



## **Am I a Construction Disburser? Why do I care in Colorado?**

Colorado Revised Statutes §38-22-126 (Disburser – notice – duty of owner and disbursing) outlines that a Lender or any other party (that means Owners and General Contractors!) should record a “Disbursing Notice” in the County’s Clerk and Recorder Office where the property is situated (in the Public Record).

A “Disbursing” is essentially anyone who receives construction funds from a lender, owner, or contractor to be disbursed as progressive payment for work performed on the project. Such funds are generally characterized as payment for costs of construction, alterations, or repairs on the subject property.

A “Disbursing Notice” must contain –

- Name and address of the property owner,
- Names, addresses, and telephone numbers of the primary contractor,
- Names, addresses, and telephone numbers of the disbursing, and
- Legal Description and street address of the subject property.

“It is the duty of the disbursing, prior to the first disbursement,” to record said Notice.

### Why do I care about this? You should if you are a Construction Lender or the Owner

Although not used by many subcontractors, materialmen, or hired labor, those parties can provide a proper notice to the Disbursing (see further detail in the statute) delineating that party’s general statement of his (or her) contract and amounts due to them.

When that occurs, the Disbursing is obligated to ascertain the amount due and pay that amount directly to the claimant out of any undisbursed funds available. Therefore, a duty to withhold sufficient funds to satisfy that particular claim submitted applies to the Disbursing.

If the Disbursing fails to fulfill that duty, the Disbursing becomes directly liable for any losses incurred by that claimant by statute. Accordingly and as an example, if a General Contractor fails to pay a subcontractor and that subcontractor provides notice to the Disbursing, the Disbursing (usually the Lender and/or Owner) now has a duty to pay the subcontractor directly from the overall construction loan or funds. There is Colorado case law that speaks directly to a General Contractor abandoning a project and the resulting effect of this statute.

This notice process is separate and distinct from a claimant’s right to file a mechanic’s lien against the subject property. See our affiliated Primer on Mechanic Lien Coverages for additional information on Colorado’s Mechanic Lien laws and pitfalls. If a dispute exists regarding the amount claimed and/or the work performed, the statute does allow the Disbursing to impound the amount claimed until the dispute is settled by agreement or adjudicated in finality between the parties.

Don’t let this often overlooked statute and its obligations catch you by surprise for your construction project!



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