

## What to Do if You're Sued

*If you're threatened with a lawsuit, what you do—and don't do—matters*

By Renee Schwerdt



Owning a business can be uniquely rewarding, but rewards come with risks. Perhaps the most dreaded of those risks is a lawsuit. While some contractors keep that worry in the back of their minds, others avoid thinking about legal issues altogether; worse, they assume it can't happen to them. But construction lawsuits do happen. Often. While you can't guarantee that you won't be sued, you can prepare yourself by having a plan of action in the event of a lawsuit.

Here are the steps I recommend:

**Take notes about service of process.** Each jurisdiction has rules governing “service of process,” which is the procedure by which one party gives notice of initial legal action to another party. Pay attention to how you were served and take written notes. This will help your lawyer determine whether there are grounds to challenge service.

Specifically, note the date and time of service. If you received the complaint in the mail, save the envelope. If a person hand-delivered it, note whether he or she is a sheriff or a layperson and whether he or she appears to be an adult (over 18). Record the name and position of the person the process server served. Save everything the process server has given you.

**Don't ignore the complaint.** When you are served, you will receive a document called a “complaint,” which outlines the identity of the parties and the claims being made against you. Don't throw the complaint in a drawer and try to forget about it. Failing to respond to a complaint could result in a default judgment against you or your company. The sooner you act, the more control you have over the situation.

**Read the complaint.** This will give you some basic information about the suit: Who filed the suit? Is the plaintiff suing you, your company, or both? Why has the plaintiff filed suit? How much money is the plaintiff demanding?

**Contact a lawyer.** Do not attempt to engage the plaintiff on your own. Contact an attorney experienced in construction law who will help you analyze and understand your risks so you can make an informed decision about how to proceed. If the amount in controversy is too small to justify the cost of having the attorney prepare for and attend a hearing—in small claims court, for example—the attorney could advise you on how to best represent yourself.

**Contact your insurance company.** If you think you may have insurance coverage for the plaintiff's claims, immediately contact your insurance company because most insurers require prompt notification of a claim. Your attorney can also assist you in reviewing your insurance policy and obtaining coverage.

**Collect and preserve documentation.** Collect all documents, photographs, correspondence, material samples, and other items related to the case, whether electronic or on paper, so you can review them with your lawyer. Do not delete or destroy anything. Hiding information from your lawyer can only hurt your case, and you could also face severe sanctions from the court for destroying or withholding information.

**Be careful who you speak to.** Your conversations with your attorney are generally privileged. However, anything you say to a third party could make its way to the other side.

**Consider whether you can settle the case right now.** The vast majority of lawsuits end in a settlement. Settling the case at an early stage can save a lot of money and aggravation.

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