



# Orr&Reno

## The Art of Getting Paid

Dealing with a Financially Distressed Client

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## OVERVIEW:

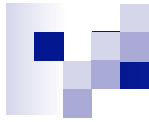
This presentation will focus on getting paid. It is geared to lay people, not lawyers. It will consist of the following sections:

1. Objective: “Show me the money!”
2. When do you have a problem
3. Consumer debt versus non-consumer debt
4. How do you get paid
5. Secure or insecure?
6. Venue choices
7. Attachment process
8. Mechanic’s liens
9. Liens that arise by operation of law
10. “If/then” scenarios
11. Sober discussions: legal considerations
12. Sober discussions: business considerations
13. Navigating the process



- Objective: Getting paid (or repaid)

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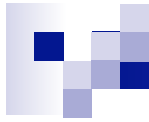


■ When do you have a problem? A few common warning signs:

1. Delinquency
2. Cause for insecurity
3. Unreturned phone calls
4. Bankruptcy
5. Breach of loan covenants



- Consumer versus non-consumer debt: words of caution
  1. Collecting and managing consumer (or household) debt requires more caution than “commercial” debt:
    - a. Federal Law: Fair Debt Collection Practices Act
    - b. State Law
  2. Concept of “debt collector”
  3. Commercial debt is not covered



- When the money stops coming, how do you get paid?
  1. Persuasion (fear)
  2. Leverage (by virtue of superior bargaining position realized on account of adequate security *that can be readily liquidated*)
  3. Force (litigation)



## ■ Security (and the sometimes false sense of it):

1. The only certainty is that nothing is certain and the value of one's security (collateral) is no exception
2. How do you get security:
  - a. By consent – in loan documents (security agreement, ALR, mortgage, etc.)
  - b. By deal or transaction – credit application, invoice, by operation of law, etc.
  - c. By judicial process – New Hampshire attachment procedure



■ Choices: Where to file:

1. Small Claims Court: Claims of up to \$7,500.00 *as of January 1, 2010*
2. District Court: Usually up to \$25,000
3. Superior Court: Jury trials, “equity” claims and monetary claim amounts over \$25,000 (in the usual course)



- Attachments in a chestnut shell:

1. Seek them in District Court or Superior Court (or Federal Court if in that forum)
2. Obtain them by proving (a) that you are more likely than not (i.e., have a 51% chance) of succeeding on the merits of your claim, and; (b) that you need security for your judgment
3. One defeats these by showing (a) no likelihood of success on your claim, or; (b) that debtor has sufficient assets to satisfy any judgment that you might obtain
4. Seek them *before* or after judgment (prejudgment favored)



## The curious case of mechanic's liens:

1. The silver bullet
2. These liens arise by operation of law and endure for 120 days
3. Not available in Small Claims Court



- Remain aware of other liens that arise by operation of law in New Hampshire:

- 1. These can help *and* they can **HURT**
- 2. Some may take priority over (i.e., jump ahead) of your lien: tax liens, condominium liens for assessments
- 3. Remain vigilant: search Secretary of State and Registries to monitor your collateral



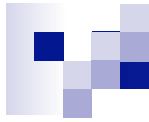
## The hard part: seeing the money. The “if/ then” scenarios

1. If mortgage, then foreclosure sale (90 days)
2. If lien on business assets, then seize and sell *if no breach of the peace (ASAP)*  
– *SELF HELP RISKY*
3. If debtor who gave lien on business assets cooperates, then conduct secured party sale to get pennies on the dollar (in the usual case) (60 – 90 days)
4. If debtor does not cooperate, then need to “judicially foreclose” lien (6 to 18 months; \$\$)
5. If prejudgment attachment or lien by operation of law, then to court (to reduce to judgment) then to execution via sheriff’s sale (6 to 18 months; \$\$\$)
6. Other avenues: replevin, deed in lieu of foreclosure



- Have the sober discussion about the legal approach:

1. Money: cost/benefit
2. Time: time value of it
3. Net recovery: costs of litigation
4. Take it when you need it:
  - a. to perfect a lien;
  - b. to reverse a fraudulent conveyance;
  - c. replevin, judicial enforcement of security agreement or UCC lien(s);
  - d. equity actions
  - e. certainty and closure in secured party situation



■ Have the sober discussion about business considerations:

1. Bad p.r.
2. Potential loss of client(s)
3. Expenses
4. Concept of being a business/community partner
5. Foreclosing chances for rehabilitation
6. Forcing a bankruptcy filing



- Knowing the process:

1. Exercise your rights and do so diligently
2. *Assess and understand* whether you are secured or not
3. Secure yourself for past debt and going forward
4. Work with debtor in good faith, but from a position of strength
5. Be prepared to navigate fraudulent conveyances and bankruptcy if you must