

# The Dangers of DIY Legal Work & Value of Preventive Law

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for ExecutiveLP™

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## A Case Study in the Dangers of DIY Legal Work

Let me share with you a story of how one man could have saved more than \$200,000 by spending less than \$500 on preventive legal services.

This is a case study in how to screw yourself in the long term by trying to save money in the short term. Let's start with an introduction.

Meet Stephen, our hypothetical case study participant (who is based on a real person but whose name has been changed, along with other details in this story, to protect his privacy). Stephen is a freelancer who helps buyers find things they want to buy--a "scout" and "consultant," as he calls himself. It's not really important what kinds of things Stephen helps his clients buy. We'll call these things "widgets," keeping this story nice and hypothetical.

Stephen called my office a while back, and explained he had helped a client of his, Generic Acquisitions, Inc. (a company based in a state on the West Coast in the U.S.), to locate three widgets. The widgets were high-dollar items. Each widget cost, we'll say, \$250,000.00. **Stephen used a contract he wrote himself.** This contract is his "Fee Agreement." The Fee Agreement entitles Stephen to a fee for his services in the amount of 1% of the final purchase price of any widget he finds for Generic Acquisitions, Inc., which Generic Acquisitions, Inc. ultimately purchases.

Stephen found for Generic Acquisitions, Inc. three widgets, which Generic Acquisitions, Inc. subsequently purchased. According to the terms of Stephen's Fee Agreement, which an authorized agent of Generic Acquisitions, Inc. properly executed on behalf of the company, Generic Acquisitions, Inc. now owes three fees to Stephen, each in the amount of \$2,500.00, for a total of \$7,500.00. Generic Acquisitions, Inc. cuts a check to Stephen in the amount of \$2,500.00 and refuses to pay him any more money. Stephen believes General Acquisitions, Inc. still owes him \$5,000.00 -- the fees for two widgets.

Stephen has gone to the office of the state agency where the title for the widgets is recorded, and has recorded two liens, one lien against each widget owned by General Acquisitions, Inc.,

each in the amount of \$2,500.00. Stephen did not sue General Acquisitions, Inc., and, therefore, did not obtain a judgment before recording his liens against the widgets owned by General Acquisitions, Inc.

General Acquisitions, Inc., consequently, is forced to take out cash bonds on the widgets to assure other parties to other transactions involving the widgets that they are good for any debt which otherwise would have been secured entirely by the widgets, tying up more of General Acquisitions, Inc.'s capital. General Acquisitions, Inc. sues Stephen, claiming (1) that the liens are not proper; and (2) that the liens defame or, at least, cloud title to the widgets; and demanding (1) release of the liens, (2) damages for the defamation or clouding of the title, including (3) punitive damages, and (4) consequential damages related to the tying up of General Acquisitions, Inc.'s capital in the cash bonds which, but for Stephen's liens, would have been unnecessary. The amount of damages, including punitive damages, General Acquisitions, Inc. is requesting the Court award them against Stephen is more than \$200,000.00.

Stephen has been summoned to appear in Court in 30 days... but two weeks have already elapsed by the time he has called me, leaving me just two weeks to file a written answer with the Court in response to General Acquisition, Inc.'s complaint and summons. Also, both Stephen and General Acquisitions, Inc. each claim that they have attempted to settle this dispute out of court, but that the other party has not been responsive to communications sent. Neither party, however, has invited the other to formally engage in good faith negotiations or a good faith mediation to be held at any particular place or time (or virtually) to resolve the underlying disputes.

Of course, 97% to 98% of litigation is settled out-of-court, but one still has to comply with all the litigation-related deadlines to avoid default judgment, once a lawsuit has been filed. So, while this case might have been settled, using Alternative Dispute Resolution (ADR) processes, without anyone having to file a suit in Court, because the Plaintiff, General Acquisitions, Inc., has already filed suit, the costs of settling the case have been dramatically increased for all the parties, because now they must manage the litigation AND any ADR processes in which the parties might engage to settle the dispute.

This, dear reader, is precisely *what not to do*.

## **Three Chances to Avoid A Costly Lawsuit**

Stephen had three clear opportunities to avoid this lawsuit, and, if Stephen had used preventive legal services, he could have avoided this lawsuit for less than \$500.00. Even if Stephen had spent \$5,000 or \$50,000, the fees would have been worth what he spent to avoid a \$200,000 lawsuit!

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## DIY Legal Work FAIL #1: Writing Your Own Contract

This is probably the second-biggest mistake Stephen made, but it was a "gateway FAIL" to his biggest blunder.

Maybe you're using a contract you've been using for a while, and you haven't been involved in a lawsuit. It probably seems like your contract is working for you, and you feel really clever for saving a buck by avoiding hiring a lawyer. Then -- BAM! -- that lawsuit hits. Suddenly, you don't feel quite so clever, because your contract is revealed to have created more liabilities than protections for you, and, *perhaps worse*, has given you a false sense of security.

Stephen could have had his Fee Agreement written by a real lawyer for less than \$500.00, and the Fee Agreement would have included terms and conditions that governed the collections process he would have been required to follow to legally collect on the debt created by any breach of the contract by General Acquisitions, Inc.

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## DIY Legal Work FAIL #2: Pursuing Collections and Filing Liens Yourself, Unless You are a Lawyer

Unless you are a lawyer, pursuing collections and filing liens yourself is ill-advised. I have heard some people describe doing this as "wildly irresponsible" and "borderline insane." That seems like a fair characterization to me.

If Stephen had even called a lawyer to ask for a consultation (something many attorneys will give a prospective client *for free*), his lawyer might have told him -- again, *FOR FREE* -- that it improper to file a lien against property without first getting a judgment and becoming a judgment creditor, especially when one does not qualify for a Mechanic's Lien (alternatively sometimes referred to as "construction liens," "laborer liens," or "artisan's liens"). So, just asking a lawyer a quick question and getting a brief answer could have saved Stephen from all this hassle with the lawsuit.

Even if Stephen was legitimately owed some money by General Acquisitions, Inc., which he may or may not be (depending on how his contract was written and the circumstances involved), the right thing to do would be to hire a lawyer, sue General Acquisitions, Inc. for any alleged breach of contract, and then obtain a judgment before filing a lien.

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## DIY Legal Work FAIL #3: Litigation Without First Making a Decent Effort to Resolve the Dispute through an ADR Process

Now, I've been kind-of rough on Stephen, but I think General Acquisitions, Inc. bears some, though not all, of the blame for this particular fail. Both parties likely could have reached a reasonable settlement if they had agreed to a good faith mediation of this dispute. Hell, even good faith negotiations between counsel for both parties might have done the trick. Litigation is intrinsically expensive, and, therefore, should only be used as a last resort, when all other efforts to resolve a dispute have failed.

It seems to me the parties could have made a decent effort to use Alternative Dispute Resolution ("ADR") processes to resolve their disputes, yet no one did. Sure, they exchanged some letters. That's not a negotiation, really. That's not one party's lawyer(s) sitting down with the other party's lawyer(s) and hashing out a compromise over a boardroom table. Even if that failed, mediation is a lower-cost alternative to litigation, but I haven't seen any evidence that anyone even considered mediation as a solution. I consider that a failure.

### **Let This Be A Lesson To You**

Everyone makes mistakes. Everyone makes dumb mistakes--even smart people. This happens most often when you don't know *what you don't know*. When it comes to the law and protecting your legal rights, trying to save a buck with DIY legal work is a dumb mistake a lot of smart people make. They think because they're intelligent, they can figure it out themselves. This is the equivalent to earning a Yellow Belt in Karate; you know just enough to get your ass kicked.

You think you can't afford preventive legal services? Just wait until you try to do your legal work yourself. You're better off spending \$500 or even \$50,000 than getting sued for over \$200,000.

As an entrepreneur, a freelancer, a small business, or any business, you absolutely need a lawyer watching your back. This person is called your General Counsel, and it's not as expensive to hire a General Counsel attorney as you probably think. In any event, in the long run, a good General Counsel attorney is going to save you far more than you'll spend to hire him or her. So, do yourself a favor and get the legal representation you need, before your DIY legal work comes back to bite you in the ass.