

Iowa Convert to Theft Law

David Wetsch, an attorney with Wetsch & Abbott, P. L. C., detailed information about the implementation and documentation of the Convert to Theft law during the I-NED Annual Meeting held September 22 in Clive, Iowa. The law, which went into effect in Iowa on July 1, 2005 reads, "If someone rents property and fails to return it, that is evidence of misappropriation." (Section 714.1 – Subsection 2)

"If a lease specifies when the equipment is to be returned and it is not returned within 72 hours, it is considered a misappropriation," explained Wetsch. "In addition, if a time is not specified, and the equipment is not returned within five days after PROPER notice sent by certified mail, it also is a misappropriation regardless of whether or not the recipient signed for the mail."

Wetsch recommends sending notices via restricted certified mail with a return receipt, AND standard mail. He warned members to use extreme caution when writing this letter, and strongly encouraged them to have their corporate attorney review any letter they draft.

He explained, "You CANNOT say, 'If you don't give me my equipment back in five days I'm going to prosecute.' That's a crime in and of itself. You can include the language, 'the law in the state of Iowa has changed,' and then quote that section of the law."

He recommends amending equipment leases to contain this language. "In order to take full advantage of this law change, leases should be reviewed and revisions considered to fully state payment terms." He also encouraged distributors to utilize the Internet to check out customers and potential customers.

For example, in Google type in "Iowa Supreme Court." Click on "on-line records" and type in the business/person's name. "Most states have this system in place, and Iowa's system continues to get better and better." added Wetsch. Another recommended Web site is www accurint.com.

Wetsch encouraged members to take the following items to small claims court: a copy of the lease, the receipt from the post office for the restricted certified mail, and a copy of the letter sent to the customer. (Note: before sending the letter to the customer, record near the top of the letter, "Mailed by standard mail and restricted certified mail #XXXX on MM-DD-YY.")

According to Wetsch, a valid legal description (obtained from the county assessor's website) remains essential to a properly executed mechanics lien. "Mechanics liens can be filed 90 days after the last work was done on the project and leased equipment *is* a lienable item," he stressed. "A notice must be provided to the primary contractor, providing the details of the equipment rented to subcontractors. If this notice is not given, you cannot file a mechanics lien."

Wetsch explained that small claims court is now up to \$5,000. “It’s a relatively simple process,” added Wetsch. “While the people at the court house cannot give you advice, they can help you fill out the forms.” Anything over \$5,000 goes through district court. “You will probably need a lawyer for district court since the forms and procedures are more complex,” he added.

He stressed that exact company names remain essential for successful judgments. For example, if a company name is Smith Sewer, LLC and you only enter Smith Sewer, it will not work. He also emphasized the importance of using credit applications with all customer rentals, leases and sales. For example, if the credit applicant is Smith Sewer, LLC and you discover in the Supreme Court search that they were just incorporated last Tuesday, get a personal guarantee on the transaction. Whenever personal guarantees are obtained, Wetsch suggests that they run on a separate page.

Wetsch recommends making a photocopy of checks received and placing the copies in the file. “Then if the need arises, you have the person’s bank information to file a garnishment and so forth,” he stressed. He added that it’s understood that the person may have multiple bank accounts, so the one on file may not always have the money when needed.

According to Wetsch, real estate judgments are good for 10 years, while bank accounts (and so forth) remain good for 20 years. All judgments are renewable indefinitely.