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Notice, Thy Name Need Not Be Nasty

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On many a construction project, a claim has been substantially impaired by a party's simple act of failing to provide a notice—required either by statute or by contract—in order to validate the claim. Given the increasing volume of documents generated on construction projects, it may be difficult to imagine how these vital communications are often overlooked. Or are they? While it appears that many notices are not given simply due to inadvertence or not appreciating the statutory or contractual requirements imposed for the project, in other instances, notices have been deliberately withheld due to a perception that providing them would create animosity for the project and produce more significant consequences than failing to preserve a particular claim.

Enter stage right: the neutral notice. A neutral notice entails providing an adequate amount of necessary information, without the trappings of either hyperbole or vitriol. The document format itself can be as simple as a handwritten notification containing all of the necessary information that is transmitted in the format required by statute or the contract documents.

There is really no need to couch the notice in terms that may engender unfavorable reactions to the contractor or party supplying the notice. In fact, including these extraneous statements may cause the claim to be viewed with suspicion, or worse. In the classic TV show *Dragnet*, Sgt. Joe Friday—played by Jack Webb—often interrupted a witness' lengthy and emotion-filled monologue by saying, "Just the facts, ma'am." Much the same, supplying information in a more nuts-and-bolts fashion may encourage the owner, or other designated representative, to pursue further inquiry on the points raised and perhaps address them in a more forthright fashion, as they may anticipate a lesser likelihood of confrontation if the matter could be resolved amicably at that juncture.

In some jurisdictions, basic required notices are much more common and include, for example, certain states' lien requirements of providing a pre-site activity notice to the owner that the subcontractor or supplier will be involved with the project. On those projects, this notification is unlikely to be viewed as either aggressive or confrontational. Taking a page from that script, presenting the necessary notice in a similar matter-of-fact fashion may reduce the possibility of negative repercussions associated with presenting what the parties are required to provide to successfully advance a claim.

As long as the notice is delivered in the method and the manner required by the statute or by the contract, it can be in various forms, including email, formal letter, speed notices in triplicate, or even a handwritten or facsimile notice. While it is important to note that the presentation of the subject matter may be viewed as more appropriate when delivered in a typewritten form and signed by the knowledgeable/authorized representative of the party making the claim, it is far preferable to have a less-formal notice, not bearing a raised-seal attestation, than not having any notice in the record.

While opportunities for confrontation appear to be on the rise on current construction projects, as a result of rapid delivery deadlines and more-stringent budgetary considerations, providing notification necessary to advancing a future claim does not have to be one of them. Indeed, by preparing and delivering the notices in an even, measured tone and without unnecessary baggage, is likely to create a significantly less-negative environment for future project activities—and may position the claiming party to protect its claim interests, as well as promptly advance a dialogue with the owner toward ultimate (and possibly more amicable) claim resolution.

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