenever there's a slight hiccup?
- Were you voted "most-likely-to-assert-leverage" in your high school yearbook?

If you answered yes to any of the above, then this book is *not* for you. You can keep playing all these tricks and trying to hide behind mountains of leverage and "protection," but this book is just going to irritate you. You're not a lienzero stakeholder.

And, by the way, you're also going extinct.

A revolution is happening in the industry. The old guard is leaving, the industry is tired of going through the same pains over and over again, and technological innovations that bring stakeholders *together* like never before are being embraced.

This book is for those in the construction industry who yearn for the better way they know is out there somewhere. Use the information in this book to understand why construction payment is so complex, and how you can cut through the noise and make it simple, fast, and fair.

Chapter 1

Understanding the Complex Payment Landscape Today

In This Chapter:

- How payment laws developed (and got complicated) over time
 - How this complexity is ruining your business
 - What's next
-

Do you ever feel like it's harder than ever to do business? Does it seem like you need to be a lawyer to handle the simplest processes?

It's not your imagination.

Today, your business suffers from complexity that has been evolving for *thousands* of years. This complexity didn't spring forth fully formed, but along the journey from then to now, whenever something new happened, another code or law was passed, and another contractual provision became important. And then another. And then another . . .

And then another.

Anyone in today's construction industry is intimately familiar with a lot of very unique concepts that are completely foreign to other industries: general conditions, schedule of values, prevailing wages, prompt payment, performance and payment bonds, mechanics lien claims, retainage, and more.

That's a ton of stuff! Where did it all come from? Why does it exist in construction and nowhere else? *And what's next?*

Let's travel up to take a bird's-eye view of how it all came into existence and then examine the problems and challenges people like you are forced to suffer through and deal with.

A Short History of Everything Getting In Your Way

Thousands of years ago, there was no such thing as a “lien waiver” or “schedule of values,” but there certainly was construction.

Construction is one of the oldest industries on the planet. Virtually as soon as humans began to stand on two legs and make tools, they made tools to build things. And then, *immediately*, they started arguing about it.

The oldest law known to mankind actually includes construction regulations. The Code of Hammurabi, which dates back to 1780 B.C. and contained 282 laws carved out on stone tablets, actually considered construction payments and defects.

If you think regulations are painful these days, you can at least take some comfort in knowing that your head won’t wind up on a spike. In the Code of Hammurabi, there were times when the “builder shall be put to death” if a building caved in on someone, or even “the son of the builder shall be put to death.”

Ouch.

Over time, construction methods slowly improved, but the construction laws and regulations remained fairly simple. Here’s why:

- Most labor was performed by slaves or peasant classes. There were no “payment rights”;
- Concept of trades, specialties, or subcontracting didn’t exist. Everything was done by a “builder”;
- Work was done in small communities without major corporations participating.

The Industrial Revolution and founding of America tipped over the first domino that changed everything. Cities sprawled. Indoor plumbing was invented. Electricity was discovered and put to use in buildings. “Freedom of contract” proliferated. Specialties became necessary. Building codes got sophisticated. The rights of workers and unions emerged.

The result has been a death spiral of complicated laws, regulations, and contractual development. Here’s an abbreviated timeline:

1791: Mechanics Lien

Thomas Jefferson and James Madison urged the Maryland legislature to create the first “mechanics lien” law in the United States. This has been called the “first labor law passed [ever] in the US.”

1860s: Labor Laws

Shortly after the Civil War, the concept of “prevailing wages” was established on the back of the burgeoning push for 8-hour days, and it was further legitimized when Congress passed the National 8-Hour Day law for governmental contractors. In 1891, Kansas became the first state with a “prevailing wage law” for its own public projects, and these laws continued to spread. FDR eventually pushed through the Davis Bacon Act, which is the law of the land today.

1888: AIA and Uniform Contract Documents

The American Institute of Architects (AIA) created “Uniform Contracts” for use between an owner and contractor. These original documents grew in number and complexity over 100 years and 17 different editions – and numerous other organizations also began to offer “uniform” contracts.

1894: Heard Act / Miller Act

The Heard Act established payment and performance bond requirements on federal jobs. States followed. This became the Miller Act in 1935.

If you think we’ve been through a lot already, then hold on to your boots, because *everything* tilted off the ledge starting in the 1960s and 1970s.

Technology *really* advanced. Specialties *really* emerged. Labor laws and trade unions enormously advanced. Corporations grew, consolidated, and became dominate players.

This resulted in more stakeholders, more tiers of participants, more paperwork, more complexity, and—above all—more and more chances for things to go wrong.

And, when more things did go wrong, everyone began to race to fix those problems. With laws. And regulations. And contractual provisions. And leverage.

1960 – 1966: AIA Docs

The AIA “Documents Review Committee,” which used to meet every now and then, began to meet *quarterly* in the 1960s. Over the course of 130 years, the AIA committee has revised their documents 17 times in total. Four of those revisions were between 1960 and 1966 alone and included inventions like:

- No-lien clauses
- Retainage
- Pay-when-paid clauses
- Pay-if-paid clauses
- Notice claim periods

1965 – Today: Lien Law Reforms

From 1965 until today, mechanics lien laws have undergone massive reforms, with modifications to notice and waiver requirements and the imposition of other burdensome structure.

1982 – Today: Prompt Pay Laws

The United States Congress passed the Prompt Pay Act. From there, federal and state governments began to mandate payments happen on a “shorter” timeline and also sometimes made pay-when-paid and pay-if-paid provisions invalid.

1983 – Today: Retainage Laws

The Office of Federal Procurement Policy urged laws on retainage, and federal and state governments began passing restrictions on the amount of retainage allowed, and when it must be released.

And so here we are.

How This Complexity Is Ruining Your Business

Construction has always been a high risk / low margin business, but it's getting worse.

In 1972, the profitability rate for contractors was 6%. By 1986, it declined to 3%. In 2000, it was down to 2%. That's not a great trend.

Retainage practices are strangling what little cash you have. On private jobs, there's an 85% chance that at least 5% of the job price will be withheld in retainage. The retainage burden is mostly suffered by subcontractors. *Two out of every three subcontractors* have 10% retainage withheld from them. Since margins are slim, that retainage can be concerning.

And it takes a *long* time to get paid in this industry. The longest of any other industry. Anywhere.

On average, it takes 73 days to get paid after submitting a payment application or invoice. For retainage, GCs wait an average of 99 days to get paid, and subcontractors wait an average of 167 days! Waiting a long time to get paid a little bit is not efficient.

Margins are lower than ever before. The paperwork and compliance burden is higher than ever before. Retainage is getting more and more common—and aggressive. Payments in general take forever.

No one trusts one another.

Everyone is racing to get ahead and grab their own as fast as possible, no matter the cost to other parties, because if they don't, who knows if they'll get it at all.

Now What?

The world is going to keep building—it has to. It always has, and it always will. So the future looks really bright for the construction industry. Today, construction is 11% of the global GDP. It's expected to grow to over 13.2% in the next 30 years.

Between now and then, do you really think the lawyers and politicians are going to make anything better? News flash—they won't.

For the past 200 years, owners, contractors, lenders, politicians, lawyers—the entire lot—have been chasing their tails trying to circumvent the risks in construction.

The industry can't keep chasing down a “solution” through complexity and protectionism. It's never going to happen.

The perfect law, the perfect contract, the perfect risk-mitigator . . . it's *never* coming.

It's time for something different. For a movement. For a revolution. *For a dramatic shift in approach.*

And, since this industry is full of good people who already want the best for their business, their families, themselves, and the people with whom they do business, the dramatic shift really only requires a tiny tilt toward that goodness. A tiny tilt *away* from those bad actors who are wooed to exercise all the leverage they possibly can by the prospect of having zero risk, and a tiny tilt *toward* the good actors who want good results.

Chapter 2

Fear, Frictions, and Fires: The 3 Construction Payment Killers and the SET Framework

In This Chapter:

- Identifying the 3 collaboration killers
 - Using the SET framework to attack the 3 killers
-

Everyone involved on a job—from the lender and owner, to the contractor and supplier—organizes the job, bids the job, starts the job, and finishes the job paralyzed by the fear of what may go wrong, and how much it’s going to cost.

Instead of collaborating to make payment go smoothly, parties do things to protect themselves at the expense of the other parties.

Therefore, they prioritize protection over collaboration.

This is because of the **3 collaboration killers**: fear, frictions, and fires.

- **Fear:** Fear breeds paranoia, which leads to everyone trying to load themselves up with protections and leverage.
- **Frictions:** All of these protections require paperwork that creates overhead and relationship frictions. This erodes trust and puts people in a bad state of mind.
- **Fires:** The poisoned state of mind sparks fires that can be impossible to put out. This breeds wars and entrenches the parties into combative positions with few ways out.

You can attack these 3 killers by adopting 3 simple principles on each job, what we call the **lienzero framework**. You can remember the framework through the “SET” acronym. When you get a new job, think about having to “**SET**” the job.

The acronym stands for:

- **See** everyone on the job (reduces fear)
- **Easy** paperwork (reduces friction)
- **Talk** it out (reduces fires)

These three simple principles can shift the paradigm of risk and fear to collaboration and good outcomes—which, in turn, will dramatically improve the results for everyone on your next job. Let’s now go through each principle in more detail.

Chapter 3

Principle #1: Reduce Fear By Seeing Everyone

In This Chapter:

- How bad visibility on a job causes risk, inefficiency, and fear
 - Why seeing everyone on the job is actually hard to do
 - How to overcome challenges and always see everyone
-

“ . . . we know there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say, we know there are some things we do not know. But there are also unknown unknowns – the ones we don’t know we don’t know . . . it is the latter category that tend to be the difficult ones.”

— Donald Rumsfeld

When You Can’t See Everyone, You Have Problems

It may go without saying, but when you are working on a construction job, and you don’t know who else is contributing, it causes problems.

Generally speaking, bad visibility on a job causes these 3 problem categories:

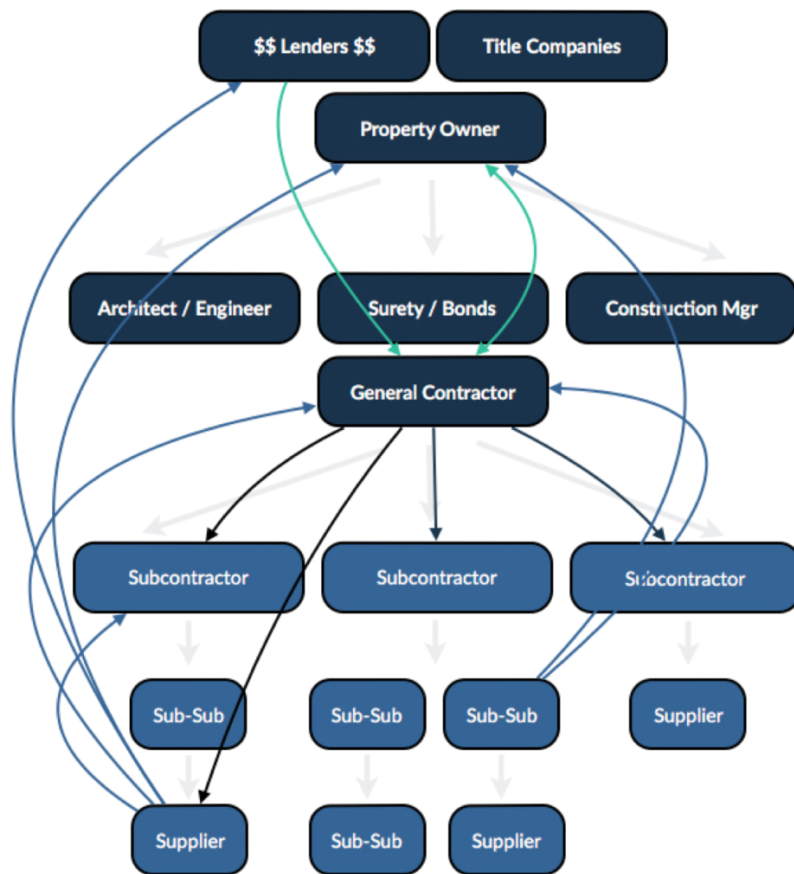
- Risk: You are exposed to things you don’t know;
- Inefficiency: It makes *everything* more difficult;
- Fear: The unknown unknowns are scary.

Risk: You're Exposed to Things You Don't Know

Risk Management 101 requires you take inventory of your risks. But as Donald Rumsfeld famously explained, it's the things you don't know, and therefore can't inventory, that present the difficult cases.

Through this lens, construction jobs present *a lot* of difficult cases.

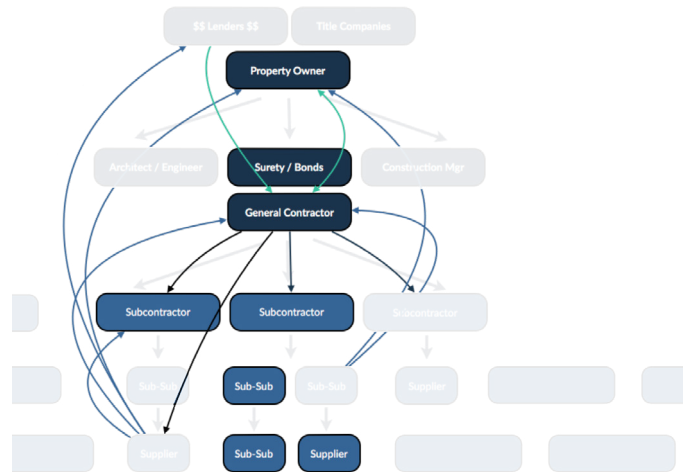
Each job participant has a limited view of who is on a job based on who they contract with, but they are at risk from nearly everyone on the job, which is a much wider sample.



Any 1 of these job stakeholders can create a problem for you.

You're at risk to them all.

A problem with any one of these job stakeholders can create problems for you, even if you didn't contract with them.



But you probably only interact with and know who a few of them are....

But you may not even know who the stakeholders are.

Inefficiency: Bad Visibility Makes Everything More Difficult

Here's an interesting problem—how much time do you spend trying to figure out who is on a job? Take a few moments to think about this. You may not even realize you're doing it.

Here are just a few examples of time you may spend just trying to figure out who is on your job:

- When processing payment applications, you may need to determine who the supplier or equipment provider to a contractor is in order to collect lien waivers from that party;
- When starting a new job, you may need to identify who the owner, lender, or general contractor is in order to send a preliminary notice or file a notice of commencement;
- When working on a job, you may need to fill in the blanks of your job sheet or job folder.

This is an efficiency suck and a major operational headache, and it's amazing how unnecessary it is. Everyone in the industry is literally investing money, time, and labor into trying to identify everyone else, and one hand is not talking to the other.

Fear: Unknown Unknowns Create Paranoia

The final problem caused by not knowing everyone on the job is that it breeds fear, and fear is the disease that plagues the construction industry's payment world. Fear causes paranoia, which results in everyone stacking up their protections and asserting leverage against the other.

Why Seeing Everyone Is Actually Hard to Do

“See everyone on the job” seems like a straight-forward suggestion. Not so.

In practice, you’ll run into three distinct and stiff challenges.

- There are a lot of participants to track down;
- There aren’t many easy ways to get everyone’s identity;
- Bad actors will resist.

There Are a Lot of Participants to Track Down

I hate to tell you this, but depending on the job, there may be *a lot* of participants to track down.

Jobs can have lenders, title insurance companies, bonding companies, owners, construction managers, engineers, architects, general contractors, and then layers and layers of subcontractors, suppliers, and equipment providers.

Oh, and by the way, you’re not going to know which roles are and aren’t on your particular job.

An interesting study from 1995 found that jobs have as many as 5 tiers of subcontractors in the chain, with GCs having virtually no control over those tiers, and very little visibility into the second tier and below.

This doesn’t scratch the surface with how little visibility subcontractors and suppliers have on the full picture.

There Aren’t Many Easy Ways to Get This Information

I’m also sorry to report that it’s not easy to identify everyone who’s on the job, and most people you can contact won’t have much helpful information.

No one circulates a “directory” of everyone insuring, financing, commissioning, working, and supplying to the job. You can’t subscribe to a database for this information. You can’t look in the newspaper for it. You can’t easily ascertain it in building permit or other public data. It’s literally nowhere to be found.

Bad Actors Will Resist

Some people and companies like operating in the dark (or forcing other companies to do so).

Some job participants will look for leverage wherever they can claim it. It's crystal clear that "seeing everyone" offers substantial efficiency and risk mitigation benefits, but for those with ill intentions, an opaque and dark environment may be more comfortable.

How You Can Overcome the Challenges and Always See Everyone

The good news is that there are concrete steps you can take to always see everyone on the job and to suffocate fear, the first and most severe collaboration killer.

Here is what you'll want to do:

- Raise your hand;
- Ask others to raise their hand;
- Leverage tools and data available to you.

Raise Your Hand

Raising your hand means giving some type of notice to the other job stakeholders that you're on the job. This may be a legal notice, like a notice of commencement or preliminary notice, or it may be something simple, like an email.

Raising your hand on a job is a service to others on the job. It's being a good steward of the job. This is like the Golden Rule of construction visibility. If you want to know who else is on the project, make sure everybody else knows you are.

Preliminary notices are really good for this and, in fact, were specifically designed to clearly identify the job and help paint a picture of the other parties related to you.

A subcontractor, for example, may provide something like this:

“Hi there, I’m Joe Electric LLC, an electrical subcontractor on this job. I was hired by ABC Electrical Company. I’m getting my materials from Electrical Supplies, Inc., and am renting some equipment from Equipment Co. Look forward to getting this job to completion with you!”

Raising your hand on a job doesn’t help you see others on the job by itself, but it creates the job environment in which that information can be made available. The change here starts with you.

Get Tips on Raising Your Hand:

Check out Chapter 6’s best practices for tips on how to make “Raising Your Hand” easy and automatic on your jobs.

Ask Others to Raise Their Hand

There is so much fear and paranoia on jobs that many contractors and suppliers are fearful to let others know they are there.

A supplier, for example, is scared to jump over their subcontracting company and “notify” the general contractor and property owner they are there. For starters, they are worried that it will give the general contractor the wrong impression about the subcontractor. And, of course, the subcontractor doesn’t want that either.

Have you ever gotten a preliminary notice from a material supplier and seen language like “This is not a lien,” or “This does not reflect the creditworthiness of the subcontractor”?

A notice meant to simply “raise a hand” is cluttered with confusing and adverse language like this because there’s a bunch of unnecessary fear.

Just make things easier for everyone. Encourage others to raise their hand. Ask them for it. (Remember, if you’re raising your hand first, other parties are more likely to follow suit.)

Leverage the Tools and Data That Are Available

While some of this data is really hard to find, there are some tools and databases out there to help you fill in your job tree. *Use them.*

Construction is extremely fragmented. Even when you raise your hand, and encourage others to raise their hands, there will *still* be gaps.

Think about each job tree as a family tree.

You may know a lot about your family history, but inevitably there are going to be some gaps and things you aren’t sure of. You may not know who your great-great-grandmother’s sister was, or where she lived, and who she married. So, if you’re interested in this sort of thing, you’ll go to work to fill in the gaps. You’ll first look into your own records and leverage tools like [ancestry.com](https://www.ancestry.com) to see what information you can extract from there. If that doesn’t work, and the gap is important enough to you, you may hire a pro genealogist to research that gap more aggressively.

You should treat your job tree the same way.

- First, start with what you know and can gather yourself.
- Then, start exploring tools, databases, and easily accessible information. We’ll mention some in the best practices chapter, but we’re compelled to mention the product developed by *zlien* called **JobSight**, which fills in some of these gaps and works like [ancestry.com](https://www.ancestry.com).
- Finally, if you still have gaps, and if the gaps are important enough, you may want to hire a pro and retain some service provider to dig into the research for you (or have someone internally do it).

Get Tips on Raising Your Hand:

Check out Chapter 6's best practices for tips on how to make "Raising Your Hand" easy and automatic on your jobs.

In Sum: Work Hard to See Everyone

The first bullet fired at the payment problem shoots right to the problem's heart: *fear*. If fear can be reduced or eliminated, the path to good outcomes becomes a relative walk in the park.

It is the fear of the unknown that festers paranoia among job stakeholders and that creates aggressive positions, complex contracts and policies, and difficult catch-22s.

The first lienzero principle is to increase job visibility to reduce fear and paranoia and get everyone closer to working together to make payment easier, faster, and fairer.

So, be a good steward of the job and raise your hand. Encourage others to raise their hands (and even facilitate it). Leverage tools and data available to fill in your job tree. And watch the fear go away.

Next up . . . frictions.

Chapter 4

Principle #2: Reduce Frictions By Making Paperwork Easy

In This Chapter:

- What makes payment paperwork frustrating
 - Why making paperwork easy is hard to do
 - How to overcome the paperwork challenges and make things easy
-

“Anticipate the difficult by managing the easy.”

— Lao Tzu

Friction in the construction payment process causes a lot of trouble, but perhaps the worst consequence is that friction creates frustration.

It’s absolutely mind-boggling how so many of the frustrations in the payment process come down to how difficult, nuanced, tedious, and abrasive the paperwork can be.

Does it really need to be that difficult?

Maybe. Maybe not. (Probably not.)

But you can certainly make things a lot better by managing the easy. The paperwork itself, the source of so many frustrations, can actually be easy.

Get out of the expensive and aggravating paper chase.

Contractors and suppliers who want simple construction payment that makes everyone happy don’t get in their own way with the paperwork. *They manage the easy.*

Why You Get Frustrated With Payment Paperwork

Getting frustrated is bad for your company, your relationships, and your job. Being in a frustrated state of mind can negatively impact your decisions.

In other words, getting frustrated isn't doing you any favors. As Madeleine Albright famously observed, "Hate, emotionalism, and frustration are not policies."

When dealing with the payment process and paperwork, it's easy to get frustrated, and here's why.

- **You shouldn't need an expert or lawyer to do your simple paperwork.** When it feels like a law degree is necessary to simply process an invoice for payment, that is frustrating.
- **Payment paperwork shouldn't be used for legal positioning.** When someone is hijacking standard paperwork like a pay-app or lien waiver to create a legal position and exert leverage, that is frustrating.
- **Nonsense requirements shouldn't be invented.** Asking for something to get notarized when it's unnecessary, requiring certain unnecessary legal language, and other dumb things that don't matter are all frustrating.
- **Everyone shouldn't need something different.** When everyone is asking for the same paperwork to be done a different way, and you're juggling a bunch of unnecessary requests to simply submit an invoice or pay an invoice, that is frustrating.

Why Making Paperwork Easy Can Be Hard to Do

The risks, processes, and personalities involved in construction payment are intricate and difficult, and it may always be like that.

That doesn't mean that the underlying paperwork needs to be so difficult, but making the paperwork easy can be hard to do for the following reasons.

- **The Fingerprint Problem:** Every single construction project is like a fingerprint. No two projects involve the exact same job participants in the exact same roles. If you get the stakeholders on one job to make paperwork easier, you may start from scratch on the next one and encounter unnecessary difficulties.
- **“We’ve always done it that way.”** Sometimes the legal requirements don’t even matter. Companies are addicted to their processes and requirements simply because they’ve always done them that way, and change is scary.
- **The legal requirements are complex.** Construction payment is *highly* regulated, and the regulations are different from job to job and state to state. No one is a master of all the nuances. It’s scary to exchange some of this paperwork and to make any changes to a process that seems like it’s not causing huge problems.

How to Overcome the Challenges and Make Paperwork Easy

So, paperwork can be really frustrating. Frustration creates unnecessary frictions, and this leads to stressed relationships and bad outcomes. And the unique challenges with the construction payment process make it hard to make paperwork easy.

Nevertheless, here are some ways you can overcome the challenges and make paperwork easier for you, and everybody else on the job.

- Be a good paperwork steward
- Tools, tools, tools
- When you encounter bad stuff, FEED it!

Be a Good Paperwork Steward

The construction industry is big and fragmented. It’s going to be a long time (if ever) before everyone is singing “Kumbaya” around the campfire. As you can see throughout the entire framework, though, *change starts with you*.

Specifically with respect to paperwork, though, you’d be surprised how many wounds are self-inflicted. Yes, it’s true. Most of the paperwork headaches you have may be your own fault—your own non-required requirements, your own attempt to reach for extra legal positioning in a document that could be more vanilla, and so on.

Being a good paperwork steward will aid your own headaches and help others. Here are a few quick tips on how to do it:

- **Don't invent requirements.** Challenge everything that you think is a "requirement." Is it really? If not, strip it out.
- **Challenge the status quo at your organization.** When something is getting in the way of making the paperwork easy, ask why and challenge your organization when the answer is "because that's how we've done it."
- **Challenge your attorneys. Attorneys are notorious for creating "CYA" requirements.** These are not actual requirements. They are just noise. When an attorney tells you to do it a certain way, push back on them. Ask them why. Look into when it ever actually helped you. Make your CYA stuff worth the trouble.
- **Don't posture through paperwork.** It's really, really tempting to throw that extra indemnity into a lien waiver. Fight it if you want your regular paperwork to be easier than a contract negotiation. After all, you shouldn't want to take advantage of others on the job anyway.

Tools, Tools, Tools. Use Tools.

These days, there are so many tools and systems that can help you with payment paperwork. Use them, and let them help.

Your use of these available tools is directly connected to you being a good steward. If you mandate weird requirements and try to insert bespoke legal posturing into your paperwork, it's going to be difficult to find tools to handle those custom preferences. But if you let them, tools can help you find paperwork bliss. Here are some ways:

- **Automate:** You can make that lien waiver automatically generate, get signed, and send it when requested. You can automatically request it.
- **Electronic Signatures:** The entire world is electronically signing things left and right. Your payment paperwork *rarely, rarely, rarely* needs ink signatures. It's even more rare that it needs notarization. Make it easy on yourself.
- **APIs and Integrations:** When your company uses tools with APIs that are integrated into other solutions, you can get your data moving more easily.

When You Encounter “Bad Stuff” – FEeD It!

Again, it's going to be a while before everyone is singing “Kumbaya” around the campfire. When you start changing your paperwork hassles, you may notice a new area of frustration: everyone else's! When you encounter frustrating “bad stuff,” you'll want to FEeD.

- **F- Fight the Frustration:** You see the light and you want to improve paperwork hassles. It's natural to be frustrated when others don't, but fight those feelings as much as possible. They only lead to more turmoil and don't help you get any closer to a better process.
- **E- Educate to Your Worldview:** This is the guts of the “FEeD” framework. Remember that no one really loves any specific paperwork, and certainly everyone hates bad outcomes, frustration, and extra work. Don't be frustrated (previous point), and do your best (next point), but along the way, educate the other person to your worldview, to this framework, and look for any tiny win. Two parties collaborating to reach a good outcome is a powerful way to get others to join in—especially when they understand why you are doing what you are doing, and why it works.
- **D- Do Your Best:** Ultimately, just do your best when confronting over-complicated and non-lienzero paperwork. Meet the other person's requirements where you can. Try to leverage tools that make it easier on you. Note the best practices chapter of this book.

In Sum: Manage the Easy

The second bullet fired at the payment problem shoots at all of the processes' frictions and difficulties.

Frictions in the payment process create frustration, put people in a bad state of mind, and actually manufacture problems and difficulties that are not real.

Though many real difficulties and challenges exist in construction payment, contractors and suppliers can anticipate and smooth out those challenges by managing the easy.

And what's the easy stuff to be managed?

The paperwork!

The paperwork isn't difficult, and shouldn't be difficult. Don't make it difficult. Make it easy, and get the easy part of out the way to reduce friction.

So, be a good paperwork steward on the job, use tools to take paperwork off your plate, and when you do encounter bad stuff around paperwork, FEED it! And watch the frictions go away.

Next up . . . fires.

Chapter 5

Principle #3: Reduce Fires with Channels to Make Talking Easier

In This Chapter:

- The cause of most payment fires
 - The behaviors and approaches that don't work when fires arise
 - How to overcome the challenges and reduce fires
-

"The single-biggest problem in communication is the illusion that it has taken place."

— George Bernard Shaw

Fires happen. They have always happened, and they always will happen.

The tricky thing about fires in construction is that an eruption between any two parties can actually have a ripple effect that impacts other parties not directly connected to the fire, even on other jobs.

The extent of trouble caused by fires in the payment process is difficult to overstate. When cash dries up, companies must tap into expensive lines of credit—or worse, stop spending and working. Fires can create a pandemonium that begins to suck people's attention and time, creating productivity challenges. Fires can spoil the reputations of innocent parties and have expensive ramifications on a company's goodwill for years to come.

Certainly, there are some causes worth the fight, but the truth is that it's much more likely you'll get pulled down into the mud and the muck of fighting for a questionable cause than it is that you will have an easily identifiable and obvious villain against whom you will be victorious.

And *poor communication* is the most common reason why fires get started.

The Cause of Most Payment Fires

The construction payment process presents a perfect environment for fires. The process touches people's *money*. Smokey Bear would gauge the danger index as extreme!

Fighting payment fires is at least easier than fighting wildfires, and that's because the cause of almost all payment fires is simply *communication*.

There is a big misunderstanding about communication.

Communication is not an activity. It's a result.

George Bernard Shaw has another spin on this: "The single-biggest problem in communication is the illusion that it has taken place."

A construction job is a complex communication environment. There are many moving parts and many participants. Activities that look like communication (i.e. a single phone call or email to one other stakeholder on the job) frequently don't result in the message actually getting delivered.

And too frequently, job stakeholders engage in unproductive—or even counterproductive—communication that throws everyone else into a stressful "flight or fight" mindset. This happens when someone starts beating their chest and asserting their leverage.

You can't reduce fires by having your lawyer show them who's boss. That's how you feed fires.

Most payment fires are the result of simple breakdowns in communication that can be fixed relatively easily.

The Behaviors and Approaches That DON'T Work When Fires Arise

The fire danger index around construction payment is extreme on all projects, with no added accelerants. Something has popped up, there's smoke, and the project is a tinderbox ready to full-on ignite.

Take a deep breath, don't panic, and retain a level head. Here are a few behaviors that definitely *won't* help:

- **Lawyers:** Look, both of the Lienzero authors are lawyers, but if you want to avoid a fire, you'll need to work on *avoiding a fire*, not how to best position yourself in the event you can't avoid the fire. Working on your position and leveraging through lawyers is the easiest way to make sure you fail at avoiding the fire and are left dealing with the clean-up. Runners-up in this category include collection agencies, "lien services," and others who are in the business of helping companies assert leverage.
- **Waiting:** Time is a problem with fires. Fires get worse with every passing day. Lien rights, contract provisions, and other legal rights have important timetables. Cash problems worsen quickly as time passes. People get *more* desperate. When it looks like a problem is arising, one really bad approach is to "wait and see." Controlling the fire requires proactive communication *before* the problem fully ignites, not at some point after waiting for the issue to extinguish itself has failed.
- **Silence:** Silence is a close cousin of "waiting" but is more specific. When challenges arise, it's natural to hide those challenges from others, as you *may* work around them. Maybe you're encountering a job performance problem, a payment timing issue, or working capital issue. Waking up one sunny morning thinking everything is fine and then having a bomb explode isn't anyone's idea of fun. The silence about brewing problems adds fuel to the burn and makes the onset of a fire worse.

How to Overcome the Challenges and Reduce Fires

Everyone hates fires and everyone wants to avoid them. The other two lienzero principles, "See Everyone" and "Easy Paperwork," will significantly mitigate fires, but they will still arise occasionally.

Here is how you can overcome the challenges of specific spot-fires, reduce them, and ultimately reach a positive outcome that avoids expensive wars:

- **Be a Good Steward:** This point keeps popping up for very important reasons. The other party may be communicating poorly and may be a bad steward. That's okay. Take a deep breath. Don't make things worse. Don't blow things out of proportion. Don't push people around. Don't go straight to the leverage. Be the shining city on the hill and embody the change you want to see.
- **Build Channels of Communication on Your Jobs:** This is critical. You can't just tell everyone to "communicate" and then carry on. You need to build out the channels for communication. You need to *shape the path* so that communication actually happens when situations arise. If you're a general contractor, how will the material supplier actually communicate with you in the event of a payment problem? Do they feel comfortable going around *their* customer to reach you? Do they have a safe way?
- **Actually Talk. With Your Voice:** This one sounds simple, but so much "communication" is wrapped around activities like sending emails, letters, and notices. No. That's not going to cut it when you need to work things out. Pick up the phone. Meet in person. Talk with your voice at the onset of a fire.
- **Widen Your Options:** In their *New York Times*-bestselling book on decision-making, *Decisive*, Chip and Dan Heath warn against "either/or" decisions. When a fire arises, fight against any thoughts that sound like, "Should we do this, or not?" The Heath Brothers urge you to "widen your options." What are all the different options available to you? Don't approach a fire with an "either/or" option. Widen your options.

In Sum: Really Communicate!

The third and final bullet fired at the payment problem shoots at fires that arise and create bad, expensive, and destructive situations.

The construction payment process deals with people's money, a perilous situation. And a construction job is a complex communication environment to begin with. When these are added together, the danger level for fires is extreme.

While it sounds simple, the truth is that most fires are the result of bad communication.

Communication is not an activity like talking, emailing, or sending a letter—that (by itself) is bad communication that can result in a payment fire being lit. Communication is a *result*.

When issues arise and there is smoke, parties must work hard to communicate about them proactively, fairly, and transparently, and not engage in unproductive behaviors like asserting leverage, using attorneys, waiting, and being silent. Instead, you should be a good steward of communication on the job; proactively build channels for communication; actually talk with your voice; and, when problems arise, widen your options. And then watch all of your fires go away.

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We've seen thousands of contractors and suppliers make construction payment processes simple, fast, and fair. Here's a summary of some best practices to leverage the lienzero framework.

Raising Your Hand

In the first principle of the lienzero framework—"See Everyone"—all are encouraged to be a good steward of the job and to raise their hand. Here are best practices to make this easy.

- **Send a Preliminary Notice:** Most states have some sort of "preliminary notice" practice. It's a best practice to use these established notice processes to raise your hand. A good notice includes all the right information, is sent to the right parties, and has the pleasant side effect of protecting legal rights for the sender.
- **Use a Tool to Make It Easy:** You shouldn't fumble around with this paperwork. It will be too inefficient, and you'll wind up not doing it. Tools—like *zlien*—can make raising your hand (via legal notice or electronically) automatic. It also makes *getting* a hand-raise easy for those on the other end. Tools are good, but beware of "services" that are also collection agencies. It's the wrong message to raise your hand through a collection agency.
- **Raise Your Hand to Key Players:** Key players on private jobs are the property owner and the general contractor. On public jobs, these are the government entity and the general contractor. It may also be useful to raise your hand to any lenders or bonding companies, if they are known.

Filling In Your Job Tree

In the first principle of the lienzero framework—to “See Everyone”—it’s also critical to work on filling out your job tree. Here are best practices to make this easy.

- **Ask Others to Help:** Get in the habit of requesting information from the parties you know, and set up an information exchange. Saying “Hey, this is everything I know about this project. Is there anything you can add to it?” can help you fill in your job tree. By offering up the information you know as an exchange, you may be surprised at the information that other parties are willing to provide you in return.
- **Use Database Tools:** Some project information can be difficult to find, but there is still a huge amount of information available to people who know where to look. Databases of construction projects and participants—from Dodge Reports to *zlien*’s own JobSight database to public bidding info to county assessor websites—all provide information that can be stitched together to form a more accurate picture of a project as a whole.
- **Leverage Existing Processes Built Into Laws:** Just like preliminary notices, there are often specific documents that states have created to make a request for information easy and successful. Use these when available. In some cases, this means sending a written request for information to certain parties. In others, it may mean accessing a state-approved construction registry. Either way, there is often information out there and specifically available to you.

Making Paperwork Easy

In the second principle of the lienzero framework—“Easy Paperwork”—all are encouraged to be good paperwork stewards of the job. Here are best practices to make this easy.

- **Rely on Standards:** Many of the complications surrounding paperwork are the product of self-inflicted case-by-case bespoke requirements. Avoid these. General document standards can be your friend and help you make your processes streamlined and efficient. If a requirement isn’t actually a requirement, it can be excised. And the more your processes can be made uniform, the less hassle your paperwork becomes.

- **Automate:** Automate, automate, automate. It doesn't get much easier than automating processes to take the hassle of paperwork completely out of your hair. Technological solutions exist not only to automate a step or two of some paperwork processes but also to completely streamline the entire process. Embrace this. Send that lien waiver automatically when you get paid; request that lien waiver automatically when you're going to make payment. Set automatic workflows to manage your processes with a hands-off approach. Trust us, it'll change your world.
- **Include Education:** While leveraging paperwork to establish and entrench protective legal positions is bad, using the same paperwork to educate others on your collaborative worldview is good. No one really loves tedious paperwork, and no one wants bad outcomes. Educating project participants on the lienzero framework, of collaboration to reach a good outcome, is powerful. Helping others understand why you are doing what you are doing, and why it works, is the way to get more buy-in and better outcomes.

Handling Non-lienzero Paperwork

In the second principle of the lienzero framework—"Easy Paperwork"—all are encouraged to be a good paperwork steward of the job. But you'll encounter people who are not good stewards. Here are best practices to handle this.

- **Make It Simple/Standard For You:** Parties that are too entrenched in their own way of doing things just because that's the way they've always done them will not generally have standardized, streamlined, and efficiently edited paperwork. But that doesn't mean that you can't make it seem like they do; and it doesn't mean that your responses can't be simplified/standardized to a certain extent, either. There are a lot of ways to exchange documents, and many can be simplified—either by you or with the help of technology or another partner.
- **Send lienzero Information Along With Paperwork:** Just because there may be parties who mandate certain types of paperwork (that may not fit nicely into the lienzero simple paperwork framework), it doesn't mean you can't continue to "raise your hand" and make information available. You can disseminate the information you know whether or not it is specifically requested by another party. This information can be sent electronically in order to make it simple to receive.

Building Channels of Communication

In the third principle of the lienzero framework—“Talk It Out”—all are encouraged to reduce fires by really communicating, and to build channels of communication. Here are best practices to make this easy.

- **Monitoring Your Legal Timetables:** While monitoring your legal timetables may not seem like a collaborative step to improve communication, it can help significantly. If you understand the required timetables, you can make sure that there is sufficient opportunity for communication prior to running up against any particular deadline. This helps avoid the “surprise” of something being filed or received when there was no prior indication of trouble.
- **Notice of Intent:** Jumping directly into a lien or other claim is a great way to fan the flames and add fuel to a fire. Being a good communicator on a project in order to reach good outcomes means exploring ways to avoid this. One step is sending a notice of intent prior to taking the step of filing a lien or other claim. But it’s imperative that you don’t think the communication is the act of sending the notice of intent itself. Sending the notice of intent is merely a conduit or opportunity for actual communication to occur. Talk to the interested parties, with your voice, and let them know the situation—there is almost always an opportunity to work through the issues and avoid the claim before it is necessary to file.
- **Take Engagement Surveys:** Companies take engagement surveys of their employees to check in on their health. Make it a practice to “check in” with those above and below you on your job.

1. SET your jobs for success on day 1.

Attack the 3 project killers—fear, frictions, and fires—through the SET framework: See everyone on the job, Easy paperwork, Talk it out. Creating a standard path and process for beginning new jobs that incorporates the SET ideals, and using it on every project, will help get your projects off on the right foot.

2. Standardize and trim down your documents.

Check for what is actually required, and what is just hanging around and serving no real purpose other than adding complexity. Is that additional line of legalese really necessary? (Probably not.) Standardizing documents by editing them down to only the necessities makes them more universally applicable and less posturing, and it streamlines your paperwork.

3. Automate your processes.

Automating your processes, paperwork and otherwise, serves two main purposes. First, it saves time and energy that can be spent on more important things, like actually communicating. Second, it forces you to examine your processes and workflows with a more critical eye and really look at the “why” and “how” behind them. Redundant, protectionist, posturing, or unnecessary procedures can be jettisoned.

4. Question your lawyer (and processes that exist “just because” or to CYA).

Sometimes those clunky and protectionist processes were put in place by your lawyer, or someone else tasked with the CYA responsibility. But do they actually help, and are they really required? Or do they hinder *real* communication and put other parties in a poor frame of mind by coming across as protectionist? When it’s necessary, it’s necessary—but don’t keep complexities “just because.”

5. Ask questions.

Be curious. Ask why your processes are what they are. Ask other parties on the job what they know about the project. Ask your customer if they have contracted with other parties below them. Getting information can sometimes be difficult. Other times, all it takes is to ask for it.

6. Don't hide the ball; be proactive with information.

You want information about the project, and guess what—so do other participants. Be a good steward of the project information and share what you know with the other parties. Foster an environment of transparency and open communication, and don't hide information in an attempt to gain leverage or protection.

7. Associate with outside parties who share the vision.

While you may not always have a choice of who else is on a project, you do have choices regarding the third-party partners and vendors you work with. Want to automate processes, foster communication, and get good outcomes? Don't use a collection firm for paperwork, or elevate every hiccup to a lawyer who doesn't share the lienzero vision.

8. Use every opportunity to educate.

Use paperwork to educate others on your collaborative worldview. Help others understand what you are doing, and why it works, and you will be surprised at how many buy in to open communication for better outcomes.

9. No surprises.

Surprises can be great for birthday parties, but they're terrible on construction projects. Don't surprise people by hiding the other parties you have contracted with. Don't surprise people by filing a lien without transparently discussing the issue first and giving them the opportunity to work it out. Let people know what's going on.

10. Be Fair

They teach you this in kindergarten, so put it in practice. When you get past the fear, people on construction projects (like people in general) prefer fair outcomes. If you're fair in your dealings and processes, others will be fair to you, too.

We're **zlien**. We're on a mission to kill liens and make payments fast, easy, and fair for all. Join us.

It's time to fix construction payments.

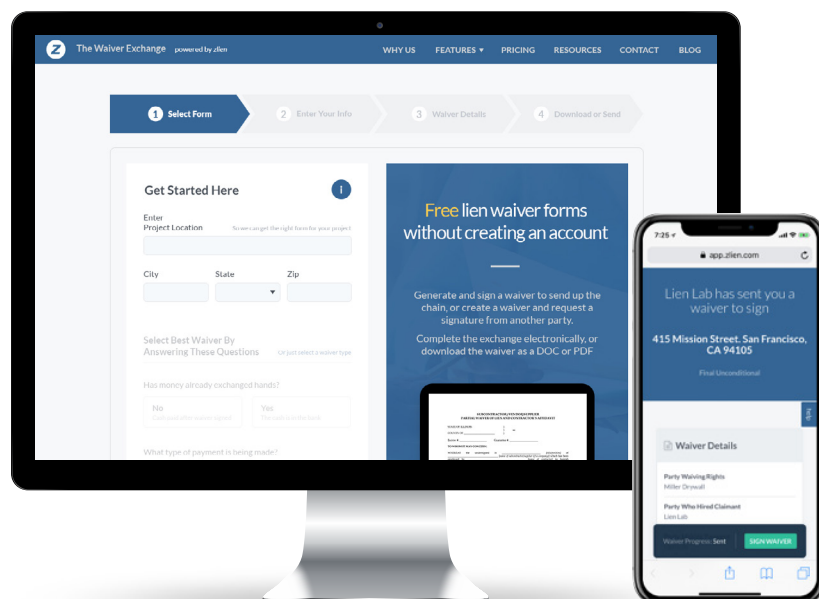
Instead of protection, it's time to focus on collaboration.

Instead of leverage, it's time to focus on good outcomes.

It's time for the construction industry to have a system of payments that works for everyone.

We're an energetic group of construction payment professionals that is fixing the system of construction payments, one job at a time. You can find out more about us here:

zlien.com



Join 25,000+ Contractors and Suppliers Who Use **zlien**

zlien is the most popular platform for managing lien rights, sending construction payment documents such as notices, and exchanging lien waivers. And we can help you, too.

Here are some actual quotes from some of our real customers:

All of our big accounts receivable problems are from before we started using zlien. We wish we would have started sooner.

Vjera Thompson, Accounting Manager, 9Wood Lumber

The beautiful thing is that with the zlien platform I'm able to see the required documents, and the dashboard shows upcoming deadlines, which is extremely helpful.

Katy McGee, Accounting Manager, Central Texas Lath and Plaster

The zlien crew has truly taken a load off of my plate. I would definitely use them again and we'll be using them [prior to] starting any more contracts. I give them an A+.

Shawn Walker

WOW!!! Superior Service - Fast Response Time, Truly Concerned People, Best Current Legal Direction! Trust Inspired here. Call Now - do not wait, Your Future Depends on it. SO Thankful I found this company.

Connie Chichester

No Liens. No Surprises. **No Stress.**

When a lien is filed on a construction project, it's a terrible outcome that no one wants -- not the claimants who just want to be paid in full and on time, and not for the lien recipients who just want the project to go smoothly.



However, liens and other payment fires happen all too often in the construction industry, and the current system of payments, is so dysfunctional that we believe it to be irretrievably broken.

There is a new way of thinking -- an industry movement -- that is designed to overhaul and simplify the status quo in order to have a system of payments that works for all industry stakeholders. It's called "Lien Zero," and the goal is nothing short of killing the mechanics lien forever.



Scott Wolfe Jr., bothered by the unfairness of construction payment, founded *zlien* to make payment easy, fast, and fair. He's on a mission to kill liens, fix slow payment, and eliminate bad outcomes in construction payment.



Nate Budde, is a licensed attorney who previously practiced construction law, and has been recognized by First Chair as one of the nation's Top General Counsels. Today, Nate helps contractors promote collaborative construction payment processes as *zlien*'s Chief Legal Officer.