

## Potential Pitfalls in Seeking Investors for Your Company



JUNE R. McIVOR

Imagine this scenario: your company is growing, but you don't have the resources to sustain your growth. If you could bring in some investors by selling them an equity stake in your company; then you would have the resources you need to take your company to the next level. Surely, anyone who heard about this investment opportunity would want to get on board so the best way to go about getting investors would be to let as many people as possible know about the opportunity. Maybe you could get the local paper to do an article on your company and you could mention you are looking for investors. Maybe you could send a letter to everyone in town who owns a luxury car.

And since these investors won't be majority owners and won't have too much input into the day to day operations of the company, you aren't very concerned about who these investors are—so long as their check clears.

**NOT SO FAST!** As soon as you take on investment in your company through the sale of equity interests, whether it be the sale of shares in a corporation or of membership interests in a limited

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## Mechanic's Liens



ROGER B. FREDRICKSON

A mechanic's lien is the most powerful payment collection tool available to the building professional working on a nonpublic project. Once a lien is recorded, the property owner cannot easily sell or refinance the property without first paying off the debt secured by the lien. If the debt remains unpaid, the lien may be foreclosed upon and the property sold to pay the debt.

The following are important steps in the mechanic's lien process:

**Step 1. Make certain you have an attorneys' fee recovery provision in your services or materials contract.** Under California law, you can only recover attorneys' fees and costs where your contract provides for such a recovery. The attorneys' fees and costs associated with an action to foreclose on a mechanic's lien can be high, often exceeding the amount of the lien itself. If your standard contract does not contain an attorneys' fees recovery clause, you need to correct that at your earliest opportunity.

**Step 2. Recordkeeping.** Maintaining detailed records is critical to later enforcement of a mechanic's lien claim. Your file should contain all

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## ATTORNEY SPOTLIGHT



DAVID A. JUHNKE

Dave Juhnke heads up the Litigation Practice Group and handles business, real estate, and probate litigation at the trial and appellate levels in both state and federal court. He counsels businesses in employment and personnel matters and defends them in employment related disputes. He joined the firm in September 1986, becoming a principal in the firm on July 1, 1989.

Dave graduated with distinction from Stanford University. He graduated from UCLA Law School in 1980 and externed with United States District Court Judge Laughlin E. Waters. Dave has served as a Judge Pro Tem in the County of Los Angeles Municipal Court and as a judicial arbitrator by assignment in the County of San Luis Obispo Superior Court. Dave resides in San Luis Obispo with his wife Sharon and twin sons, Chris and Drew.

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MORE THAN JUST ANSWERS...

...SOLUTIONS.

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liability company, your company is selling securities. The sale of securities is heavily regulated by both federal and state law, which require registration of the securities with either the SEC or a state securities agency before any sales can be made, unless your company is eligible for an exemption from registration.

Exemptions from registration that are commonly used by smaller companies include Regulation D on the federal side and California Corporations Code section 25102(f) on the state side in California. There are several requirements for these exemptions that must be understood thoroughly before a company offers securities in reliance upon them. However, there are two requirements that often trip up the unwary company seeking investors.

### Private Placements

The sale of securities under the exemptions from registration are often referred to as private placements, as opposed to public offerings of registered securities. This means they must indeed be private. Both Regulation D and Section 25102(f) require that the offer and sale of securities not be accompanied by the publication or broadcast of any advertisement, article, notice or other communication in any newspaper or magazine or through television, radio, or the Internet. The offer and sale also cannot be done by a general solicitation. Rather, it is expected that

the sale will be to people who have a pre-existing relationship with the company or representatives of the company. It is extremely easy, even for those who are aware of the prohibition on general advertising, to lose the availability of the exemption by making public comments about the company at a time when the company is soliciting investors.

### Accredited Investors and Sophisticated Purchasers

The standards for whom you may sell securities to vary somewhat by the exemption.

However, the general rule of thumb is that investors should have the business or financial experience to understand and analyze the merits and risks of the investment and the resources to withstand the total loss of their investment. Under some exemptions, this comes in the form of a requirement that the purchaser be an “accredited investor,” which generally means the investor meets specific net worth or income requirements. It is not an absolute requirement that the investor meet these requirements but rather that the issuing company has a reasonable belief that the investor does. This reasonable belief requires more than hope or an impression, but less than a full financial audit. The most common method for ascertaining the reasonable belief is to have potential investors complete an investment questionnaire as to the investor’s educational and business background, previous investment experience, connections to the com-

pany and its principals, income, and net worth.

### Get It Right!

The consequences of violations of the securities laws can be severe for the issuing company and, in some cases, its principals personally. Before seeking investors to raise the capital your company needs, be sure to have a counselor who can guide you through the intricacies of the laws, rules, and regulations.

*June chairs the firm’s Business Transactions Department. A graduate of the University of Virginia School of Law, June has almost two decades of practice experience in complex business and real estate transactions, business formation, mergers, acquisitions, reorganization, and capitalization issues. She began her legal career with the international law firm of Gibson, Dunn & Crutcher, served as general counsel for a number of companies, and served as Chief Operating Officer for the FIFA Women’s World Cup Organizing Committee. (JMcIvor@sjlmlaw.com)*

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bids, the original fully executed contract, all receipts, sales and delivery tickets, labor records, change orders, permits, and punch lists. It should also contain records of any disputes, misunderstandings, or irregularities.

**Step 3. Provision of 20-Day Notice.** Unless you are the prime contractor, at the outset of every project you should give the property owner an early preliminary 20-Day Notice of

your potential lien. This should be done by registered or certified mail when you begin work on the project or first provide supplies to the project. A service of the Notice must be done no later than 20 days after the first provision of labor or materials. It should be given to the owner(s), prime contractor, and construction lender, if any, along with all bonding companies that may be involved.

**Step 4. Recordation of Lien.** This should be a last resort, only after all efforts have been made to obtain voluntary payment by the owner or general contractor. To be enforceable, a mechanic's lien must be recorded with the County Recorder within 90 days of the completion of the labor or the provision of materials. The period is shorter where a notice of completion or cessation has been recorded (30 days). To be safe, you should file the Lien as soon it becomes obvious that the owner or prime contractor is not going to pay your debt, but in any event within 30 days after your completion of labor or provision of materials.

**Step 5. Foreclosure of Lien.** Usually upon notice that the lien has been recorded, the owner/prime contractor/lender will either pay the lien or negotiate its reduction. In either case, you should have an attorney involved to advise you of your options. Should the owner/prime contractor/lender refuse to honor the lien, you may be forced to foreclose upon the lien. In that event, you will want to consult with your attorney.

Please call with any questions you may have and visit our website to learn more.

*Roger is a trial lawyer specializing in business, construction and real estate matters. He has litigated to successful conclusion cases involving a wide variety of corporate, insurance, commercial and real estate issues. Roger is the current chair of the Civil Litigation Section of the San Luis Obispo County Bar Association. (RFrederickson@sjlmlaw.com)*

## ATTORNEY UPDATE



JOE C. LIU

SJL&M is pleased to announce that Joe C. Liu has become a registered United States Patent and Trademark Attorney, admitted to practice law in California and New York. His expertise includes client counseling, intellectual property licensing, patentability and infringement analysis, and preparation and prosecution of patent applications in a wide range of technologies. Joe received his law degree from St. John's University School of Law in New York and earned his master's degree in electrical engineering from California Polytechnic State University.



JOSHUA W. MARTIN

Joshua W. Martin is a trial attorney with a background in commercial litigation and criminal defense. He obtained valuable courtroom experience at the Salt Lake City law firm of Rasmussen & Miner and later participated in the defense and prosecution of several multi-million dollar lawsuits at the prestigious litigation boutique of Burbidge Mitchell & Gross. Josh received his law degree from the University of Utah in 2003 where he was a member, and later an editor, of the Utah Law Review.

# ACCOMPLISHMENTS

- Represented seller in sale of landmark ocean front hotel in Pismo Beach.
- Represented buyer in purchase of manufacturing company in Paso Robles.
- Represented a biotech company in securing \$3 million seed round investment.
- Represented land owners in successful appeal to the County Board of Supervisors for contentious lot split.
- Prepared franchise offering documents for Italian hydraulic hose company.
- Counseled numerous non-profits in our community, including preparing tax exemption applications for SLO Green Build and Studios in the Park, as well as negotiating a 55 year lease for the latter for their innovative concept of working artist studios open to the public on the park in downtown Paso Robles.
- Successfully mediated complex lease dispute involving issues of sublease improvement compensation, management obligations and maintenance fees.
- Successfully resolved a supplier's liens relating to the installation of a solar panel array.
- Successfully represented a media company in its multimillion dollar lawsuit arising from an asset purchase agreement.

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