Construction contractors in the region face anything but uniformity when it comes to dealing with the rules addressing sales tax as it applies to projects for tax exempt customers (e.g., government entities and not-for-profits). Not only does the scope of the exemptions offered in the region (i.e., the District, Maryland, and Virginia) differ, the compliance requirements vary as well.

Generally, construction contractors are considered the consumers of the materials and supplies they purchase for use in their projects. This is because the contractor is providing a service, not reselling tangible personal property. Thus, contractors are generally required to pay sales tax when purchasing their materials and supplies. Contractors can at least be rest assured that the local jurisdictions all follow this foundational sales tax principle. Unfortunately, that's where the similarities end and the differences begin; especially when it comes to construction contracts with customers that are tax exempt entities.

Virginia is somewhat simple in that there is no exemption from tax for contractor purchases that will be incorporated into the real property of a tax exempt entity. The only options for avoiding sales or use tax on such purchases for projects in Virginia are for the contractor to be named as an authorized purchasing agent by the exempt entity or simply have the tax exempt customer make the purchases directly. Complications can arise when materials are temporarily stored in Virginia for a project in another jurisdiction. In this case, Virginia will allow, by Department of Taxation preapproval, construction contractors to make purchases tax-free if the same purchases could have been made tax-free in the jurisdiction where the project is located. Thus, applicability of Virginia's temporary storage exemption hinges on whether there is an available exemption in the other jurisdiction.

In contrast to Virginia, Maryland and the District both have sales and use tax exemptions for purchases of materials to be incorporated into the real property of certain tax exempt customers. However, the scope of the exemptions is different. Maryland's exemption applies Continued On Page 26
Architect’s Corner

K-Team Designs, a franchise studio of Decorating Den Interiors, won two top design awards at the company's 47th annual conference in San Antonio, Texas.

The "Dream Room" competition, in its 37th year, is judged by a panel of 30 editors from the top shelter magazines like "Better Homes & Gardens". Decorator Jenifer Yoon, one of two lead decorators in the Kensington studio, took first place in the dining room category with her timeless blend of classic yet on-trend furnishings, highlighted by a soft grey palette. While designer Bindu Maneyapanda, the other lead decorator, took second place in the living room category with her energetic palette of teal and citrus incorporating modern design details in her wall treatment and upholstery selections.

Decorating Den Interiors is North America's largest home furnishings and interior design franchise company. Whether you enjoy surrounding yourself with time-honored traditional design or inspired modern couture, it's our ultimate goal to design spaces that reflect our clients' tastes and lifestyle. We pride ourselves on working collaboratively with our clients to create perfectly appointed interiors to satisfy any style and budget.

K-Team Designs
10426 Fawcett St. Kensington, MD 20895
301-933-7900 www.ktown.decoratingden.com
Subcontractor Default Insurance
What Every Subcontractor Should Know

One of the changes subcontractors have encountered more frequently over the last ten years is the need to fill out extensive subcontractor prequalification packages. This requires the subcontractors to turn over their most sensitive financial information and disclose their bonding capacity to the general contractors. Why are subcontractors being required to give this information to their clients? What other industry requires a company to release confidential financial information to its client?

The answer is the increased use of Subcontractor Default Insurance, which is often known in the industry as SDI. SDI is an alternate to surety bonding that has served as a prequalification mechanism for the construction industry for over a century. If a subcontractor would not be able to perform or pay a second tier subcontractor, the general contractor has the ability to make a claim against the surety to remedy any potential default. SDI works much differently.

In a traditional bonding relationship, the subcontractor selects an agent to represent them to the bonding industry. The subcontractor will undergo the underwriting process including sharing its financial information with the surety. The bonding company will extend a bonding line of credit to the subcontractor and when the subcontractor is awarded a contract, they will typically be asked to provide a bond for the amount of the contract. Should a problem exist on the job, the general contractor will make a claim against the bond and the bonding company will independently investigate the claim and determine if the claim is valid.

SDI is an insurance policy that the general contractor takes out to protect itself from financial loss should a subcontractor not perform for the contractor. Currently, there are three insurance companies offering SDI: Zurich, Arch, and XL Catlin. An important distinction with SDI is the general contractor is the determiner of whether or not the subcontractor is in default. The power to default the subcontractor is transferred to the general contractor without an independent bonding company to verify the general contractor’s position.

Typically, the general contractor will require the subcontractors to undergo a prequalification process prior to enrolling the subcontractor in its SDI policy. In order to enroll, the general contractors will want all of the financial information including profits on jobs of your company and your competitors. Once the determination is made by the general contractor and the subcontractor, it is enrolled in the SDI policy.

Should a problem develop on the job in the opinion of the general contractor, the subcontractor can be declared in default. The general contractor will then complete the subcontractor’s work with its own forces or hire a completing subcontractor. The SDI policy will reimburse the general contractor for its financial loss subject to a large deductible. The deductibles are usually $500,000 to $1,000,000. The default process and the hiring of a completing contractor are at the discretion and control of the general contractor. The SDI policy only reimburses the general contractor for its financial loss so the process is much faster than when a surety bond is in place and the surety must investigate the loss.

A common question for a subcontractor is what protections are there for second tier contractors and vendors. With a SDI policy, only the general contractor can make a claim. For a second tier contractor and/or a vendor to have any protection, they must file a mechanic’s lien on the job and have the general contractor make a claim on the SDI policy. If the notice provisions under the state’s lien laws are not carefully followed, much of the traditional protections under a bond are not present under a SDI policy. If the general contractor has not provided the owner with a bond, as the first tier subcontractor, you have no right under the SDI policy to make a claim. Your only recourse is to file a mechanic’s lien against the project as well.
Another major risk to construction accounting software implementation is imprecise or incomplete job-costing data. Contractors face a distinctive challenge in integrating not only general business accounting data, but also the details of multiple, ongoing projects. A typical approach is to move job-costing info from the old system to the new one as quickly as possible, using whatever on-the-fly method seems most expedient. Naturally, doing so can lead to data transfer errors. But, again, there’s also a risk of missed opportunity here. When upgrading to a new system, you’ll have the chance to improve your job costing. You may be able to, for instance, add new phases or cost code groups that allow you to manage project expenses much more efficiently and closely.

Beyond job costing, other opportunities for improvement include optimizing your chart of accounts and improving your internal controls. Again, to obtain these benefits, you’ll need to take a slow, patient approach to the software implementation.

Cleaning up

You’ve probably heard that old tech adage, “garbage in, garbage out.” The “garbage” referred to is bad data. If inaccurate or garbled information goes into your system, the reports coming out of it will be flawed. And this is a particular danger when transitioning from an older software platform to a newer one.

For example, you may be working off of inaccurate inventory counts or struggling with duplicate vendor entries. On a more serious level, your database may store information that reflects improperly closed quarters, unbalanced accounts because of data entry errors or outstanding retainage on old jobs.

A methodical, analytical implementation should uncover some or, one hopes, all of such problems. You can then clean up the bad data and adjust entries to tighten the accuracy of your accounting records and, thereby, improve your financial reporting.

Seizing opportunities

Great question. Many construction company owners buy accounting software and, even if the installation goes well, quickly grow frustrated when they don’t get the return on investment they’d expected. From an accounting perspective, two of the primary implementation risks that contractors face are bad data and missed opportunities.

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Getting a leg up

Just thinking about what could go wrong will give you a leg up on avoiding the biggest disasters. To further increase your chances for success, involve your CPA in the implementation.

Rivka Bier
Senior Manager
Hertzbach & Company, P.A
410.363.3200

PAGE 4 NETWORKED & CONNECTED JUNE 2016
Contact us today to see how we can work together on building your business. We can help provide your company reach its maximum profit potential by providing the expert guidance, support and resources many contractors lack. Services we provide include: Accounting and Auditing, Tax Planning and Preparation, Business Advisory Services, Surety and Bonding Assistance and Cost Segregation Services.

Building Relationships | Delivering Success®
3 Mistakes Companies Make When Signing Construction Contracts

Most construction companies I know were started by people who liked to build things. They had a passion for their craft and wanted to contribute something real and lasting. Then, the inevitable happened. The ability and the passion became buried under a mountain of paperwork.

To make it worse, the paperwork tended to be written in some sort of pseudo-English prose. Sure, it looked like English, and the individual words (most of them) actually were English, but once they were put together… gibberish.

When's the last time you actually used the word *heretofore* or *aforementioned* in a casual conversation? Have you ever been talking with someone and felt the need to say something like *notwithstanding the foregoing*? Who talks like that? For that matter who, outside of the legal profession, writes sentences with five commas?

I have seen talented construction professionals and managers allow their talents to suffocate, little by little, under the weight of legal paperwork. As any good contractor knows, company-killing mistakes are made when people in authority make decisions outside of their area of expertise.

Don't let that be your story. Understand the contracts you're being asked to sign day in and day out. Take a look at the following common mistakes I see contractors make all the time and resolve to sidestep these extremely common landmines.

**Mistake number 1: Glazing Over The Boilerplate Language**

While I’m sure you have become more than familiar working with construction contracts, you may not be familiar with some of the major mistakes many companies make when signing them. Many preventable incidents (and claims) occur when companies fail to:

- Check and double-check specifications to ensure that their contractual scope of work involves only what was included in the bid.
- Pare down the indemnification provision to apply only to actual damages caused by their company. In other words, many companies fail to limit their risk to a reasonable level.
- Place a firm contractual deadline for the start of work.

Keeping the above-mentioned tips in mind the next time you sign a contract may prove to be invaluable, as they will help you avoid making unfortunate and costly mistakes.

**Mistake number 2: Thinking The Indemnification Clause Protects You And The General Contractor**

Indemnification clauses are classic company-killers. They’re made even more dangerous by the fact that most peoples’ eyes glaze over just reading the heading. The devil, as they say, is in the details.

Here’s an example of a classic indemnification clause. Read it carefully:

YourCompany shall indemnify, defend and hold harmless OtherCompany from and against any and all claims, suits, damages and losses, including related expenses and attorneys’ fees, for or resulting from injury to, or death of any person (including but not limited to employees of YourCompany or OtherCompany) and/or loss of or damage to any property in any way sustained by reason of, arising from, or relating to the act, error or omission of the YourCompany, its employees or subcontractors in the performance of the Services and/or while on OtherCompany’s premises. Regarding such claims, YourCompany shall promptly give notice to OtherCompany, after the YourCompany has knowledge, of any claim against YourCompany or OtherCompany and/or loss of or damage to any property in any way sustained by reason of, arising from, or relating to the act, error or omission of the YourCompany, its employees or subcontractors in the performance of the Services and/or while on OtherCompany’s premises. Regarding such claims, YourCompany shall promptly give notice to OtherCompany, after the YourCompany has knowledge, of any claim against YourCompany or OtherCompany or any investigation by any governmental agency of any activity conducted on or in the project site or of the commencement of any legal proceeding against OtherCompany related to the project for which YourCompany is...
providing Services. YourCompany shall not, in the defense of any such claims, investigation or litigation, consent to the entry of any judgment or enter into any settlement (except with the written consent of OtherCompany, which consent shall not be unreasonably withheld), that does not include as an unconditional term thereof, the giving by the claimant or the plaintiff to OtherCompany a complete release from any and all liability in respect of any such claim or litigation.

**Five Potential Company-Killers:**

1. The clause does not exclude consequential damages. Consequential damages can include lost profits or other forecasted damages. Imagine a painter which was supposed to complete its work on a hotel by May 30th. Upon its failure to do so, the hotel owner sued the contractor for the $1 Billion in lost profits forecast for the Memorial Day weekend. Those lost profits would be consequential damages and should be excluded.

2. Most indemnification clauses are limited to claims arising out of personal injuries or death. By including what would normally be covered in a simply breach of contract claim, the OtherCompany has retained the ability to claim attorney’s fees under this provision while YourCompany presumably does not have access to the same kind of relief, in the event YourCompany has to file suit for lack of payment.

3. The indemnification is not restricted solely to damages that can be traced to YourCompany’s acts or omissions. This results in 2 potential problems (see point #4 below for the second). You will notice that the clause envisions two separate circumstances: (1) claims arising out of personal injury; and (2) claims relating to the project. The second one is (at least partially) tied to the acts or omission of YourCompany. The first does not have any such limitation. The difference could be that YourCompany will be held to 100% indemnification of a claim in which it ultimately bears only 10% of the responsibility. (Grammar and phrasing count!)

4. The first clause of the indemnification provision cites issues that “relate to or arise out of” YourCompany’s work. Well, in a complicated undertaking involving multiple trades, virtually anything can be said to “arise out of” YourCompany’s work. To avoid being roped into a huge lawsuit for which YourCompany is only marginally responsible, you must take pains to tighten the language of this clause.

5. YourCompany is precluded from settling a claim unless the other side provides the OtherCompany with a complete release. So what happens if the other side did not file a claim against OtherCompany and refuses to release them as part of the settlement? Will YourCompany have to turn down an advantageous settlement (and perhaps jeopardize its insurance coverage) because it could not secure a release of a non-party?

**Mistake number 3: Wasting Money**

My firm has helped countless clients extricate themselves from disastrous, company-killing contracts and prevented them from entering countless others. In our experience, the three mistakes that waste the most money and have the greatest company-killing potential are:

- Signing away rights to open claims in monthly lien waivers (which tend to be very broad and date-oriented) submitted with invoices.

- Failing to adhere to notice provisions to preserve claims—in other words, not submitting your provisions on time.

- Failing to initiate proper document management. It is imperative that everything be documented—emails, text messages, phone calls... everything. Just as important, the documents should be on the company server or in the cloud, so that the company doesn't have to worry about rounding up and dusting off old iPads and laptops when information is needed.

*Continued On Page 13*
Sun Exposure For Construction

Sun exposure can do major damage — sunburn, skin cancer, and cataracts. While the rays of the sun are more damaging during summer months and between 11 a.m. and 1 p.m., sunburns can occur during a cloudy day, other seasons, and other times of the day.

Melanoma (skin cancer)

Healthy skin cells grow, divide, and replace themselves in an orderly way. However, sometimes certain cells may divide too rapidly and grow without any order. Too many cells are produced, and tumors begin to form. Some tumors are not cancer (benign). Unfortunately, some tumors are cancer (malignant) invading and destroying nearby healthy tissues and organs. Skin cancer developing in the pigment cells is called melanoma. It may spread to other parts of the body. Two other skin cancer types, basal cell cancer and squamous cell cancer, are much more common and rarely spread.

Most of the moles on your body are perfectly harmless. They may be brown, tan, or black; flat or raised; and round or oval. However, a change in a mole's size, shape, or color is a sign that you should see your doctor. Look for asymmetrical moles; moles with ragged, notched, or blurred edges; unevenly-colored moles; and moles that have changed in size.

Melanoma in men occurs most often on the trunk (the area between the shoulders and hips), the head, and the neck. In women, melanoma is often found on the arms and lower legs. It is found most often in people with fair skin. People with dark skin are more likely to have melanomas on the palms of the hands and soles of the feet.

Ultraviolet radiation from the sun is a risk factor that increases the chance of getting melanoma. Reduce your risk by avoiding or limiting sunlight exposure from 11 a.m. to 1 p.m. Gradually build up exposure to sunlight. Also, wear a hat, long sleeves, and sunscreen.

The earlier melanoma is detected, the better a person’s chances for a full recovery. Check your skin regularly for new growths or other changes. See your doctor if any areas look suspicious. Your doctor will remove part or all of the growth for examination. If melanoma is found, your doctor will determine the best treatment—surgery, drug therapies, or radiation. For more information, contact the Cancer Information Service, at 800-4-CANCER.

Cataracts

This is a condition in which the eye's lens fogs up so no matter how the eye tries to focus, it can’t see through the foggy area. Age is a factor in developing cataracts, but so is exposure to ultraviolet radiation from the sun over time. Eye drops, avoiding glare, proper prescription glasses can help, but usually surgery is the most effective treatment.

Sunburn

Prolonged exposure to ultraviolet radiation from the sun can produce sunburn. Symptoms include red, sensitive, inflamed skin, even blisters. To relieve the pain, soak sunburns in cold water, dry the area, apply ointment, and cover. Seek medical treatment for severe sunburn. The only way to prevent sunburn is to avoid sun exposure (wear a hat, long sleeves, and sunscreen).

Stay Safe,
Terry L. Foy
President
www.foysafety.com

Friends are the sailors who guide your rickety boat safely across the dangerous waters of life.

~ Unknown
FLATS @ 703

Construction of Flats @ 703 is part of continued growth in the Towson area. Kinsley Construction, Inc. recently broke ground on this new, seven-story residential building.

The project features 105 apartment units; rooftop deck equipped with a gazebo, water feature, and seating overlooking downtown Towson; a fitness center with strength and cardio equipment; and a resident clubroom with areas for gaming and lounging. Residents will enjoy street level features that mimic the style of downtown Towson such as landscaping, bike racks, and benches.

The developer, Federal Realty Investment Trust, is a repeat client of Kinsley’s, and owner of other mixed-use projects in the greater Baltimore region.

500 PARK AVENUE

Following the success of the residential and retail conversion of the former Hochschild Kohn Warehouse in Mount Vernon, The Time Group has again teamed with Kinsley Construction, Inc. to deliver 500 Park Avenue. This new 172,000-sq-ft, seven-story residential building includes 153 apartment units and an elevated swimming pool. The 75-foot high building includes six levels of residential use overtop a one-story parking garage. The units include a mix of studio, one-bedroom, and two-bedroom apartments.

Construction is underway, with completion scheduled for September 2017.

Kinsley Construction is a family-owned business with offices in York, Reading, Baltimore, and Washington DC. Kinsley provides solutions through preconstruction, construction management, general contracting and design-build services for clients throughout the Mid-Atlantic region.
What do bats with White-nose Syndrome (WNS) have in common with construction projects? Some found out the hard way last year when proposing clearing of forest that could be home to these WNS infected and federally protected bats. With newer regulatory criteria, the good news now for the development industry is not to worry too much about it in most of Maryland.

According to the U. S. Fish and Wildlife Service (FWS), WNS had gradually rendered the Northern Long-Eared Bat (NLEB) species threatened, affording them interim past protection measures when particular regulatory approvals for construction work are triggered.

So, what is really going on? WNS is a potentially lethal disease caused by a white fungus that grows around bat muzzles during hibernation. First documented in 2006-2007, WNS has spread across the bat populations in the eastern United States and Canada producing a wake of odd bat behavior.

Early FWS initiatives to propose the first restrictions to construction activity were initially viewed by some in the development industry as a technically unsubstantiated regulatory over-reaction that failed to follow mandatory public interest notification processes.

At that time, many construction projects needing a joint U. S. Army Corps of Engineers/Maryland Department of the Environment Section 404 and Tidal/Nontidal Wetlands and Waterways Permit, or any other authorization triggering federal species coordination, were going to potentially need additional screening and time of year construction restrictions.

This potentially included bat habitat field surveys, even if hundreds of miles away from known habitat – and could have also retroactively applied to an already permitted project if construction impacts had not yet occurred.

Yikes.

In response to the panicked regulated construction industry, the FWS reconsidered their initial approach leading to what became the interim April 2015 guidance (declaring it a threatened species under the Endangered Species Act Interim 4(d) Rule), which most in the industry could live with. The interim guidance specified that only projects with forest clearing over an acre west of the Chesapeake Bay were subject to potential review from the FWS Chesapeake Bay field office in Annapolis.

If under an acre of forest impact was expected, then no FWS review would be needed if the forest cleared was in: urban woodlots in industrial and commercially developed areas or high density residential areas; apple orchards; tree nurseries; pine plantations; and Christmas tree farms. And if any permanent tree clearing was done outside of the period of April 15 to August 30, then no restrictions applied.

While one could initiate the screening process themselves online with a follow-up to FWS field office staff if a triggering event occurs, terms such as “urban woodlots in industrial and commercially developed areas or high density residential areas” are still subject to human interpretation and technical judgment.

In January 2016 the FWS released its final 4(d) rule for the NLEB species – which further eased the on-the-ground regulatory burden. “We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for the northern long-eared bat (Myotis septentrionalis) is prudent. We have determined that such a designation is not prudent,” said the FWS in their subsequent federal register rule summary.

Although agencies continue to refine the implications of the final rule, the short version is that construction activities can proceed unrestricted in locations outside of the known NLEB habitat locations, which covers most of Maryland. Currently only Garrett, Allegany, and Washington Counties in Maryland and New Castle County, Delaware are known to potentially have NLEB species habitat.

So, where does that leave a project actually in one of these counties, or in any another area where NLEB species are newly discovered? That too is gradually being vetted through FWS consultation along with Maryland DNR.

Continued On Page 11
Drive Your Company Using The Dashboard

From time to time, this space has contained observations on the tough transition that business owners have to make from doing to delegating. The phrase used most often is the need to shift from owning the process to owning the results. It’s hard to give up the rush from solving the problems and doing the work. It’s also very difficult to trust another person to do it right and then see them do it a different way, especially if it works better! There is no substitute for just going ahead and delegating as you hire the right people and make sure they have the training and skills to get the job done. Mistakes will be made but so will accomplishments and growth.

There is one tool that successful owners have developed that helps them over the hump of delegating and getting back to their own highest and best use and working on the business instead of in it: a “dashboard.” Like the one in your car, a business dashboard feeds you the information you need to either see that things are running they way they should or that there is a problem that should be addressed.

The dashboard can be a spreadsheet, a report from your accounting system, or an alert on your smart phone. But the information has to be what you need to have your finger on the pulse of the business. What is the smallest collection of information you need each day or week to tell you how things are going? What’s the easiest way for you to get that information when and where you need it and at the frequency you need to have it?

The basis for dashboards that are used at any level in your company consists of the KPI’s that are measured at those levels. KPI’s are Key Performance Indicators. KPI’s track the tasks that are critical for each area to accomplish properly so that each area is contributing to the success of the organization. Reviewing KPI’s not only helps everyone know how they are doing but also points out opportunities for those tasks to be done more efficiently.

So start with the KPI’s you want reported on your dashboard at the frequency you want them reported and drive the process down through the organization. You will be creating a culture of accomplishment and preparing your managers for leading in the future and you will be keeping your company on the right road.

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Don't work until you get it right. Work until you can't get it wrong.
~ Unknown

Continued From Page 10

of such roost trees June 1 through July 31. Hazard tree removal for the protection of human life and property is allowed.

Most significant to the regulated public are neither landowners nor permit applicants need to conduct surveys to determine the bat's presence on the property. Agencies such as the Corps and FWS will rely on data and assessment efforts from the states’ natural heritage database for regulatory guidance as well as to interpret some of the numerous ongoing debates and subjective issues.

Andrew Der is Principal of Andrew T. Der & Associates, LLC practicing in the consulting industry since 2001, previously completing 18 years of service at the Maryland Department of the Environment. He can be reached at 410 491 2808 or AndrewTDer@comcast.net.
And The Survey Says …

Last month I had the pleasure of presenting the results of our 2016 Construction Industry Survey at a Maryland Construction Network event.

When Gross Mendelsohn and Maryland Construction Network decided to partner on the survey in early 2016, we really didn’t know what the results would show. So when more than 200 survey responses came in from contractors across the state, we were very excited to see what the results revealed about Maryland’s construction industry.

The survey addressed outlooks and trends for 2016; accounting, finance and tax issues; human resources and personnel development issues; technology; and exit and succession planning.

The goals of the survey were to take the pulse of how Maryland contractors view their future, and to gather key financial, operational, and management benchmarks that respondents could use to assess where they stand relative to their competitors.

One thing is clear: optimism is high among Maryland’s construction community, despite years of a tough economy. In fact, 85% of respondents said they are more optimistic today about their company than the prior year. This level of optimism is very exciting for Maryland’s construction community.

While the future looks bright for Maryland construction business owners, the survey also revealed some obstacles and challenges.

Key Finding: Accounting, Finance and Tax

Many contractors are leaving money on the table by not taking advantage of tax credits and incentives to minimize taxes.

Half of all CFOs and nearly nine out of ten CEOs report that they are unsure whether or not the company is taking advantage of Section 41, 199 and/or 179D credits and deductions.

The good news is that your CPA can help you recover those missed opportunities from past years and, with proper tax planning, position your company to secure the tax credits and incentives you qualify for in the future.

Key Finding: Human Resources and Personnel Development

More than half of contractors say that finding and retaining good employees is their top concern. However, there’s a big disconnect here, since three out of ten contractors say they have employees on staff who should be terminated. There is a reluctance to terminate these employees because of the scarcity of qualified employees.

Carrying the “dead weight” on staff surely has a negative impact on a company’s profitability. Fortunately, there are ways to tighten up your company’s approach to personnel management that will ensure that you retain your best employees for the long haul.

Key Finding: Technology
Nearly 20% of contractors had their computer systems attacked last year. That figure rises for companies with more than $25 million in revenue. The losses from being hacked can be staggering. An IT expert can help tighten up your company’s network to make it less vulnerable to attacks.

**Key Finding: Exit and Succession Planning**

More than 50% of construction business owners do not have an exit or succession plan in place. Just as troublesome, the survey uncovered the fact that less than 30% of owners say they know how much their business is worth, although about half say they could make an educated guess.

Since many owners have a big portion of their net worth tied into their business, it makes sense to approach the sale of the business from sound research and planning perspectives, and a best case solution prepared with the assistance of a qualified expert.

**Get More Insight in the Survey Report**

The survey results provide an insightful snapshot of Maryland’s construction industry, as well as practical recommendations for how contractors should handle the challenges they face. To get more insights, download a summary of the survey results [here](#).

Steve Ball, CPA, CVA, CCFIP, is director of [Gross Mendelsohn's Construction & Real Estate Group](#). He is passionate about helping contractors succeed in all facets of business. Steve provides audit, review, compilation, tax, business valuation, succession planning and consulting services for contractors. Contact Steve at 410.685.5512 or [sball@gma-cpa.com](mailto:sball@gma-cpa.com).

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**Continued From Page 7**

Lately, we’ve been working with more and more companies looking to initiate a uniform, reliable, contract review process. Sure, some companies will call on a catch-as-catch-can basis, but the best practice now is for companies to incorporate this kind of analysis into their workflow.

Today, what we hear most often is “we're going to need you to review 25 contracts over the next year. Figure out a monthly price and don't charge us by the hour. It's cheaper than having a lawyer on staff, there are no billing surprises, and CEOs sleep a lot better.

Let me know if there's anything I can do to help you.

**Avoid these common mistakes to save your company from this:**
When I review subcontracts for clients, it is not uncommon to see change order clauses including language such as, “no change order is effective unless it is in writing and signed by the contractor’s project manager.” Likewise, it is not uncommon for up-stream contractors or owners to dispute the validity of change order work charges based on the defense that the up-stream entity did not provide a written, signed change order authorizing the work or costs.

Unfortunately, I regularly see the “no signed change order” defense asserted even when the up-stream entity directed via email that additional work be performed, such as in the following example:

-----
To: Subcontractor
From: Bob Contractor

Dear Sub:

Proceed with the additional work we discussed.

Bob Contractor
Best Construction, Inc.

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Modern Maryland law may now provide an avenue for subcontractors to fight back against the “no signed change order” defense, increasing the chance that informally ordered additional work will be compensated.

For example, Maryland’s Statute of Frauds, in a fashion similar to the change order clause described above, requires that certain kinds of agreements be both in writing and signed before a party can bring suit on them. Two common agreements falling within the Statute of Frauds are contracts relating to real estate and contracts for the sale of goods over $500.00. Historically, parties were required to sign a paper copy of an agreement with a pen to satisfy the Statute of Frauds, much as contractors have historically been required to obtain a formal, written and signed change order to have a clear path to compensation for additional work.

Under Maryland’s Uniform Electronic Transactions Act (“MUETA”), however, neither a paper agreement nor a signature in ink is necessary to form a contract that satisfies the Statute of Frauds. Instead, if a party intends to do so, it can form a contract that satisfies the Statute of Frauds merely by sending an email with a signature line. The MUETA provides that, “[i]f a law requires a record to be in writing, an electronic record satisfies the law.” Md. Code Ann., Comm. Law § 21-106(c). Likewise, “[i]f a law requires a signature, an electronic signature satisfies the law.” Id. at (d).

The Court of Special Appeals of Maryland has acknowledged that e-mails satisfy the Statute of Frauds in MEMC Elec. Materials, Inc. v. BP Solar Int’l, Inc., 196 Md. App. 318, 9 A.3d 508 (2010). In reviewing a series of e-mails that contained the terms of an agreement for the sale of goods, the Court of Special Appeals held that “e-mails constitute a sufficient writing under the Statute [of Frauds]. . . . In that regard, if so intended, a typed name is a sufficient signature as an agent of the party against whom enforcement is sought.” Id. at 339, 9 A.3d at 521. Essentially, the Court of Special Appeals held that a party can bind itself to a contract under the Statute of Frauds merely be sending an email with a signature block.

That case and others like it could have important ramifications for subcontractors working under a formal “writing-required” change order clause. The MUETA does not stop with the Statute of Frauds. Instead, emails can satisfy any contract that requires written confirmations or approvals, so long as the surrounding circumstances and contract language suggest that the parties agreed to conduct their business via email. See Md. Code Ann., Comm. Law §§ 21-104(b) and 21-108(b).

In the context of the email described above, the MUETA could therefore empower a down-stream contractor to assert that, since the parties were conducting business (including orders for additional work) via email, the
email directing additional work constitutes a “signed, written change order” for the purposes of entitling the subcontractor to additional compensation for that work.

“Jeremy Wyatt is an award-winning attorney at Harrison Law Group. He specializes in construction law, using his skills and experience to help clients get paid and avoid risk on construction projects. You can reach Jeremy by email at jwyatt@harrisonlawgroup.com or by phone at 410-832-0000.”

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The Hierarchy Of Ensuring Payment

It is a truism of business: At some point, you will be owed money on an account. The party owed money is the creditor, and the delinquent party, who owes the money, is the debtor.

There are no magic bullets to solving every delinquent account. The circumstances in each situation will dictate which methods are the best. Certainly the best method to receiving prompt payment is to be paid upfront, in advance. But, for obvious reasons, that is not always an option. Everyone likes lists – so here’s a top 5 of methods for ensuring payment.

Best to “Minimalist” Methods of Ensuring Payment

1. Stipulated Judgment, with Payment Plan, plus Levies, or Attachments. A Stipulated Judgment is an agreement by the Creditor and Debtor that a Judgment will be entered in Court in favor of the Creditor and against the Debtor. Some parties say, “I don’t want to stipulate to anything; I want to sue the debtor!” But the outcome of a lawsuit is a judgment. By stipulating to a judgment, it simply cuts-out the expensive and time-consuming litigation. Once a Judgment is entered, it can be attached to assets. For example, the Sheriff can attach (freeze) the debtor’s bank accounts. Or, the Sheriff can levy personal possessions that the debtor owns. Generally, the effect of a levy or attachment is that the debtor cannot relinquish those assets, because those assets are specifically inventoried by the Sheriff as items to be sold to pay the judgment debt.

In practice, only short payment plans will be practical for stipulated Sheriff’s attachments. This is because a Sheriff can only attach an item for a short period of time. Personal guarantees as well as a written payment plan are also advisable.

2. Stipulated Judgment, with Payment Plan, plus Collateralization. This is more common than the previously mentioned option. Here, the Judgment is entered, and a payment plan is agreed to. The parties additionally secure the payment plan via mortgages, or other security interests. It is advisable that the debtor also disclose its assets, and execute personal guarantees, too. Assets can also be placed in escrow holding, while the payment plan is being made.

3. Promissory Note with Collateralization. Promissory notes are simply payment plans. Collateralization (also called securitization) is the tying of the payment plan to a specific asset, so that the default in the payment plan triggers a collection against the asset. Collateralization can be achieved with mortgages or perhaps a UCC Article 9 lien. The promissory note should include a confession of judgment clause, if allowed by statute, and an attorneys’ fee provision. Personal guarantees are once again advisable.

Securing or collateralizing the promissory note takes a few extra documents and legal advice, but it is highly advisable. Without the security for the note, it is merely an “unsecured debt.”

4. Unsecured Promissory Note. This is probably the most common tactic that businesses immediately look to, when attempting to get paid on a delinquent account. A promissory note is better than merely an outstanding invoice, because it is harder to challenge a debt if a note has been signed acknowledging that the debt is owed. But without collateralizing the note, it is merely a memorialization of the debt and a promise by the debtor to a payment plan. That’s better than nothing, but it does not “secure” the payment plan to specific assets, because there is no collateral. The promissory note should include a confession of judgment clause, again, if allowed by statute, as well as personal guarantees, and an attorneys’ fee provision.

5. Written Contract and Invoices. Always have a written contract and document the debt with timely invoices that articulate the debt and the services provided. This is a foundation for all the above-methods, too. If allowed by law, it is also wise to include attorneys’ fees clauses and other clauses governing the process for bringing suit on the contract.

Enforcing contracts to ensure payment is a bit of an art, and there are nearly infinite ways to approach the issue. For example, it might be wise to discount the invoice, if a large initial lump payment is part of the payment

Continued On Page 30
Over the course of the next decade, the landscape of business ownership in this country will begin to shift dramatically. The sea-change has already begun as millions of baby boomer business owners begin to contend with retirement and the importance of exit planning begins to sink in. As recently as 2014, roughly 66% of all businesses were owned by baby boomers. Unfortunately, many baby boomer business owners don’t begin to think through their exit strategy until they are on the brink of retirement age or, which puts them at a significant disadvantage.

One factor that complicates the exit strategies of baby boomer business owners is the question of who will take on leadership of their company once they retire. In past generations, business owners would usually pass their business on to their children, but because baby boomers had fewer children than their parents, many baby boomer business owners are forced to face challenges regarding succession and liquidity.

If you’re a baby boomer business owner who has not yet begun the exit planning process and wonders when is the right time to get started, the answer is now! Depending on how close you are to retirement, here are some questions you need to answer and some ideas to help you begin your exit planning. Remember one way or another you will exit your business.

You need to plan now. Exit planning requires careful consideration of important questions. These are the types of questions you should begin to think through:

What happens if you are not able to run the company? Who will run the company? How will you be able to provide for your family’s financial needs?

If you plan on leaving your business to your child(ren), then you must determine what you will need in retirement. Think about how to structure the transaction to balance the needs of your child(ren) with your needs. Begin to plan the transition of leadership. How will you prepare your successor to run the company once you are gone?

If your children are not interested, do you want to transition the business to your current management? How do you structure the transaction? Who is involved?

What will the leadership structure look like? How do you meet your financial requirements in retirement? Is an Employee Stock Ownership Plan (ESOP) right for your business?

Do you want to sell the business to a third party? How much do you need in retirement from the sale of your business to continue to sustain your standard of living? What price do you need to provide those funds? Remember, the largest asset of business owners is the unknown value of their business. Who would be interested in buying your business? What do you need to do to increase value in your business when you are ready to sell?

Once you have begun to think through the details of your exit plan, you’ll need a skilled team of advisors to help you understand the issues you may run into and provide you with the information you need to meet your goals for your future. They will then guide you through the transition and through any necessary transactions. Your team of advisors should include a certified exit planner, an accountant, an attorney, a financial advisor, an investment banker, and an executive coach.

Whether or not you know the value of your business, it’s never too early to begin the process of increasing its value. Consider any necessary capital improvements and work on improving your company’s earnings to create better value. Look at all your expenses and cost of goods to find ways to improve your margins. All of these steps will position your business to better provide for you once you retire.

For younger business owners, the current reality of the baby boomer generation should act as inspiration to begin your exit planning sooner rather or later. While no one can be sure what the future will hold, by planning strategically and intelligently, you’ll be better equipped to handle whatever comes your way.

Allan Hirsh is an Executive Coach at Allan Hirsh Advisors and the host of AHA! Business Radio on CBS Sports Radio 1300AM Tuesdays at 6-7 pm. Visit ahabusinessradio.com to pod cast the shows.
Homes For America’s Bravest

Seriously wounded by an improvised explosive in Afghanistan, Captain Edward “Flip” Klein survived three amputations and 15 months of rehabilitation. Following his injury, he nearly lost his life in a house fire. Upon hearing his story, Steve Ulmer, COO at APi Group Inc. felt compelled to take action. APi Group partnered with Building for America’s Bravest, a Staten Island, N.Y.-based organization which provides severely wounded veterans with homes designed specifically for their needs.

The homes include amenities to address the needs and challenges of recipients. Mobility can be difficult for wounded veterans, so ensuring protection during emergencies is paramount. “This is their forever home,” said John Hodge, chief operating officer of Building for America’s Bravest. “We want to make sure they can fulfill their dreams and whatever those dreams were prior to them being injured. This is definitely a step in that direction.”

Devoted to improving veterans’ well-being, the APi Group companies of Reliance Fire Protection, International Fire Protection and Western States Fire Protection eagerly volunteered to help. The three fire protection companies committed to installing sprinkler systems in 20 “forever” homes located throughout the country.

“We have all accepted it is our responsibility to care for the veterans who have served our country. I’m proud of the fact our sister companies have made a collaborative effort to help change the lives of these heroes.”

Knott extends a special thanks to Charley Wilhelm and Mike Hebble of Reliance Fire Protection; Eddie Gnip, Jr. and Brian Pedrick of International Fire Protection; Troy Orsini of K&M Fire Protection, and Ben Stewart of Western States Fire Protection.

This article was submitted by Trish Kallis, Marketing & Creative Coordinator with Reliance Fire Protection. Reliance Fire Protection, a subsidiary APi Group, Inc. is a strong advocate of Building for America’s Bravest and heavily involved in supporting our veterans. For additional information about this worthy non-profit or Reliance Fire Protection, please visit reliancefireprotection.com or contact Trish Kallis at 443-989-3000.
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There are an estimated 70 million Baby Boomers and they are approaching retirement. The Boomers own over 12 million businesses and over the next 10 to 15 years, 70 percent of these companies are expected to change hands. B2B Exit®, a division of B2B CFO®, conducted a survey of business owners at the 2013 Inc. 500|5000 Conference and Awards Ceremony held in Washington, D.C. Of the 271 owners that participated, 67% plan on selling their business within 10 years. This Tsunami of business for sale is creating a unique opportunity to facilitate growth through acquisition.

Before you look outside for a company to buy, you need to look inside. Ask yourself these questions: Where is our company today and how did we get here? Where do we want it to be in 5 and 10 years? What are we missing to get us to our 5 and 10 year vision? After you answer these questions (and many more) you will have an understanding of where you want to be and what you need to get you there. You can then take a look at what is the best method to get there. You could pursue organic growth, enter into a joint venture, or form a strategic alliance with another company that can advance your plan. Or, you could acquire what you are missing via an acquisition. All of this should be documented in your strategic growth plan.

If you determine the best method to proceed would be to acquire another company, you need to create an acquisition plan. Whether the goal is to gain market share, enter a new geographic location, acquire specific technology or patents, access new customers, enhance your talent pool or any number of other objectives; the key is to make a strategic acquisition where you take advantage of synergies, i.e. 2 + 2 = 5.

Next you need to create a list of criteria that will be used to rank potential acquisition targets. Criteria could include the size of the target company, their management structure, financial performance, the product or services they provide and their customer base.

Once you know what criteria you are looking for it is time to search for specific companies. Don't limit your search to companies currently up for sale; but, include companies not currently for sale. By including these not-for-sale companies you have greatly expanded the population of possible targets. If the target is for sale, it is easy to contact their broker or M&A advisor to express intent. The not-for-sale group will take a little more planning as you will have to convince them that a union of the companies will benefit them. Any company is for sale for the right price and terms; and, you will have to sell your vision to the owners of the target company.

Once a target is approached, it is time to get to know the company to determine if it is a match. This is usually proceeded by a negotiated nondisclosure agreement. Once the necessary agreements are in place, it’s time to gain an understanding of the company:

- Learn about their market and customers
- See if there is a cultural fit between the companies
- Determine if it is a strategic fit for your company
- Prepare a SWOT assessment of a combined entity
- Identify and quantify synergies
- Outline the start of an integration strategy
- Create a financial assessment and valuation

If you determine 1) the target meets your criteria; 2) the purchase will satisfy your acquisition goals; and 3) you and the seller have reached an agreement in principle, it’s time to execute a letter of intent. Although it should contain certain binding provisions, the LOI is a non-binding offer to purchase.

The LOI will include a valuation with a range of possible prices (the actual price will be adjusted based on financial information obtained during the due diligence phase). It should include a possible structure, i.e. stock vs. asset purchase. This can always be adjusted once both parties understand the tax consequence to a sale. And it will outline any other agreements: employment or consulting, non-compete, finance, etc. Binding
terms will include details on confidentiality, who pays for what expenses and if the seller has the right to shop the deal to other buyers. Additionally, it should include a time table for completing the due diligence phase and closing the deal.

Once the letter of intent is executed, the real work begins with the due diligence process. Here is where you take a deep dive into the financial records to better understand the entity. This will include tax structure, employee compensation, benefits and talents, legal compliance, information technology and many other aspects of the company.

As you compile this information, you should create lists of items that could adjust the purchase price up or down, quantify synergies that could create savings or enhance operations and begin to develop an integration strategy. Once the due diligence process is complete you can negotiate the fine points on price and terms and enter into a formal purchase agreement.

Creating and executing an acquisition strategy is a team sport that requires the expertise of many people both inside your company as well as outside consultants. The external team typically includes lawyers experienced in mergers and acquisitions, tax accountants, valuation experts, investment bankers and a third party acquisition advisor. If you don't have the internal expertise to manage the process, this third party advisor can save you time and money.

With the higher than normal businesses being bought and sold, now may be a good time to take advantage of the Baby Boomer Tsunami and facilitate your growth through acquisition.

J. Scott LeVora is a partner with B2B CFO Partners, LLC. Scott is a CPA and a Certified Business Transition Expert. B2B CFO is the nation’s largest CFO and business transitions services firm and has the largest source of mid-market business transition experts in the nation.
The Evolution Of Backup: Is Your Organization Prepared For The Threats Of Data Loss?

Years ago data backups were great insurance in the case of a catastrophic hardware failure. However, the need to restore from those backups was relatively infrequent. Many folks would question the value of expensive data backup systems because it was insurance that was rarely or never needed. Those days are long gone. In today’s world, data is at risk at all times and the risks are many. Data can be easily lost by the multitude of virus attacks that destroy your data or lock it up for a ransom. Companies are quickly becoming paperless and are making their electronic corporate documents accessible to their entire employee base. The more users you have accessing these systems, the more mistakes you will experience. Mistakes like unintentional deletions and overwrites; and the famous unintended drag and drop are a daily occurrence. Weekly (if not daily) restoration of files from data backup systems is now a quite frequent occurrence. Because of this, it is now more important than ever for every company to have a solid, commercial grade data backup solution.

Your data backup solution should first and foremost be easy to operate with as little user interaction as possible. Many a file has been lost because someone forgot to “change the tapes”. Your solution should support a robust retention policy so that you have several point in time copies to restore from. You don’t always know that your data has been lost or corrupted the day it occurs. Sometimes, this realization does not surface for days or weeks. So you need to be able to go back to that time period in order to recover a good copy of the data. A good solution will offer the ability to recover your files from a local device that resides within your corporate walls for faster recovery as well as the ability to store and restore from multiple copies offsite or in the cloud. If you have a virtualized environment, you should look for a solution that offers true virtualization support so that you can quickly restore an exact copy of your virtual machine. Reliability is a huge consideration. Your backup solution should not experience regular failures during normal operation. Failures on a daily or weekly basis is unacceptable to most companies. There are many other things to consider in a complex environment. The above qualifications are a good start on the basics of a good commercial grade backup system. The reliable and robust systems available today are not inexpensive. However, when you consider the cost of recreating your lost data, you will inevitably find that it was money well spent.

Finally, make sure that you test restoring data from your backup system on a regular basis. A backup is worthless unless you can restore the data from it. Backup media (tapes and disk) go bad over time and with heavy usage. Even if your backup system has reported that the backup job was 100% successful, it is always good measure to test a restore from it on a regular basis.

Scott Dolmetsch
Business Information Group

Incorporated in 1992, Business Information Group (BIG) provides our clients quality services in network design and implementation, virtualization, wireless communication, and custom software development.

You would know the value of time, the day you start counting not the hours, but the seconds they contain, and what you did with them.

~ Hermann J Steinherr
Seeking to put God’s love into action, Habitat for Humanity brings people together to build homes, communities and hope. Habitat Chesapeake serves communities throughout Baltimore City, and Anne Arundel, Baltimore and Howard counties.

Since 1982, Habitat for Humanity of the Chesapeake has partnered with more than 700 families in Baltimore City, and Anne Arundel, Baltimore and Howard counties through home construction, rehabilitation and repairs, and by increasing access to improved shelter through products and services.

**Team Build** Habitat Chesapeake partners with various companies and organizations throughout the year, who contribute their time and money in supporting our mission and vision. Learn how you or your team can become involved with Habitat Chesapeake, click [here](#).

**Lend Us a Hand** Volunteer with Habitat Chesapeake. The help we receive at our ReStores and on the construction site empowers us to fulfill our mission of providing affordable homes to working families in need. Regardless of your experience, your help makes a difference. Volunteer today.

**Youth Partners** The Build-A-Block coalition, which consists of local schools in Baltimore, helps to raise money in support of Habitat Chesapeake. The coalition includes The Park School of Baltimore, The Friends School of Baltimore, Garrison Forest School, Roland Park Country School, and Carver Vocational Technical High School. The students hosted an annual fundraiser, in partnership with Wegmans of Hunt Valley and raised an amazing $21,792. For information, email youth@habitatchesapeake.org.

**Shop The Store That Builds Homes** Habitat Chesapeake operates six ReStores in the Maryland area. The Chesapeake ReStore is a non-profit discount home improvement and building supply store and donation center. We accept and resell quality new and used building materials, furniture, and appliances. The profits from these stores cover up to 16% of our costs to build homes for families. Stop by your local ReStore today!
Is Your Advisor Upholding Fiduciary Standards?

The Prosperity Consulting Group was founded on the hallmarks of fiduciary standards – meaning we always place our clients’ interests ahead of our own. Recently, I have observed people make unfortunate mistakes in their investments, often at the hands of other advisors who failed to maintain these vital standards. I’m sharing these stories with you in hopes that you can learn from these mistakes and avoid them with your own investments.

401(k) plan vs. Permanent Life Insurance
On a recent trip to the snowcapped mountains of Colorado, I met with a lovely couple. They were middle aged and have spent the majority of their adult life making the right financial decisions. They worked hard, saved for their retirement in their 401(k) plan and obtained years of tax deferred growth in their investments. Unfortunately, this couple has been led to believe that they should place their money in a permanent life insurance policy, rather than their 401(k), on the premise that they’re building up savings within the policy and will be able to borrow from the “cash value” and eventually cash out. However, in practice, this couple may end up owning this policy for many years without building any real savings or “cash value” to cover the advisors commission, which can range from 80% to 90% of the first year. Not to mention, the large premiums they will have to pay into the policy. Remember, a 401(k) plan is designed to maximize your retirement and tax benefit while a permanent life insurance policy is not.

529 Plan vs. Permanent Life Insurance
Born 7 pounds, 8 ounces, a beautiful baby boy has been welcomed into his family. This little bundle of joy has the world at his feet and his parents want to make sure he gets everything he needs, including the invaluable gift of education. Similar to the story above, this couple spoke with an advisor who suggested a permanent life policy for their child that he can later use to pay for college. Remember, the main purpose of life insurance is to make up for the loss of income and to cover outstanding expenses in the case of death, it is not for college savings. Setting up a tax-deferred 529 plan is a much better option for higher education expenses. The funds grow tax-free if used for any qualified college or higher education expense, including tuition, room, board, fees, books, supplies, and equipment.

Annuity vs. Traditional Investing
One of our newer clients, an older woman who is well into her retirement, requires investments that allow her to withdraw money immediately, while the rest of her portfolio continues to grow. However, in 2010, she consulted a pair of advisors who placed her money in annuities. While annuities may be a fit for some investors, this woman lost substantial appreciation in the market as the internal fees alone ate away at the overall value of her investment. Recently, she went to her local bank and was convinced that she should invest in an additional annuity with her remaining cash. A better option would be to stick with a well-diversified, lower cost investment portfolio. The only people who were benefiting from the annuities were the bankers who sold them as they received substantial commission from the sale.

At The Prosperity Consulting Group, we pride ourselves on always placing our clients first. If you have any questions or wish to discuss any of these scenarios in greater detail, we are here to help.

Donald N. Hoffman, MS, CPA
President
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to purchases of materials for projects for not-for-profit organizations as well volunteer fire, ambulance, or rescue squads. Notably absent from Maryland’s exemption are material purchases for projects with government organizations. The District’s exemption applies to not-for-profits (i.e., “semipublic institutions”) as well as federal or District of Columbia government entities.

It’s important for contractors to realize that the exemptions in Maryland and the District only apply to materials and supplies that will become part of the real property of the tax-exempt customer. A contractor must still pay tax on tools and supplies purchased for use on a contract for a tax-exempt organization.

The regional rules for purchases of materials by construction contractors are a fair reflection of the nation as a whole in terms of the wide variance in available exemptions. Whenever contractors are venturing into unchartered jurisdictions, it’s critical to understand the applicable sales tax rules upfront. A proactive approach will facilitate accurate bidding on jobs, and allow for compliance on the front-end as opposed to potential penalties and interest on the back-end of a project.

If you have any questions regarding how sales and use tax applies to your industry, please contact your Aronson tax advisor or Michael L. Colavito, Jr. at 301-231-6200.

Michael L. Colavito, Jr
Aronson, LLC
Senior Manager, Tax Services Group
http://www.aronsonllc.com/component/zoo/item/michael-l-colavito-jr

Michael Colavito is a senior manager in the state and local tax practice of Aronson’s Tax Services Group. Michael assists clients with a broad range of state and local tax issues. His expertise extends to many areas of multi-state taxation, including income, franchise, sales and use, and property taxes. Michael’s experience also includes representing clients at all stages of tax controversy—from audit through appellate litigation as well as advising clients on restructurings and state tax refund and planning opportunities. He is a member of the Bar in New Jersey and the District of Columbia, and he serves as a member of the MACPA State Tax Committee.
Legal Pro Tips For Commercial Subcontractors

1. **Review & Negotiate Your Contracts.** If you have been awarded a subcontract, you’ve got negotiating power regardless of what you may think. Review the contract yourself, and get expert attorney help if necessary.

2. **Know Your Trigger Events.** Every contract will contain language that triggers an obligation to act on your part. For example, “If Subcontractor discovers that a change order is required, it must provide notice to the General Contractor within ten (10) days.” Extract all of these trigger events and store it in your job file for quick reference.

3. **Get Copies Of The Payment Bond.** If the prime contractor owes you an outstanding invoice, she is unlikely to send you the payment bond once you figure out you need it. Ask for a copy of this document upon execution of the subcontract.

4. **“This is to confirm…”** If a prime contractor gives you a directive over the phone, or makes a promise during a discussion, and there is too little time to produce a formal document, send an email copying the necessary parties and include the phrase, “This is to confirm…” List all of the important components of the conversation, and ask the recipient(s) to correct any portion of the email that does not reflect their recollection of the conversation. Make sure the other side’s decision maker is on the email, and remember that project managers frequently switch companies, so your contact could be gone by the time the matter resurfaces.

5. **You Teach What You Tolerate.** If you constantly allow late payment, your customers will get the message that being paid in a timely manner is not important to you. Make sure your message is clear.

6. **Documentation Is King.** As an example, if you are working on a time and materials basis at any point during a job, you must properly document and organize each hour and item. If you need a particular person’s signature, get it every time. Make it easy for a third party (judge or arbitrator) to agree with your position on the amount you’re owed.

7. **To Thine Own Self Be True.** Most often, contractors get into hot water when they’re entering a realm into which they’ve never been. Know what you’re good at, do it, and repeat.

8. **Know When To Say “No.”** Trust your instincts when determining whether to take a risky job. It’s not an easy call to make, but it can be the most important one. Making the tough calls correctly is the type of decision making that creates long lasting companies.

**Kate Lawrence is a construction lawyer and owner of Lawrence Law, LLC. Kate represents clients during contract review and negotiations, as well as construction litigation. Contact Kate at 443.898.6193 or at kate@lawrencelawmd.com or visit www.lawrencelawmd.com. Lawrence Law: Big Firm Experience – Small Firm Accessibility.**

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**Let’s See You At This Can’t Miss MCN Event - “Get Your Head Out Of The Cloud” The Do’s & Don’ts Of Modern Business In The Cloud**

September 27th - 9:00 a.m.
Some subcontractors might be under the mistaken premise that they would prefer to work under a SDI policy because of the indemnification a contractor provides to its bonding company and because the same rights are not provided in a SDI policy. This assumption would not be correct. Under every state’s insurance rules, an insurance carrier has the right of subrogation against a party causing a loss under a policy it has written including SDI. What does this mean to you? If a general contractor determines that a subcontractor is in default, the SDI carrier has the right to sue under common law to recoup its loss.

SDI can be a great tool for general contractors to mitigate its risk and gives them much more control of the risk mitigation process in the event of a defaulted subcontractor. It does allow a subcontractor to obtain work that they might not be able to bond; however, you will be asked to provide all of your confidential financial information and possibly be asked to reimburse an insurance carrier if your client would declare you in default. These risks are typically not explained to subcontractors when they are enrolled in a SDI policy.

As always, prior to executing a contract with a general contractor and being asked to be enrolled in a SDI policy, it is wise to talk to your bonding agent and your attorney so you can fully be apprised of the risks to your company.

Michael Clayton
Client Executive, RCM&D

For more information or if you have any questions, please contact Michael Clayton at mclayton@rcmd.com or 410-339-5236. RCM&D is ranked among the top independent insurance advisory firms in the United States. Our specialized teams provide strategic solutions and consulting for risk management, insurance and employee benefits. Leveraging 130 years of experience and strong local, national and global reach, we partner with you to meet all of your business objectives.
Workers’ Compensation: Cost, Fraud and Productivity

Navy-Marine Corps Memorial Stadium
511 Taylor Avenue, Annapolis, MD 21401
Thursday, July 28th, 2016
Program - 3:30 - 5:00 p.m. ~ Networking -5:00 - 7:00 p.m.

Premier Networking To Build Your Business - Premium Content To Maximize Your Profitability
Register By Friday, July 15th & Your Parking Is FREE!

For construction companies, the true cost of workers’ compensation goes far beyond an insurance premium. Employee injuries can cause loss of productivity, reduced profits, monetary penalties and reputational damage. In 2016, an estimated $65 billion will be paid in workers’ compensation, but did you know that approximately 10 to 20 percent of those claims will be fraudulent? Businesses must understand how to protect themselves from potential fraud. Learn how to uncover fraud and prevent fraudulent claims in order to reduce the costly and damaging impact of workers’ compensation fraud on your business.

This presentation will cover:
• The true cost of workers’ compensation insurance
• Aspects of insurance fraud and articulable suspicion
• How to detect and investigate potential fraud
• Methods to prevent and abate fraud

Our Event Host: Our Sponsors:
Continued From Page 16

plan. But if the payment plan is to extend for a long duration, then, it is advisable to recover as close to full dollar as possible with interest. Also recognize that the rights and obligations of debtors and creditors can be different, depending on the type of debt: consumer debt, in particular, has its own set of rules and processes.

If a creditor is unable to timely resolve an outstanding account via a payment plan or negotiation, then, generally, the only option left is to pursue legal action. On construction projects, this also means considering whether a payment bond covers the project, and the ability to enforce payment via either a mechanics’ lien or a suit for breach of contract along with prompt payment claims under the applicable statute.

Jeffrey C. Bright, Esq.
Attorney at Harmon & Davies, P.C.

Negotiating and litigating payment disputes is a complicated area of law, and it is best to seek legal advice at the first signs of a payment dispute to ensure that all legal rights are preserved. The author is an attorney licensed to practice in Maryland and Pennsylvania, and practices out of the Lancaster, Pennsylvania office of Harmon & Davies, P.C. (www.h-dlaw.com). The content of this article is not legal advice, as legal advice requires an analysis specific to the circumstances.

Coming Soon

**July 28th, 2016 - Direct Connect Networking & Educational Event**
Navy-Marine Corps Memorial Stadium
511 Taylor Avenue, Annapolis, MD 21401
3:00 - 7:00 p.m.

**September 27th, 2016 - “Get Your Head Out Of The Cloud” The Do’s & Don’ts Of Modern Business In The Cloud**
Baltimore County
9:00 – 10:30 a.m.

**September 29th, 2016 - Direct Connect Networking & Developer – Builder Forum**
Montgomery County
3:00 – 7:00 p.m.

**October 12th, 2016 - Meet The Primes**
Maryland State Fairgrounds, Timonium, MD
8:00 a.m - Noon

**October 27th, 2016 - The Blue Book Showcase**
M&T Bank Stadium, Baltimore MD
Noon - 6:00 p.m.

**November 17th, 2016 - Direct Connect Networking & “Where’s The Work” Economic Forecast**
Carroll County
3:00 – 7:00 p.m.

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