

Ohnstad Twichell, P.C., is a full service law firm having a general and trial practice in North Dakota, Minnesota, and federal courts and offering services in the fields of probate, real estate, estate planning, corporate, employment law, family law, elder law, municipal finance and bonding, taxation, personal injury, criminal, negligence, commercial, insurance defense, water rights and automobile law.

WHAT TO DO WHEN YOUR CUSTOMER DOES NOT PAY



Christopher M. McShane
works in the West Fargo office of Ohnstad Twichell, where he works in the areas of civil litigation and commercial drafting.

Collecting unpaid accounts is not an enjoyable part of being in business. Unfortunately, businesses must get paid for the product or service provided simply to stay in business. This article contains tips and techniques for preventing past unpaid account and collecting from a customer if they fail to pay for the goods or services received.

If your customer has not paid for goods or services provided, the first step is to continue billing the customer in no less than monthly increments. Maintaining a regular monthly billing cycle allows for collection of a late payment charge of up to 1.75% per month on the principle not paid within 30 days of being billed. If you do not send regular billing statements, or you calculated a late payment based on the entire outstanding principal and interest, you will be in jeopardy of losing the right to charge any late payment charge.

Once it becomes clear the customer cannot or will not bring the outstanding account current, the next step is to compile all documentation relevant to the services or products provided. The documentation to collect would include any evidence of an agreement between the parties regarding the work completed, invoices, materials purchased, and a record of time worked on the project. Once you have compiled the relevant information, contact with an attorney will be necessary to pursue the debtor. In some cases, the outstanding account can be converted to a lien. In other cases, the debt must be converted to a judgment in district court or small claims court. In many debt collection actions, short time restrictions are in place which limit the collection of outstanding debts. For this reason, it is important to consult an attorney before the debt has been outstanding for an extended period of time.

Certain preventative measures may be taken to assist in the collection of unpaid debt from a

customer. The simplest way to simplify collection of debt in the future is the implementation of an agreement before any products or services are provided to the customer. The agreement should identify the product or service to be provided with as much detail as possible. It is also important to establish a date on which the product or service must be delivered, and any conditions which would change the delivery or completion date. The agreement should include an agreed-upon price, or a formula upon which the price will be computed. The agreement could be as formal as a contract signed by buyer and seller, or as informal as a letter to the buyer confirming a previously-discussed agreement.

It is also possible to obtain security from a customer before providing a product. In the event a customer does not pay for the product, the provider of the product will have the option of taking the product back in full satisfaction of the debt. To have this option available, a security agreement and UCC Statement must be completed prior to delivery of the product. A security agreement and UCC Statement should be drafted to account for the specific nature of the product being sold, and the situation the customer is in.

If you have any questions about collection of past-due accounts, or how to limit non-payment by your customers, the attorneys at Ohnstad Twichell would be happy to assist you.

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THREE OHNSTAD TWICHELL ATTORNEYS NAMED "GREAT PLAINS SUPER LAWYERS"

Ohnstad Twichell is proud to announce that Robert E. Rosenvold, Brian D. Neugebauer, and Robert G. Hoy have earned "Super Lawyer" status. Every year, Super Lawyers magazine conducts surveys of thousands of attorneys to determine the country's leading attorneys. Only five percent of all attorneys attain "Super Lawyer" recognition from their peers, and we are excited to have three of our own leading the ranks in North Dakota.

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newsletter from
Ohnstad Twichell, P.C.,
with offices in
West Fargo,
Hillsboro,
and Page,
North Dakota.*

*EPA Regulations
Concerning
Lead-Based Paints*



Robert E. Rosenvold practices estate planning, probate, and real estate law. Bob has one of the most respected estate planning and probate practices in North Dakota and Minnesota. He is active in the American College of Trust and Estate Counsel, the National Association of Estate Planners, and the Red River Valley Estate Planning Council. Bob is proficient with the most complex tax and estate planning issues you might encounter, or in crafting the most basic wills.



Brian D. Neugebauer practices municipal law and municipal bonding and financing. In addition to his designation as a "Super Lawyer," Brian has also earned the status of Nationally Recognized Bond Counsel. Brian represents several cities, counties, school districts, water resource districts, and other political subdivisions in North Dakota and Minnesota in tax-exempt bonding and other financing. Brian has a reputation as the leading municipal and bond attorney in the region.



Robert G. Hoy is one of the most respected trial lawyers in the region. Bob has successfully tried hundreds of jury trials at the federal and state level. Bob practices personal injury, business and commercial litigation, construction litigation, and criminal defense. Bob is an effective trial litigator, but his peers also respect his ability to obtain positive results for his clients in the pre-trial stage.

The "Super Lawyer" designation is a difficult title to earn, and we are proud of Bob, Brian, and Bob for their reputations for excellence amongst their peers. At Ohnstad Twichell, all of our attorneys are committed to providing excellent legal services, and our "Super Lawyers" lead the way.



Attorney David L. Wanner was recently selected by his peers for inclusion in the 2010 edition of *The Best Lawyers in America* in the areas of Real Estate Law and Trusts and Estates. Selection is based on an exhaustive and rigorous peer-review survey comprising of confidential evaluations by the top attorneys in the country. Dave focuses his practice on real estate transactions, including title opinions, deed/contract preparation, purchase agreements, tax-free exchanges, real estate sales, and on estate planning, including wills and trusts, powers of attorney, and healthcare directives. Congratulations, Dave!

EPA UPDATES



John T. Shockley works in the West Fargo office and devotes his practice to municipal law.

Beginning in April 2010 any contractor performing work which disturbs lead-based paint either on the exterior or interior of homes, childcare facilities and schools built before 1978 must be certified by the Environmental Protection Agency (EPA) and must adhere to special work practices and notices requirements. You may be asking yourself, "How does this rule affect me?" As a homeowner, landlord, school superintendent, an owner of an older building or a purchaser of a building, you may be affected by both higher construction costs, potential testing costs, and liability during sales transactions and for tenant claims.

The EPA is the federal agency with the authority to enact regulations intended to protect the environment. The EPA has the power to enforce these regulations through either administrative or civil fines. The new rules amend 40 C.F.R. part 745. Under these new rules contractors desiring to perform renovations to older buildings after April 22, 2010, will need to be certified by the EPA. 40 C.F.R. § 745.81. Contractors will also need to provide informational pamphlets to owners and to maintain records of renovations for a minimum of three years and their efforts to provide notice to the owner.

As result of the new rules, owners of buildings will need to have paint tested to determine if lead is present prior to starting renovation. 40 C.F.R. § 745.82. If lead is found in the paint, special precautions must be made if the paint is to be disturbed. The EPA has expansively defined the term renovation to include scraping, painting, cutting, sanding. However, the EPA has exempted renovation which is minor in nature and does not disturb six square feet in interior spaces and 20 feet in exterior places. 40 C.F.R. § 745.83. It is important to note that as a result of these regulations that activities occurring outside which affect the exterior of your older house, child care facility or school are subject to these rules.

The EPA has, in its adoption of the rules, presumed that lead paint is present in older buildings, and it is incumbent upon contractors and homeowners to test for the presence of lead prior to beginning renovation. 40 C.F.R. § 745.87. To enforce this rule the EPA has given itself the power to conduct

inspections and issue subpoenas to gather information related to such activities. Id. Thus, to avoid getting caught up in the center of an EPA directed enforcement action for the failure to obtain the proper certification and follow the proper procedure prior to beginning renovation, it is incumbent that homeowners ask contractors if they are certified and if they are aware of the EPA regulations. For contractors it is important that they become certified if they intend to perform renovations to older houses, and that they keep accurate and complete records. Simply keeping records in a company truck with the hope that they will never be reviewed by the EPA would likely be insufficient and lead to potential liability.

The new rule also provides an opportunity for homeowners with existing structures that were built before 1978. Under the rule contractors are not required to be certified to perform such activities until 2010. Therefore, this year presents an opportunity to perform this work without the additional cost of the certification.

Your Ohnstad Twichell attorneys are familiar with the practice of environmental law and are available to provide additional information on this issue and other issues related to environmental law including liability issues and enforcement actions by the EPA and ground contamination issues.

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BUSINESS CORNER!

NORTH DAKOTA FAMILY LAW MEDIATION EXPANDS PILOT PROJECT



Susan L. Ellison works in the West Fargo office and devotes her practice to labor/employment law, family law, and elder law.



Erin A. Muldoon Haug works in the West Fargo office and devotes her practice to family law, real estate law and estate planning

The North Dakota family law mediation pilot project appears to be off to a strong start. Originally tested in South Central and Central Judicial Districts of the state is now expanding to all but 14 counties in North Dakota. Cass and Traill Counties are part of the 14 and not included as of yet. The state has hired an independent consulting firm to track the project

success. According to Greacen Associates, more than 90 percent of the participants reported being satisfied with mediation, even if they did not settle anything through the process. Judges surveyed in the South Central and Central Judicial Districts approved of the project and several commented that many cases are getting resolved through mediation.

The family law mediation project will provide up to six hours of mediation orientation and mediation sessions at no cost to the family with a custody and visitation dispute. If participants elect to have more than six hours they are required to pay for the additional sessions.

Mediation is an alternative to litigating family law issues before a judge. The goal of the project is “to improve the lives of families and children who appear before the court by trying to resolve custody and visitation disputes through mediation in order to minimize family conflict, encourage shared decision making, support healthy relationships and communication among family members. Mediation can also be a money saver, overtaking the issue to the court. Through the mediation process the participants are in control of the outcome whereas judges decide the parties issues if they are brought before the court.

Officials hope to eventually involve the 14 remaining counties that are in the states southeastern corner. However, individuals with family law issues can elect to participate in mediation at their own expense in the areas where mediation costs are not yet covered. Susan Ellison and Erin Muldoon Haug are trained mediators and both practice in the area of family law. Since 1991, Ms. Ellison has practiced in the area of family law, including a variety of cases involving divorce, child custody, child support, spousal support and maintenance, and property division. Ms. Muldoon Haug and Ms. Ellison are available to mediate cases involving divorce, child custody, child support, spousal support and maintenance, and property division.

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*Attorneys Are
Available to
Mediate Family
Law Cases*



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PEG BUCHHOLZ, PLS

**NEWS FROM OHNSTAD
TWICHELL!**

Bob Hoy was recently appointed by the North Dakota Supreme Court to a two-year term on the Joint Procedure Committee, which considers and drafts proposed modifications to the Rules of Procedure.

Susan Ellison was recently elected to the Board of Directors for the West Fargo Area Chamber of Commerce.

Congratulations to David Miller on his recent marriage to Tiffany Johnson!

Janae Kragero was recently elected Corresponding Secretary and NALS Liaison for NALS of Fargo-Moorhead.

Julie Koppelman was re-elected to her fourth term as Treasurer of the Red River Valley Paralegal Association for the 09-10 fiscal year.

Susan L. Ellison has recently been appointed by the North Dakota Supreme Court to serve as the East Central Judicial District member of the Disciplinary Board. The Disciplinary Board is responsible for reviewing conduct of attorneys licensed to practice in the State of North Dakota and recommending discipline, if warranted. She joins the ten-member board that consists of seven lawyers, one from each judicial district of North Dakota, and three public members. Susan previously served on the Ethics Committee of the State Bar Association of North Dakota.



The information provided in this letter is of a general nature and should not be acted upon without prior discussion with your Ohnstad Twichell, P.C., attorney.

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