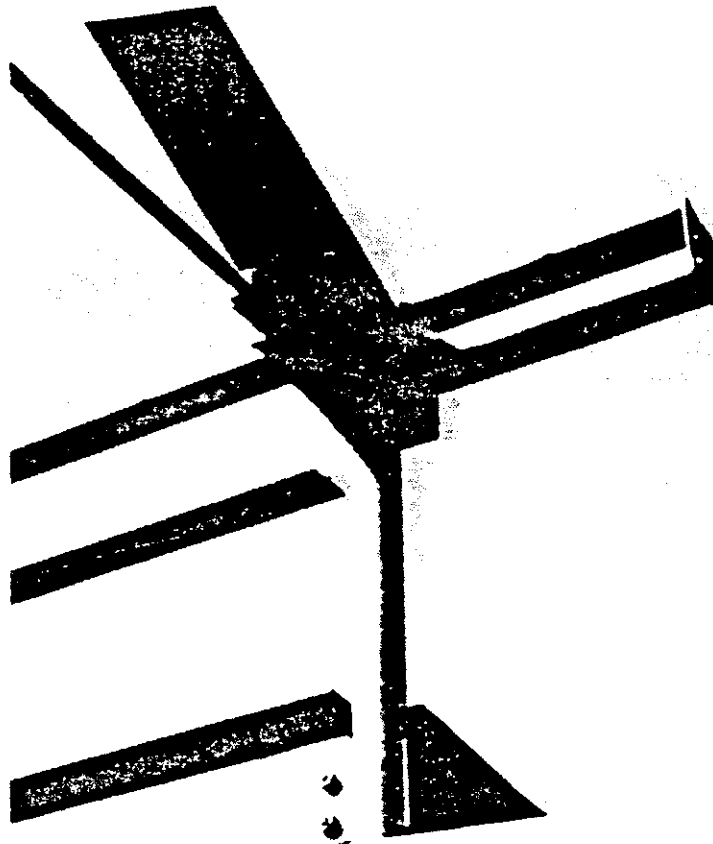


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THE ROLE OF THE LENDING INDUSTRY
IN CONSTRUCTION

SPONSORED BY A GRANT FROM THE BUILDING CONSTRUCTION
INDUSTRY ADVISORY COMMITTEE



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**THE ROLE OF THE LENDING INDUSTRY
IN CONSTRUCTION**

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TABLE OF CONTENTS

	PAGE NUMBER
EXECUTIVE SUMMARY	i 1-2
ACKNOWLEDGEMENTS	ii 1
I. INTRODUCTION	I 1-9
A. Statement of the Problem	
B. Objective of the Study	
C. State of the Art	
D. Research Approach	
1. Phase One	
2. Phase Two	
3. Phase Three	
E. Benefits	
1. General Public	
2. Industry	
II. PHASE ONE - PRELIMINARY INVESTIGATION ..	II 1-19
A. Lending Institutions	
B. Owners	
C. Designers	
D. General Contractors	
E. Subcontractors	

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The Florida Bankers Association
American Institute of Architects
Associated General Contractors
Associated Builders & Contractors
American Subcontractors Association

In addition special recognition must be given to several individuals who have given of their time and assistance in the review and development of this report:

Neil H. Butler, Esq - Neil H. Butler, P.A.
Larry R. Leiby, Esq - Leiby, Ferencik and Libanoff, P.A.
Bruce Simpson - BCIAC Project Coordinator

Finally there is one last note of appreciation that needs to be given to:

Florida International University

For their confidence in these Investigators by agreeing to subcontract this grant to the University of Florida when it became impossible for them to complete the report because of the illness of Dr. Gabriel Aurioles. We sincerely hope that the completion of this report has been undertaken and presented in a manner for which they would be proud.

This report has attempted to survey all parties in the commercial and multi-family construction industry fairly and completely to produce an equitable report.

Secondly, efforts have been made to solicit recommendations to change the current system to make the administration of construction loans more equitable.

The response of the participants has been overwhelming. Not only were the surveys responded to by over 28% of those surveyed, but there were also returned many letters documenting exact details of the transactions involved.

The system of funding and administering commercial and multi-family commercial loans in the State of Florida must undergo a thorough review by the Legislature; and recognition must be given to establishing a more equitable means of dealing with the parties affected by a foreclosure of a construction loan. If fundamental changes are not made in the current system, then we must acknowledge that more Developers, Designers, Contractors, and Subcontractors will be in the position of the General Contractor writing the following as the close to one of the letters referenced above:

"I have finally grown tired of fighting in an unfair system, and have chosen instead to avoid further legal battles by simply liquidating my business. It is regrettable that the inadequacies of Florida's laws allow such injustices to occur."

Copies of this report may be obtained by contacting:

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I. INTRODUCTION

A. Statement of the Problem

The lending industry plays an integral part in the development and construction process. The construction of most commercial and multi-family housing projects have traditionally been funded by Construction Loans, usually from Commercial Banks or Savings and Loan Associations; in many cases arranged for the developer through a Mortgage Banker.

Due to the nature of development and construction, financing of construction projects presents the lender with a unique and completely different situation as compared to the traditional commercial lending process.

In commercial lending, the loan can in most cases be based on the market value of a tangible, existing commodity (e.g. an automobile, an appliance, or even a completed constructed home or building). However, in development, the loan is based upon a product that does not yet exist, such as the development of a former parcel of vacant ground. In this type of lending the institution must make a decision to finance based upon a set of drawings and specifications, a pro-forma feasibility study, property appraisals, developer equity, pre-sales of the development, and the track record of the developer. The lender may, or may not, have a history of the development entity, and record of the developer's competence or financial responsibility.

In many cases, the Lender must make a decision to finance the project without the opportunity to provide any input into the selection of the Contractor or Construction Manager that the developer intends to utilize to construct the project since the firm has already been selected by the Developer. Therefore, the Lender must rely solely upon the judgement of the developer to determine the integrity, competence, licensure, and financial responsibility of the builder.

A compounding factor in this area seems to be that only institutions active in construction lending have Construction Loan Departments that are separate from their other Commercial Loan Accounts. Few such departments are staffed with personnel who have an adequate knowledge of, and experience with the development and construction industry. Such knowledge and experience are critical in order to properly evaluate, appraise, and manage the construction loan request, and ultimately the disbursement of the loan proceeds.

The potential result is an unsuccessful project caused by a lack of financial responsibility and accountability of the developer and/or builder, or even outright incompetence, negligence, or unscrupulous behavior.

The failure of either the developer or builder to properly perform can, and often does, result in an loan that becomes a "Non-Performing" or otherwise troubled loan for the lending institution. This problem has become all too frequent within the State of Florida, and throughout the United States.

B. Objective of this Study

This research grant has been funded to study the inter-relationship of Lending Institutions with the Construction Development Industries through the financing process. In this regard, the following specific objectives were established:

1. To investigate the activities of the Lending Industry which provide financing to commercial and multi-family construction projects.
2. To investigate the manner in which the Construction and Development Industries involved in the process of building commercial and multi-family projects interact with the Lending Institutions.
3. To survey the various industry groups to identify areas of concern in regard to the application, approval, and administration of the construction loan.
4. To make recommendations that will achieve a greater efficiency in the industry for the benefit of the public, through the reduction of financial losses caused by incompetence, developer and contractor failures, construction liens on the property of owners, unlicensed activities, negligence, and fraud.

C. State of the Art

Currently there is no state licensure for developers with the State of Florida. Anyone may call themselves a developer, and must only persuade a lender that they have the financial capability and competence to develop the project. Similarly, there are few regulations that govern the activities of a developer aside from those that establish the laws by which all other corporations must operate.

Such is not the case for any other party to a construction project. Lenders are regulated by the State Banking Laws, architects and engineers by their respective licensing boards, and contractors by the Florida Construction Industry Licensing Board (CILB).

For instance, in order for a prospective contractor to obtain a contractor's license in Florida, an applicant must submit to a screening process that includes a review of the applicants's education, experience in the chosen field, basic financial capability and credit worthiness, and obtain the minimum liability and worker's compensation insurance policies. In addition, the applicant must also pass a rigorous two day examination to demonstrate a knowledge of the applicable laws, codes, and regulations, as well as proficiency in the areas of contract administration, project management, and financial management of the a business enterprise. This information is furnished to the Department of Professional Regulation through the CILB.

Furthermore, any complaints and resulting disciplinary actions taken by the CILB are on file with the regulatory agency, and are a matter of public record.

Similar regulations and disciplinary boards are in place to regulate the activities of architects and engineers involved in the construction process.

However, the authors are not aware of any readily available sources by which the lending institution can avail themselves of similar information in regard to developers. In addition, the lending institutions interviewed in the initial phase of this grant were not aware that the information detailed herein on contractors, architects, and engineers is available through the respective licensing boards.

The most recognized organization from which information is obtained concerning the financial strength and history of such organizations is the firm of Dun and Bradstreet, but problems such as the ones described previously are unlikely to be identified by such reports.

D. Research Approach

1. Phase One

This initial phase of the research grant has consisted of the selective probing of the problem as viewed by the CILB, lending institutions, developers, architects, engineers, contractors, subcontractors, and suppliers. The purpose of this phase has been to clearly define the scope of any problems that appear to exist, from the point of view of each party to the construction project.

This phase has also been used to develop a methodology for further investigation on a broader scale within Phase Two of this study.

2. Phase Two

The efforts undertaken during this phase of the study have consisted of the development and distribution of a comprehensive survey of a representative sampling of each of the above industry groups. This has included the mailing of a survey to each industry group, followed by selected personal visits, correspondence, and where needed, telephone interviews.

The purpose of the survey has been to identify the current measures being taken to assure that construction projects are being financed and managed in such a way as to protect the general public from the financial failure of the project. It is clear that with the failure of the Savings and Loan industry, and the high cost of the establishment of the Resolution Trust Corporation to liquidate the thousands of failed development projects, that the general public has paid, and is going to continue to pay billions of dollars in losses due to the mismanagement of the development and construction loans made over the past decade.

Additionally, the investigators have requested suggestions for improving the management of construction loans, including ways in which the CILB might, if requested to do so, provide input to financial institutions and developers regarding the competency and history of the particular professionally regulated firms.

3. Phase Three

The final phase of this grant has consisted of the tabulating, analyzation, and summarization of the information gathered from the various surveys. Thought has been given to the development of guidelines for specific recommendations to enhance better cooperation between the lending, development, design, and construction industry.

This phase of the report really contains the vast body of the research, neither the executive summary, this introduction, or any other phase should be substituted for an in-depth reading of each question and the responses given. The investigators only wish would be to have been in a position to detail all of the unsolicited written responses given to these questions. While the investigators have drawn their own conclusions in tabulating and analyzing these responses, it is recognized that the recipient of this report is totally capable of drawing their own conclusions. A thorough reading of Phase Three of the report will make that possible.

Finally, the report includes recommended future actions for the industry to consider, which hopefully will improve the interaction of information between the lending, design, development and construction industry partners that are involved in the successful development of a project.

E. BENEFITS

1. General Public

The benefits of this research grant should accrue to the general public through increased cooperation between the industry groups, through greater awareness of the information available through the CILB, and through changes in the statutes which govern the various industries involved in the construction process.

It is the desire of the authors that this report, and any future research done into the area of lender involvement in the construction industry will help to reduce the potential of future financial losses such as have been sustained by the general public in the past several years by way of the financial collapse of so many development projects.

2. Industry

By working together in the development process, sharing appropriately the rewards and the risks inherent in the construction of a project, each of the participants in the process can have a brighter future than the past decade has held. If the parties are concerned only with the profitability of their own group, then all will suffer. It is the desire of the investigators through this report to demonstrate to Lenders, Owners, Designers, General Contractors, and Subcontractors alike the importance of this genuine cooperation in building a better tomorrow.

II. PHASE ONE - PRELIMINARY INVESTIGATION

As stated in the introduction, the purpose of this phase of the research grant has been to selectively probe the area of lender involvement in the development and construction industry. To accomplish this objective, meetings have been held with a number of individual firms and association representatives to discuss any problems that they have found to exist in the lending and loan administration process.

The associations contacted for information in this initial development stage of the research included the Florida Banker's Association, the American Institute of Architects, the Associated General Contractors of America, and the American Subcontractors Association.

Outlined on the following pages are the issues that each group has identified as a concern of their members for investigation. These have been utilized to develop the survey to explore each potential area for further review during Phases Two and Three of the report.

The information gathered during this phase was not quantified as to either the significance of the item that have been raised, nor as to the extent for which it represents a concern to the overall industry group. It simply have been used to develop the survey which will be used to quantify the matter for investigation, analysis, and recommended changes.

A. LENDING INSTITUTIONS

Discussions were held with representatives of both lending institutions and mortgage brokers. Lenders often are first contacted by mortgage brokers on behalf of a developer seeking financing for a project. Therefore, they have a particular insight into what a lender may be looking for from a developer to favorably respond to a lending request.

Primary areas of concern expressed by these parties include the following:

1. Developer Financial Statements

Lender concerns about the financial condition of the developer of a construction project relate to the representation of the true financial condition of the entity requesting the loan, and the principals guaranteeing the performance of the loan. Since many developers form a new legal entity for each development, the financial ability to repay the loan proceeds is contingent primarily upon the net worth of the principals within the organization developing the projects. The tendency to overstate a financial position to obtain financing is common with any commercial loan, but the lenders interviewed felt that this would be found to be the prevalent attitude as it pertains to construction loans.

In addition, the inclusion of past projects and their values within the balance sheet of the developer requires significant understanding and interpretation by the lender to ascertain the marketable value of the collateral.

Finally, concerns exist with the financial statements of the principals guaranteeing the loan. Such issues raised were the identification of assets that have previously been pledged as collateral securing other loans, joint ownership of assets with a spouse, and assets of questionable marketable value.

2. Overly optimistic project Pro-Formas

Another objection raised by Lenders is in the area of overly optimistic Pro-Formas by developers on the projects that are being planned. Because of the tendency to be so optimistic, the Lenders indicated that there is always a degree of skepticism about each Pro-Forma that is given.

3. Knowledge about the Selected Contractor

In this initial inquiry to several Lenders, another area of concern is in that the developer has most often selected the General Contractor or Construction Manager by the time the lender is brought into the process. This gives the Lender very little input into the selection and approval process.

Since the Contractor is the party expected by the Lender to finish the project in the event of default by the developer, it was felt that consideration should be given to the developer gaining approval of the contractor prior to closing of the loan.

None of the Lenders talked to in this initial review were aware of the fact that the Construction Industry Licensing Board maintains certain information about the licensing of contractors, previous violations, and suspension or revocation of the Contractor's license.

4. Monitoring of the Construction Loan Progress

Of the lenders talked to at this stage, there was no consensus as to the best format for monitoring of the Construction Loan Progress. Several alternatives were listed for consideration.

Included among the recommendations were:

- a. Hiring of an Independent Construction Consultant.
- b. Accepting the Architect of Record's review of the status of the project.
- c. Using an In-House Bank Official familiar with construction.

In each case, there was still concern about the ability to adequately monitor the progress of the project, and to be comfortable in the ability of the developer and contractor to complete the project for the balance left in the loan.

B. OWNERS

Being the party to the loan with the lender, the owner/developer of the property must meet all of the obligations for approval of the loan, and then work closely with the lender during the administration of the loan. Concerns expressed by this group centered on the availability of adequate financing for a new project, and in the administration of the loan. Included among the suggested survey responses were the following topics.

1. Lack of Lender understanding of the development industry

Of the owners contacted during this phase of the study, it was felt that very few lenders have a true understanding of the development industry. The ability to prequalify a borrower in a typical commercial loan where the asset is already produced is the manner in which most bankers operate.

The review process of analyzing a loan on a prospective project by a lender, seems to be beyond the capabilities of the typical lender, according to the developers interviewed. For this reason, several developers indicated that they have found relatively few lenders really interested in making a construction loan.

2. Available financing in light of today's credit shortage

Every developer contacted during this initial phase of the grant indicated that the single biggest threat to their ability to develop a project is the availability of financing.

Most indicated that their traditional sources of construction loans were not making any loans for projects of the type they traditionally developed.

Most believed that the current Savings & Loan Association and Banking Industry crisis were the primary reasons behind this change in lender interest in the construction and development industry.

3. Changing nature of tax laws creating uncertainty

Because of the constant pressure to change the tax laws, most developers talked to have found it difficult to develop projects profitably in the last several years. Pressure on the legislature to eliminate capital gains as a tax advantage had made many projects unprofitable.

The changing of the tax laws in the midst of development had made several previously profitable projects unprofitable.

4. Payment of Subcontractors by General Contractors

Most of the owners talked to did not feel comfortable with the Construction Lien Law, and it's ability to keep their property lien free during the construction process.

Even though it was pointed out that the lien law was for their benefit as well as that of the provider of services to their project, it was believed that it was virtually impossible to keep the project lien free in making payments to the General Contractor.

From these discussions, it appears that there may be a significant misunderstanding or lack of understanding of the Florida Construction Lien Law by every party to the construction contract, including Lenders, Owners, Architects, General Contractors, and Subcontractors. It seems that this should be an area of further questioning of those surveyed in this research grant.

C. ARCHITECTS/ENGINEERS

Usually the Design Professional for a project is the first contractual relationship that a prospective developer makes on a project. In this unique role, the design professional is most often involved in producing the design of the project before there is financing in place to construct the project, and the relationship continues through the warranty period following completion of the project. Concerns of the design professionals interviewed during this initial phase of the research grant, which they felt should be addressed in the survey included the following items in addition to those expressed by the lenders.

1. Lack of payment for services rendered prior to financing.

Since the designer is involved in the process prior to the finalization of the loan process, there arise significant accounts receivable from the designer to the developer for which the designer must rely upon the good faith and credit of the developer for payment. The right to place a lien on the land owned by the developer is often the only security that the designer may have for payment. A number of design professionals have seen their receivables and liens eliminated by the foreclosure by the lender of the property in developments that have failed.

2. Coordination of progress inspections with lender

As mentioned by the Lenders contacted, the design professionals contacted felt that there was a lack of coordination and consistency in the inspection of projects by the lender. This results in the possibility of a duplication of efforts, or even worse a lack of complete inspection for payments of the contractor. Every lender has a different plan for inspection of the projects, and the design professional proposing services to the developer may not know what is to be expected at the time the proposal is made.

3. Payment for additional services during construction

Several design professionals indicated that the developer makes inadequate provisions in the soft costs of the loan for changes in the design which require additional future services. These may be changes required by code, preference of the owner, or clarifications requested by the contractor. Since pressure is on the developer to prepare a pro-forma that demonstrates profitability, the additional design professional fees needed after the start of construction are often underestimated or left out completely.

4. Monitoring of Lien status on project

Design professionals have become in many cases the administrator of the construction lien law for the owner.

The Designer is put in this position because of their role in approving of the construction draw before it is certified to the owner. Many design professionals felt that this is an area where they were inadequately prepared to deal with all of the issues of the lien law.

In addition, this is an area with many legal implications regarding payments and possible double payments if the law is not followed by the owner. This leaves the designer in an untenable position of assuming some liability for certifying improper payments.

D. GENERAL CONTRACTORS

The General Contractor or Construction Manager on a project is the party with the single largest portion of the construction loan under it's control. The hard cost of the construction project in most cases exceeds all other portions of the loan combined. For this reason, the General Contractor is also the party exposed to the most risk of financial failure of the developer or lender.

Not surprisingly, the meetings held with several General Contractors and Trade Association representatives during this preliminary phase of the project brought about the most concerns about the lending process. The issues of concern which were developed from these discussions included the following items for the survey.

1. Lender foreclosure leaving contractors unpaid for services

Every contractor met with during this initial phase of the survey indicated that this is a major problem for them as the General Contractor on a project. As the prime contractor with the owner, the contractor has certain specific rights and responsibilities under the lien law. In this role, it is quite possible for the General Contractor to be totally in compliance with all of lien law provisions, and still have to pay subcontractors for services which they perform for which the General Contractor does not get paid by the owner in the event of a foreclosure by the lender.

Florida courts have in several cases ruled that the subcontract between the General Contractor and its Subcontractors is a separate document with distinct provisions for payments by the General Contractor, which are independent from those of the Owner to pay the General Contractor. For this reason, in the event of a foreclosure by the Lender of the construction loan, the General Contractor may well be left without payment for the services rendered through the date of the foreclosure. Yet, the General Contractor would still have an obligation to pay all of the Subcontractors who have performed work on the project.

In addition, the obligations of the Lender to inform parties other than the Borrower (typically the Owner of the Development) of any events which might involve the foreclosure of the loan. Several General Contractors met with during this phase of the survey indicated that this is the single greatest unknown risk that they face in the area of working for private developments.

This item will be discussed in greater detail in the recommendation phase of this report.

2. Prompt Payment by the Owner

General Contractors met with in preliminary discussions indicated that the receipt of their construction draws on a timely basis is the only way that they can sustain their operations.

Most Contractors indicated that their subcontracts had "Pay when Paid" clauses in them with their subcontractors.

These clauses, which had previously assisted them in the managing of cash flow needs on the construction project now are serving no useful purpose in many instances. With the recent court decisions limiting the enforceability of these "Pay when Paid" provisions, it has become even more difficult to maintain a positive cash position when owners do not pay on a timely basis. In several of the discussions, it was pointed out that the "Red Tape" that they must go through on a monthly basis with the Designer, Owner, and Lender is the major time extending factor in the receipt of their construction draws.

The issue of requiring prompt payment of all construction invoices by the Owner, is an issue that is being discussed in many jurisdictions of the country, and is being discussed by General Contractors and Subcontractors alike.

3. Co-Mingling of Hard Cost and Soft Cost Funds

In most cases, the General Contractors met with indicated that they are required by the Lender to execute the Construction Loan Agreement, but only for the purpose of assenting that their construction contract with the owner is subordinate to the terms and conditions of the construction loan agreement between the lender and owner.

Most of these agreements include a clause that requires the contractor to complete the project at the request of the lender in the event of default by the owner. However, the contractor is given no rights as to notice by the lender of transfer of funds from the loan for purposes other than construction "Hard Costs". The terms "Hard Costs" and "Soft Costs" are used within the construction and development industry to loosely describe the difference between those project costs which are considered as a part of the construction of the facility ("Hard Costs") by the Contractor, and the costs of marketing, selling, and financing of the project ("Soft Costs") by the Developer.

What many contractors stated they have found is that when a project becomes troubled, then the owner and lender undertake to transfer funds from the funds originally available for the construction, and utilize them to fund other costs of the development, commonly referred to as "Soft Costs". This process is done without the consent of the contractor, and then when additional funds are required for changes in the work, or changed conditions on the project, they are not available.

4. Performance and Payment Bond Requirements

Lenders typically require Owners to utilize General Contractors which provide Performance and Payment Bonds.

These bonds obligate the Surety Company to fulfill the contractual responsibilities of the contractor to satisfactorily complete the work, and to make all payments as required by the contract. Performance and Payment Bonds are written by the surety companies specifically in favor of the owner. Subcontractors, Suppliers, and Employees involved in the project are assured of their payments by reason of the surety representation that all valid invoices and project costs will be paid. However, it must be noted that the ultimate payment not be achieved until after the firm or individual supplying goods or services to the project has proven the validity of their invoice, which in many cases will require the process of litigation to be completed.

As the bonds are written, there is no representation to additional parties other than the owner for the above protection against claims.

However, as the Florida courts have been interpreted in recent years, additional parties have been able to enjoin the surety company and the contractor as third parties in various warranty cases.

In some instances these third parties have been able to collect for damages far in excess of the stipulated warranties agreed to by the parties, and far in excess of the statutes for surety obligations in other states. For this reason, many surety companies are hesitant to issue Performance and Payment Bonds to otherwise financially capable General Contractors.

5. Payment of Contract Retainage

Most General Contractors who have been in the business for many years have come to accept that retainage is going to be a part of the construction contract.

The purpose of retainage is ostensibly to assure that the project is completed in accordance with the plans and specifications, and that all payments have been properly made.

But one question often raised by those contacted, is that on those projects which require a Performance and Payment Bond, it seems that the withholding of retainage in addition to having the bond in place is in a double security which should not be required.

6. Lack of knowledge of the Lien Law by Owners and Lenders

In projects being built by the first time Owner, it is understandable that they might not know the details of the often confusing Construction Lien Law.

However, for experienced Owners and certainly for Lenders, the lack of understanding of the Lien Law and it's operation is perplexing to many contractors contacted for input into the survey.

It was reported that on many projects, there is a period of education of all parties, in some cases even the attorneys for the Owner and Lender, by the General Contractor through their corporate attorney, who in many cases is much more familiar with the Construction Lien Law than the Owner.

E. SUBCONTRACTORS & SUPPLIERS

Being in the last position of payment, and in most cases, the first position of performance on a project, puts the subcontractor in the position of often waiting the longest time from the date of performing the work, until payment for the services rendered. For this reason, it is not unexpected to see the initial interviews with this group focus on the issue of prompt payment for services rendered. The items which were raised during meetings with subcontractors, suppliers, and their trade association representatives included the following topics.

1. Prompt Payment for services by General Contractor

The overriding concern of Subcontractors is their payment by the General Contractor with whom they contract. Being one of the last to receive payment in the cash flow cycle automatically extends the subcontractors financially. When this is coupled with the General Contractor that does not pay promptly after being paid by the Owner, it can be devastating.

Many subcontractors talked to during this phase of the research grant indicated an unwillingness to accept that they are not to be paid "... unless and until the General Contractor is paid"; a clause included within many Subcontract Agreements drafted by General Contractors. The Subcontractors do not believe that they have a contractual relationship with the Owner, and that it is not their responsibility to prequalify the Owner before doing business.

The Subcontractors only want to look to the General Contractor for their payment.

2. Improper payments by lender to owner under the lien law

The Lien Law places a burden on the Owner of a construction project to make proper payments to avoid the possibility of having to pay twice for services rendered on their property. In spite of this, many Owners do not follow the Lien Law, and make payments to General Contractors without requiring Lien Releases from those who have given them a proper Notice to Owner. Even though the Subcontractor has protection under the law for improper payments, it still can be an element of risk, by allowing the General Contractor to extend the distribution of payments to it's subcontractors on the project.

3. Payment for retainage after work is complete

Several Subcontractors indicated that the payment of their retainage following completion of their work is a problem which needs to be addressed. Those making this statement were those who are traditionally involved in the early phases of a project, which is completed long before the balance of the work. In some cases the Subcontractors were required to wait as long as a year for their retainage even though they have no further work to be accomplished.

It was the feeling of these Subcontractors that the Lenders should understand this matter, and be willing to allow the release of this retainage prior to the completion of the overall project, provided that their work has been satisfactorily completed and approved by the Designer.

4. Other Issues

These were not the only issues mentioned by the Subcontractors.

In addition to the items included here, they also raised several of the concerns raised by the parties mentioned earlier in the report. Included among these were:

a. Lender Foreclosure

The position of the subcontractors talked to was basically that of the General Contractors, however, it seemed from the Subcontractors that more of them raised this as an issue than did the General Contractors.

b. Both Performance and Payment Bonds & Retainage Required.

Of those Subcontractors that were bondable, this was raised as the same issue as the General Contractors, except that in these instances they were bonded to the General Contractor not directly to the Owner.

III. PHASE TWO - SURVEY DEVELOPMENT

A. Groups to be Surveyed

Based upon the amount of information gathered in the first phase of this report certain areas of investigation became clear. These areas deal with the inter-relations between the various parties to the contract with one another.

The relationships that seem to be most in need of further study include:

- A. The Lender with the Owner
- B. The Lender with the Contracting Parties with the Owner
- C. The Owner with the General Contractor
- D. The Owner with the Subcontractors to the General Contractor.
- E. The General Contractor with the Subcontractors.

In addition, there were certain recurring themes in all of the preliminary discussions in regard to payments and the lien law which need to be addressed.

Based upon the preliminary meetings, it also became obvious that separated addressed and tabulated results of the survey would be necessary for each group surveyed, including:

- A. Construction Lenders
- B. Private Owners
- C. Architects/Engineers
- D. General Contractors
- E. Subcontractors & Suppliers

After discussions with several Mortgage Brokers, it seems that their involvement in the process is to put the parties together and act as a facilitator in the obtaining of financing for the project. Those spoken to did not feel that the inclusion of their input on the other issues addressed would be that meaningful, as they do not get involved in the actual construction process once the loan has been closed for the owner. Therefore, no further consideration was given to included them in the survey that has been developed.

B. Development of the Survey

Attached hereto as Appendices A through E inclusive are the forms of the surveys that were developed for each of the above parties.

Each survey covers the same information, but has been worded to address the concerns of the group for which it was developed.

Following development of the preliminary survey, it was reviewed with several key individual companies, lenders and associations that expressed a strong interest in the report being developed. To the extent possible, their concerns were included within the questions being asked.

C. Representative Sampling for the Survey

Next, a decision had to be made as to the representative sampling to be undertaken to obtain a valid response group to the survey. Based upon the investigators contacts within the lending, design, and construction industries, it was felt that a minimum of twenty (20%) response to the survey could be achieved for all areas except for construction lenders. It was estimated that the response rate for this group would be approximately one-half of the response of the other groups, or approximately ten (10%), therefore, a proportionately larger mailing would be required.

In order to achieve a representative and responsive result to the survey, it was determined that the following minimum number of surveys would be sent for each of the above groups:

- A. Lenders - 200 Banks within Florida
- B. Private Owners - 100 Private Developers building or have built within Florida.
- C. Designers - 100 Architects or Engineering firms active in the design of private projects within Florida.
- D. General Contractors - 100 Active General Contractors based within Florida.
- E. Subcontractors - 100 Active Subcontractors or Suppliers working for General Contractors on private projects.

E. Selection of Firms to be Surveyed

The selection of the firms to be surveyed was based upon several factors, including the time constraints of the report and the budget available for the mailing and response costs. But more importantly, the selection was determined by selecting those firms which are generally involved primarily in the commercial and multi-family construction market, and those which are considered to be the more professional within the various groups. To accomplish this, membership lists and/or assistance for lists of individual firms to be mailed questionnaires were obtained from:

- A. Florida Bankers Association
- B. American Institute of Architects (AIA)
- C. Associated General Contractors of America (AGC)
- D. Associated Builders and Contractors (ABC)
- E. American Subcontractors Association (ASA)

From the above lists, a total of over 750 surveys were distributed in at least the minimum number noted above. The actual number of surveys sent were as follows:

- A. Construction Lenders - 200 banks
- B. Private Developers - 102 developers
- C. Architects/Engineers - 147 architectural
or engineering firms
- D. General Contractors - 150 general contracting
firms
- E. Subcontractors/Suppliers - 172 subcontracting firms

IV. PHASE THREE - SURVEY ANALYSIS

A. DISTRIBUTION AND RETURN OF SURVEYS

The surveys were distributed in the same order as outlined in Phase II, with surveys being prepared and sent out approximately one week apart to allow for even distribution and return.

In addition, there was an additional motivation for sending the surveys out in the order of Lenders first, Owners second, Designers third, General Contractors fourth, and Subcontractors last. It was believed that General Contractors and Subcontractors would be the most prompt in responding to the survey because of the nature of their concerns with the issues being inquired about. Also, because of this interest, it was assumed that they would return the surveys in a greater number than possibly Lenders, Owners, or Designers. This assumption was reached based upon the discussions held with each group wherein the concerns expressed were not indicated to be felt as deeply by Lenders, Owners, and Designers, as they were by General Contractors and Subcontractors. By sending out the earlier surveys to those parties, additional time was allowed both for return and possible follow up if necessary.

Care was taken not to distribute the surveys during the Holiday Season where they would be likely to be included in with much other mail, and possibly not receive the attention which the investigators hoped for the survey.

The distribution of each survey was outlined in Phase II. The response to the survey by each group is outlined herein. In most instances the response of the individual groups exceeded the expectations of the investigators both in the number of responses, and in the turn around time from distribution to receipt of the completed surveys (average of less than one week). This indicated to the investigators a great deal of concern about the issues being studied, and the timeliness of the matter.

Outlined on the following pages are the number of responses of each group participating in the survey:

1. LENDERS

Surveys Distributed	200
Surveys Returned Undeliverable	0
Net Surveys Distributed	200
Surveys Returned Completed	51
Percentage Returned/Distributed and Recieved	25.5%

2. OWNERS

Surveys Distributed	102
Surveys Returned Undeliverable	8
Net Surveys Distributed	94
Surveys Returned Completed	17
Percentage Returned/Distributed and Recieved	18.1%

3. DESIGNERS

Surveys Distributed 147
Surveys Returned Undeliverable 8
Net Surveys Distributed 139
Surveys Returned Completed 53
Percentage Returned/Distributed and Recieved 34.7%

4. GENERAL CONTRACTORS

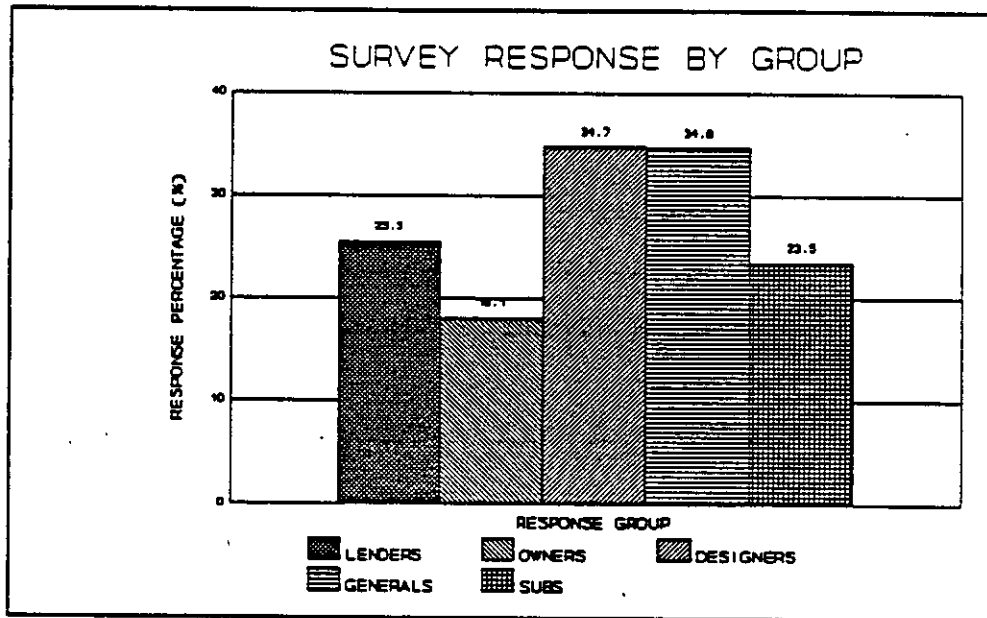
Surveys Distributed 153
Surveys Returned Undeliverable 0
Net Surveys Distributed 153
Surveys Returned Completed 53
Percentage Returned/Distributed and Recieved 34.6%

5. SUBCONTRACTORS & SUPPLIERS

Surveys Distributed 152
Surveys Returned Undeliverable 3
Net Surveys Distributed 149
Surveys Returned Completed 35
Percentage Returned/Distributed and Recieved 23.5%

SUMMARY OF DISTRIBUTION

Surveys Distributed	754
Surveys Returned Undeliverable	19
Net Surveys Distributed	735
Surveys Returned Completed	209
Percentage Returned/Distributed and Recieved	28.4%



Several items of interest were noted when reviewing the various response totals to the surveys of the individual groups, including:

1. Surveys Returned Undeliverable

In the two groups of Lender and General Contractor none of the surveys were returned undeliverable. In each case the mail was either received by the party directly or forwardable to a known address.

However, in the case of both Owners and Designers eight (8) of the surveys were returned as undeliverable with no forwarding address. This represents approximately 8% and 5% respectively within these two groups that have either gone out of business or moved leaving no forwarding address. This is a significant percentage when considered even against that of Subcontractors, who some might consider to be less financially capable of surviving a recession than either the Owners or Designers.

In the case of Subcontractors only 3 out of 152 surveys mailed were returned undeliverable or forwardable, which represents less than 2% of the group. This may indicate that the recession currently being felt by the construction industry has impacted Owners and Designers in a more dramatic way than one might first imagine.

2. Percentage of Surveys Returned

The investigators found some interesting correlation to the number of surveys returned and the issues being discussed in the subject matter of the research. This included:

A. Designers:

This group, along with the General Contractors returned almost 35% of the surveys, an amount that most would consider phenomenal in terms of survey response.

This indicates that the subject matter is most critical to these two parties, particularly when one considers that the vast majority (over 80%) of the surveys were returned within one week of mailing.

B. Owners:

This group returned less than 20% of the surveys, the least of any group. It may be that the first questions of the survey dealing with the tendency of Owners to overstate their financial condition was found offensive, and therefore the survey was not completed. Or, in the alternative, it may indicate that the owner is not as concerned with the issues of Lender responsibilities within the loan process as are Designers and General Contractors.

Of those owners contacted about the survey, most felt that they as the developer were bound by the terms and conditions of the Lender.

B. TABULATION AND ANALYZATION OF RESPONSES

In reviewing the responses to each of the individual questions by the various groups, it becomes clear that the total responses of all groups to each question is the only appropriate way to both tabulate and analyze the survey.

Based upon this determination, the results of the responses to the survey for each question which is common to more than one of the groups is tabulated, analyzed and discussed at the time the question is addressed to the first group. Immediately following the question, it is noted which groups are included within the context of the survey question.

In the situation of those questions which were specific to one industry group, they are addressed individually at the time that group is reviewed. The order of group survey responses is the same as the mailing order; Lenders, Owners, Designers, General Contractors, and Subcontractors.

For ease in reading of the survey responses, each question begins at the top of a new page. Even though some pages are left with only a paragraph or two, each specific question is more readily identifiable.

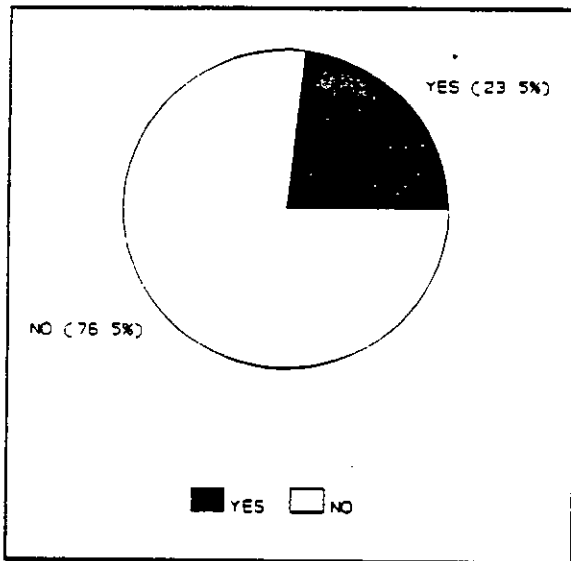
In addition, every effort has been made to provide graphics which visually show the results of the survey.

The survey responses begin on the following page of the report:

1. Do you administer Construction Loans with a separate department or division from other Commercial Real Estate Loans?

() Yes () No

(Groups Surveyed: Lenders)



The purpose of this question was to ascertain the level of required attention that lenders perceive must be given to the administration of Construction Loans as compared to other Commercial Real Estate Loans. The degree of knowledge needed about the construction process is significantly higher in the

construction of new or renovated facilities than is required to administer a Commercial Real Estate Loan on a constructed project.

On a constructed project, the decisions required to make loan decisions are based upon a product that, in most instances, is in place. The decision can then be made based upon the performance of the product in the marketplace; whether it be a shopping center, condominium, apartment, or office building.

In the case of a proposed project to be constructed or renovated, the risk to the lender and owner is expanded to include the financial and management ability of the borrower to execute the development, and the various contractors to produce the intended project within the budget established, with the quality expected from the contract documents, and within the time frame required.

All of these factors further complicate the ability of the lender to analyze the feasibility of both the construction loan, and the progress that is being made toward the ultimate completion goals once construction is underway.

For this reason, a number of the lenders in the construction loan market have determined that it is in their best interest to include within their loan departments a separate construction loan group which administers primarily these type loans.

The purpose of this question in the survey is to determine the extent of this type of loan administration.

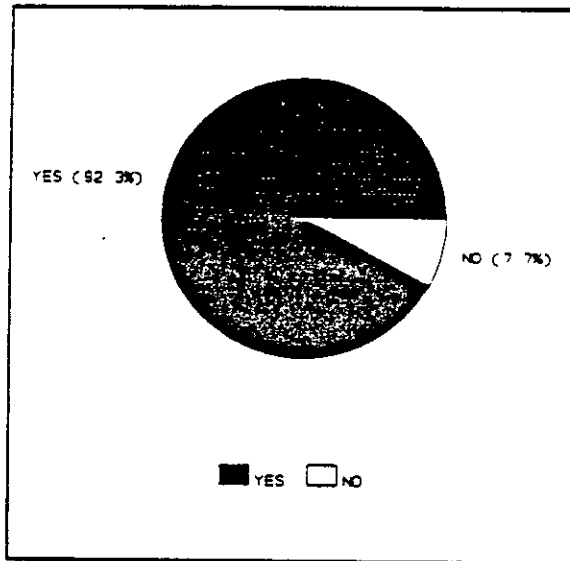
Of the Lenders responding to this survey question, 23.5%, or approximately one in four, indicated that they do have a separate department or division to administer construction loans. One of these Lenders indicated that they had made a decision within the last year to establish a separate department for construction loans, after determining that the inclusion of the administration of these loans within the Commercial Loan Department was not providing the degree of attention needed.

The responses to this question indicated that a minority of Lenders either feel that the separation of these departments is important, or that they possibly do not have the resources to maintain separate departments. One response to the survey indicated that there did not make enough construction loans to maintain a separate department. This seems to indicate that if they were making more of these loans that such a separation would be considered.

2. If Yes, does your Construction Loan Department include staff experienced in the Construction Industry?

() Yes () No

(Groups surveyed: Lenders)



Of those lenders which do have a separate Construction Loan Department, 92.3% responding indicated that they have a staff that is experienced in the Construction Industry. Of those talked to in this regard, each indicated that those involved in the department or division, that they have had direct construction experience, and also have

experience in the processing of other types of commercial real estate loans.

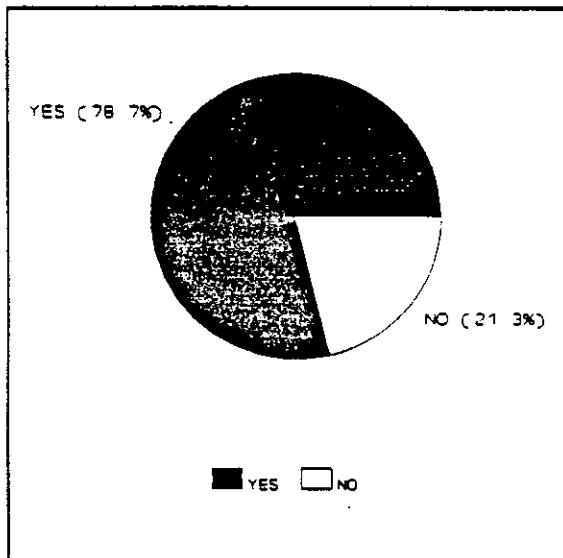
Only 7.7% of those responding indicated that their Construction Loan Departments do not have experienced construction personnel involved in this department.

These responses indicate that the Lenders who feel that having a separate Construction Loan Department also recognize the importance of having individuals involved in this department who are knowledgeable in the industry.

3. Do you make Construction Loans even when you have no interest in the Permanent Financing of the Project?

() Yes () No

(Groups surveyed: Lenders)



This question relates to the status of the making of Construction Loans in the absence of the borrower having permanent financing in place on the project. Most construction loans are made only for the period of time during which construction is to take place, and for a short period

thereafter during which the then completed project is converted to a traditional long term loan. At this time the loan may be based upon more accepted standards for the loan, and additional options are available to the borrower from various lenders. In addition, the long term mortgage on the property is generally accepted to be made at a substantially lower rate of interest than the construction loan.

In discussions with those lenders who make a large number of construction loans, it was pointed out that some borrowers are not aware of this fact, and often begin the loan process with the intention of the same bank making one loan for both construction and permanent financing.

Other borrowers are not aware of the fact that many lenders will make a construction loan even when they have no interest in the long term financing of the project. These institutions often want the short term interest rates available on the loan, but are not interested in the long term commitment of the lower interest rate mortgage. In addition, by making construction loans, they are able to meet the needs of their clientele over the short term while allowing them the opportunity to locate long term financing for the project.

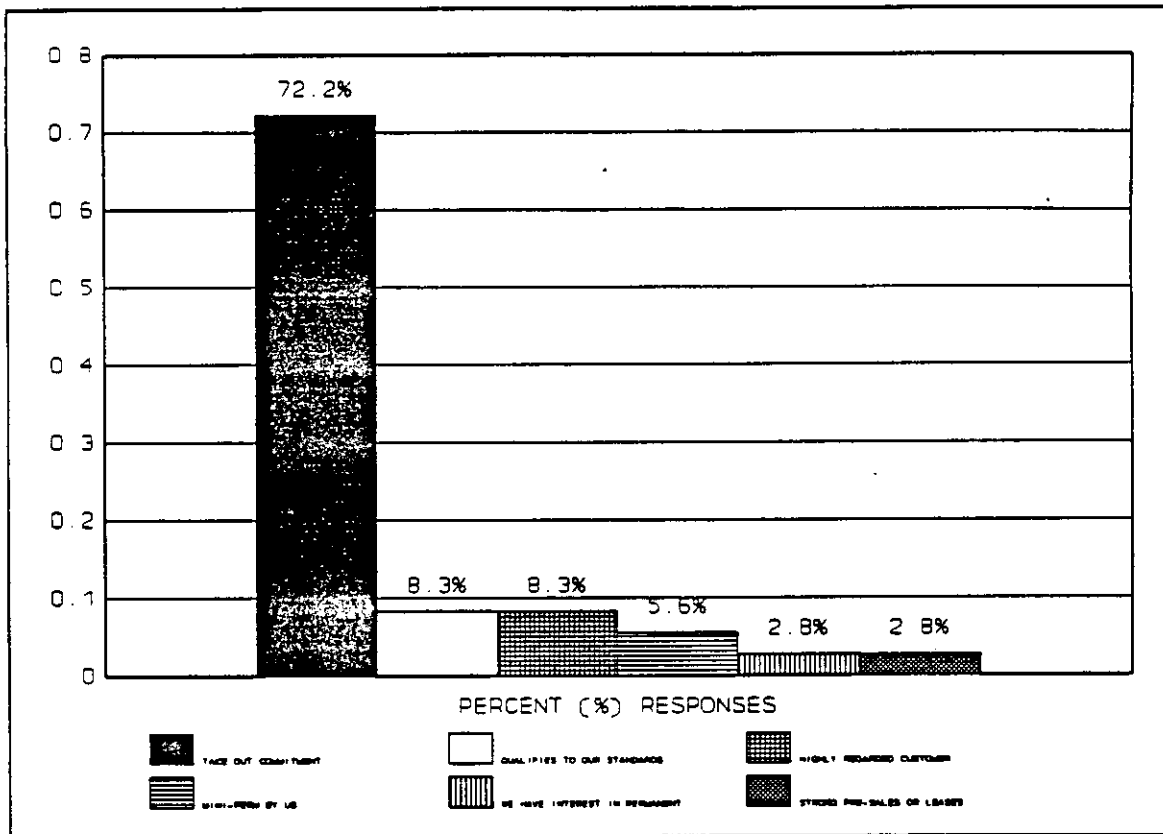
Of those lenders responding to this question, it was found that 78.7%, or over three-fourths of the lenders making construction loans, will do so even when they have no interest in the long term loan commitment. Approximately 21.3%, or less than one-fourth of those responding indicated that they have no interest in only making construction loans in the absence of also providing the permanent financing on the project.

In the comments offered by the lenders, it seems that a number of those responding in the negative to this question are primarily the smaller banks, which are making a large number of single family residential loans, and when making construction loans, are also looking to obtain the permanent mortgage on the completed property.

The high number of favorable responses indicates that the borrowers of construction loans should keep all options open in the selecting of a construction lender, realizing that there are a number of Lenders that will make the construction loan only.

4. If Yes, what requirements do you have for there to be Permanent Financing in place before the Construction Loan is made? (Please list all)

(Groups surveyed: Lenders)



Of those lenders indicating that they do consider construction loans to developments where they do not provide the permanent financing, there were a number of responses, however, one response was predominant among all others.

Of those responding to this question, 72.2% indicated they would only make the construction loan if there existed a firm commitment for permanent financing from another acceptable lender, which in the industry is referred to as a "take-out" loan.

This take-out commitment would include a commitment on the part of both the permanent lender and the borrower.

This would be represented by a binding, fully executed commitment letter from the permanent financing lender that is binding, and a fully paid commitment fee on the part of the borrower prior to the final approval of the construction loan.

If both of these items are not in place, then a construction loan commitment letter may be given with the condition that it will not become effective until the borrower has these items in place.

The second most common responses were given only 8.3% of the time, and they fall into two categories. First among these was that the loan must otherwise meet all of the standards for permanent financing by the construction loan lender. This would leave open the option for both the lender and borrower to enter into a permanent financing arrangement in the event that either of the parties wishes to pursue this avenue at a later time.

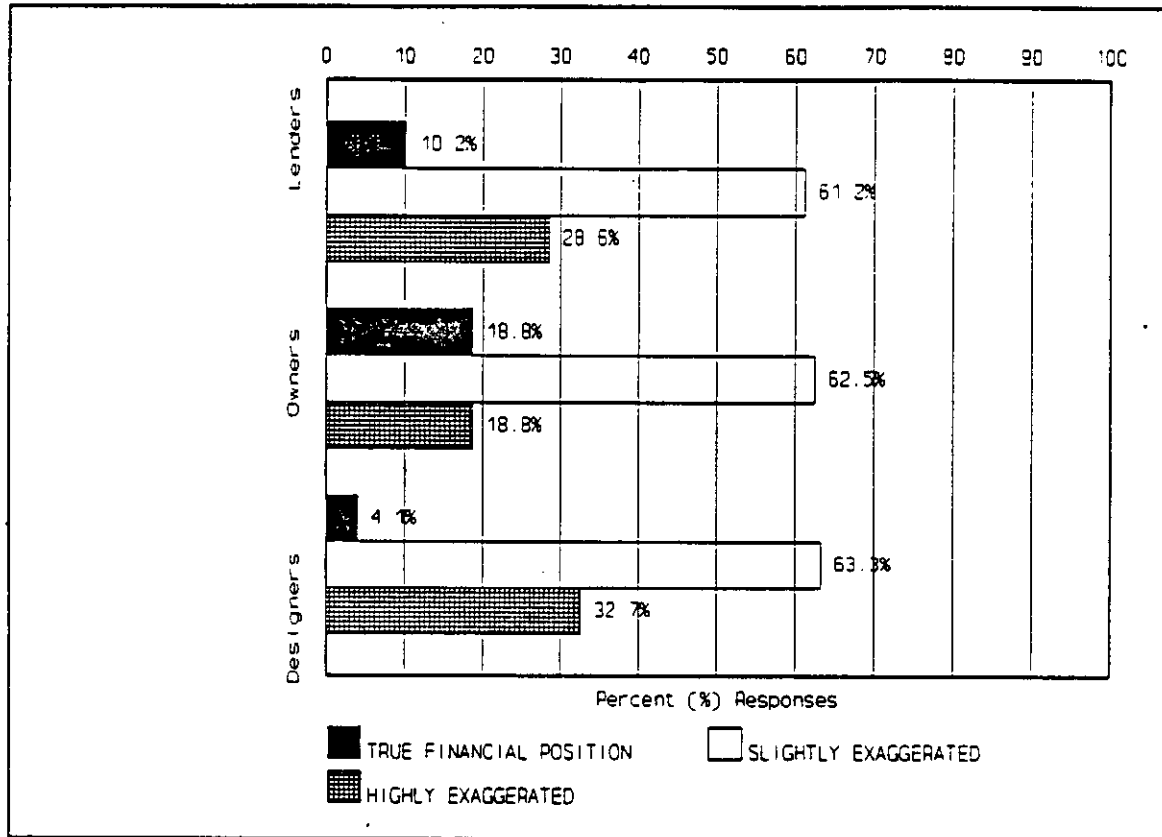
Obviously, if the lender requires all of the take-out commitment steps to have been completed prior to issuance of a construction loan, then this would preclude any future involvement in the final financing. By prequalifying the loan for permanent financing, and not finalizing the take-out commitment, it leaves open the option for both lender and borrower to continue to investigate the best permanent financing arrangement.

This does leave open one risk for the borrower, and that is should the construction lender not ultimately approve the permanent financing, then the borrower could be left with no financing.

5. Do you feel that when a Developer makes an application for a Construction or Land Acquisition Loan that they typically represent:

- () Their true financial position
- () A slightly exaggerated financial position
- () A highly exaggerated position

(Groups surveyed: Lenders, Owners, Designers)



As shown in the accompanying chart, it is the overwhelming opinion of Lenders, Owners, and Designers alike that the typical Developer when making a loan application at least slightly exaggerates their financial position. In every case the response to this survey question exceeded 60% of the groups responding.

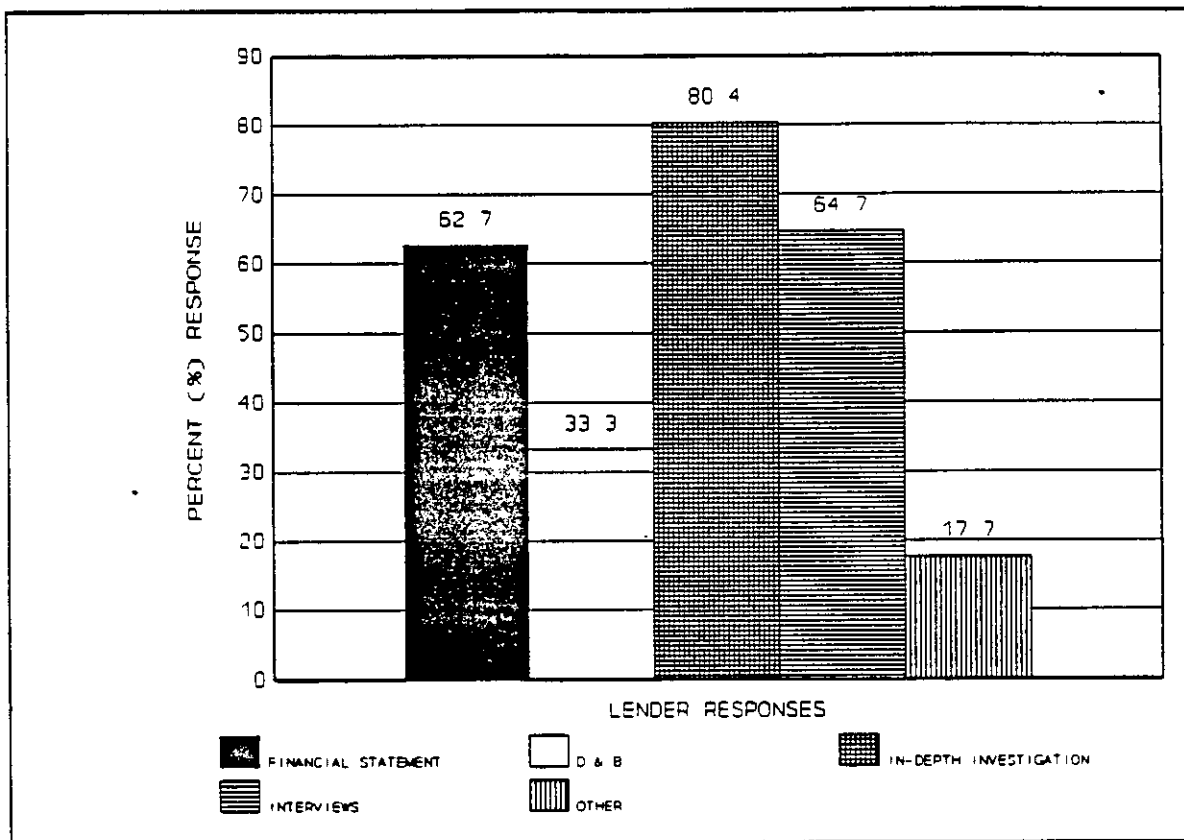
There is a measurable difference in the responses of the Lender and Designer as compared to that of the Owner in regard to the number of instances where it was reported that the Developer highly exaggerates their financial position.

Lenders indicated that this is found to occur over 25% of the time, and Designers felt that this occurs in approximately 25% of the projects. However, the Owners responding indicated that they believe this to occur in only 15% of the projects requesting construction loans. This variance is no doubt due to the fact that Lenders and Designers are looking at the financial statements from the perspective of being in a position of critical review of the financial condition, whereas the Owners are in a status of trying to sell to the other two parties their relative strength.

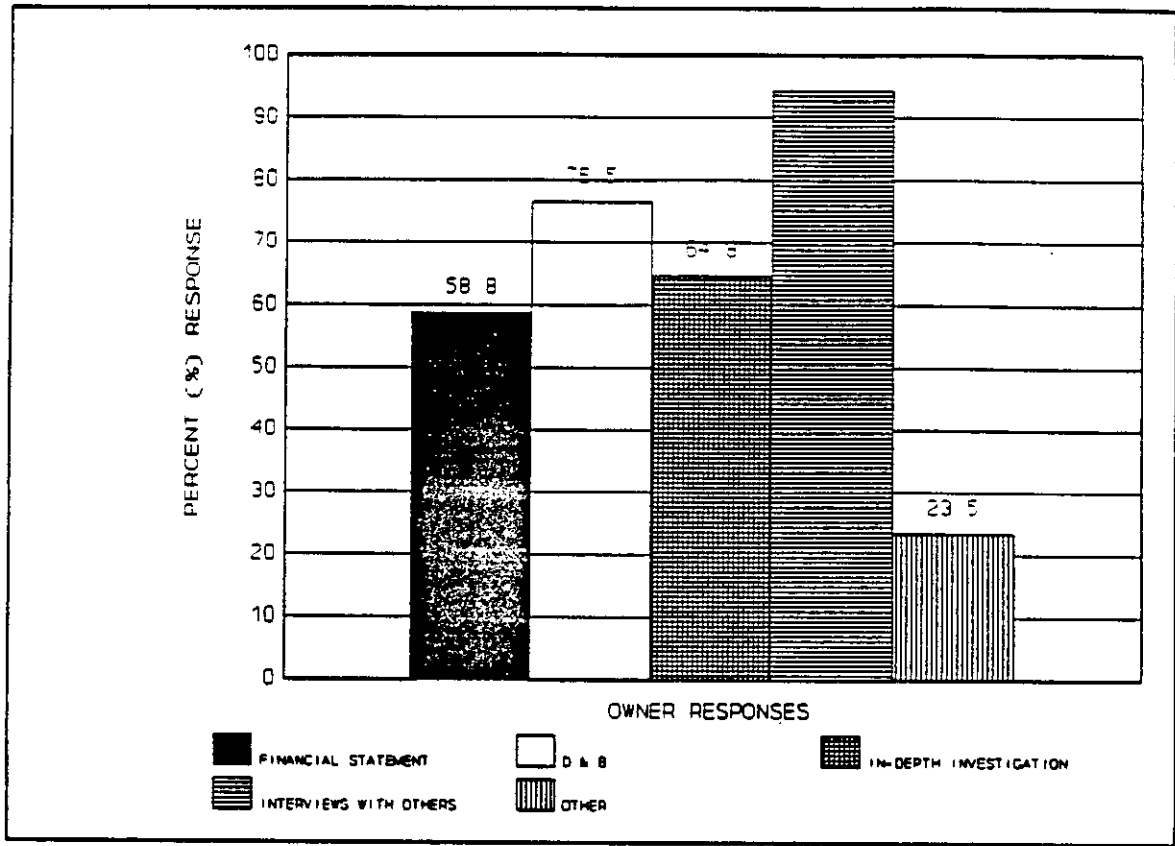
6. What available means can be utilized to verify a Developer's true financial position?

- () Certified Financial Statement
- () Dun & Bradstreet
- () In-Depth Investigation of Financial Statement
- () Interviews with those doing business with Developer
- () Other (please list)

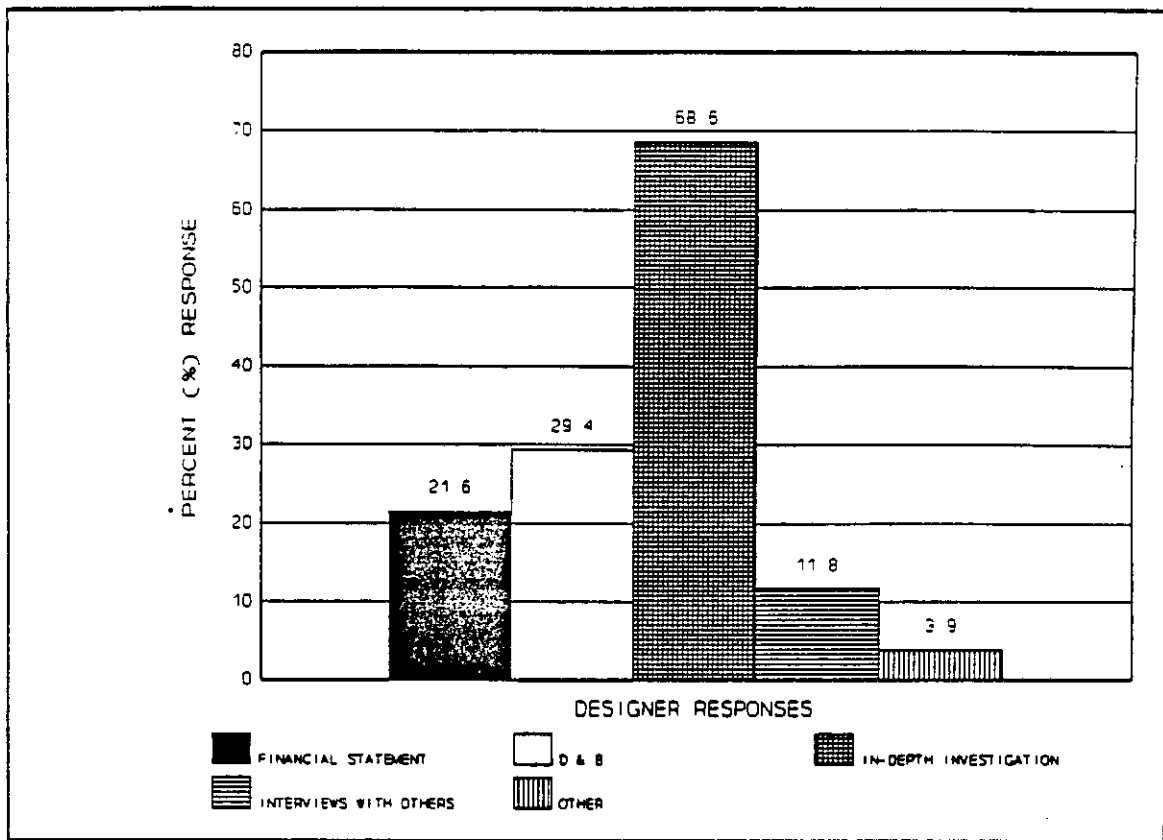
(Groups surveyed: Lenders, Owners, Designers, Generals, Sub)



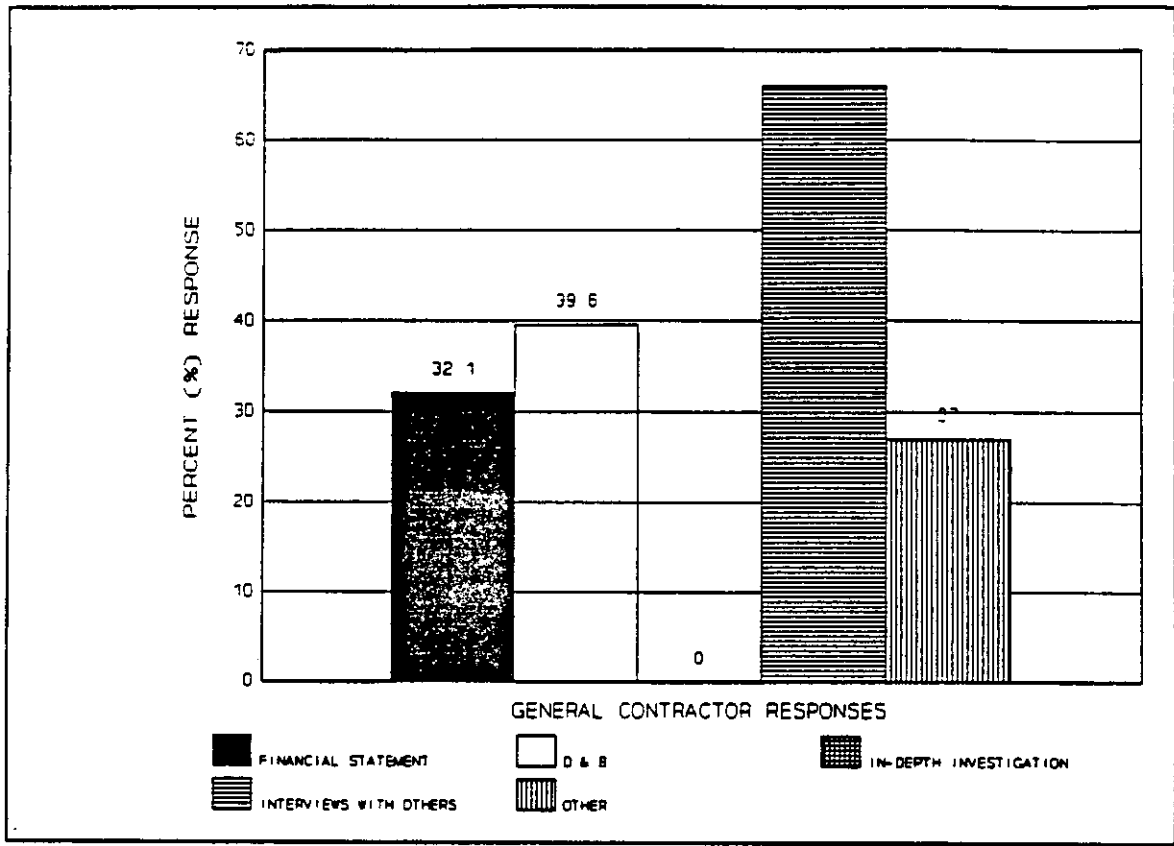
Lender Responses to the Survey for each of the categories queried are shown above. Each of the other groups surveyed are shown on the following pages. Following the graphs by group is a review of each type of response, comparing each of the groups.



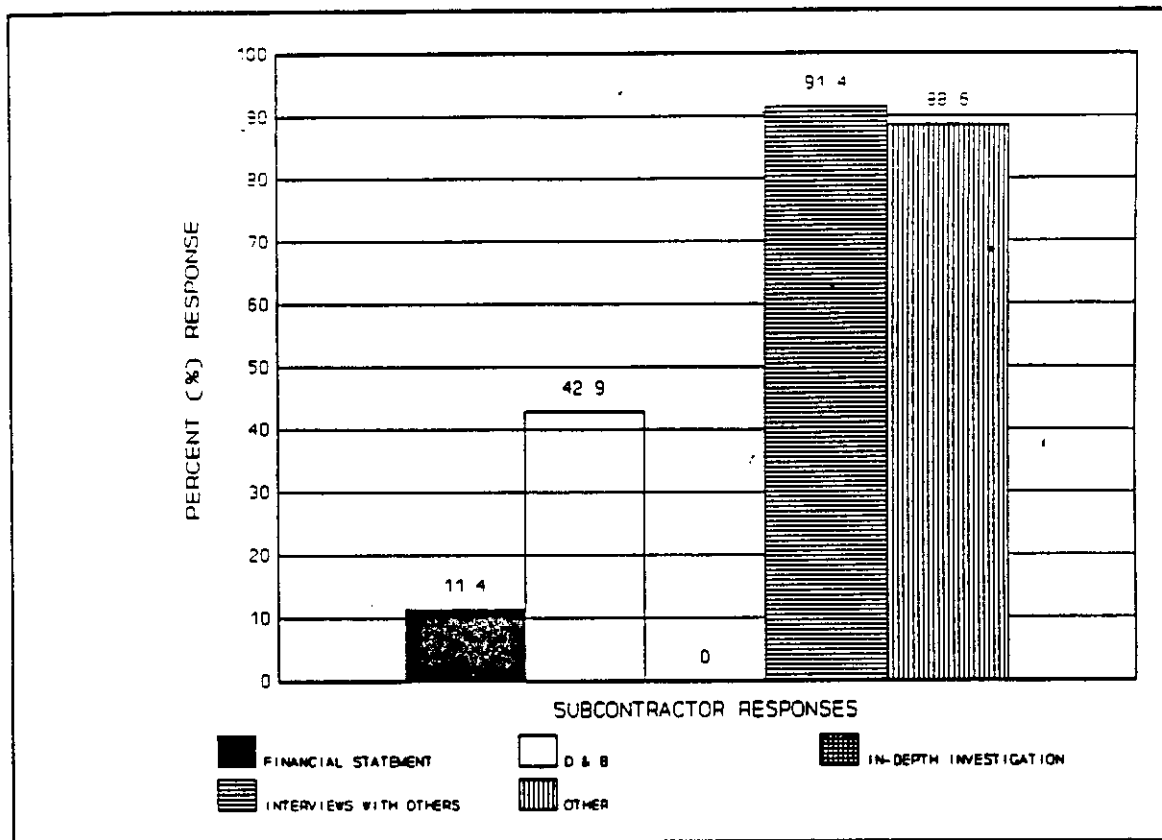
Owner Responses to the Survey indicate their strong interest in the Lender inquiring personally with those whom the developer is doing business.



Designer responses indicate their strong reliance upon the Developer's financial statement as their primary means of verifying the financial ability of the Owner to pay them.



The above chart indicates that the General Contractors place no reliance on the financial statement of the Developer, and instead rely upon the process of interviewing those with whom the Developer has conducted business. This may well be because to the reluctance of the General Contractor to press the Owner for a financial statement at the same time they are attempting to negotiate the contract.

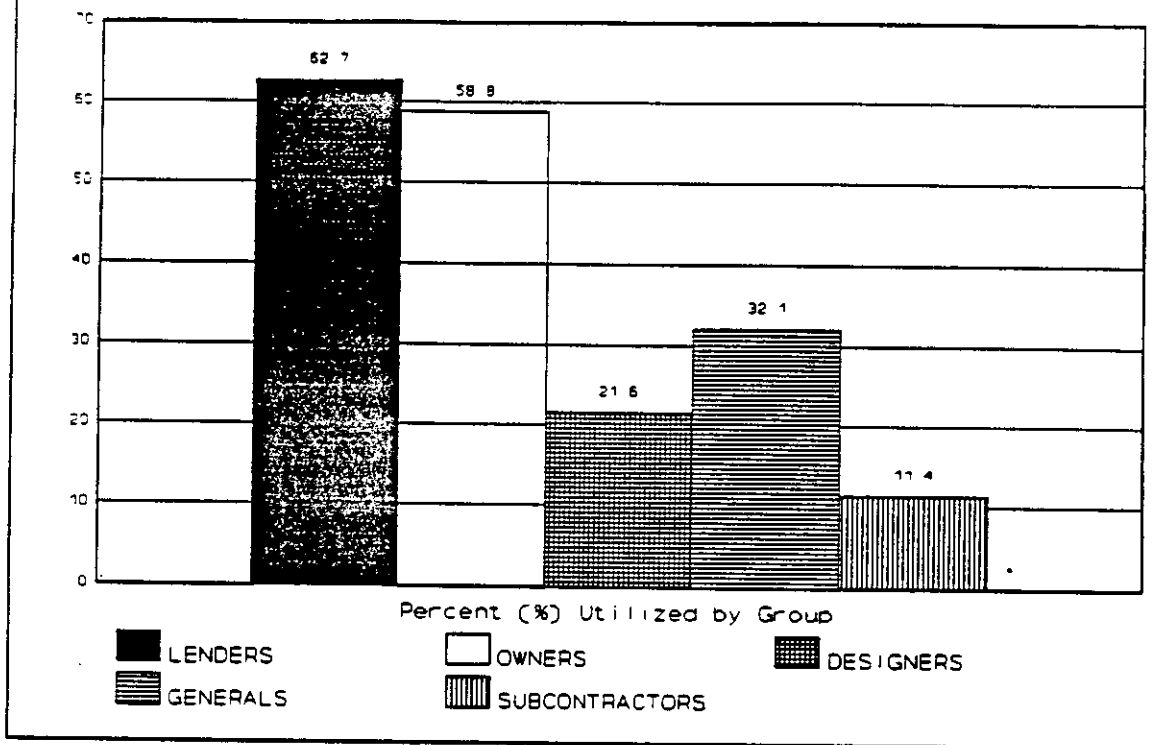


Subcontractors, like the General Contractors with whom they work, rely on two areas to confirm whether to work on the project:

1. Interviews with those doing business with the Developer
2. Bonding of the General Contractor

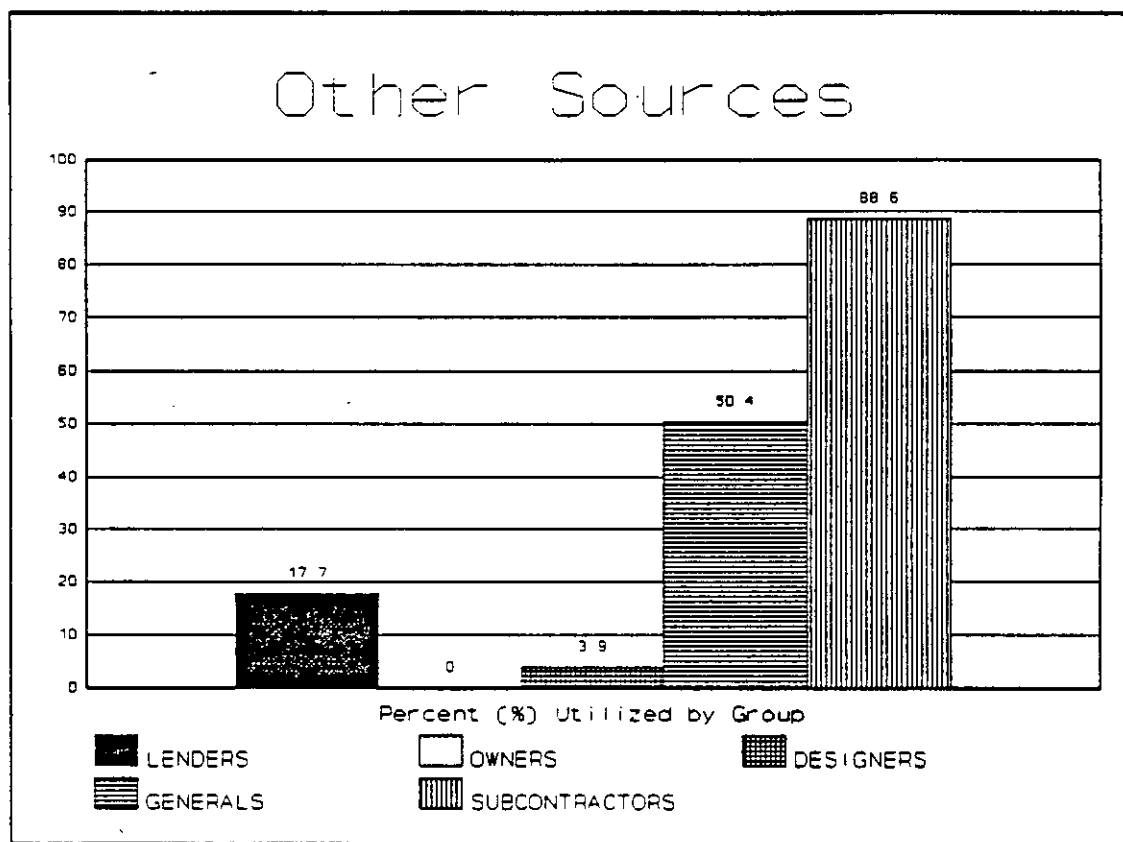
As shown graphically in the preceding charts there are several notable differences in the manner in which the various surveyed groups utilize financial statements. When comparing the individual group graphs, it becomes difficult to analyze the importance placed on each type of financial investigation by the groups as a comparison. For this reason, each of the responses are discussed in the following graphic and narrative review:

Certified Financial Statements



It can be readily seen that there is a diversity of utilization of financial statements. Clearly Lenders and Owners pay significant attention to the financial statement as indicated by the usage of approximately 60% by each group. However, there is a dramatic drop-off of review of the Developer's financial statement when the groups of Designer, General Contractor and Subcontractor are considered. Less than one-third of either group indicates a usage of the statement, with the subcontractors representing the smallest at a little over 11% indicating a positive response.

Other responses to the question of what is relied upon in doing business with the Developer were quite informative. A number of responses other than those solicited by the investigators were identified in several ways. To best depict this area, each survey group will be discussed separately:

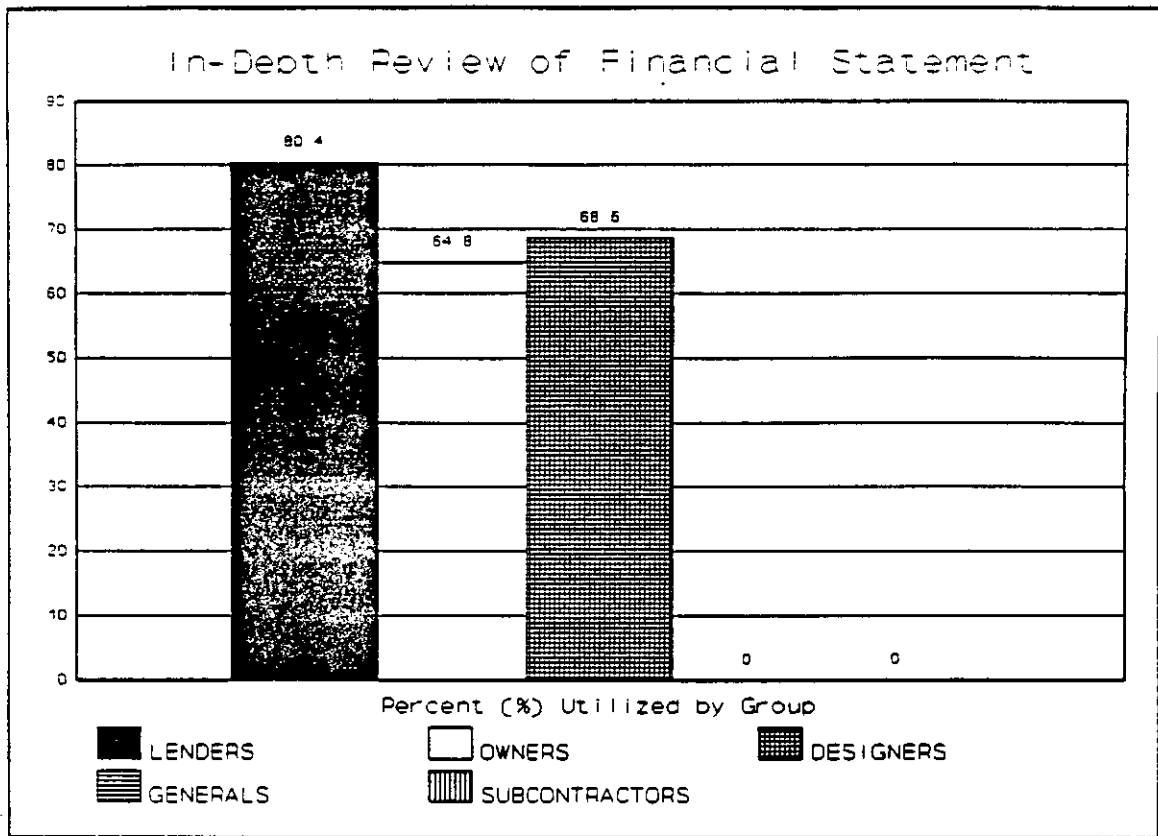


Owners indicate in 76.5%, or over three-fourths of the responses that they utilize this service.

Subcontractors indicated that they rely on the Dun & Bradstreet report 42.9% of the time, and increase of almost four fold over their review of the financial statements.

This is a strong indication of the interest of the Subcontractors in the parties with whom they are doing business. Even though they did not feel that their ability to obtain the financial statement was possible, they do rely upon the credit information included within the D & B reports to assist them in their evaluation.

The following graph will be used to demonstrate the significant change when reviewing those parties reliance upon the in depth financial statements of the Developers.



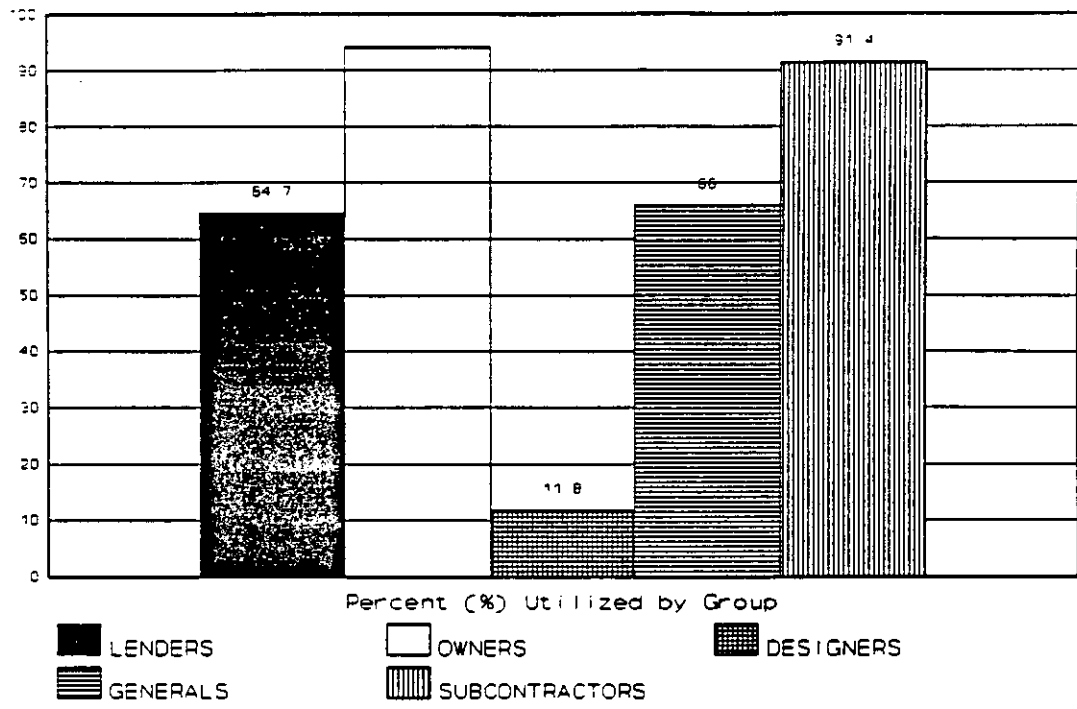
A dramatic change is shown when the question is asked as to whether the undertaking of a thorough review of the financial condition of the Developer is undertaken by the survey groups. This is graphically depicted above. While the Lenders indicated that this is one of their actions in 80.4% of the survey responses, General Contractors and Subcontractors did not indicate this response in even a single survey.

This clearly indicates that the General Contractors and Subcontractors do not believe that they can undertake such a complete review of the statement as do the Lenders.

This is, no doubt, also an indication of why their response to the first question in regard to using the financial information was also correspondingly low.

Interestingly, Designers responded on 68.6% of the surveys, that they review in detail the Owners financial statement, second only to the Lenders. This may be because the Designer in many cases is relying on the financial condition of the Developer even before the construction financing is in place.

Interviews With Other Clients

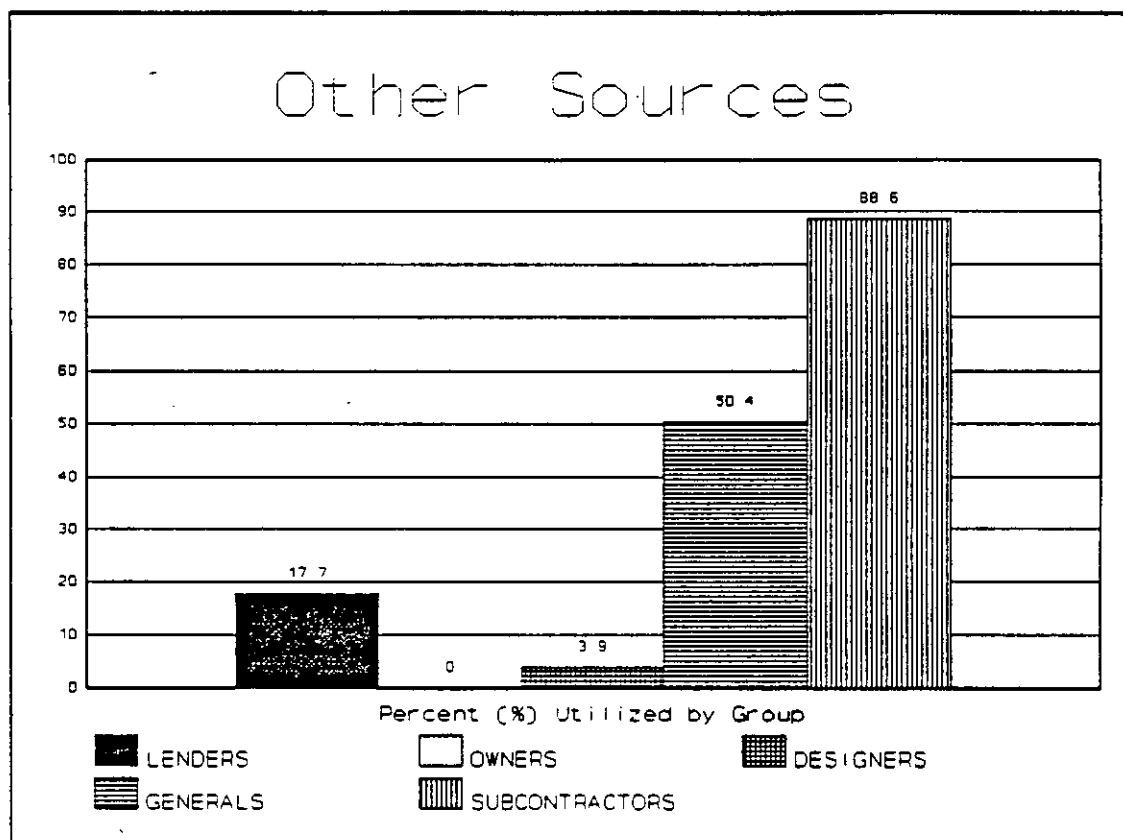


Every group with the exception of Designers showed a strong usage of the interview and recommendation process in their evaluation of the financial condition of the Developer.

Of these groups, the Developers themselves felt that it was important as a criteria in over 94% of the responses. Likewise, the subcontractors, who never utilized an in-depth review of the financial statement in determining the financial viability of the Developer, indicates that in 91.4% of the responses that they do conduct interviews with others having done business with them.

The high rate of those relying upon the interview process indicates the reliability in the obtaining of information from party to party in the construction industry. Whereas General Contractors and Subcontractors did not rely at all upon the opportunity to review in detail the financial statement, they both overwhelmingly endorsed talking to those who had done business with the Developer; an indication of the importance of a good reputation.

Other responses to the question of what is relied upon in doing business with the Developer were quite informative. A number of responses other than those solicited by the investigators were identified in several ways. To best depict this area, each survey group will be discussed separately:



A. LENDERS

In 17.7% of the responses, the Lenders indicated that they rely upon the tax returns of the Developer to evaluate financial condition. No doubt in these instances the tax return is then compared with the information provided on the Certified Financial Statement to verify the accuracy of the reported numbers.

No other survey group indicated the use of tax returns as a means of determining financial condition. This shows the ability of the Lender to make a demand for information that others could not easily gain access to in their business dealings with the Developer.

This also confirms the high response on the part of Lenders that they undertake an In-depth review of the financial condition of the Developer.

B. OWNERS

Owners on the other hand recommended no other means of determining financial condition of their own group.

C. DESIGNERS

The designers listed two other means that can be utilized to evaluate the financial ability of the developer to perform it's obligations on the project, but they did so in only one response to each category, indicated a less than wide spread use of these otherwise good concepts.

These two items were first to obtain a retainer before proceeding with any substantial work on the project, and second to have the Developer set up a line of credit at the bank to cover the proposed expenses of the Designer during the preconstruction period.

Even though these items were mentioned but once each, the investigators see these as a means that should be considered more often by these two parties to the early stages of the design process.

D. GENERAL CONTRACTORS

Both Generals and Subs had a high percentage of other comments concerning establishing financial credibility on the part of the Developer. General Contractors indicated in 22.6% of the survey responses that they obtain a separate Credit Report from that of the Dun & Bradstreet report on the Developer.

In addition, another 28.3% stated that they only begin work on the project after they receive a firm commitment of financing availability from the Lender.

E. SUBCONTRACTORS

Similarly to the General Contractors, the Subcontractors reported in 31.4% of the surveys that they also obtain separate Credit Reports on the Developers with whom they are considering doing business.

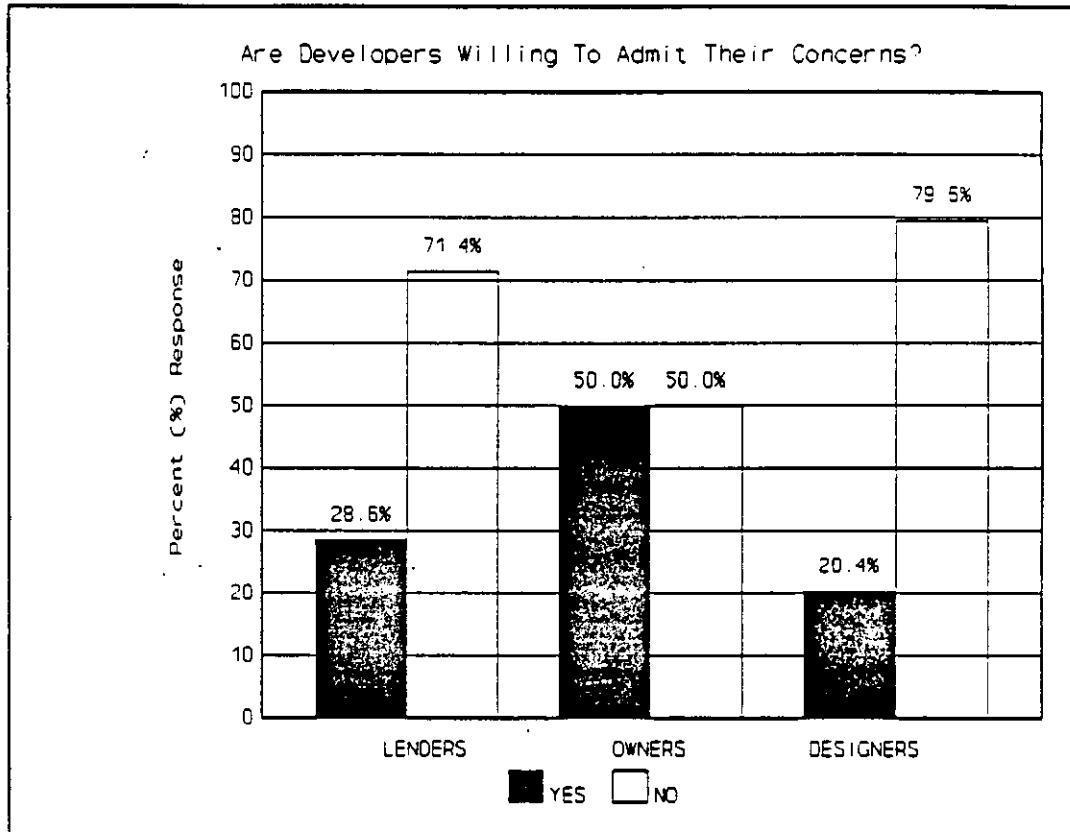
This indicates a strong independence on the part of many subcontractors to distinctly identify the financial condition of the Developers, even though they are in most cases not directly contracted with them on the construction project.

An indication of the high degree of reliance of the Subcontractors on the financial strength of the General Contractors with whom they do contract is shown in their second new response. Fully 57.14%, or the majority of Subcontractors listed as a "write-in" their dependence upon the Performance and Payment Bond of the General Contractor in determining the financial condition of the project. This is a significant factor. The Subcontractors obviously are looking to the party with whom they contract for payment, regardless of whether the Developer has the ability to pay or not. This is a factor often overlooked by many General Contractors, and is one of the primary concerns of the Subcontractor. This also demonstrates the importance to the Developer of using a General Contractor that is bondable.

7. Are Developers willing to admit concerns they may have about other projects that they own that might cause them financial setbacks?

() Yes () No

(Groups surveyed: Lenders, Owners, Designers)



The most interesting comment given by a Developer in response to the question dealing with the willingness of Developers to admit concerns they may have about other projects that they own that might cause them financial setbacks, was this, "I do, most don't!".

This attitude is no doubt a reflection of the overall attitude of Lenders and Designers to this question in reference to the Developers they do business with in construction. The prevailing comment by both groups is that Developers are not candid in their release of information about negative aspects of any projects, which could have a detrimental effect on their ability to obtain financing for the project being considered at the time.

Developers on the other hand were evenly split on this subject matter, with half of the group stating that there was a willingness to admit their concerns about other projects, whereas an equal group indicated that they would not be so inclined.

In discussing this matter with several Lenders, the investigators have found that this becomes a issue of some concern for the Lender, in that when currently built projects do not meet the cash flow requirements of the pro-forma established by the Developer, it will often lead to financial setbacks on the project being considered by the Lender for a new loan package. The proverbial "robbing Peter to pay Paul" principle becomes the Developer's only means of meeting the cash flow needs on existing projects, which only further complicates the picture for the Lender, Designers, and Contractors involved in the construction loan.

To overcome this area of concern, several Lenders indicated that steps have been taken by their Construction Loan Departments to assure that the loan proceeds are disbursed only to meet the established draw schedule for the project under their construction loan agreement.

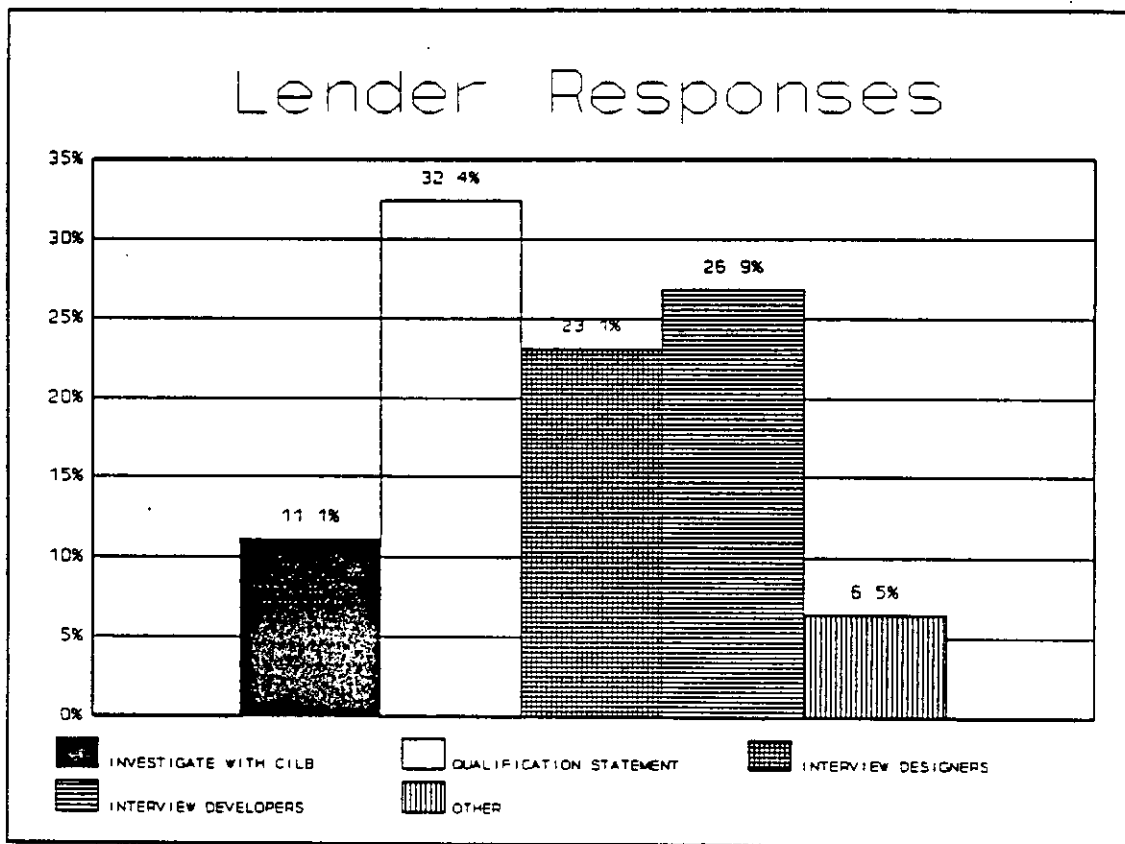
In addition, some Lender comment in this area included the taking of steps to accurately assess the financial condition of existing projects of the Developer, including a review of pre-sales or leasing, interest reserves, and cash flow projections as compared to the actual results on a month by month basis.

8. What steps do you take to assure that a reputable Contractor is being utilized to construct the project?

(Please list all) Rank 1 = most important

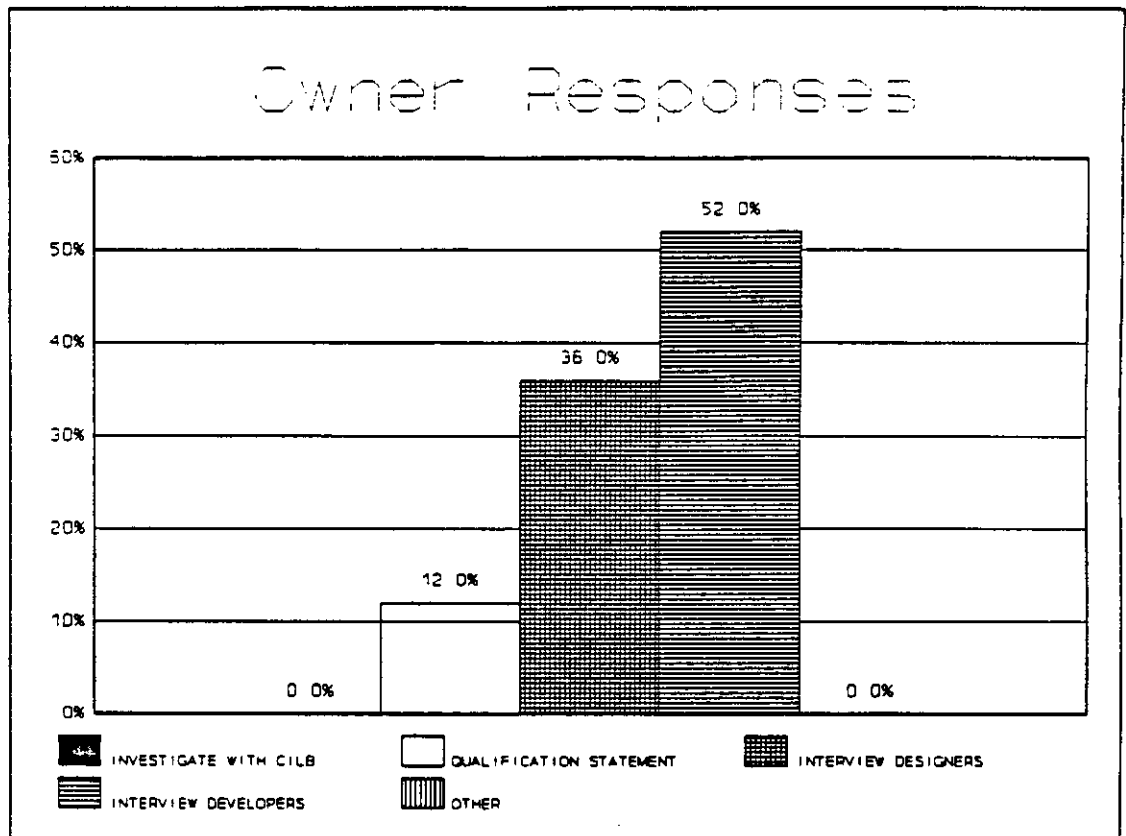
- () Investigate with the Construction Industry Licensing Board
- () Submittal of Contractors Qualification Statement
- () Interviews with Architects and Engineers
- () Interviews with other Developer clients of the Contractor
- () Other

(Groups surveyed: Lenders, Owners, Designers)



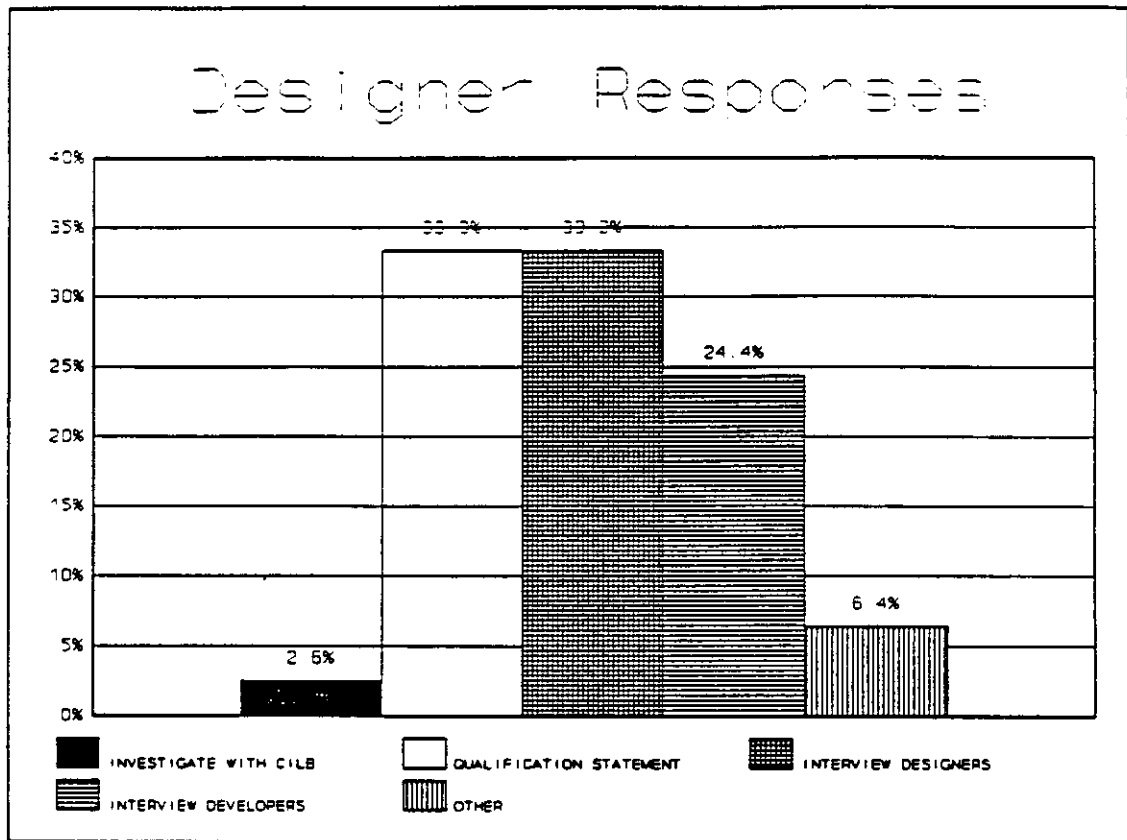
Each of the Survey response groups are tabulated and graphed individually on the following pages, followed by the discussion of each group response.

Owner Responses



Owner response to clearly indicate a strong reliance upon interviews with the Designers with whom they have contact in the industry.

Designer Responses



Designers it is clear overwhelmingly rely upon the Contractors Financial Statement and the interview process.

In order to thoroughly review each of the various responses by group, it is necessary to review each of these responses by comparing each groups use of the available means to select a reputable contractor.

A. Construction Industry Licensing Board

Of the most significance in the above charts is the fact that very little investigation with the Construction Industry Licensing Board takes place with any of the respective groups.

The only response group indicating any measurable use of the Licensing Board was that of the Lenders which indicated on less than 12% of their surveys that this was a method utilized by them.

None of the responding Owners, and only 2.6% of the Designers took advantage of this as a primary means of determining that a reputable Contractor was being utilized in building the project.

B. Contractor's Qualification Statements

Of the individual groups, the Designers utilized the Contractor's Qualification Statement most frequently, at 33.3% of the time, which is understandable in that the form most often utilized for this purpose was developed by the American Institute of Architects, AIA Document A305.

The use of the Qualification Statement was also reported by a large percentage of the Lenders, who chose it in 32.4% of the survey responses.

Owners recognized this report as an important tool in evaluation of Contractors in only 12% of the respondents comments. This is possibly due to the fact that many owners rely upon their Designer to undertake this evaluation and recommendation of prospective bidders.

C. Interviews with Architects and Engineers

Both Owners and Designers indicated in approximately one-third of their responses that conducting of interviews with other professionals was a primary tool which can be used effectively in selection of the Contractor. Clearly, the opportunity to make contact with other professionals is important to the Designer, and it appears that the Developers have an equal or greater interest in inquiring into the relationships that previous Designers have had with the prospective Contractors. Owners noted a reliance on this personal contact three times as often as they did on the written Qualification Statement of the Contractor.

Lenders had a drop off to only 23.1% in their listing this option as a viable method for them to utilize. Again, this indicates a stronger inclination of the Lender to rely upon the written document as opposed to personal contact and opinions of the performance. This is no doubt indicative of the Lending industry's overall interest in meeting of certain measurable levels of financial capability.

D. Interviews with other Developer clients of the Contractor

Owners led the way again in the area of contact with those having done business with the Contractor they are considering. in a 52% majority, Developers reported this as the option they most often select, if possible.

E. Other steps utilized to investigate the Contractor

Other methods of investigation noted by the groups were as follows:

1) Lenders:

- a) Credit Reports on the Contractor.
- b) Only utilizing quality regional Contractors.
- c) Bonding capability of the Contractor.
- d) References of local Subcontractors and Suppliers.
- e) Contact with local Law Firms and Realtors.
- f) Require Contractor to provide an audited statement.

2) Owners:

- a) No other steps listed.

3) Designers:

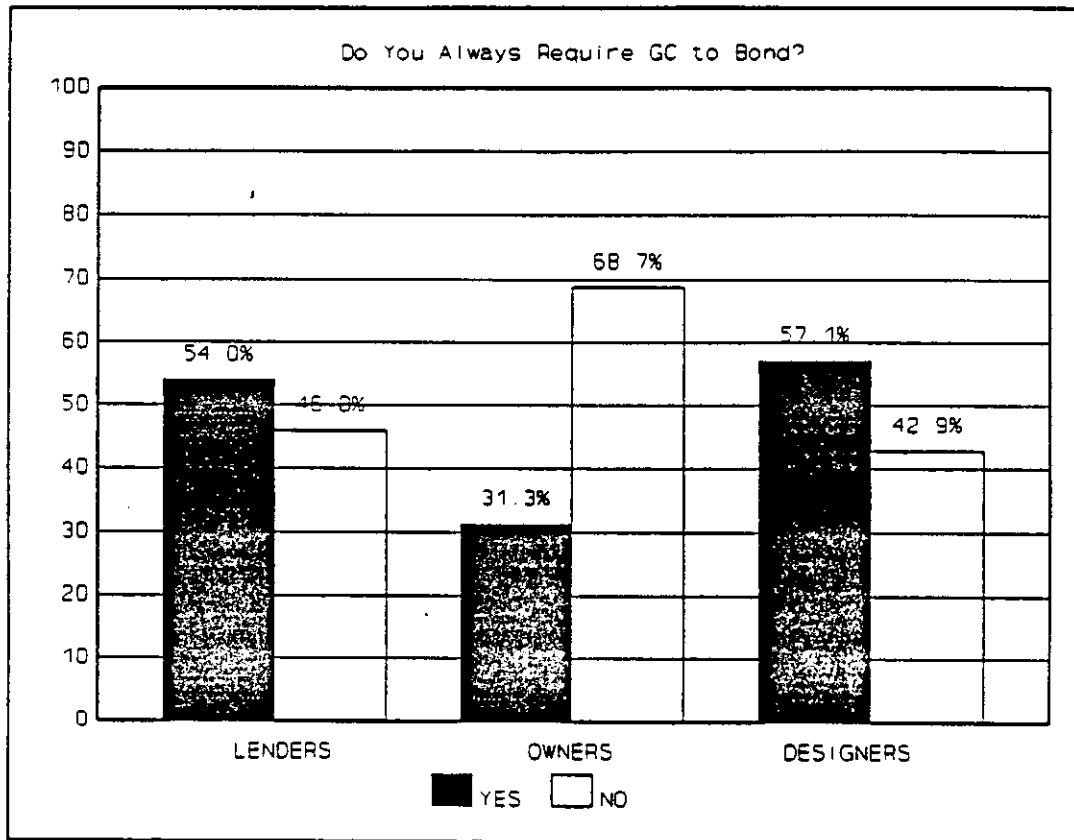
- a) Check with Architects and Suppliers knowledgeable of the Contractor that were not listed by them.
- b) Bonding capability.
- c) Recommend that the Developer negotiate with only Contractors of known capabilities.
- d) Street talk about the Contractor.

The above responses are self explanatory, however it is noteworthy that both Lenders and Designers indicated confidence in their ability to find out how the General Contractor performs by contacting the Subcontractors and Suppliers in the area. This is an important way to determine how the Contractor treats it's Subcontractors and Suppliers.

9. Do you always require the General Contractor to provide a Performance and Payment Bond?

() Yes () No

(Groups surveyed: Lenders, Owners, Designers)



By a slight majority, both Lenders and Designers indicated that they always require or recommend the use of a Performance and Payment Bond on all construction contracts of the Developer. From the Lender's perspective, there is a greater degree of assurance that the construction will be construction to meet the "performance" standards of the drawings and specifications.

All "payments" will be made by the Contractor when a Performance and Payment Bond is required to be furnished.

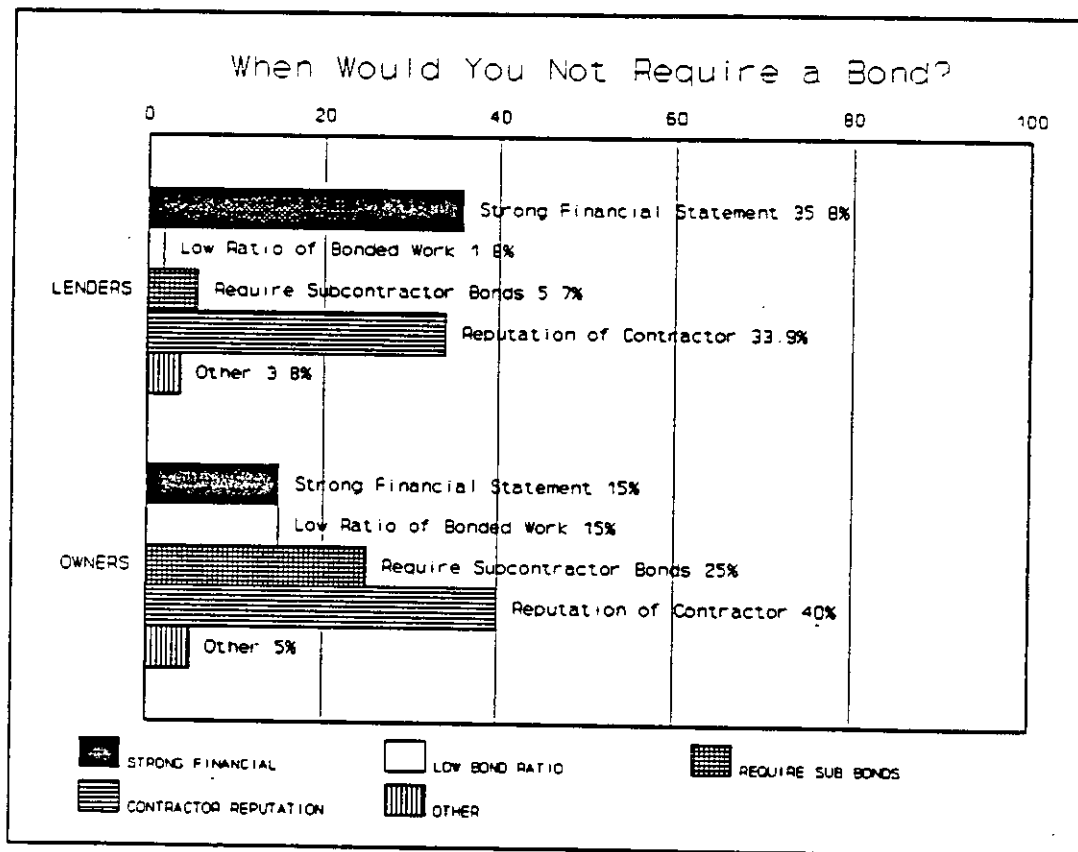
From the point of view of the Designer, in addition to the above assurance, there is the added incentive for the Contractor to provide these bonds. This additional reason is in the area of Contract Administration on the part of the Designer. When no Payment Bond is provided by the Contractor, there continues to be a greater obligation on the part of the Owner to assure that proper payments have been made to all Subcontractors and Suppliers of the General Contractor. This obligation is usually delegated to the Designer as the Owner's Agent to certify progress payments to the Contractor.

Owners seem much less inclined to insist upon the providing of Performance and Payment Bonds by the Contractor. Only 31.3% of the Owners responding to this question indicated that they always require that these bonds be issued. This could also be based on the factor of initial cost, which is approximately one (1%) of the overall cost of the project for the Contractor to provide these bonds. Also, in some cases, the Owners with whom the investigators discussed this issue, did not see the importance of the Performance and Payment Bond. No doubt some of these Owners are ultimately educated about the importance of the bonds by both Lenders and Designers.

10. If not, under what circumstances would you not require a Performance and Payment Bond? (Please list all that apply)

- () Strong Contractor Financial Statement
- () Low ratio of current bonded work to total bond capacity
- () Requiring Contractor to bond major Subcontractors
- () Reputation of Contractor
- () Other

(Groups surveyed: Lenders, Owners)



A. Lender Responses

Lenders, in the previous question indicated in the majority of responses that they always require the Contractor to provide a Performance and Payment Bond.

In this response the Lenders continue their reliance upon the financial condition of the Contractor when they do allow for the elimination of bonding.

As would be expected, Lenders rely upon a strong Contractor Financial Statement more than any other form of substitution for the Performance and Payment Bond, which was listed as a response on 35.8% of the surveys. Second to the Financial Statement in the mind of Lenders as justification for not requiring the bonding of the General Contractor was the firm's reputation, which was noted by 33.9% of the lending institutions.

Apparently having a low ratio of currently bonded work to total bond capacity is not a factor considered by the financial institutions, as this was listed by only 1.8% of those responding. Likewise, the Contractor's requirement to bond major Subcontractors on the project does not appear to have much influence on the decision of the Lenders to require the General Contractor to also bond the project, as just 5.7% of the Lenders agreed to this as a factor in their decision.

Other factors identified by the Lenders as items which would impact their decision to not require the Contractor to bond the project included two items. The first item noted was having the General Contractor provide a personal guarantee of performance. Second, and similar in nature was for the General Contractor to provide a Letter of Credit to be deposited to guarantee the performance of the company.

B. Owner Responses

The primary reason noted by Owners in their response as a justification for waiving the requirement for bonding by the General Contractor was the reputation of the firm with whom they were doing business. Secondly, the Owners agreed that having the major Subcontractors bond their work was an acceptable alternative. This response indicates an understanding on the part of these Owners in that having bonds on both the General Contractor and the major Subcontractors is considered by many in the construction industry as in effect having double bonding on the project, which quite naturally is an additional expense to the developer.

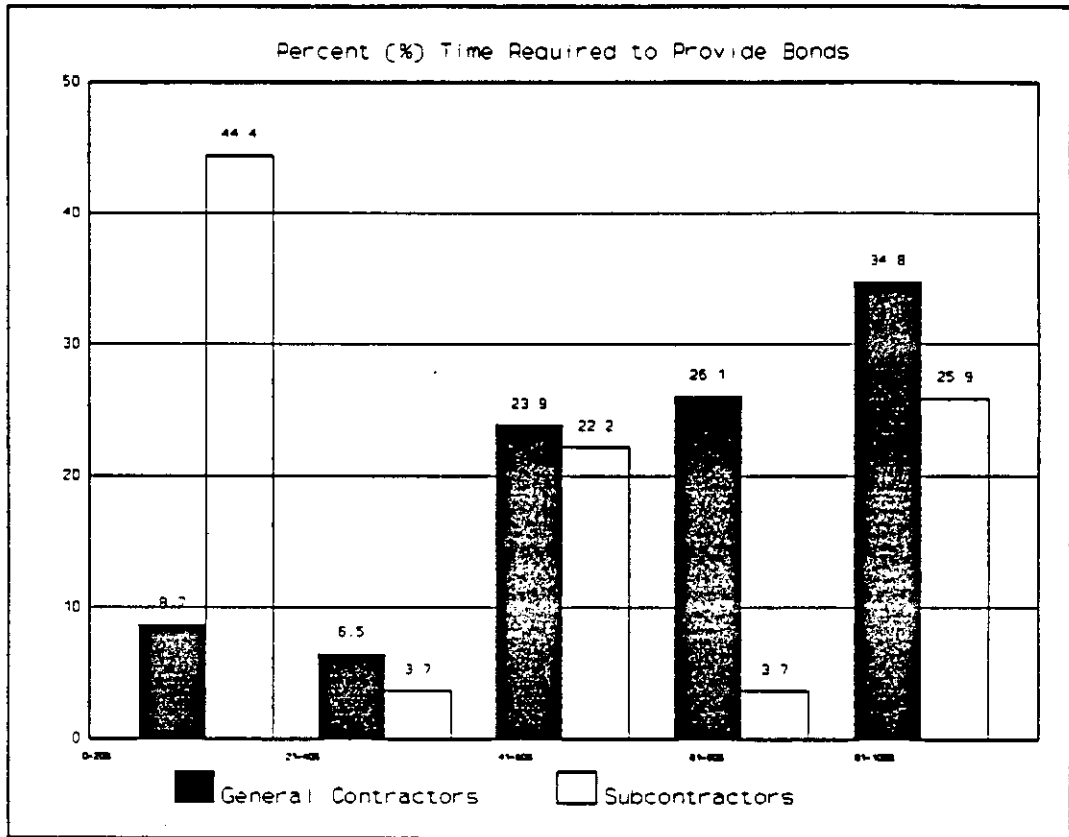
A strong financial statement and low ratio of bonded work to total bond line were equally listed in just 15% of the Owner responses to the survey, indicating little interest in these areas.

The only other item listed by Owners as an alternative action for consideration was to utilize only Contractors who were allowed to bid the project by "Invitation Only". This process obviously eliminates any undesirable Contractors, and provides the Owner and Lender with the assurance of a satisfactory Contractor regardless of the ultimate low bidder. Note: The General Contractors and Subcontractors were asked the following companion question in regard to the requirement to provide Performance and Payment Bonds on private projects.

11. What percentage of the time are you required to provide a Performance and Payment Bond on private construction projects?

_____ %

(Groups surveyed: Generals, Subs)



In analyzing this question, it should first be noted that the Performance and Payment Bonds provided by General Contractors and the Subcontractors are typically written to the benefit of different parties, or Obligee. Surety bonds are issued by the Contractor as the principal.

The bond is to the benefit of the Owner, as Obligee. Subcontractor bonds are written with the Sub, as principal to the benefit of the General Contractor, not the Owner. One secondary benefit to the Owner of Subcontractor bonds is the additional assurance of their contract performance.

There is a dramatic difference in the reported degree of bonding on the part of General Contractors and Subcontractors.

The majority of General Contractors (54.9%) are required to bond on over 60% of their construction contracts, with nearly 35% being required to bond over 80% of the time. This is indicative of the fact that Lenders also indicated in a majority of the construction loans that they require the bonding of the General Contractor.

Subcontractors are almost as likely not to be required to provide a Performance and Payment Bond to the General Contractor. The majority of Subcontractors (51.8%) responding stated that they are required to bond their contract with the General Contractor on less than 40% of their contracts. This response is also a good confirmation to the fact that neither Lender nor Owner considered the bonding of the Subcontractor to the General Contractor as a viable alternative to the bonding of the General. This then leaves the decision to bond the Subcontractor as a business decision of the Contractor.

In today's economy, the difference of the cost of a Sub bond, approximately 1% of it's contract value, could be the difference between obtaining the contract and being the second bidder. Therefore, fewer sub bonds are being required.

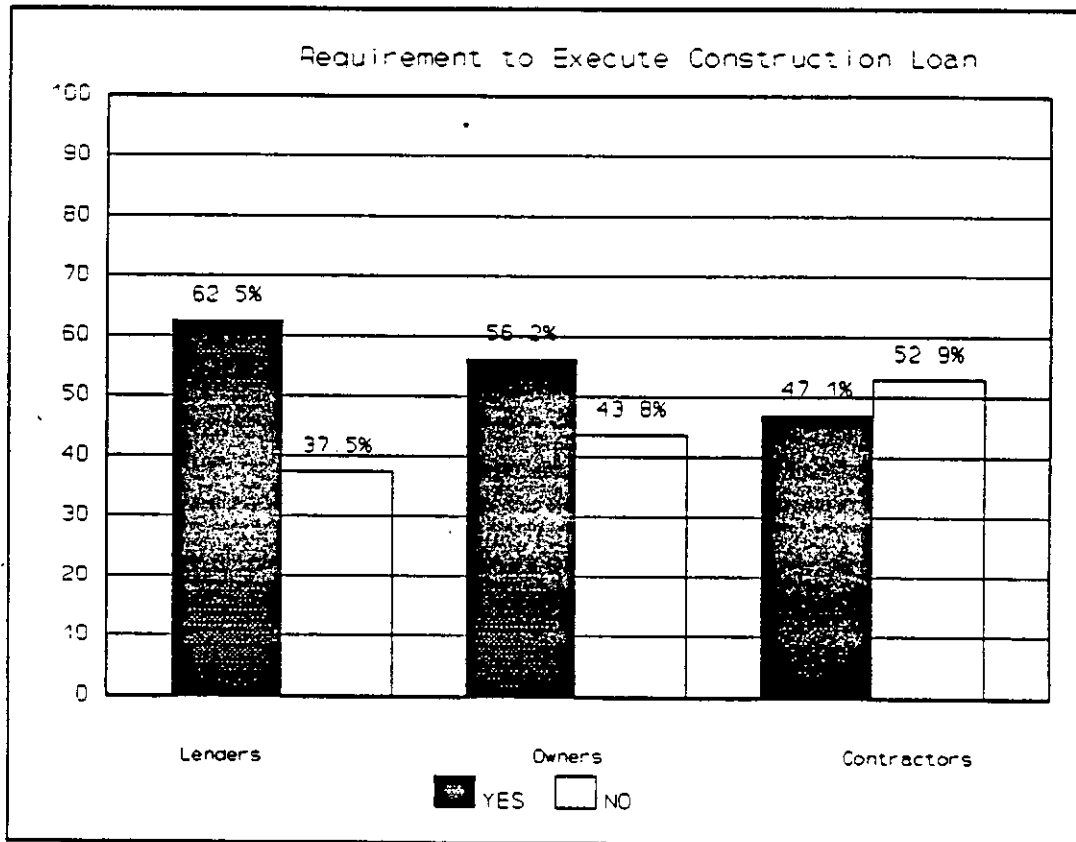
Only one subcontractor in four indicated that they are required to bond on over 80% of their subcontracts. It is quite possible that these are the major mechanical and electrical subs which are often the primary subs on the project, and also the most likely to be bonded.

12. Do you require the Contractor to execute the Owner's Construction Loan Agreement?

() Yes () No

Note: This question was also asked of General Contractors as to whether they are required to execute the Owner's Loan Agreement.

(Groups surveyed: Lenders, Owners, Generals)



A. Overview of the Requirement to Execute the Construction Loan

As an introduction to this issue, it is important to understand the principle behind this demand. First, the Lender makes the construction loan to the proposed Developer.

The Developer accepts the terms of the construction loan documents as a prerequisite to obtaining the financing.

Each party anticipates a smooth construction and development of the project, however the Lender needs a fall back position in the event of default for any reason on the part of the Developer. This concern brings up the subject of "Contract Privity", wherein the only parties to the Construction Loan are the Lender and the Borrower; and the Lender wants to be certain it stays that way.

Therefore, in order to preserve this separation, the Lender often (62.5% of those responding) requires that the Contractor execute the Construction Loan, thereby agreeing to perform the obligations cited within it in the event of default by the Borrower (the Owner). The execution is usually unilateral on the part of the Contractor, meaning that he agrees to undertake this obligation, without the Lender agreeing in advance to do anything. This is done by the Lender to attempt to preserve their separation from any obligation to the Contractor. To accomplish this, the execution of the Construction Loan by the Contractor is often referred to as a "Contractor's Consent" or in some cases "Assent".

Detailed below is a typical Assent required by banks within Florida, which serves to bind the Contractor to the following terms and conditions:

ASSENT BY CONTRACTOR

The undersigned hereby certifies that it is the general contractor for Owner for the construction of improvements, and in consideration of the making of loan by Lender, the undersigned agrees to be bound by the terms of this agreement insofar as any act is required of the contractor by this agreement, and further agrees to perform the same, regardless of the fact that the terms of this agreement may conflict with the construction contract, and the undersigned hereby subordinates it's lien on the Property to the lien of the Mortgage. Any loan funds received by the undersigned shall be used only to pay for costs which are authorized hereunder. The undersigned agrees that in the event of default by Owner under the Construction Loan Agreement, it shall at Lender's request continue performance of the construction contract in accordance with it's terms and this agreement, provided it is reimbursed in accordance with the contract and this agreement for all work, labor and materials provided by the undersigned. By executing this assent, contractor shall not be deemed in privity with Lender.

The above is typical of many such assents that are used by financial institutions both in Florida and throughout the country. For the Contractor these documents present several problems, which are listed briefly herein:

1. In many instances the first time that the Contractor sees this document is when the firm is requested to come to the loan closing and execute it. There is no time to review either the overall Construction Loan Documents or even the Assent.
2. In one brief statement, the Contractor agrees to be bound to the Lender's Agreement with the Borrower even when the Construction Contract conflicts with the terms.

This clause says, "the undersigned agrees to be bound by the terms of this agreement insofar as any act is required of the contractor by this agreement, and further agrees to perform the same, regardless of the fact that the terms of this agreement may conflict with the construction contract". Some insist that this is only in the case of a default by the Borrower, but the simple reading of the entire Assent makes it clear that such is not the case. The Contractor by executing the Assent agrees to abide by all of the Terms and Conditions of the Borrower's Loan even during the satisfactory construction of the project. Terms often included within this deal with draw schedules, construction liens, appropriation and disbursement of funds, etc.

3. The Contractor agrees to subordinate it's Claim of Lien on the property to that of the Lender's Lien of Mortgage.

4. The Contractor acknowledges that it will only use the funds drawn to pay for improvements to the project. This could be interpreted to establish what is referred to as a segregation of accounts, whereby the Contractor could not use the excess funds included as Overhead and Profit to pay for other expenses of the company normally not considered as project costs.

5. The Contractor agrees unilaterally to complete the project for the Lender in the event of owner default.

However, the agreement to complete is "... only at Lender's request", meaning that if the Lender does not make such a request, then the Contractor will not be allowed to finish the project and collect for it's performance.

6. The Assent specifically states that by this execution, "Contractor shall not be deemed in privity with Lender." Most contractors discussing this issue feel that this is improper, and that if the Lender wants the Contractor to execute this document, that it should be a bi-lateral agreement also executed by the Lender.

The above is only intended to provide a backdrop for understanding the survey question as to whether a General Contractor is required to execute the Construction Loan Agreement, and if so under what circumstances, which is addressed in the next survey question.

B. Lenders Response

Not surprisingly, the Lenders lead the way in insisting upon having the General Contractor execute the Owner's Construction Loan Agreement, requiring that this document be executed by the General Contractor in 62.5% of the responses.

The above Assent makes it abundantly clear that there is every advantage to the Lender to require the execution of the Construction Loan Agreement, and for the Lender, no reason not to require it.

All of the options remain with the Lender, the Contractor has none, except to refuse to perform under the contract, which is the lifeblood of the company.

The actual surprise for the investigators was that only 37.5% of the Lenders indicated that they did not require it to be executed.

B. Owners Response

Owners were more evenly split in this area, indicating in 56.2% of the responses a requirement that the Contractor execute the Loan Agreement, and in 43.8% of the surveys that they did not require it. Interestingly to the investigators were the number of Owners that indicated in conversations that they did not have any understanding with the Lender in advance of the Construction Loan Closing date that the Contractor would be required to execute the Agreement. Otherwise, the Owners stated they would have requested the Designer to include the provision in the Supplementary Conditions of the Specifications. By omitting such a reference, some have expressed concern regarding their ability to insist upon it at the time of the Loan Closing. Albeit, there may not be any prerogative on the part of either the Owner or Contractor if the Loan Closing is going to take place.

C. Contractors Response

The response of Contractors was as expected with a slight majority indicating that they are not required to execute the Agreement. At first, this may not seem to compare to the overwhelming position of the Lender to require the execution.

The response does begin to make sense when one considers that some Contractors may ultimately either not execute the Assent, or through intense negotiations they gain some concessions on the terms of the agreement.

The position of the parties is further clarified in the review of the following question regarding the "Terms & Conditions" under which the Construction Loan Agreement operates.

13. If execution of the Construction Loan Agreement is required, what are the terms which require the Contractor to finish the project in the event of default of the Developer?

(Groups surveyed: Lenders, Owners, Generals)

Of those responding to the survey that expressed an understanding of the meaning of the execution by the Contractor of the Construction Loan Agreement, it is a fair summary of the responses to state that the almost unanimous list of the terms of the agreement are as follows:

In the event of a default by the Developer, the Contractor agrees to complete the project under the terms of the Construction Loan Agreement for the Lender, at the Lender's sole option.

Based upon the above summary interpretation of the typical response to the question, the following comments are offered in way of analysis.

A. Lenders

In responding to this question, 100% of the Lender's answering the survey listed the above statement, or a very close variation of it. One responded that, "the Contractor agrees to complete for us, just as if we were the Owner."

B. Owners

Of the Owners responding to the survey, 55% listed the above summary as the terms of the execution. However, fully 45% were not sure what the terms of the agreement were for the Contractors Assent.

C. Contractors

Contractors on the other hand knew well what the terms were; not surprising since they are the entity that is required to finish the project in the event of the Developer's default. Nearly 80% of the Contractor's listed the above requirement as the terms of the agreement. However, 8.3% of those General Contractors responding indicated that they will only execute the agreement after reaching a full agreement with the Lender to agree to finish the project, or to pay them for all work performed through the date of the default.

The frustration of the Contractors in this area are highlighted in the response of one Contractor, which is quoted in excerpt below:

"Lenders seem predisposed to appeal to the bureaucratic process when it comes to any discussion of modification to the standard agreement. The Contractor must persist in his attempts to reach any reasonable modification.

Even on the rare occasions when we have been successful in our attempt to modify the Agreement between Contractor and Lender, should a problem develop, the Lender typically acts as though the Agreement did not exist."(emphasis added by investigators)

From the comments of the Contractors, and the letters attached and forwarded to the attention of the investigators dealing with this matter of the Construction Loan Agreement execution, it is clear that this is an "open nerve" to many Contractors.

Another vivid example of one such letter is listed in excerpt as follows:

"As a condition of closing any construction loan, the lenders were requiring that the general contractor sign a document that allowed the lender to completely abuse the GC (emphasis added) in the event of borrower default ... of course, the loan documents were never available for review until the day of the loan closing.

Most contractors are given little advance warning of the requirement and are never given enough time to adequately review the incorporated documents.

As a result, our company has quit doing work for owners that had to borrow their construction funds from banks and S & L's. Fortunately, we were large enough to successfully make this change. 99% of the state's contractors cannot successfully make this change."

The above is a recurring theme in many notes and comments by contractors required to execute the Construction Loan Agreement.

Two Contractors responding to the survey provided copies of alternative arrangements that they had been able to negotiate successfully with Lenders. These are attached to the survey (with Lender, Borrower, and Contractor names omitted). For the purpose of further analyzing this question, limited excerpts of these agreements are listed below.

The first is a part of an overall six page agreement executed by Lender, Borrower and Contractor.

The provisions dealing with the default of the Borrower are as follows:

"In the event the Borrower defaults under the Contract, ... then the Contractor will continue performance under the Contract for the Lender; provided, however; (i) the Lender authorizes Contractor to continue the work, ... and (ii) the Lender, ... agrees to pay or cause to be paid to Contractor all sums due for it's work, ... and agrees to continue to pay the Contractor.

Should the Lender not elect to have the work completed, ... then the Lender shall pay Contractor for all work through the date on which the Borrower defaulted." (emphasis added)

The second Contractor had negotiated a much simpler agreement with the Lender, but one which seems equally effective. This agreement was signed only by the Lender and the Contractor, and states in part:

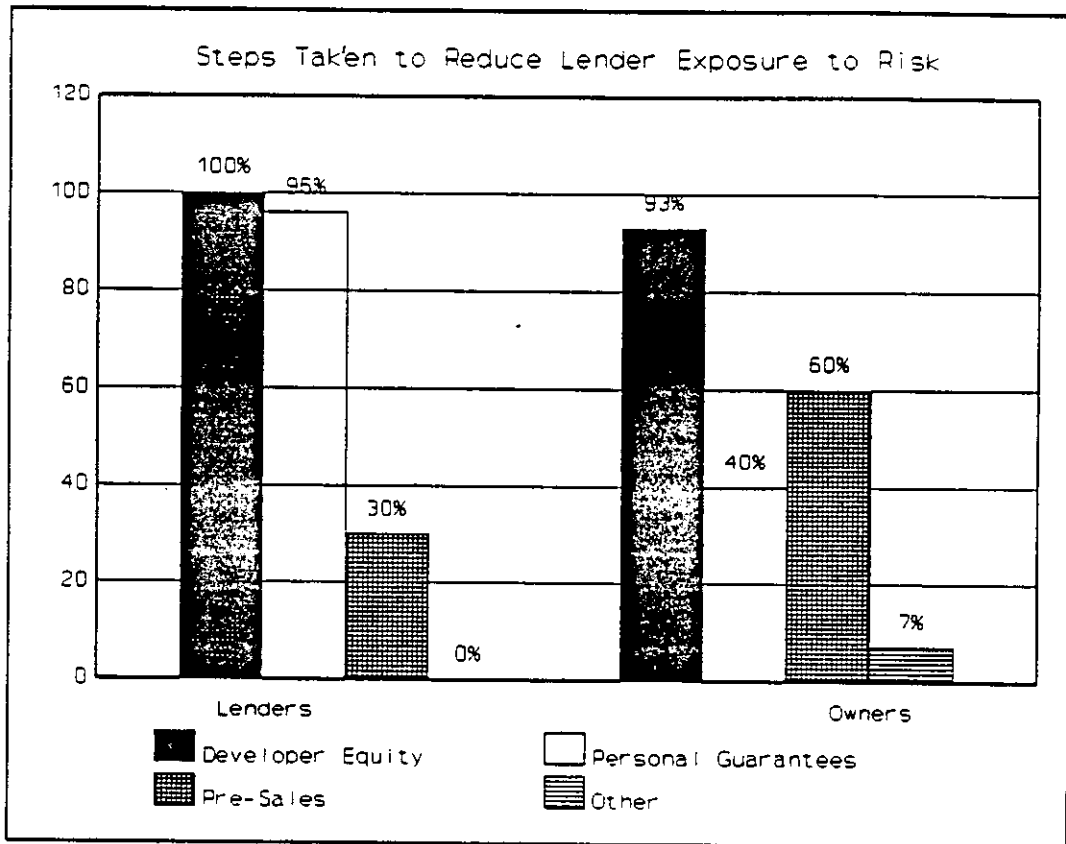
"In the event of any default of the loan agreement between the Owner and Lender, we (the Lender) will promptly notify you, and unless such default be due to your own nonperformance we will make disbursement as above for all sums earned under the contract, including any retainage, (emphasis added) for work performed and approved by the Owner's engineer through the date of such notification of default."

In each of the above cases, the Contractors were able to reach agreement with separate Lenders, and were able to get the Lender to jointly execute an agreement along with the Owner assuring that certain minimum assurances were given to the Contractor in exchange for the Contractor's having provided it's Assent to complete the project in the event of default by the Owner.

14. What steps are to be taken to reduce the Lender's exposure when making construction loans? (Please list all that apply)

- () Developer equity
- () Personal guarantees
- () Pre-Sale or Pre-Leases
- () Other

(Groups surveyed: Lenders, Owners)



A. Developer Equity

Lenders and Owners alike demonstrated a strong reliance upon the equity placed in the project by the Developer as the most effective means to reduce the risk of making a construction loan to the Lender.

The above excerpts are included to demonstrate that it is possible for the diligent Contractor to negotiate an alternative to the "standard" Assent with certain Lenders.

Other points of the terms and conditions of the Assent will be discussed in additional questions posed in the survey.

Lenders acknowledged this area 100% of the time, and Owners notes it on 93% of their responses.

B. Personal Guarantees

Lenders also identified personal guarantees as their second choice for minimizing their risk of loan failure on 96% of their responses, whereas Owners only selected this as a choice on 40% of their survey responses. This may well be because Owners are more willing to place substantial equity into a project than they are to personally guarantee the loan. This remains an area of insistence by most lenders, but still the Owner holds out hope of avoiding the position of putting their personal net worth on the line to obtain the loan.

C. Pre-Sales or Pre-Leases

Again showing the preference of the two parties, it is not surprising to see that Lenders are willing to rely upon Pre-Sales or Pre-Leases of the project to perceptively reduce their risk in only 30% of the group responses. Owners, however saw this as a viable alternative to Personal Guarantees, and noted it on 60% of their comments.

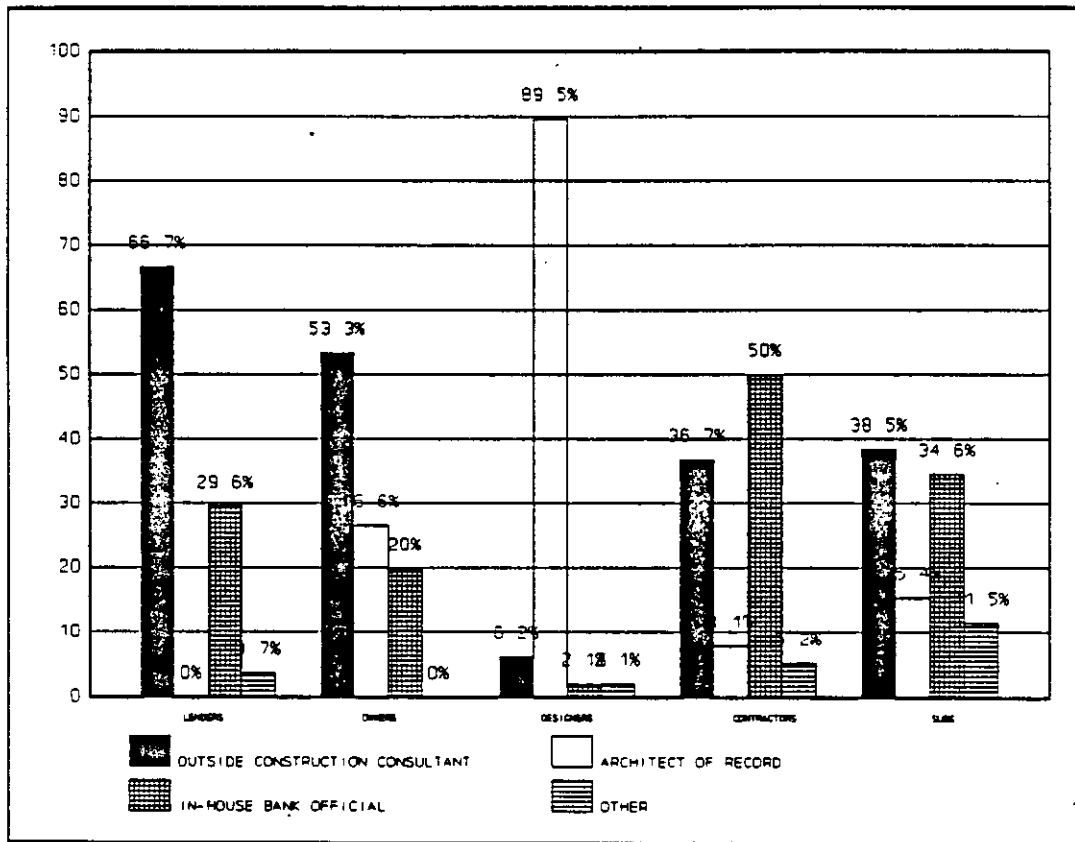
D. Other

Only one suggestion was listed as an additional alternative to reducing risk in the making of a loan, and this option was written in by an owner. This suggestion was to "rely upon the track record of the Developer". It appears Lenders do not see this was a way to reduce their risk, since none found this as a means to accomplish the stated purpose.

15. What is the most reliable method to monitor the monthly construction draw to insure that the project is not overdrawn? (Please list all that apply)

- () Outside Construction Consultant
- () Architect of Record
- () In-House Bank Official
- () Other

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



As evidenced by the above graph, it is clear that there are some territorial differences as to the most effective manner in which to inspect the project for the construction draw. It should be noted for clarification, this question was not asking which party should inspect for conformance to plans.

This inquiry was merely trying to ascertain the attitude of the various groups as to the best way to assure that the construction contract is not overdrawn.

A. Lenders

Lenders in 66.7% of their responses chose to rely upon the services of an Outside Construction Consultant, and never mentioning the Designer of Record. They did indicate in 29.6% of their responses that the use of an In-House Bank Official was an efficient way to accomplish the task.

B. Owners

Owners agreed with the Lender in the majority of their survey responses (53.3%) that the Outside Construction Consultant was the best available source for draw review. They did however identify that the use of the Designer of Record was an acceptable alternative on 26.6% of their responses, and that the In-House Bank Official would also be possible in 20% of the surveys.

C. Designers

The designers were unified in their selection of their own firms to perform the draw inspection. In nearly 90% of their survey responses this was the inspection method of their choice. No other selection received enough attention from designers to warrant an explanation. Inspecting for the draw is a part of the AIA Agreement, and the designers do not seem inclined to agree that any other way is better.

D. General Contractors

Being the party that is making every effort to collect the draw from the Owner; the General Contractors varied considerably from the responses of the Lender, Owners and Designers.

Whereas Designers chose to inspect the project themselves almost 90% of the time, the Contractors responding to the survey indicated this as a choice in only 8.1% of their responses.

Instead, the General Contractors believe that an In-House representative of the Lender is the best party to do the inspections, as indicated by their 50% response to this category. Second to the In-House Inspector, the Contractors chose the use of an Outside Construction Consultant on 36.7% of their surveys.

This may be due the fact that the General Contractor believes that they will be able to complete the draw inspection quicker with the Lender than with the Designer, particularly when it comes to actual timeliness of processing of the financial paperwork necessary to collect a draw request. By having it certified by the Lender's Consultant or an In-House Bank Official, the General is one step closer to getting paid.

E. Subcontractors

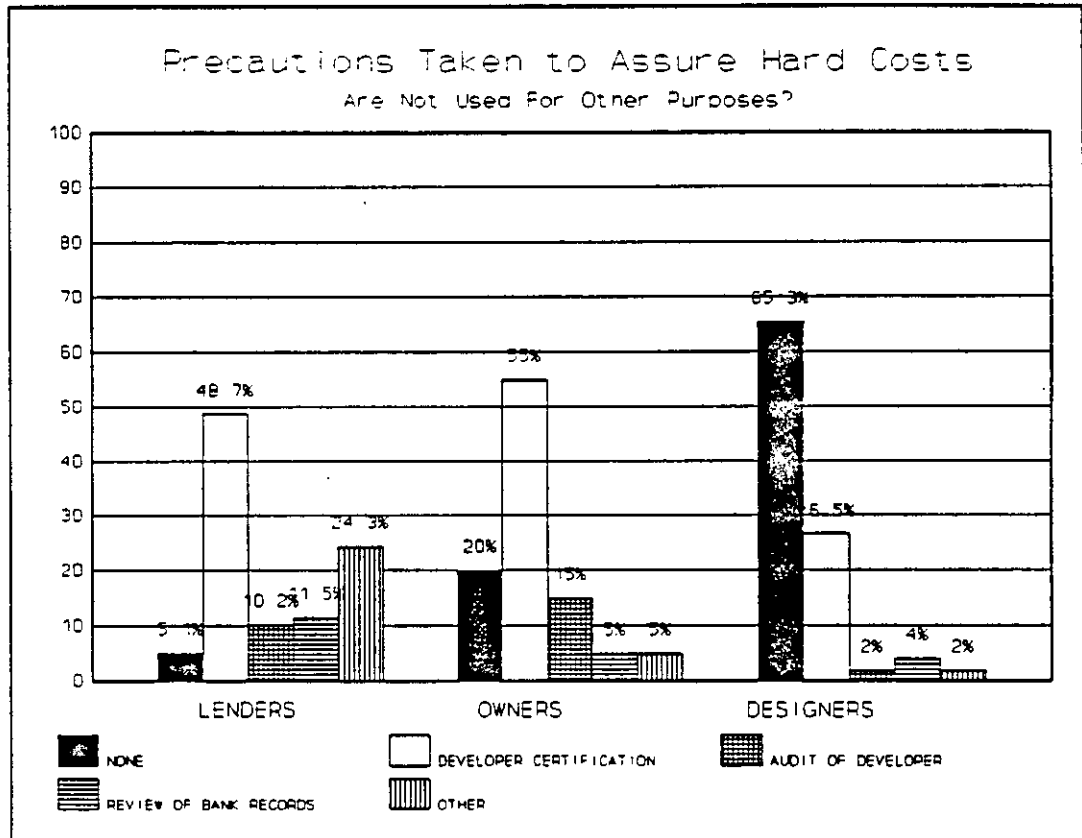
Subcontractors generally followed the pattern of the General Contractor in agreeing that the Outside Consultant (38.5%), and the In-House Bank Official (34.6%) were the two best qualified to review the draw.

Subcontractors did identify on 15.4% of their surveys that the Designer was most qualified to perform this function.

16. What precautions do you take to assure that the Developer does not take dollars drawn for hard costs to pay soft costs on the project, or to pay for costs on other project? (Please list all that apply)

- () None
- () Developer certification of disbursements
- () Audit of Developer records
- () Review of Developer Banking records
- () Other

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



This question is asked is to determine which parties, if any, undertake to assure that the costs drawn by the Developer are actually being used for the construction of the project, or "Hard Costs" as previously explained.

In some of the interviews with General Contractors, this was expressed as a concern. It appears from these discussions that some Contractors have been left unpaid, or at least have had payments delayed because the Owner takes all or a portion of the draw request to meet other financial obligations. Those contractors with whom this was discussed believed that there should be some prohibition against this type of action.

A. Lenders

Fortunately, from the General Contractors perspective, only 5% of the Lenders acknowledged that they did nothing to assure that the draws were being used properly. In almost one half of the responses (48.7%), the Lenders indicate that they require the Developer to certify the use of funds drawn from the construction loan. In another 21.7%, the Lenders indicated that they either audit the records of the developer or review their banking records. In 19.3% of the responses, the Lender also added the requirement to receive back executed lien waivers on every draw, or in some cases issued joint checks. Included among this group of other responses there was one response which called for a title update every month to assure that everyone was getting proper payments.

B. Owners

The owners responding to how the Lender confirms their use of the funds also indicated that the Lender relies upon their certification of use of the funds. This was the response of 55% of the Owners responding to the survey.

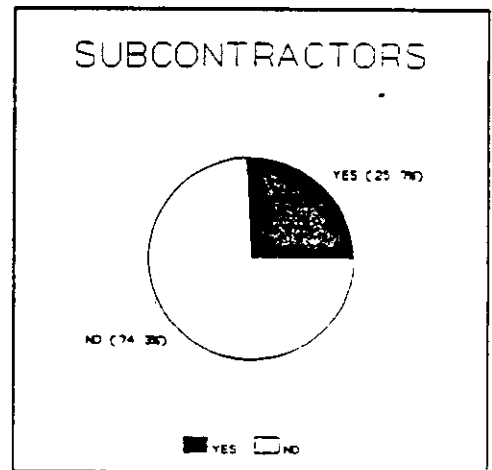
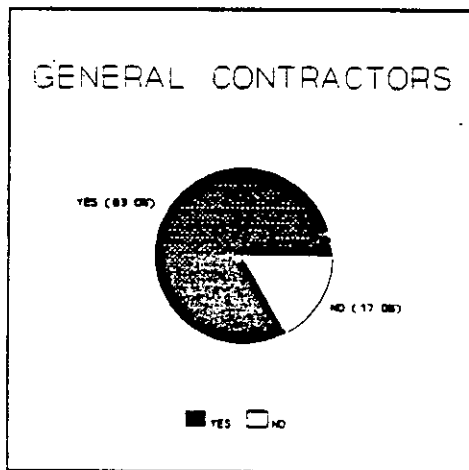
However, another 20% indicated that the Lender did nothing to confirm their use of the funds. This is in contrast to the Lender's response that this only occurred 5% of the time.

C. Designers

This group indicates that they do not take any precautions as to the Lender's use of the funds from the draw in 65.5% of their survey responses. This is a very high total as seen from the chart, particularly considering that the lenders indicated that they let this slip by in only 5% of the cases. This may indicate the reliance of the Designer upon the Lender's certification of Developer disbursements, which also was the designer's second selection at 26.5% of the time.

D. General Contractors and Subcontractors

Generals and Subs were asked the similar question regarding their efforts to substantiate draw usage:

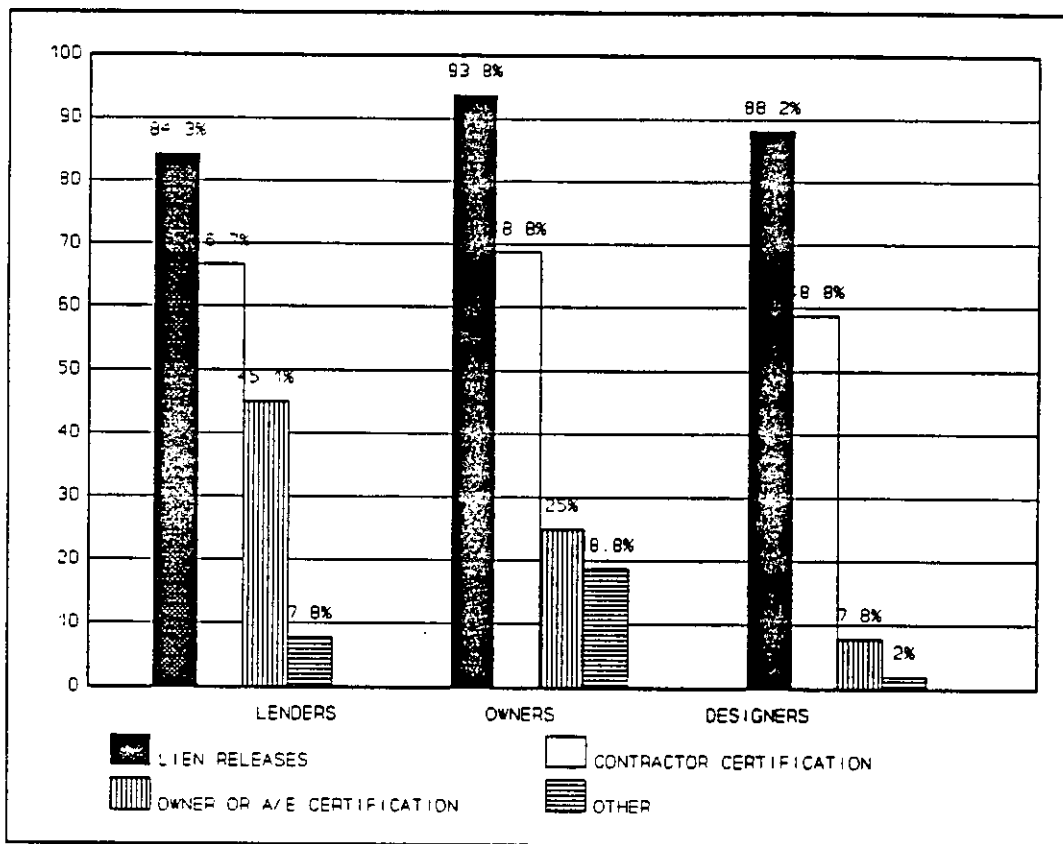


The above contrast is clear, and self explanatory. General Contractor do undertake to see that the draws are properly applied 83% of the time, whereas an almost equal amount of Subcontractors (74.3%) make no such effort.

17. What precautions do you take to insure that the Contractor pays the Subcontractors, Suppliers, and Materialmen on the project on a timely basis? (Please list all that apply)

- () Lien releases on all Subcontractors
- () Certification by the General Contractor
- () Certification by Owner and Architect
- () Other

(Groups surveyed: Lenders, Owners, Designers)



A. Lien Releases

The primary precaution taken by Lenders, Owners, and Designers to assure that the Contractor pays it's Subcontractors and Suppliers is the requirement to provide executed Lien Releases.

In each case this was a requirement listed in over 80% of the survey responses, with Owners at 93.8%, followed by Designers which listed this 88.2% of the time.

B. Certification by the General Contractor

Having the General Contractor execute a certification that all Subcontractors and Suppliers had been paid properly was virtually identical in the response of the three surveyed groups at between 65 and 70% of the returned surveys.

C. Certification by the Owner & Architect

Lenders also asked for certification by the Owner and Architect 45% of the time, leading the way in wanting to see that every party had fulfilled their respective obligations.

D. Other Responses

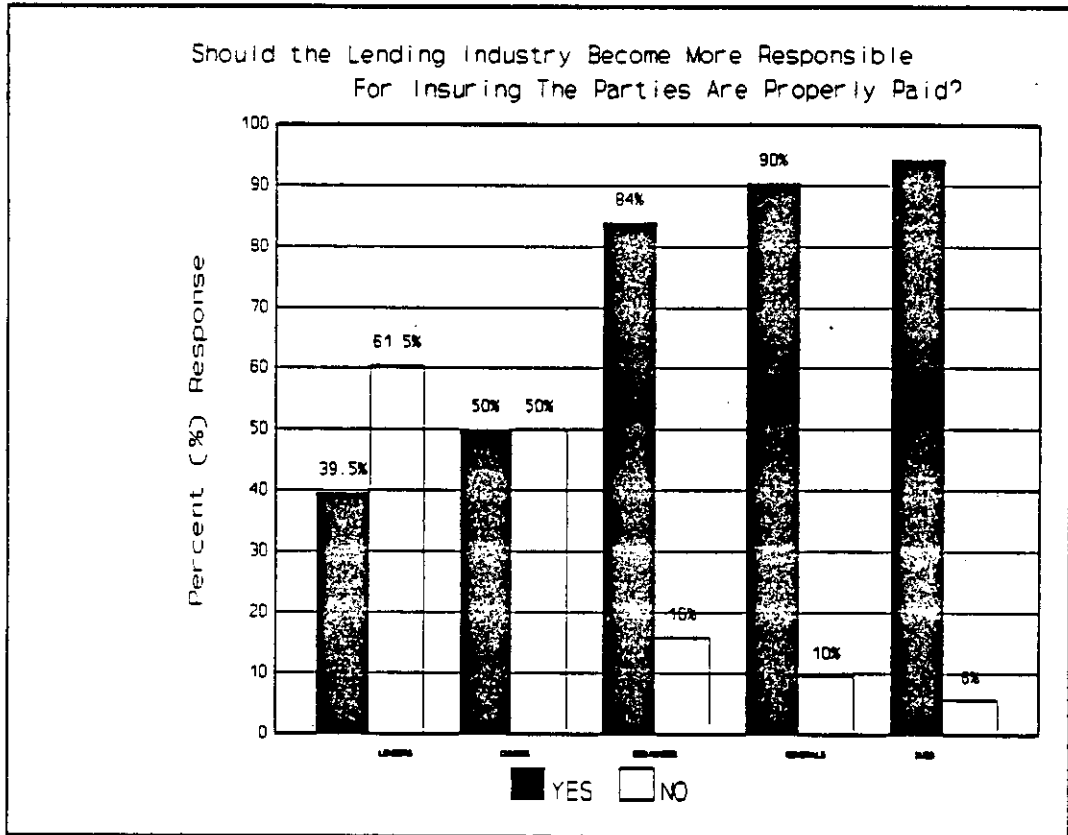
Other responses that were listed which should be considered included:

1. Update of the Property Title on a monthly basis to assure that no liens have been filed against the property.
2. Issuance of joint checks in the event of any concern about the proper payments. (Note: This is listed as an option of the Lender in most Assent Agreement executed by the General Contractor as a part of the Construction Loan closing.

18. Do you believe that the Lending Industry should become more responsible for insuring that all parties for whom monies are drawn are in fact paid with those funds?

() Yes () No

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



It is at this stage of the survey that the major differences between Lenders, and for the most part, the remainder of the survey groups become evident. Opening with this very general question, the survey will build upon the thought that in some ways, the Lending industry must become a more responsible part of the lending and development process.

A major portion of the litigation in the state is over the issue of delayed payments, or failure to pay the various parties in the cash flow cycle. The Lender is in the first position in the cycle, and could if so required undertake more steps to assure that payments are being properly distributed.

The argument can be made that this is the responsibility of the Owner, since that is the borrowing entity. But, as has been seen in the increasing number of defaulted mortgages, placing the total responsibility upon the owner would be unfair. Many owners are first time borrowers of funds of this magnitude, and are ill equipped to handle the administration of the funds.

A review of the above statistics in the above gives an insight into the thoughts of the various groups. As each group moves further away from the source of the funds the intensity of their opinion grows:

A. Lenders

Even a significant representation of the Lenders responding to the survey indicated that their industry should become more responsible to see that those for whom the funds are drawn, are in fact paid with those funds. Approximately 40% of the Lenders responded affirmatively to the question, a very strong indication that there is a need for such improved payment procedures.

One lender supporting strongly the concept of their industry assuming additional responsibility for distribution of funds wrote the following insightful comment on this question:

"The bank lends money. If it thinks it might have to foreclose on a loan, why should it make the loan in the first place. Risky lending is the cause of the current financial banking crisis!!!." (emphasis added by investigators)

Another Lender, taking the opposing position on the subject, stated his objections in the following manner:

"This is not a lender responsibility. It forces the lender to become a bookkeeper for the owner, and could cause the lender to incur additional liability." (emphasis added by investigators)

Each of these Lenders state the position clearly, and their comments could have come from either side of the issue. Lending is a risky business. However, Designers, General Contractors, and Subcontractors look to the Lender to qualify those to whom it makes a construction loan commitment.

B. Owners

Not surprisingly, the Owners were evenly split (50-50) on the issue of accountability for distribution of the funds. Many Owners do see that the funds that are drawn by them on their projects are in fact paid to all the parties involved. Those that do so, realize that cash flow to every party is the lifeblood of their existence as a construction entity. In fact, many an otherwise viable contractor has been forced out of business because of one major uncollected receivable.

C. Designers

As the survey moves into the area of those who expect to be paid with the loan proceeds, it is clear that each of the groups have very strong opinions on the subject. Lenders by a margin of 84% to 16% indicated that the Lender needed to become more responsible for the distribution of the funds.

However, one Design firm, probably wishing that it could respond positively to the question based upon other responses, expressed concern with asking the Lender to take on more responsibility when they commented on this question by adding, "No! They are notoriously bad paper shufflers."

Unfortunately, those hoping that the Lending industry will take on more liability in this area have to be aware that by doing so, it may well slow up the payment process even further on the projects.

D. General Contractors

As the cash flow moves from approval by the Designer and Owner down to the General Contractor, the momentum for requiring Lenders to take on more responsibility gains to the point that 90% called for a change in the current standards.

Many contractors included comments on this matter of the Lender taking on more responsibility for seeing that disbursements are made to the parties performing the work for a construction project.

One obviously affected General Contractor expressed his frustration with the Lending industry on this subject when he wrote:

"Lenders must learn to be a part of the team, not an impediment to the process! Construction lending is not an ivory tower business. Evaluating a project for a loan is far more than numbers and paper shuffling. The same is true for administering the loan after it is made, particularly the disbursement process, and dealing with the inevitable problems that arise.

E. Subcontractors

The progression of the attitude that Lenders should become more responsible to see that proper disbursements are made reaches its conclusion at the end of the "food chain" - Subcontractors and Suppliers. Of those responding, fully 94% felt that this should be a requirement. Letters and comments on this subject indicate an adamant resolve on the part of this group to see this occur, either through negotiation with the lending industry, through the legislative process, or if none of these work, through the legal system.

One subcontractor summed up this attitude best when she wrote:

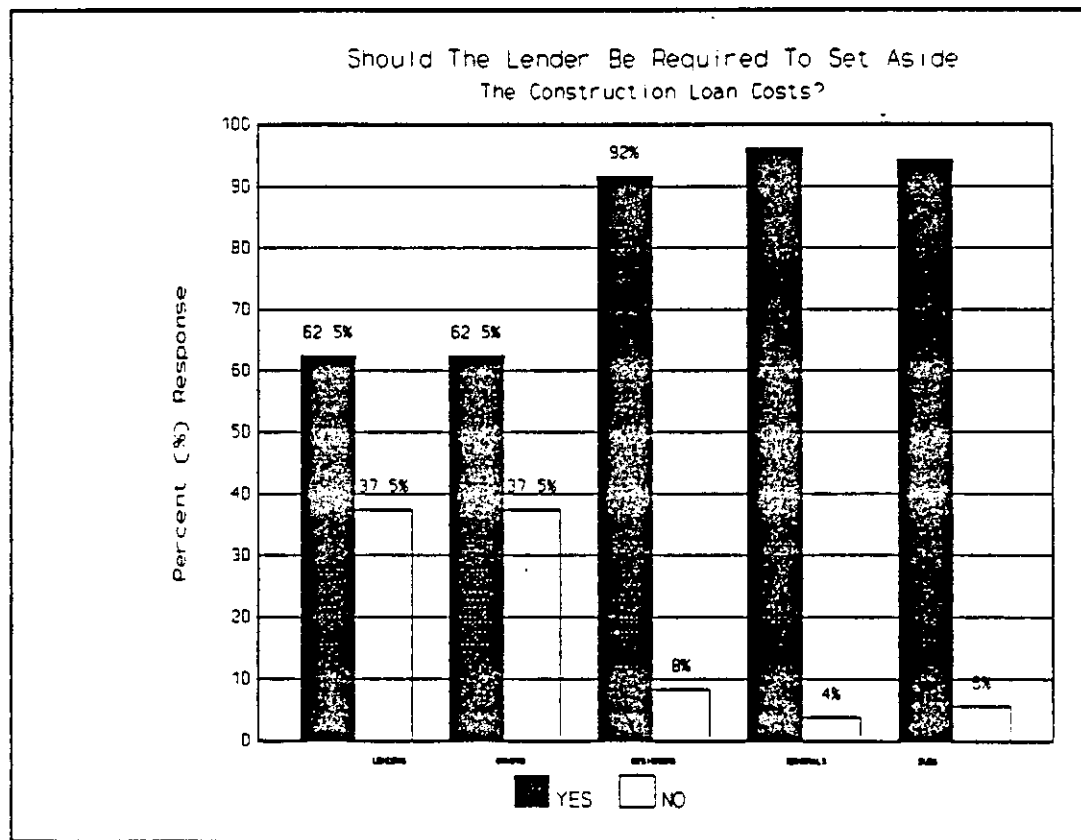
"Once the Lender makes a commitment to finance a project, it is their direct responsibility to follow through the project with the Owner, Architect, and Contractors to completion. They should be required to make sure that all parties are paid. If they receive false affidavits from the General Contractors that the Subcontractors have been paid, then they should be prosecuted.
(emphasis added)

This has been one of the primary legislative issues of the American Subcontractor Association in recent years.

19. Do you believe that the Lender should be required to set aside the portion of the loan for Construction Costs, and prohibit the use of those funds for other purposes?

() Yes () No

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



The impetus for this and similar questions arose in discussions with the leadership of several groups. The feeling being that the Lender when making a loan for a project, has undertaken a thorough feasibility study.

Once the loan is made, numerous parties rely upon the financial institution following through with the loan to its conclusion. Should the project fail following completion, then that is a different matter, but it should at least be completed, if not by the Owner then by the Lender, or its designated agent. An uncompleted project only hurts every party more, including the Lender.

Of primary concern to the parties in this question is the use of funds originally designated for the hard costs of construction ultimately being transferred out of that account to cover other soft costs on the project, including the Lender's interest reserve. In these instances, the Lender may call upon the borrower to inject more capital into the project, but it may also come at a time when there is no more capital available to inject, and the construction dollars are no longer available.

Many construction firms that have suretyship with the major Surety Companies have a requirement that they confirm that the loan proceeds have been set aside. This can provide some assurance to the contractor that the funds are available for the construction.

A. Lenders

This did not seem to be an insurmountable concern of the Lenders responding to the survey. Of these, 62.5% agreed that this was a reasonable request, and only 37.5% object to this as a requirement.

Because of this indication of willingness to set aside these funds for construction, this could be an area of initial discussion of changes in banking policy.

B. Owners

Owners responded in the identical percentages as did Lenders, 62.5 for Lenders setting aside the funds, to 37.5% opposing this concept. Since in many situations, the Owner becomes the first recipient in utilizing the funds elsewhere, this is a significant concession on their part. By dedicating the loan proceeds to the hard cost of construction, and not allowing them to be used elsewhere, the Lender and Owner have made a commitment not to "rob Peter to pay Paul", at least not with the hard cost fund.

C. Designers, General Contractors, and Subcontractors

Each of the above groups almost unanimously indicated that this was an area that needed to be addressed. In their responses these three groups stated their support 92-96% of the time.

In answering this question, one subcontractor stated what can occur to many when the funds start getting transferred out of the hard cost account to fund other portions of the loan, thereby leaving those working toward the end of the project with no balance in the loan:

"What about the last subs on the job ... if a developer is going down we then don't stand a chance, and our mechanic's lien isn't worth a dun if that happens. Lenders should have to monitor the loan and pay for the obligation."

In explaining his exasperation at seeing these funds transferred out of the construction account, and not being there when his invoices became due, the subcontractor went on to explain:

"In 1990 our firm lost \$228,000 on a foreclosed project, with no chance in H1 of ever seeing a dime of it. After spending \$12,000 in attorney fee to try and collect it, we received \$0."

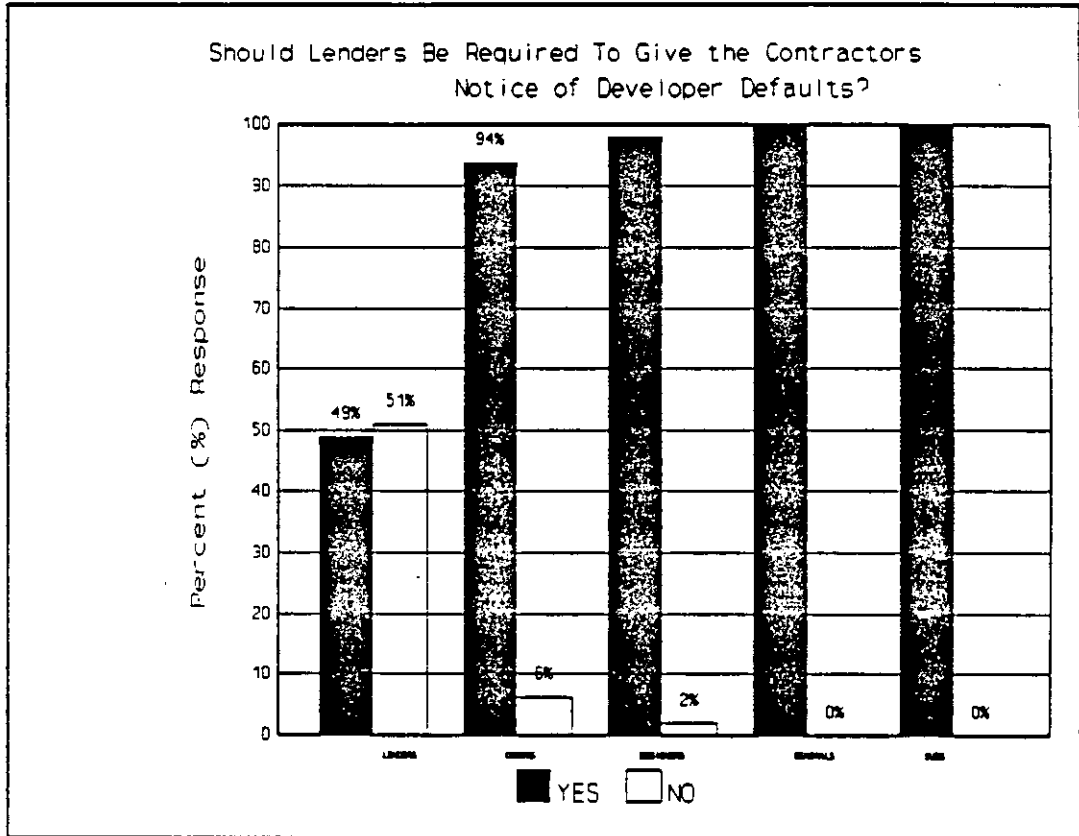
All too often the above scenario is repeated across the industry in Florida. When the funds in other accounts run out, then the construction hard cost seems to be the account of choice to reallocate.

20. Do you believe that the Lender should be required to give notice to the Contractor in the event of a default by the Developer?

Yes

No

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



Many times when the Lender determines that a loan is not performing to it's standard, they will give the Borrower, in the case of construction the Developer, a Notice of Default, thereby enacting the Lender's rights under the Construction Loan Agreement to discontinue funding of the loan.

When this situation arises, the Contractor and it's Subcontractors are usually the last to know. In some cases, if one draw has just been submitted that is currently due within the next 30 days, the construction groups will work for another 30 days without knowing that they are not going to get paid for any further work. The result is 60 days worth of improvements to the property for which the Lender or, in the case of a foreclosure, the future Owner of the property receive a benefit for which they haven't paid.

Thus, the question shouldn't the Lender be required to give the Contractor the same Notice of Default as the Owner, thereby at least limiting the amount of construction that the contracting group performs for which they may never receive payment.

A. Lenders

By a very close margin, Lenders did not believe that this should be a requirement, with those agreeing that the giving of Notice to the Contractor stating their support for this change 49% of the time, and only 51% opposing the concept.

Again, as with the previous question, this seems to be an area that would meet with minimal resistance in the event that legislative changes were proposed to require this notice.

B. Owners

Owners overwhelmingly agreed with the Designers, Contractor and Subcontractors that this Notice should also be notified, at the same time as the Owner.

By undertaking this change in the statutes, there is the possibility that the Lender could agree that the project continue, or be shut down pending resolution of the default. But, at least there would be no windfall profit being built into the loan for the future owner by allowing the Contractor to continue.

C. Designers, General Contractors, & Subcontractors

Of nearly 150 respondents to this inquiry all but 1 indicated that they supported the requirement that Lenders give Notice of Default to the Contractor.

The comments received on this question indicate that,

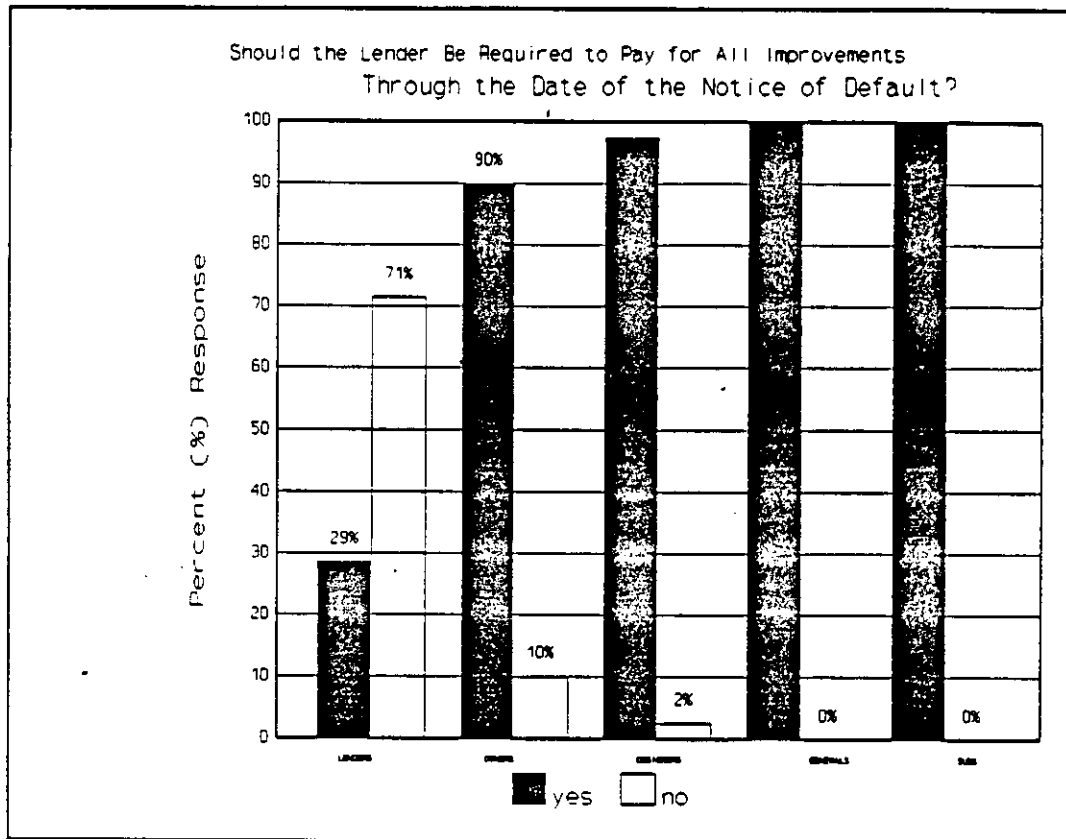
"... it is unconscionable for Lenders to object to this requirement." The issue is in their opinion a matter of basic fairness, they are insisting only that they be notified that the loan is in default, and then should they proceed without assurance of further payments, then they would be doing so at their own risk.

21. Do you believe that the Lender should be required to pay for all improvements made prior to the date of the default by the Developer?

() Yes

() No

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



This question begins a group wherein the Lender is being asked to make a financial commitment greater than they currently have under the statutes. The previous questions dealt with performing additional duties, and assuming the responsibility to give a Notice. However, this question comes down to "paying for improvements to the property which they might otherwise not have to make in a foreclosure".

A. Lenders

The Lender reaction to this question was a 71% opposition to assuming this obligation. Only 29% responded that they felt that this should be required in the event of default. However, one Lender that did indicate support of the concept wrote the following comments:

"We would normally take an assignment of the Owner's rights and documents ... we would then have a professional evaluation of the value in place, require the Contractor to certify the draws, and confirm proper disbursements with releases of liens."

The above ideas might provide some insight to other Lenders as to an alternative approach to this matter, particularly when a project is nearing completion and the best alternative is obviously completing the project and putting it into service for it's intended purpose.

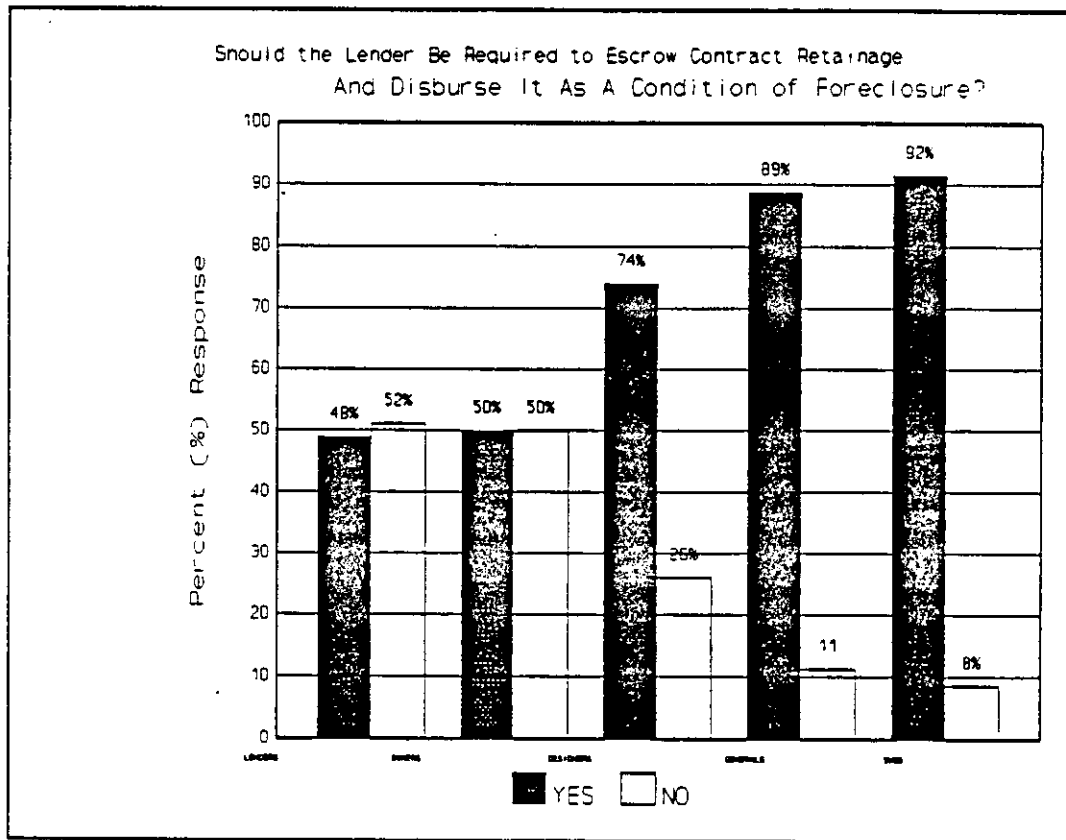
B. Owners, Designers, Contractors, and Subcontractors

Owners join with all other groups in agreeing that all disbursements approved prior to the event of default should be released by the Lender. No doubt this is an effort on the part of Owners "to have everyone in the same boat" when it comes time to convincing the Lender to continue the project to completion. By requiring the Lender to disburse payment for all improvements prior to the default, it removes a very strong incentive on the part of the Lender to allow the work to continue past the time when they intend to disburse funds.

22. Do you believe that the Lender should escrow the Contract Retainage, and disburse it as a condition of foreclosure of a mortgage?

() Yes () No

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



The concept of retainage being held by Owners on General Contractors, and by General Contractors on Subcontractors evolved over time because of the need to have an economic assurance of completion in accordance with the contract documents as to both quality and time.

The recognized standard of ten (10%) percent retainage was established in a time when profits were much higher than in the present, or even within the past 15 years. Profits on the General Contractor now are optimistically within the 4-5% range. Holding of a 10% retainage now means that the Contractor is required to either finance the negative cash position, or overdraw the accounts on a monthly basis. Because of this change, in recent year many Lenders and Owners have agreed to reduce retainage to 5% at the point in time that the contract is 50% complete, on schedule, and with the quality required.

However, the idea of retainage has always been that it was being held as an incentive for the Contractors and Subs to perform their obligations, and assuming they did, then the money was there to be paid.

Not so in recent years. In the event of default by the Borrower, and foreclosure by the Lender, the Contractors' retainage is wiped out along with all other liabilities".

The position of those on the receiving end of the funds believe that, "the retainage has been recognized as having been earned, and should be set aside in a separate escrow account", to be paid based solely on their ability to perform. This being a requirement, then in the event of default, the retainage balance would already be a drawn down disbursement from the loan, being held in a separate account for the benefit of the contractor.

This retainage would then not be effected by the foreclosure, and the funds would be released if the Contractor was not selected to finish the project.

A. Lenders and Owners

These two groups were almost evenly split on this issue, with both agreeing approximately 50% of the time that this was a valid request, with an equal number opposing this point of view.

B. Designers, General Contractors and Subcontractors

By margins of 74%, 89%, and 92%, respectively, these groups felt that this should be a requirement. One particularly articulate Contractor wrote a lengthy comment on this issue when responding:

"The biggest problem with Lender irresponsibility is their ability to foreclose the project and our liens with their 1st mortgage ... even when they deliberately induce us to continue after they have decided to default the borrower."

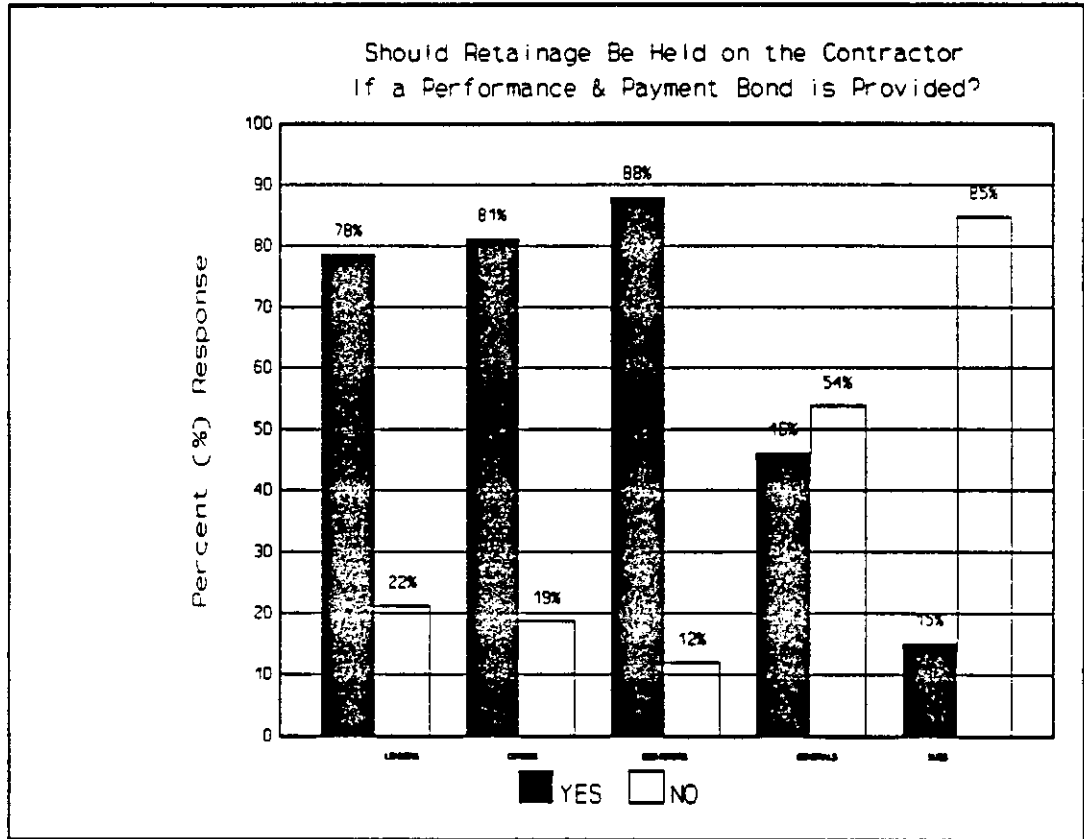
Mechanic's liens should have a priority over the mortgage as it is in some other states, or at least require them to pay the unpaid retainage and the unfunded portion of undisbursed draws ... it could save a lot of problems.

The scope of this report does not support a study of what other states may be doing in this area, but it could certainly be an informative issue for the legislature to have an investigation done into this and other areas of Lender involvement within the construction industry.

23. Do you believe that retainage should be held on the Contractor if a Performance and Payment Bond has been provided?

() Yes () No

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



The agreement of Owners and Designers with the Construction groups evaporates when the question of the retainage being eliminated in the event that Performance and Payment Bonds are required of the Contractors. It appears that the economic incentive for the Contractors to perform is greater when both retainage and bonds are held.

A. Lenders, Owners and Designers

The majority of the Lenders responding to an earlier question required bonds on the construction projects on which they make the loans, and certainly the financial ability of the surety companies to guarantee performance of obligations is higher than that of the Contractor. However, as indicated in the above graph, the Lenders, Owners, and Designers feel that both retainage and bonds should be required. By margins of 78%, 81%, and 88%, respectively, these groups asserted their opinions.

Designers, who had sided with the Contractors in several previous questions moved over to the side of the Lenders and Owners with this question. Few comments were made in the written survey, but when discussing this with several Designers, their reasons for this position was explained as follows:

"Holding the retainage on the Contractors is the only effective way to assure completion. No one wants to have to call in a surety company to complete a project, it only takes longer and costs more. The contractor will do everything possible to complete the project to get the retainage, but if there is none, then their incentive is greatly diminished. As long as they are viable, their surety company is not going to step around them to finish the project."

The position explained above is simply that having a surety bond is no guarantee that the project is going to be finished on a timely basis.

It merely acts as an assurance that in the event that the Contractor defaults under it's bond, and the Owner is able to obtain a judgement against the Contractor, then it will be collectible.

Apparently, Owners and Designers agree with Lenders that retainage should be held even when the Performance and Payment Bonds are provided.

B. General Contractors

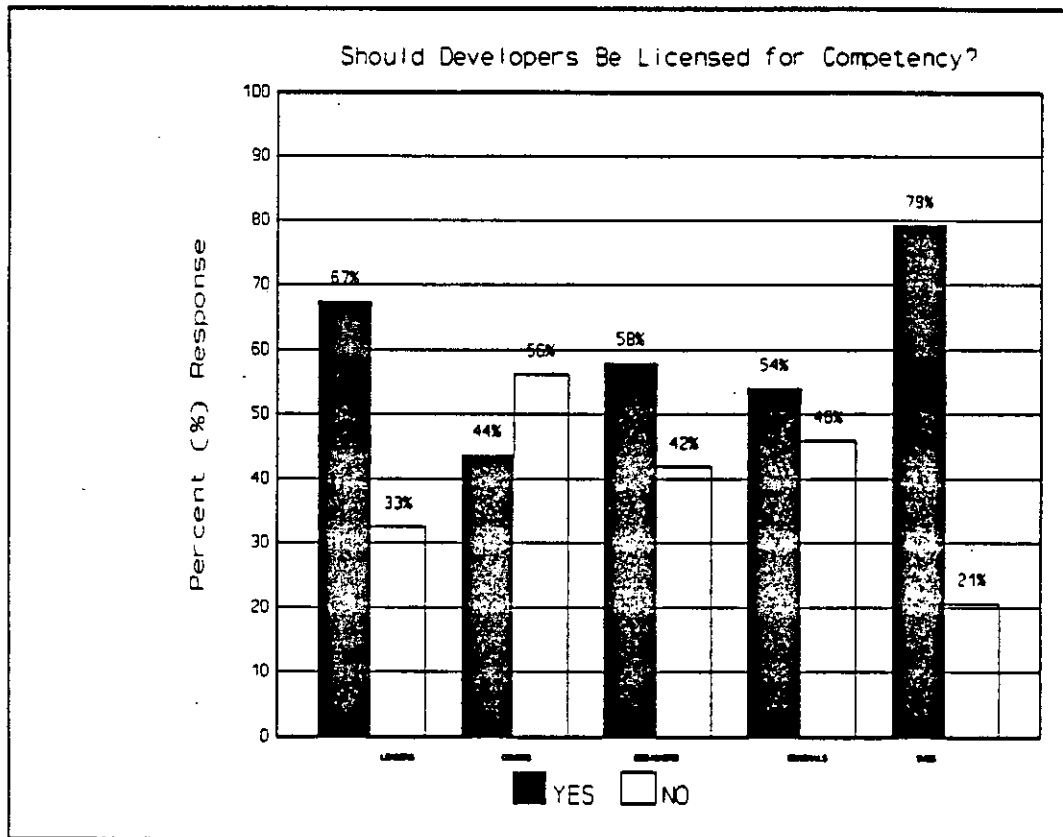
By a slight majority, General Contractors felt that the Performance and Payment Bonds should stand in the place of holding retainage. However, it was only by a majority of 54% to 48%, which indicates a strong feeling even on the part of General Contractors that both should be maintained as an incentive for completion.

Another reason for this close response by General Contractors is most likely because they also are holding both retainage, and in many cases Performance and Payment Bonds from Subcontractors working with them on the projects. This group it appears agrees that the economic incentive to complete is greater than the threat of calling in the surety to complete the project.

24. Do you believe that Developers should be licensed for competency, in the interest of protecting the health, safety, and general welfare of the public?

() Yes () No

(Groups surveyed: Lenders, Owners, Designers, Generals, Subs)



The question of licensing of those who want to develop property in Florida was mentioned by representatives from each group met with in the preliminary survey for the questionnaire. In our state every other group involved in the process of development of the project has some form of regulatory control from Lenders to Realtors, Designers to Contractors.

However, anyone can call themselves a Developer, and assuming they can get financing to build a project, they can actually become one. Many failed projects have no doubt been because of financial mismanagement through lack of experience, education, training, or the understanding of the development process. The licensing of Developers could be both positive and a negative for the industry. The positive is that most parties agree that it is good for financial institutions to have some regulatory control. The same is said even by Designers and Contractors that deal with the their respective licensing boards.

A. Lenders, Designers, General Contractors and Subcontractors

All four of these groups expressed support for the concept of licensing of the Developer. Even those who objected to the concept did so only on the basis of it being another level of bureaucratic involvement in private industry.

Comments supporting the licensing of Developers came from every group, and were too numerous to mention all, but a few did offer varying ideas, and are mentioned below:

Lender:

"Yes, but how!"

Developer:

"Maybe, but I don't know exactly how to go about it."

Designer:

"Developers should be held to a professional standard; some form of licensure or control is essential. We must eliminate those who have a "grab and run with the profit" attitude."

General Contractor:

"Developers should be licensed just like Architects and Contractors as individuals, acting as the responsible qualifying agents for their firms"

Subcontractor:

"License developers under name and social security number of the person - not under some fictitious name of a corporation."

The sentiment for licensing of developers in some form is quite strong among the above groups.

B. Developers

Even though developers responding to the survey indicated on 56% of the responses that they did not favor licensure, another 44% did endorse the concept. One developer in supporting the concept added the note, "... we are professional most aren't", which may be the attitude of many professional developers who feel that the industry needs some "cleaning up", as did this developer.

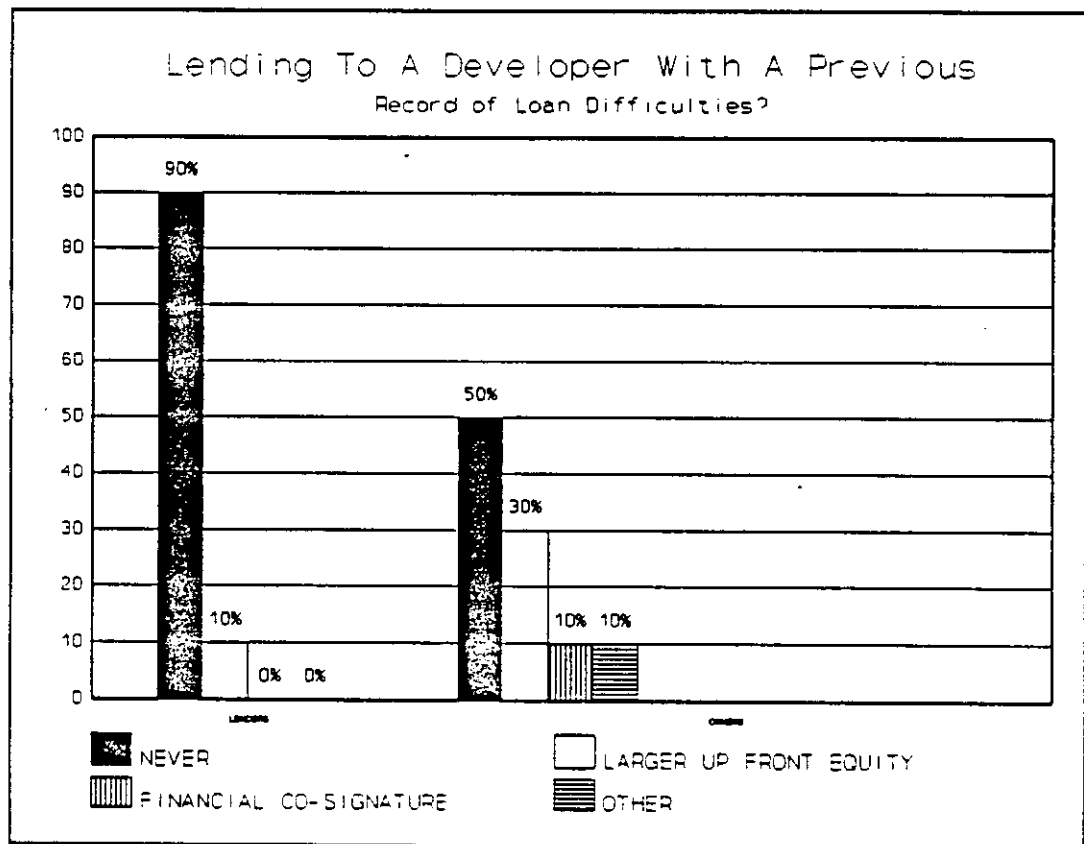
Consideration could be given to a study of this issue by the Department of Professional Regulation, who would appear to be the most likely state agency to administer such a licensing program.

25. Under what circumstances would you as the Lender make a loan to a Developer who has had a previous record of cost overruns and/or difficulty in repaying loans? (Please list all that apply)

- () Never
- () Larger up front equity
- () Co-signature of a financial partner
- () Other

Note: This question was also asked to the Developers in the context of under what circumstances did they think a Lender would make a loan to a Developer in this situation.

(Groups surveyed: Lenders, Owners)



Lenders, indicated on 90% of their responses that they would "never under any circumstances make such a loan."

This response came even given the opportunity to respond with two other options, and the chance to add their own comments. This is a very strong indication that the failure of a Developer on one project will inhibit their ability to develop future properties.

B. Owners

Even owners when asked under what circumstances they would think a Developer might make such a loan responded in 50% of the surveys that they would never expect to get a loan under the circumstances noted. There were 30% who believed that larger up front equity might be an incentive for obtaining a loan in this situation.

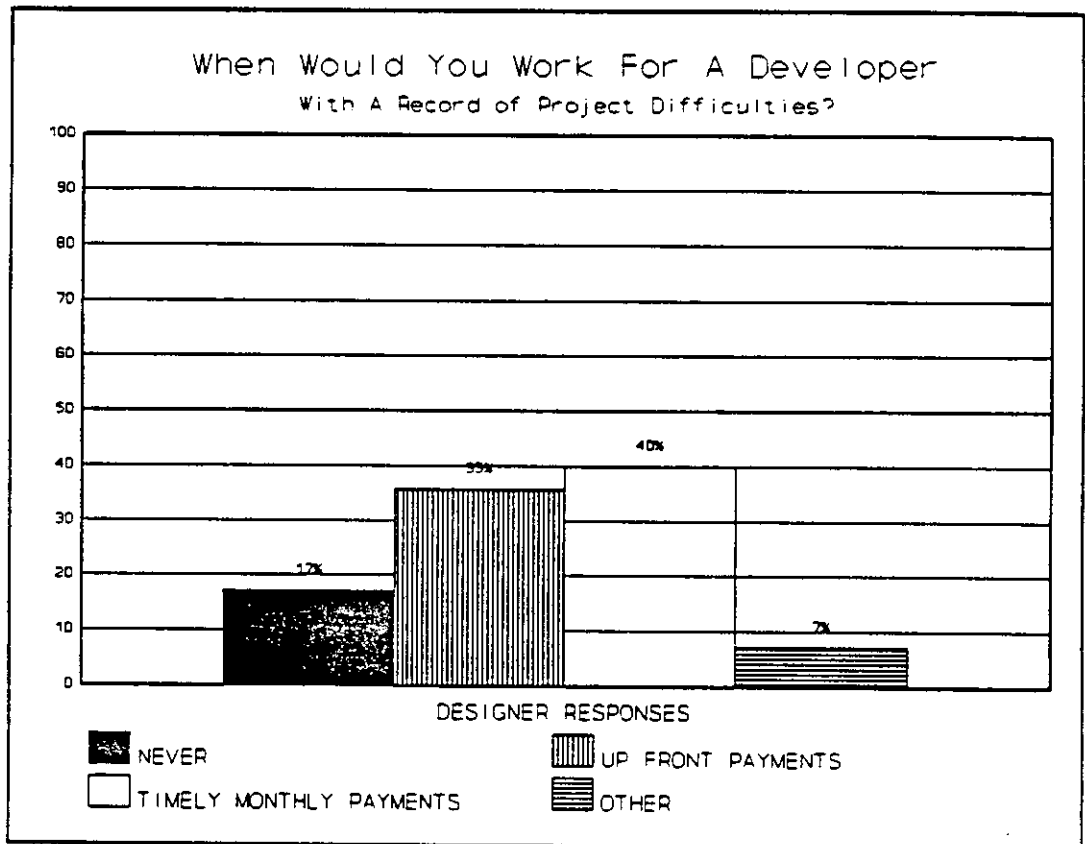
One Developer offered this comment:

" Greater up front equity of 20% put in ahead of the loan, and a good plan of development."

26. Under what circumstances would you work for a Developer who has a previous record of cost overruns and/or difficulty in repaying loans? (Please list all that apply)

- () Never
- () Up front payments
- () Month to month with timely payments
- () Other

(Groups surveyed: Designers)



Only Designers were asked this question, because they are the first of the groups which would be in a position to work for a Developer that had a previous record of failing to perform on a previous construction project.

In addition, it was assumed by the investigators that most Contractors and Subcontractors do in fact undertake to work for Developers with such a history of failed projects. Therefore, it was believed that those responses would not lead to any conclusions of value.

Only 17% of the Designers indicated they would never work for a Developer with a track record similar to that described. This is in stark contrast to the fact that Lenders indicated that they would not make a loan in these circumstances in over 90% of the survey responses.

Designers indicated 35% of the time that they would work for the Developer if they received an "Up Front" payment. One Designer commented on this procedure in this way:

"Only if I received an up-front payment for at least one month's billing, and then billed against it, always keeping one month's retainer ahead of the expenses."

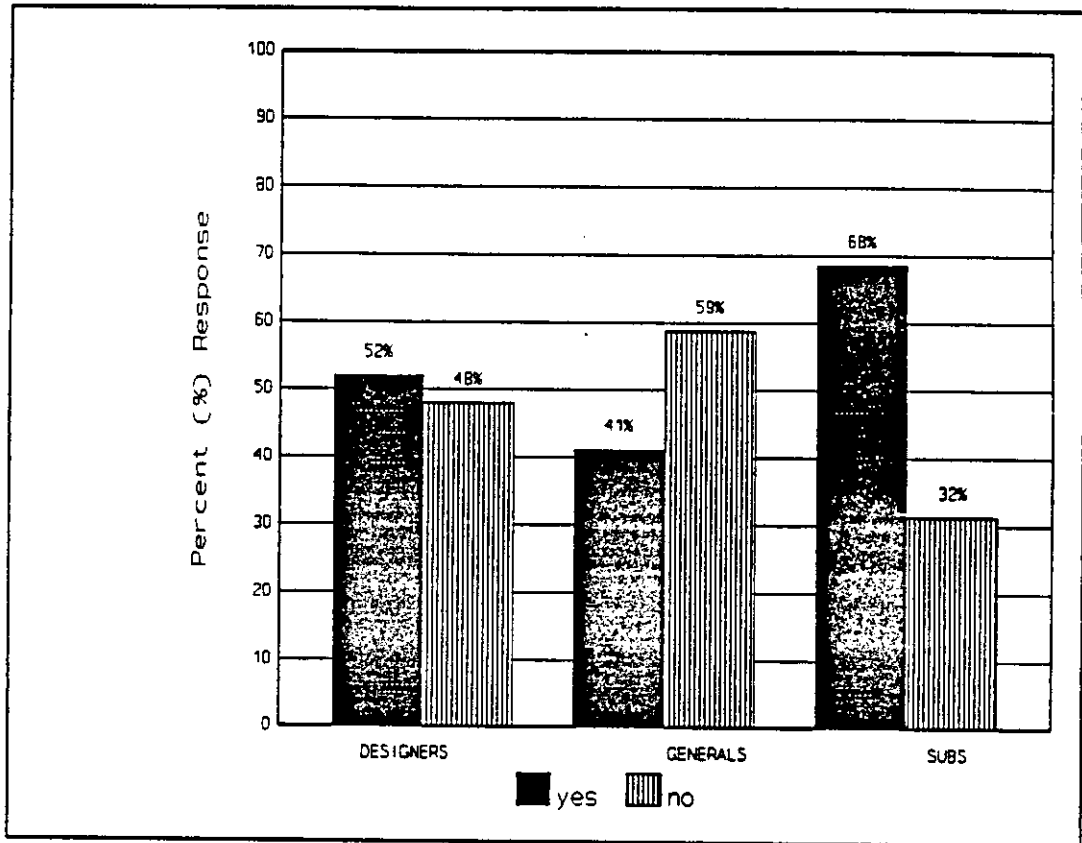
Another 40% followed through with the above idea of this Designer when they indicated that they would work on a "Month to Month Basis with Timely Payments".

Listed as "Other" categories were items such as requiring, "a personal guarantee or promissory note" from the principals of the development, "and their wives", and also one response that said they would "prepare the plans, but not release them before payment was made".

27. Have you lost money because of a lender's foreclosure of a Development or Construction Loan in the past 5 years?

() Yes () No

(Groups surveyed: Designers, Generals, Subs)



This question definitely drew a strongly emotional response from Designers, Generals, and Subcontractors, that was not indicative of the percentages shown above. It seems that the intensity of the comments was tied directly to those which had been impacted adversely to a Lender foreclosure. By calculation of the responses those 71 of the firms responding had been affected by a foreclosure within the past 5 years.

A. Designers

As mentioned earlier in the report, it is the Designers that often get involved with an Owner before the actual construction loan is made. Their only security in many cases is the potential of a construction lien against the property, which is in many instances already encumbered to the maximum by a Lender. Of those responding, 52% had been involved in a foreclosure which affected them adversely.

The investigators were made aware of at least one major firm that could not respond to the survey, because it was dissolved after it was unable to collect a receivable of over \$400,000. These "horror stories" are prevalent in the industry.

One particularly irate Designer who indicated that their firm had lost money through Lender foreclosure of development they had designed had this comment on the situation he faced, and the way it was dealt with in foreclosure:

"The banking industry totally screwed up, was afraid to make an intelligent decision, and only reacted in knee-jerk fashion. Doesn't anyone out there have a brain?"

Clearly the above comment is self-explanatory!

B. General Contractors

Of the General Contractors responding 41% had been faced with the prospect of a Lender foreclosure, while 59% had not. This may reflect on the ability of the Contractor to control it's involvement with less than substantial Developers in more ways than the Designers and Subcontractors.

Designers are working in a preliminary position before a loan is established, and may never get to the point that they have a Lender to rely upon for the Construction Loan.

Subcontractors, who do not have privity with the Owner, rely upon the General Contractors to identify the capability of the Developer, and likely does not have knowledge of their financial strength.

Written response in both comments on the survey and separate letters on this question, indicated the strong General Contractor interest in this item. Some of their comments are as follows:

"Lenders want the least amount of their money invested in a project at any given point in time. Then when the foreclosure comes, they leave the Contractor and Subcontractors unpaid, letting us pick up a large part of the tab for their foreclosure."

Another Contractor wrote,

"This is our number one concern in the private market today. The Lender should be made directly accountable."

One contractor took the time to respond to this in a two page letter, excerpts of which are included below:

"Just prior to completion, the lender and our client had a squabble (over matters totally unrelated to our performance). Because we were not a party to the conflict, we were left totally in the dark.

The Lender foreclosed, and the Developer was unable to pay our final requisition of \$197,000. Our creditors expected payment, for which we had a Performance and Payment Bond guaranteeing that they would get paid."

Later in the letter, the Contractor points out the ultimate of his insults.

"The Developer skipped town. We had to absorb thousands of dollars in legal costs in addition to paying our subs, and taking our loss.

Virtually all of this could have been eliminated if the lien of the contractors were superior to the lien of the lender, which it should be!"

This Contractor went on to explain that the Lender would probably have come out ahead to, because it was left with a project that was unfinished, and months late in completion. An all too familiar story.

C. Subcontractors

Subcontractor had the greatest percentage of problems with Lender foreclosure, as mentioned for the reasons earlier. Of those responding, 68% had been forced to absorb losses due to this action by Lenders.

One letter written by a subcontractor on the subject was most informative. He stated:

"Over the years we have had to absorb \$1.2 million in losses through no fault of ours. We have had 5 financial institutions foreclose on different projects for different developers during this period.

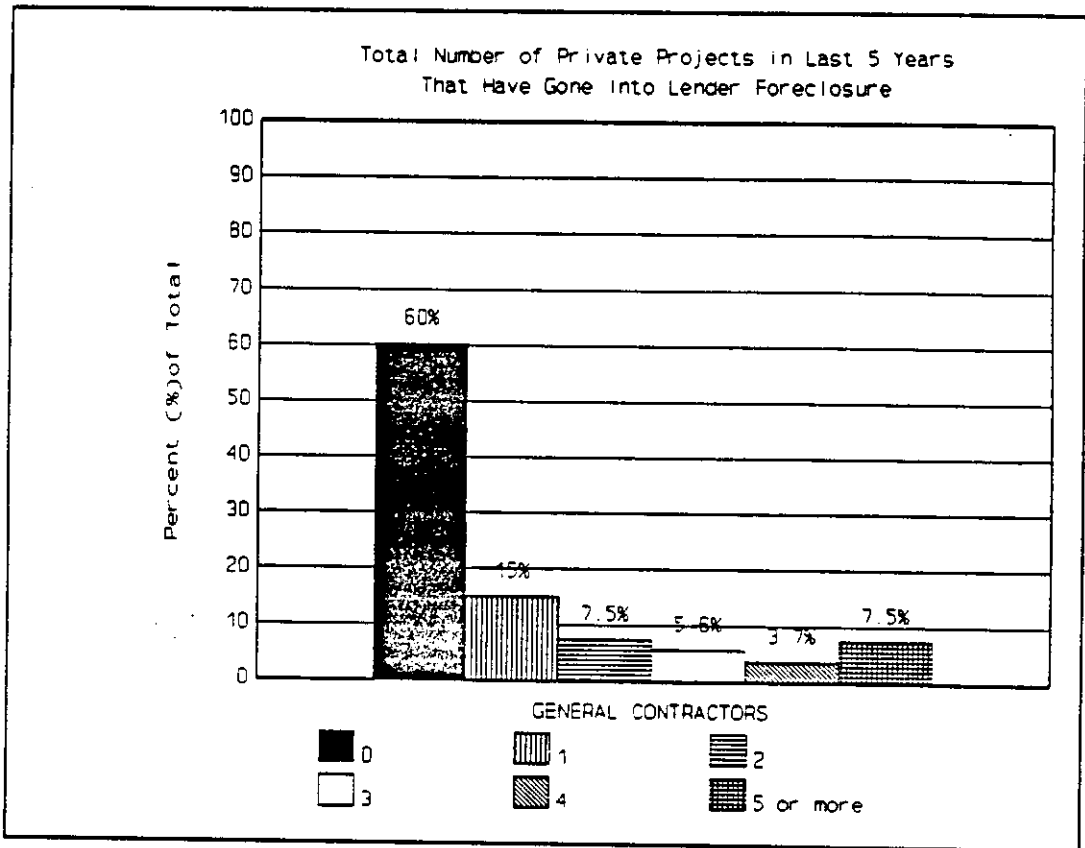
We even lost \$645,000 where the Lender had assured us that the funding was in place, and as it turned out the Lending Covenants allowed them to foreclose on the project ahead of our lien. The worst part is that we had to finish the infrastructure under a separate contract so they could get on and off the project."

Some might disagree that the Sub had any other options, but the incidence of this happening are seen all too often.

28. How many private projects have you been involved with in the last 5 years that have gone into Lender foreclosure?

_____ %

(Groups surveyed: Generals, Subs)



This question was asked in order to quantify the magnitude of the problem with foreclosures that the participants to the survey had been involved with.

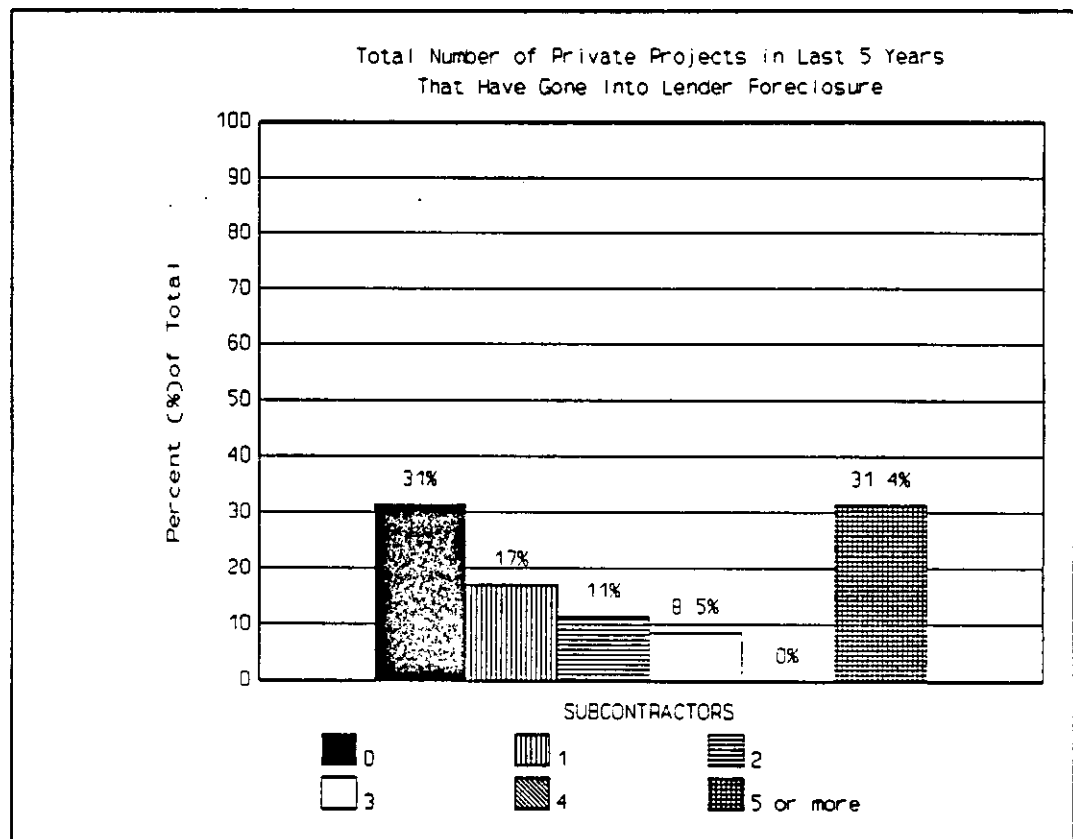
A. General Contractors

Of the Generals, 60% had faced no foreclosures, and 15% only one.

Surprisingly, a total of nearly another 15% had been involved in three or more foreclosures. What is surprising is that this many could absorb these losses and still respond to the survey.

B. Subcontractors

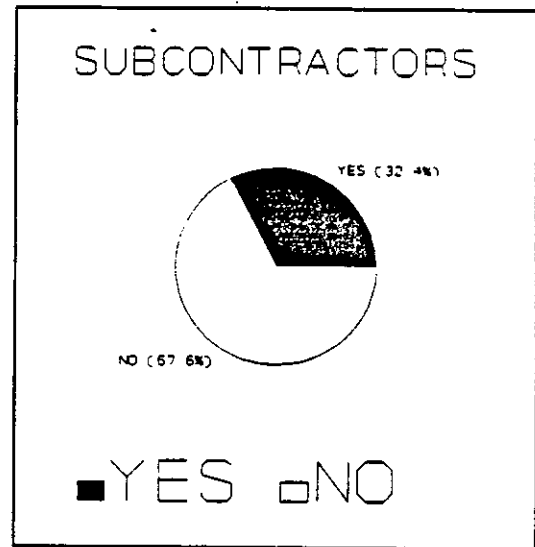
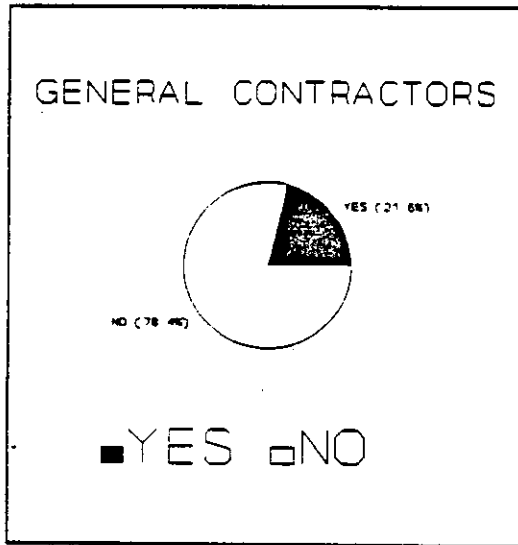
Only 31% of the Subcontractors responding had never been involved with a foreclosure, a sharp decrease from the General Contractors. Another 31% had been involved in 5 or more Lender foreclosures. Over 50% had been impacted by 3 or more foreclosures in the past 5 years.



29. Have you worked on projects which have gone into foreclosure where you performed work after the loan went into default and you were not advised of the default?

() Yes () No

(Groups surveyed: Generals, Subs)



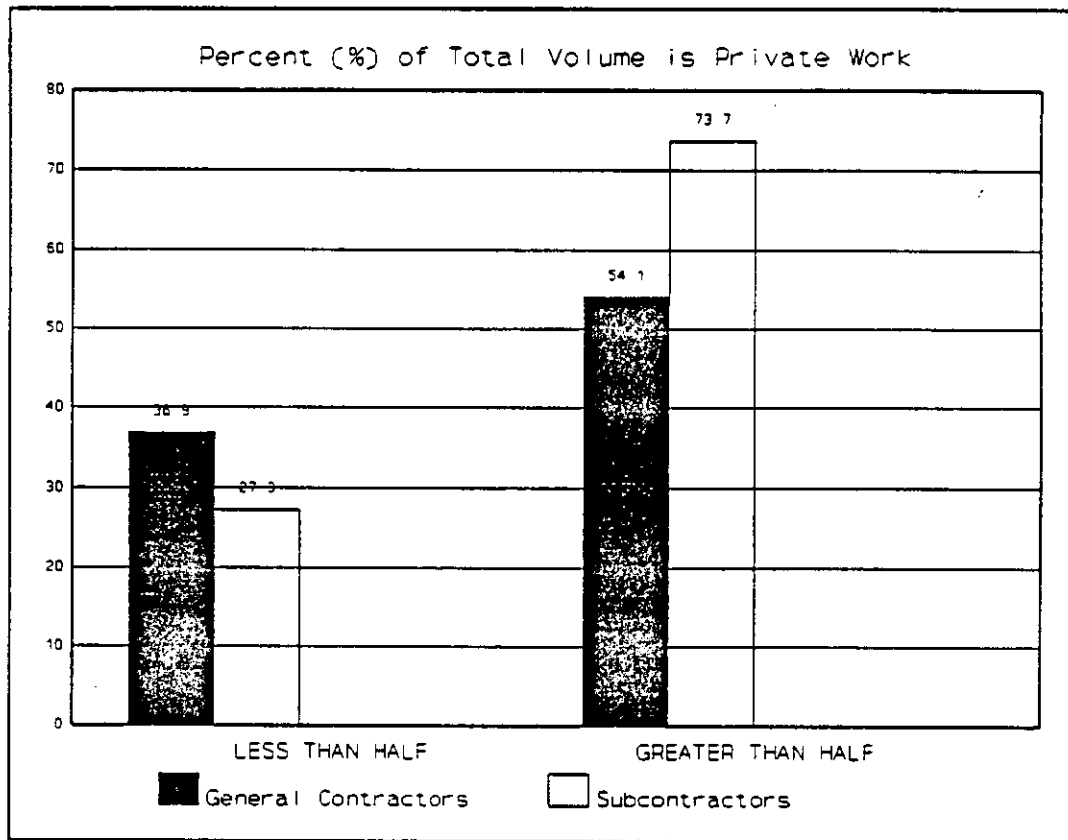
General Contractors indicated that 21.6% of the time in which they were involved in a Lender foreclosure that they were allowed to continue work after the loan had gone into default without notification.

Subcontractors responding to the same question had a positive response rate of 32.3%, indicating that they had not been notified of default in nearly a third more of the cases than had the General. This indicates that in many cases the Contractor may have known about the default and failed to so notify the Subcontractors working under them.

30. What percentage of your total volume is private construction?

_____ %

(Groups surveyed: Generals, Subs)

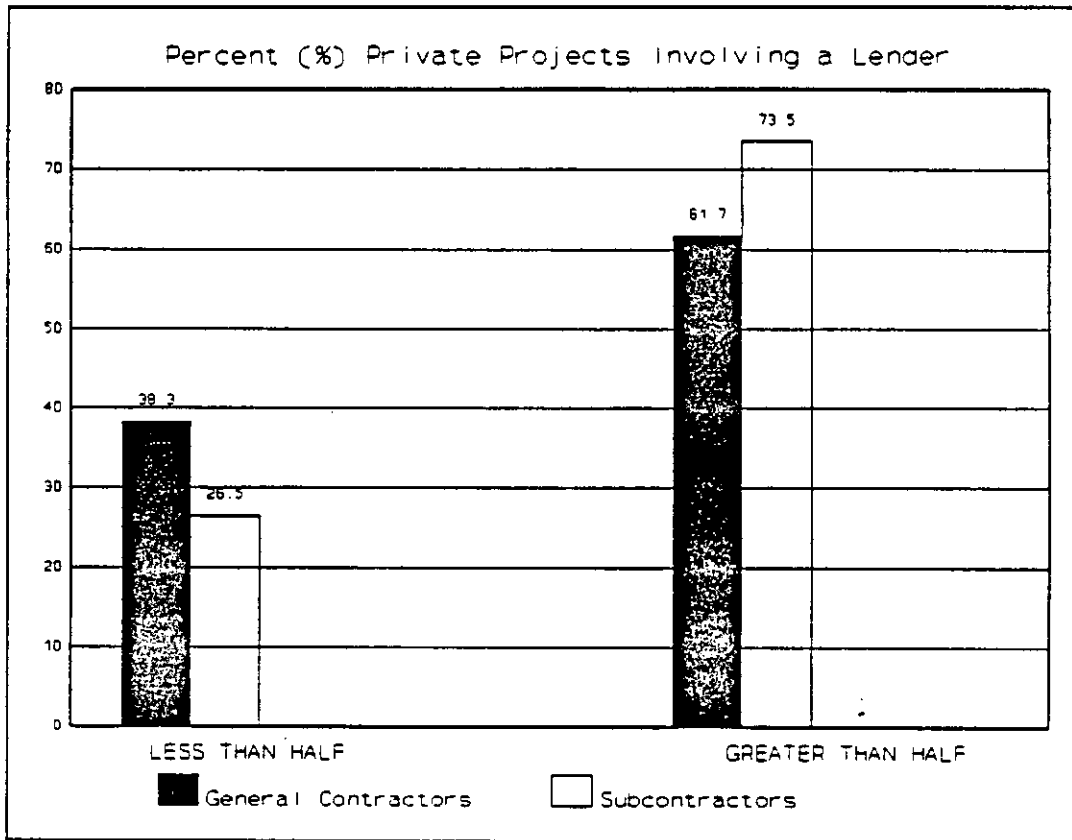


This question, and several following were asked to identify the amount of private work upon which the respondents depend as a percentage of total volume. This also indicates their interest in the issues, which are exclusively related to the private development industry. These totals indicate that in both cases over one-half of the Contractors are required to bond in excess of 60% of their private work.

31. What percentage of your private projects involve a construction lender?

_____ %

(Groups surveyed: Generals, Subs)



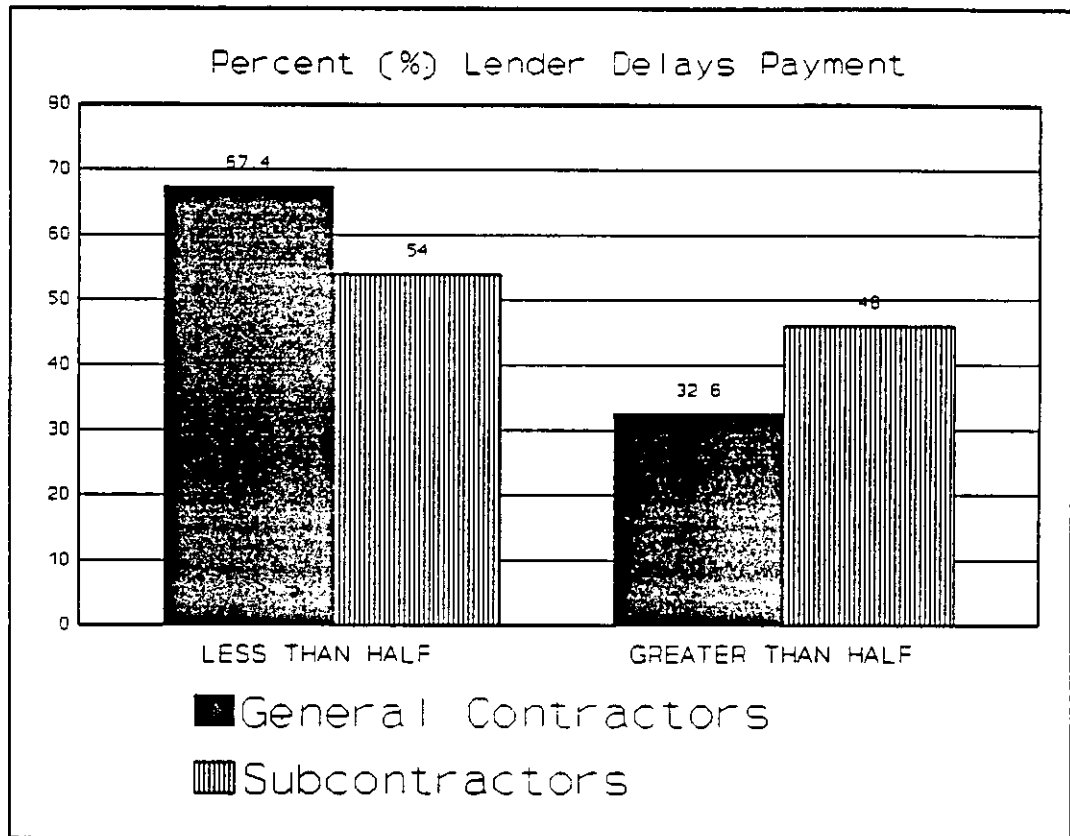
This question, like the one before indicates that the majority of Generals and Subcontractors who work on private projects depend on the involvement of a Construction Lender for payment, rather than private sources.

This points out the need for all parties to work together to solve the crisis facing many contractors and subcontractors involved in the foreclosures discussed in this report.

32. In what percentage of your projects which involve a construction lender, have there been payment delays due to the lender's involvement in the disbursement process?

_____ %

(Groups surveyed: Generals, Subs)



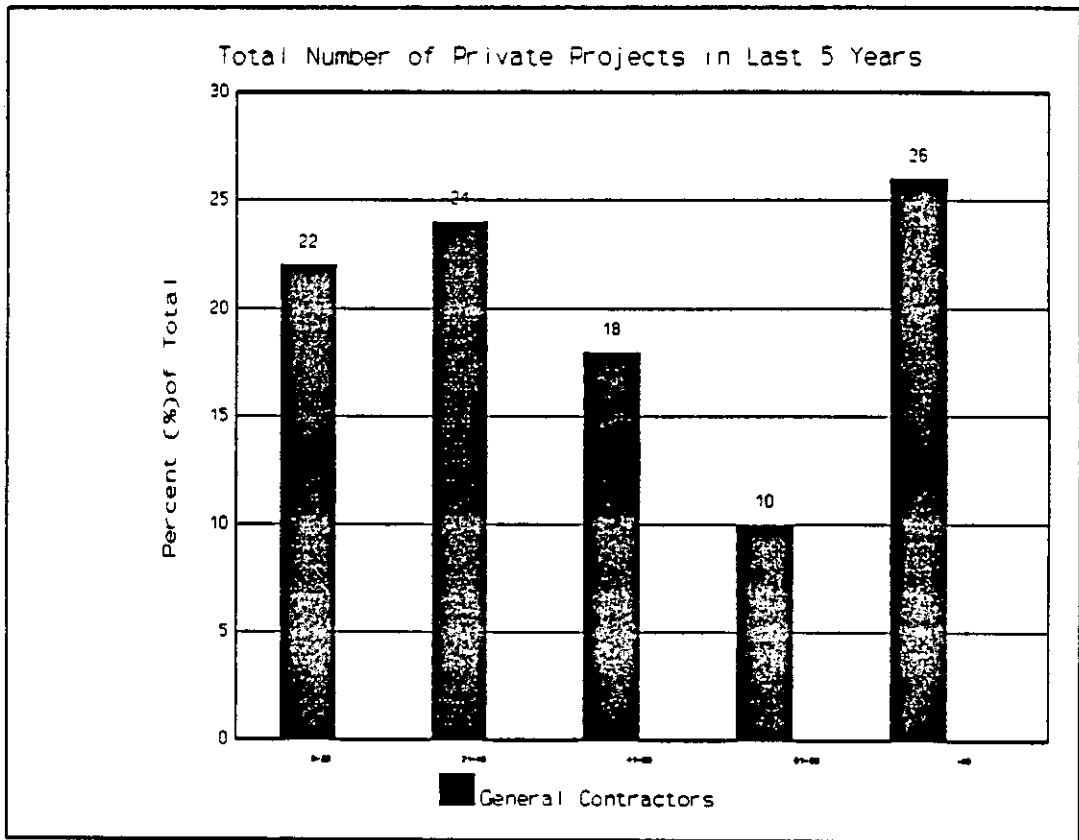
The above responses indicate that approximately 1/3 of the Generals and nearly 1/2 of the Subcontractors have payment delays on more than one-half of their projects. This indicates that a significant number of contracting firms are facing payment delays through no fault of their own making on over one-half of the projects on which they work.

This is an astonishing figure!

33. How many total private projects have you been involved with in the last 5 years?

_____ %

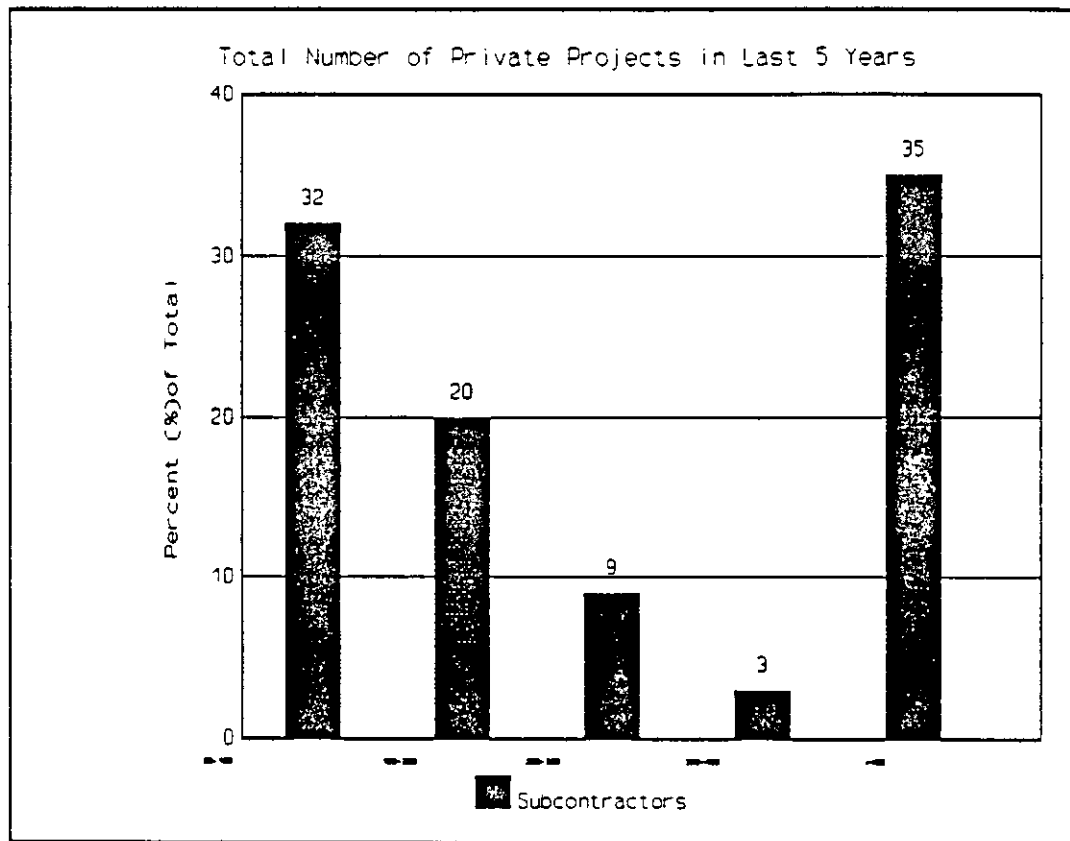
(Groups surveyed: Generals, Subs)



These two questions were asked to confirm the assumption of the investigators that Subcontractors work on many more projects than do General Contractors, thereby exposing themselves to a higher possibility of having to deal with a foreclosure on one or more of their contracts. The graphs indicate this dramatically.

General Contractors could be shown graphically with a chart reading less than one hundred total jobs, with only 26% working on more than 80 projects in the past 5 years.

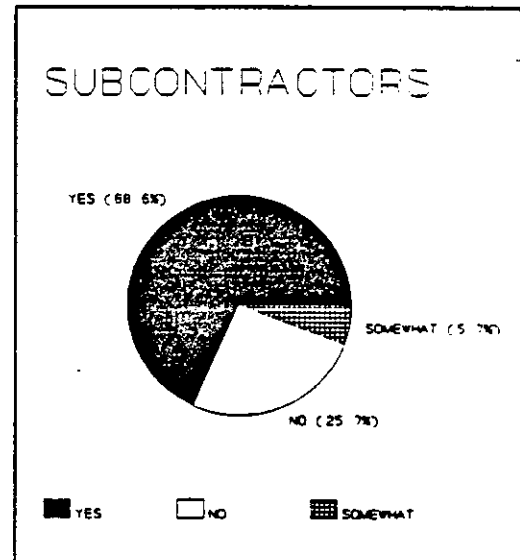
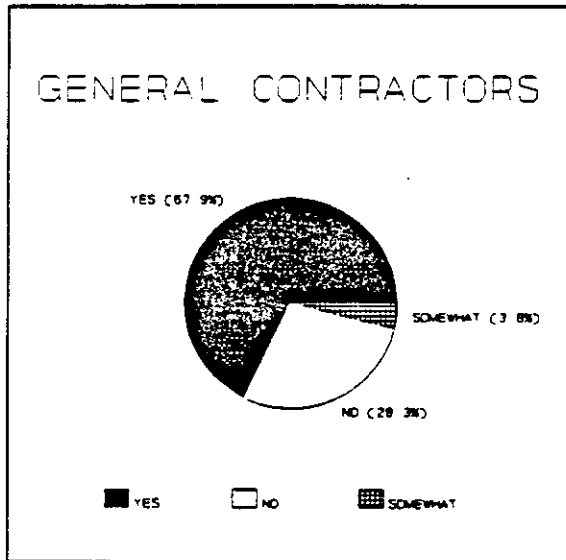
Subcontractors show a dramatically different picture, with fully 35% being involved in over 400 projects in the same time frame, as evidenced by the following graph.



34. Are you knowledgeable about the Construction Lien Law?

() Yes () Somewhat () No

(Groups surveyed: Generals, Subs)



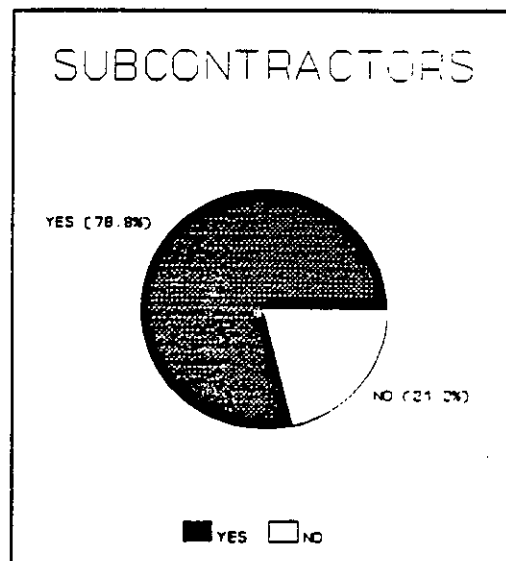
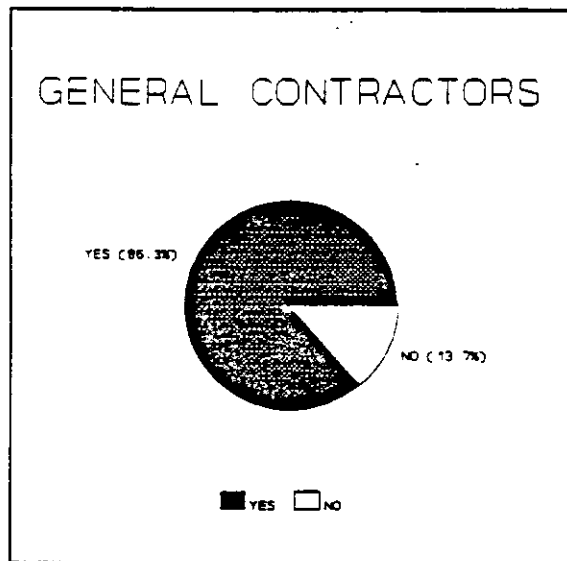
This last group of questions in the survey were developed in direct response to the number of times that Lenders, Designers, and Owners were depending on the General Contractors and Subcontractors to comply with the Florida Construction Lien Law, and found that they knew little or nothing about the statute and its application.

As indicated above, in both groups approximately 30% acknowledged themselves that they were either unknowledgeable about the law, or were only somewhat familiar with it.

35. Have you or a key manager in your organization attended a Construction Lien Law Seminar in the last 2 years?

() Yes () No

(Groups surveyed: Generals, Subs)



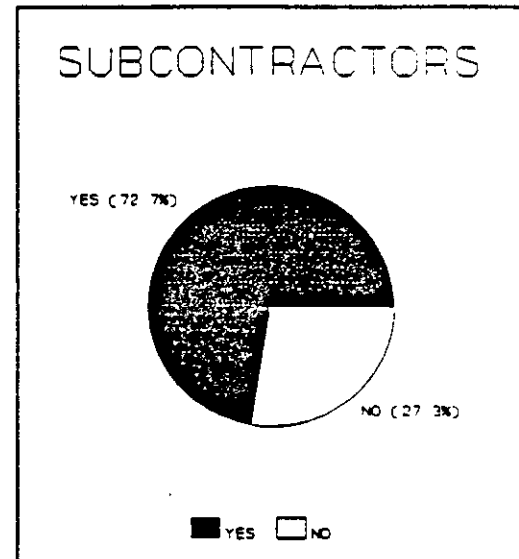
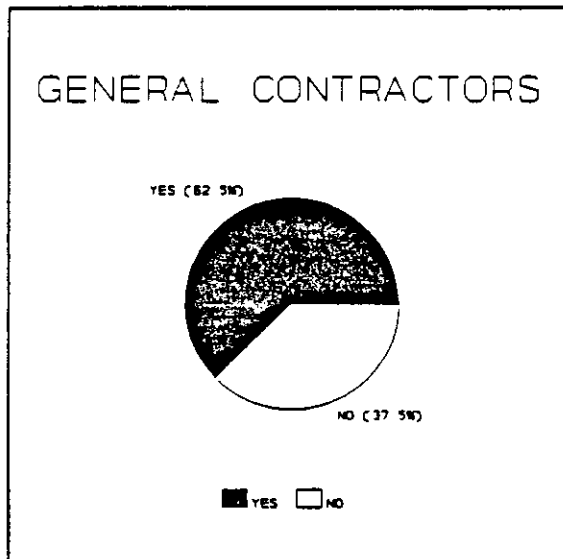
Of those responding, 86% of the General Contractors, and 78% of the Subcontractors had attended a seminar on the subject of the Lien Law in the past 2 years. This is no doubt a high percentage as compared to the overall industry, because the survey targeted those General Contractors and Subcontractors that were members of either AGC, ABC, or ASA, which would also be considered by most to be the more professional of the contractors.

Those organizations regularly conduct seminars on the subject, and also make available on a monthly basis newsletters detailing any changes in the law, and highlighting areas of the law that should be closely reviewed.

36. Do you or a key manager in your organization plan to attend a Construction Lien law Seminar within the next year?

() Yes () No

(Groups surveyed: Generals, Subs)



This final question among those asked to be completed by these groups, the majority again replied that they intended to have a key manager of their organization attend another lien law seminar within the next year.

This is essential if an organization is going to stay current on the information within the statute. Each year the legislature makes significant changes to the law, many of which completely change the operative parts of it. What one understands to be the law one year is completely changed the next.

One Florida court, succinctly put the confusion regarding the Lien Law in their opinion, part of which is shown below as the closing comment on this section:

"There can be no more confusing statute in Florida than the one on liens under 713. The frequent impracticality of its application in the field, coupled with ill conceived, confusing, patchwork amendments, all topped off by conflicting appellate decisions, have all combined to make life miserable for judges, lawyers, legislators, and the vitally affected construction and lending industries."

American Fire and Casualty v. Davis, 358 So.2d 255
Florida 4th District Court of Appeals, 1978

On this point, the investigators are assured, that having been asked this question; then Lenders, Owners, Designers, General Contractors, and Subcontractors would have for once in this survey have all been 100% positive in response to the question.

C. CONCLUSIONS AND RECOMMENDATIONS

1. Conclusions

The objectives accomplished in this survey, as stated in Section I of the report were identified as the following:

- a) To investigate the activities of the Lending Industry. which provides financing for commercial and multi-family housing construction projects.
- b) To investigate the manner in which the Construction and Development Industries interact with the Lending institutions.
- c) To survey the various industry groups to identify areas of concern in regard to the application, approval, and administration of the construction loan.
- d) To make recommendations that will achieve a greater efficiency in the industry for the benefit of the public.

In concluding this report, the investigators have demonstrated from the responses to this report that the crisis existing in the commercial development and construction industry in dealing with the question of lender responsibility must be addressed by every party that can have an impact on the method of administering construction loans for private developments.

The survey results speak for themselves. Designers, General Contractors, and Subcontractors are being forced to absorb losses for actions over which they have little or no control at the present time.

The investigators encourage those receiving the report to attempt to work together with each other party involved in the financing, development, design and construction of commercial and multi-family construction projects within the State of Florida. Meeting and discussing the issues will often clarify the respective positions, and middle ground may be achieved on some.

However, it is the Florida Legislature, and in some cases the courts that control the majority of the issues raised and responded to in the report. By working together with their legislators, the professional and trade organizations have already raised the flag of concern.

Groups such as the Florida Bankers Association, American Institute of Architects, Associated General Contractors, Associated Builders and Contractors, Florida Home Builders, and the American Subcontractor Associations have a strong voice in the legislature already, even when working alone on issues.

By combining their resources, in conjunction with this study and others that could be done, the impact of these industry groups would be even more effective.

2. Recommendations

Outlined below are several recommendations that should be considered by those impacted by the issues covered in this report.

- a) **Dissemination** - That this report be disseminated to as many of those involved in the industry as can be supported by the funding available through this grant.
- b) **Trade Association Review** - That trade associations review the results with their memberships, who so thoughtfully responded to the questionnaires.
- c) **Copies to the Legislators** - That efforts be made either through the BCIAC, or through the trade associations to put this report into the hands of every legislator in Tallahassee.
- d) **Study of Residential Market** - That consideration be given to a study of the Residential Construction, Development and Lending market to determine if, in fact, the problems identified in this study are similar in nature.
- e) **Study of Other States** - That consideration be given to further studies on this subject that could investigate what is being done in other states to resolve these types of problems. Many other groups have found this to be the most effective way of demonstrating that changes are needed.
- f) **Summary Articles** - That trade organizations use this report to develop articles for distribution through their monthly newsletters and magazines that have readerships far beyond the bounds of this publication's distribution.
- g) **Lender Review** - That Lender's receiving this report will look upon it as constructive, and will meet with industry half way in resolving this crisis.

h) Consideration of Developer Certification - That consideration be given to establishment of a Qualifying Agent for Developers, much as already exists for other professionals. This could be the basis for an additional grant to explore the means of accomplishing this task, although it may be beyond the authority of the BCIAC, or even the CILB to do so. If this is the case, then the recommendation could certainly be forwarded to the Department of Professional Regulation for their consideration.

i) Prompt Payment by Owners - That Lenders and Owners be required to make prompt payments to those for whom construction draws have been submitted.

j) Prompt Payment by Contractors - That Contractors be required to make prompt payments to those Subcontractors and Suppliers for whom they have received funds.

k) Construction Lien Law Continuing Education - That efforts be continued to educate all parties involved in Development and Construction in the Florida Construction Lien Law.

l) Construction Industry Licensing Board Information - That the Construction Industry Licensing Board make greater efforts to advise Lenders and Owners of their existence, and their ability to provide information regarding the status of the Contractor's license, any previous or existing suspensions or revocations, and the means by which supposed violations can be reported.

V. APPENDIX

A. Survey Forms by Group:

1. Lenders
2. Owners/Developers
3. Designers
4. General Contractors
5. Subcontractors

B. Distribution List for Final Report

1. Provided by BCIAC

C. Letters from Trade Associations

1. Associated General Contractors of America
2. American Subcontractors Association

APPENDIX "A"

SURVEY FORM OF THE VARIOUS GROUPS

1. LENDERS
2. OWNERS/DEVELOPERS
3. DESIGNERS
4. GENERAL CONTRACTORS
5. SUBCONTRACTORS

QUESTIONNAIRE FOR LENDERS & MORTGAGE BROKERS

1. Do you administer Construction Loans with a separate department or division from other Commercial Real Estate Loans?
Yes () No ()
2. If Yes to (1) above, does your Construction Loan Department include staff experienced in the Construction Industry?
Yes () No ()
3. Do you make Construction Loans even when you have no interest in the Permanent Financing of the Project?
Yes () No ()
4. If Yes to (3) above, what requirements do you have for there to be Permanent Financing in place before the Construction Loan is made?

5. Do you feel that when a Developer makes an application for a Construction or Land Acquisition loan that they typically represent:
() Their true financial position?
() A Slightly exaggerated financial position?
() A Highly exaggerated financial position?
6. What available means do you utilize to verify a Developer's true financial position? (Please list all.)
() Certified Financial Statement
() Dun & Bradstreet
() In-Depth Investigation of Financial Statement
() Interviews with those doing business with Developer
() Other (please list) _____
7. Do you find Developers willing to admit concerns that they may have about other projects that they own that might cause them financial setbacks?
Yes () No ()
8. What steps do you take to assure that the Developer is utilizing a reputable Contractor to construct the project? (Please list all, Rank 1 = most important)
() Investigate with Construction Industry Licensing Board
() Submittal of Contractor's Qualification Statement
() Interviews with Architects and Engineers
() Interviews with other Developer clients of the Contractor
() Other (please list all) _____
9. Do a percentage of the projects you finance require the Contractor to provide a Performance and Payment Bond?
Yes () No ()
10. If No to (9) above, under what circumstances do you not required a Performance and Payment Bond? (Please list all that apply)
() Strong Contractor Financial Statement
() Low ratio of current bonded work to total bond capacity
() Requiring contractor to bond major subcontractors
() Reputation of Contractor
() Other (please list all) _____
11. Do you require the Contractor to execute the Developer's Construction Loan Agreement?
Yes () No ()
12. If Yes to (11) above, what are the terms which require the Contractor to finish the project in the event of default of the Developer?

13. What steps do you take to reduce the lender's exposure when making construction loans? (Please list all that apply)
() Developer Equity
() Personal Guarantees
() Pre-Sales or Pre-Leases
() Other (please list all) _____
14. What is the most reliable method to monitor the monthly construction draw to insure that the project is not overdrawn?
() Outside Construction Consultant
() Architect of Record
() In-House Bank Official
() Other (please list all) _____

15. Under what circumstances would you lend to a Developer who has a previous record of cost overruns and/or difficulty in repaying loans?
- () Never
 () Larger up front equity
 () Co-signature of a financial partner
 () Other (please list all) _____
-
16. What precautions do you take to insure that a Developer does not Co-Mingle funds of different projects or take dollars drawn for hard costs to pay for other projects or to pay soft costs?
- () None
 () Developer Certification on disbursements
 () Audit of Developers Records
 () Review of Developers Banking Records
 () Other (please list all) _____
-
17. What precautions do you take to insure that the Developer's Contractor pays the Subcontractors, Suppliers, and Materialmen on the project on a timely basis?
- () Lien Releases on all Subcontractors
 () Certification by General Contractor
 () Certification by Owner and Architect
 () Other (please list all) _____
-
18. Do you believe that the Lending Industry should become more responsible for insuring that all parties for whom monies are drawn are in fact paid with those funds?
 Yes () No ()
19. Do you believe that Lenders should be required to set aside the portion of the loan for Construction Costs and whether there should be restrictions on the owner and lender to use those funds for other purposes?
 Yes () No ()
20. Do you believe that the lender should be required to give notice to the Contractor in the event of a default by the Developer?
 Yes () No ()
21. Should the lender be required to pay for all improvements made prior to the date of the default by the Developer?
 Yes () No ()
22. Should the lender escrow the Contract Retainage, and disburse it as a condition of foreclosure of a mortgage?
 Yes () No ()
23. Do you believe that retainage should still be held on a contractor if a Performance and Payment bond has been provided?
 Yes () No ()
24. Do you think Developers should be licensed for competency, in the interest of protecting the . . . health, safety, and general welfare of the public?
 Yes () No ()

.....
 Optional: Please complete all that you can to make this a meaningful questionnaire:

1. What is your Average Annual Volume of Construction Loans over the past 5 years? \$ _____
2. Estimated Annual Volume of Construction Loans in this calendar year? \$ _____
3. What do you expect in terms of Annual Volume of Construction Loans for the next 5 years?
 Increase _____ About the Same _____ Decrease _____
4. If an increase or decrease, by what percentage over this year's volume? _____ %
5. To what do you attribute this change? (Please List All)

6. Other Comments that would make the results of this survey more meaningful:

QUESTIONNAIRE FOR OWNERS

1. Do you feel that when a Developer makes an application for a Construction or Land Acquisition loan that they typically represent:
 Their true financial position
 A Slightly exaggerated financial position
 A Highly exaggerated position
2. What do you find is acceptable to lenders to verify your financial position?
 Certified Financial Statement
 Dun & Bradstreet
 In-Depth Investigation of Financial Statement
 Interviews with those doing business with Developer
 Other (please list) _____

3. Are you willing to admit to a lender concerns that you may have about other projects that may cause you a financial setback?
Yes No
4. What steps do you take to assure that you are utilizing a reputable Contractor to construct the project? (Please list all)
Rank 1 = most important
 Investigate with Construction Industry Licensing Board
 Submittal of Contractors Qualification Statement
 Interviews with Architects and Engineers
 Interviews with other Developer clients of the Contractor
 Other (please list all) _____

5. Do 100 percent of the projects you build require the Contractor to provide a Performance and Payment Bond?
Yes No
6. If No to (5) above, under what circumstances do you not require a Performance and Payment Bond? (Please list all that apply)
 Strong Contractor Financial Statement
 Low ratio of current bonded work to total bond capacity
 Requiring contractor to bond major subcontractors
 Reputation of Contractor
 Other (please list all) _____

7. Do you require the Contractor to execute the Owner's Construction Loan Agreement?
Yes No
8. If Yes to (7) above, what are the terms which require the Contractor to finish the project in the event of default of the Developer?

9. What steps do lenders take to reduce their exposure when making construction loans? (Please list all that apply)
 Owner Equity
 Personal Guarantees
 Pre-Sales or Pre-Leases
 Other (please list all) _____

10. What is the most reliable method to monitor the monthly construction draw to insure that the project is not overdrawn?
 Outside Construction Consultant
 Architect of Record
 In-House Bank Official
 Other (please list all)

11. Under what circumstances do you think a lender would lend to a Developer who has a previous record of cost overruns and/or difficulty in repaying loans?
 Never
 Larger up front equity
 Co-signature of a financial partner
 Other (please list all) _____

12. What precautions do your lenders take to insure that you do not Co-Mingle funds of different projects or take dollars drawn for hard costs to pay for other projects or to pay soft costs?
- () None
 () Owner Certification on disbursements
 () Audit of Developers Records
 () Review of Developers Banking Records
 () Other (please list all) _____
-
13. What precautions do you take to insure that the Contractor pays the Subcontractors, Suppliers, and Materialmen on the project a timely basis?
- () Lien Releases on all Subcontractors
 () Certification by General Contractor
 () Certification by Owner and Architect
 () Other (please list all) _____
-
14. Do you believe that the Lending Industry should become more responsible for insuring that all parties for whom monies are drawn are in fact paid with those funds?
 Yes () No ()
15. Do you believe that Lenders should be required to set aside the portion of the loan for Construction Costs and whether there should be restrictions on the owner and lender to use those funds for other purposes?
 Yes () No ()
16. Do you believe that the lender should be required to give notice to the Contractor in the event of a default by the Developer?
 Yes () No ()
17. Should the lender be required to pay for all improvements made prior to the date of the default by the Developer?
 Yes () No ()
18. Should the lender escrow the Contract Retainage, and disburse it as a condition of foreclosure of a mortgage?
 Yes () No ()
19. Do you believe that retainage should still be held on a contractor if a Performance and Payment bond has been provided?
 Yes () No ()
20. Do you think Developers should be licensed for competency, in the interest of protecting the . . . health, safety, and general welfare of the public?
 Yes () No ()

Optional: Please complete all that you can to make this a meaningful questionnaire:

1. What is your Average Annual Volume of Construction Loans over the past 5 years? \$ _____
2. Estimated Annual Volume of Construction Loans in this calendar year? \$ _____
3. What do you expect in terms of Annual Volume of Construction Loans for the next 5 years?
 Increase _____ About the Same _____ Decrease _____
4. If an increase or decrease, by what percentage over this year's volume? _____ %
5. To what do you attribute this change? (Please List All)

6. Other Comments that would make the results of this survey more meaningful:

QUESTIONNAIRE FOR ARCHITECTS

1. Do you feel that when a Developer makes an application for a Construction or Land Acquisition loan that they typically represent:
 Their true financial position?
 A Slightly exaggerated financial position?
 A Highly exaggerated financial position?
2. What available means do you utilize to verify a Developer's true financial position before entering into a design contract?
 Certified Financial Statement
 Dun & Bradstreet
 Interviews with other Architect Clients of Developer
 Other (Please List All) _____

3. Do you find Developers willing to admit concerns that they may have about other projects that they own that might cause them financial setbacks?
Yes No
4. What steps do you take to assure that the Developer is utilizing a reputable Contractor to construct the project? (Please list all Rank 1 - Most Important)
 Investigate with Construction Industry Licensing Board
 Submittal of Contractors Qualification Statement
 Interviews with other Architects and Engineers
 Interviews with other Developer clients of the Contractor
 Other (Please List All) _____

5. Do you always recommend that the Contractor be required to provide a Performance and Payment Bond?
Yes No
6. If No to (5) above, under what circumstances do you not recommend a Performance and Payment Bond?
 Strong Contractor Financial Statement
 Low ratio of current bonded work total bond capacity
 Requiring contractor to bond major subcontractors
 Reputation of Contractor
 Other _____

7. What is the most reliable method to monitor the monthly construction draw to insure that the project is not overdrawn?
 Outside Construction Consultant
 Architect of Record
 In House Bank Official
 Other (Please List All) _____

8. Under what circumstances would you work for a developer who has a previous record of cost overruns and/or difficulty in repaying loans?
 Never
 Up Front Payments
 Month to month with timely payments
 Other (Please List All) _____

9. What precautions do you take to insure that a Developer does not Co-Mingle funds of different projects or take dollars drawn for hard costs to pay for other projects or to pay soft costs?
 None
 Developer Certification on disbursements
 Other (Please List All) _____

10. What precautions do you take to insure that the Developer's Contractor pays the Subcontractors, Suppliers, and Materialmen the project on a timely basis?
- () Lien Releases on all Subcontractors
 - () Certification by General Contractor
 - () Certification by Owner
 - () Other _____
-

11. Do you believe that the Lending Industry should become more responsible for insuring that all parties for whom monies are drawn are in fact paid with those funds?
Yes () No ()
12. Do you believe that Lenders should be required to set aside the portion of the loan for Construction Costs and should there be restrictions on the owner and lender to use those funds for other purposes?
Yes () No ()
13. Do you believe that the lender should be required to give notice to the Contractor in the event of a default by the Developer?
Yes () No ()
14. Should the lender be required to pay for all improvements made prior to the date of the default by the Developer?
Yes () No ()
15. Should the lender escrow the Contract Retainage, and disburse it as a condition of foreclosure of a mortgage?
Yes () No ()
16. Do you believe that retainage should be held on the contractor if a Performance and Payment bond has been provided?
Yes () No ()
17. Have you lost money because of a lender's foreclosure of a Development or Construction Loan in the past 5 years?
Yes () No ()
18. Do you think that developers should be licensed for competency, in the interest of protecting the . . . health, safety, and general welfare of the public?
Yes () No ()

.....

Optional: This information would be useful in determining the state of our Construction Development Industry. Please complete that you can release from your institution:

1. Average Annual Volume of Construction Loans over the past 5 years _____
2. Estimated Annual Volume of Construction Loans in this calendar Year _____
3. What do you expect in terms of Annual Volume of Construction Loans for the next 5 years?
Increase _____ About the same _____ Decrease _____
4. If an increase or decrease, by what percentage over this year's Volume? _____
5. To what do you attribute this change? (Please list ALL Reasons)

6. Other comments that would make the results of this survey more meaningful:

GENERAL CONTRACTOR/CONSTRUCTION MANAGER QUESTIONNAIRE

1. What steps do you take to assure that the Developers you work with on private projects have the financial capability to develop and build the project for which you are bidding? (Please list all)

None ()	Financial Statement ()
Credit Report ()	Reference Check ()
Dun & Bradstreet ()	Bonding of GC ()

Other _____
 2. What percentage of your total volume is private construction? _____%
 3. What percentage of your private projects involve a construction lender? _____%
 4. In what percentage of your projects which involve a construction lender, have there been payment delays due to the lender's involvement in the disbursement process? _____%
 5. How many private projects have you been involved with in the last 5 years that have gone into lender foreclosure?
_____ projects
 6. How many total private projects have you been involved with in the last 5 years?
_____ projects
 7. Have you worked on projects which have gone into foreclosure where you performed work after the loan went into default as you were not advised of the default?
Yes () No ()
 8. Do you believe that the lender should be required to give notice to the Contractor and the Subcontractors in the event of a default by the Developer?
Yes () No ()
 9. Should the lender be required to pay for all improvements made prior to the date of the default by the Developer?
Yes () No ()
 10. Should the lender escrow the Contract Retainage, and disburse it as a condition of foreclosure of a mortgage?
Yes () No ()
 11. Do you believe it should be required that retainage be held in an interest bearing account, with the interest going to the party ultimately entitled to the retainage?
Yes () No ()
 12. What percentage of the time are you required to provide a Performance and Payment Bond on private contracts?
_____%
 13. Are you required as the Contractor to execute the Developer's Construction Loan Agreement?
Yes () No ()
 14. If Yes to (4) above, what are the terms for you, as the Contractor, to finish the project in the event of default of the Developer?

 15. Do you believe that it is proper to hold retainage on a contractor when a Performance and Payment Bond is provided?
Yes () No ()
 16. Do you take any precautions to insure that a Developer does not take dollars drawn for your construction draw to pay for other projects or to pay soft costs?
Yes () No ()
- If Yes, what precautions have you found that work effectively?

17. Do you believe that Lenders should be required to set aside the portion of the loan for Construction Costs and prohibit the use of those funds by the Developer for other purposes?
 Yes () No ()
18. Do you believe that the Lending Industry should become more responsible for insuring that all parties for whom monies are drawn are in fact paid with those funds?
 Yes () No ()
19. What is the most reliable method for the lender to utilize to monitor the monthly construction draw to insure that the project is not overdrawn?
 Independent Consultant () Architect of Record ()
 Bank Official () Other (Please List)

-
20. Are you knowledgeable about the Construction Lien Law?
 Yes () Somewhat () No ()
21. Have you or a key manager in your organization attended a Construction Lien Law Seminar in the last 2 years?
 Yes () No ()
22. Do you or a key manager in your organization plan to attend a Construction Lien Law Seminar within the next year?
 Yes () No ()
23. Do you believe that Developers should be licensed for competency, in the interest of protecting the ... health, safety, and general welfare of the public?
 Yes () No ()

.....
 Optional: Please complete all that you can to make this a meaningful questionnaire:

1. What is your Average Annual Volume of Construction over the past 5 years?
 \$ _____
2. What is your Annual Volume expected to be this calendar year?
 \$ _____
3. How do you expect your Average Annual Volume (adjusted for inflation) to Change over the next 5 years?
 Increase _____ About the Same _____ Decrease _____
4. To what do you attribute this change? (Please List All Reasons).

5. Other Comments that would make the results of this survey more meaningful:

SUBCONTRACTORS/SUPPLIERS QUESTIONNAIRE

1. What steps do you take to assure that the Developer and Contractor have the financial capability to develop and build the project for which you are building? (Please list all)

None () Financial Statement () Credit Report ()
 Reference Check () Dun & Bradstreet () Bonding of GC ()

Other _____

2. What percentage of your total volume is private construction? _____ %
3. What percentage of your private projects involve a construction lender? _____ %
4. In what percentage of your projects which involve a construction lender, have there been payment delays due to the lender involvement in the disbursement process? _____ %
5. How many private projects have you been involved with in the last 5 years that have gone into lender foreclosure?
_____ projects
6. How many total private projects have you been involved with in the last 5 years?
_____ projects
7. Have you worked on projects which have gone into foreclosure where you performed work after the loan went into default you were not advised of the default?
Yes () No ()
8. Do you believe that the lender should be required to give notice to the Contractor and the Subcontractors in the event of a default by the Developer?
Yes () No ()
9. Should the lender be required to pay for all improvements made prior to the date of the default by the Developer?
Yes () No ()
10. Should the lender escrow the Contract Retainage, and disburse it as a condition of foreclosure of a mortgage?
Yes () No ()
11. Do you believe it should be required that retainage be held in an interest bearing account, with the interest going to the party ultimately receiving the retainage?
Yes () No ()
12. What percentage of the time are you required to provide a Performance and Payment Bond on private contracts? _____ %
13. Do you believe that it is proper to hold retainage on a contractor when a Performance and Payment Bond is provided?
Yes () No ()
14. Do you take any precautions to insure that a Developer or Contractor does not take dollars drawn for your construction draw pay for other projects or to pay soft costs?
Yes () No ()

If Yes, what precautions have you found that work effectively?

15. Do you believe that Lenders should be required to set aside the portion of the loan for Construction Costs and prohibit the use of those funds by the Developer for other purposes?
Yes () No ()
16. Do you believe that the Lending Industry should become more responsible for insuring that all parties for whom monies are drawn are in fact paid with those funds?
Yes () No ()
17. What is the most reliable method for the lender to utilize to monitor the monthly construction draw to insure that the project not overdrawn?

Independent Consultant () Architect of Record ()
 Bank Official () Other (Please List)

18. Are you knowledgeable about the Construction Lien Law?
 Yes () Somewhat () No ()
19. Have you or a key manager in your organization attended a Construction Lien Law Seminar in the last 2 years?
 Yes () No ()
20. Do you or a key manager in your organization plan to attend a Construction Lien Law Seminar within the next year?
 Yes () No ()
21. Do you think that Developers should be licensed for competency, in the interest of protecting the . . . health, safety, and general welfare of the public?
 Yes () No ()

.....

Optional: Please complete all that you can to make this a meaningful questionnaire:

1. What is your Average Annual Volume of Construction over the past 5 years?
 \$ _____
2. What is your Annual Volume expected to be this calendar year?
 \$ _____
3. How do you expect your Average Annual Volume (adjusted for inflation) to Change over the next 5 years?
 Increase _____ About the Same _____ Decrease _____
4. To what do you attribute this change? (Please List All Reasons).

5. Other Comments that would make the results of this survey more meaningful:

APPENDIX "B"

BCIAC MAILING LIST

Mr. William Conway
BCIAC Chairman
110 Orchard Lane
Ormond Beach, Florida 32176

Mr. Donald R. Dolan,
Executive Vice President
MECHANICAL CONTRACTORS ASSOC.
OF SOUTH FLORIDA
99 N.W. 183rd Street, Suite 102
Miami, Florida 33169

Mr. Deane Ellis
FLA. AIR CONDITIONING CONTR. ASSOC.
802 Northwest First Avenue
Deeray Beach, Florida 33444

Mr. Joseph Holland, III
CONSULTANT
1225 N. Halifax Avenue
Daytona Beach, Florida 32118

Mr. Harold Johnson
P. O. Box 770771
Winter Garden, Florida 34777-0771

Mr. Thomas Mack, State Director
FLA. HOME BUILDERS ASSOCIATION
135 Young Place
Lakeland, Florida 33803

Mr. John C. Pistorino, President
PISTORINO & ALAM CONSULTING
ENGINEERING, INC.
7701 S. W. 62nd. Ave., 2nd. Floor
South Miami, Florida 33143

Mr. Bruce Simpson
CROM CORPORATION
250 S. W. 36th Terrace
Gainesville, Florida 32607

Mr. Russell P. Smith
THE PLUMBING EXPERTS, INC.
303 Northwest First Avenue
Boca Raton, Florida 33431

Mr. Clifford I. Strom, Director
THE BROWARD CO. BOARD
OF RULES AND APPEALS
955 S. Federal Highway, Suite 401
Ft. Lauderdale, Florida 33316

Mr. Warren M. Sutton
UNIVERSAL DIVERSIFIED ENT., INC.
1050 East 24th. Street
Hialeah, Florida 33013

Mrs. Celeste K. Valdez, Vice Pres.
KALEMERIS CONSTRUCTION, INC.
P. O. Box 15422
Tampa, Florida 33684

Dr. Brisbane H. Brown, Jr.
Executive Secretary - BCIAC
School of Building Construction
FAC 101 - University of Florida
Gainesville, Florida 32611

The Honorable Wm. Cecil Golden
Deputy Commissioner
Department of Education
Florida Education Center
Tallahassee, Florida 32399

Mr. Daniel O'Brien, Executive Director
Construction Industry Licensing Board
111 Coast Line Drive, East, Suite 516
Jacksonville, Florida 32202

CENTRAL FLA. COMMUNITY COLLEGE
Building Construction
P. O. Box 1388
Ocala, Florida 32678

Mr. Edwin Green, Chairman
Construction Industry Licensing Board
775 N.W. 21st. Street
Miami, Florida 33127

DAYTONA BEACH COM. COLLEGE
Building Construction
P. O. Box 1111
Daytona Beach, Florida 32015

Mr. Carlos Lopez-Cantera, Vice Chairman
Construction Industry Licensing Board
7401 N.W. Seventh Street
Miami, Florida 33126

EDISON COMMUNITY COLLEGE
Construction Department
8099 College Parkway, S.W.
Fort Myers, Florida 33919

Mr. J. R. Crockett
Construction Complaints Study Committee
2157 Coral Gardens Drive
Wilton Manors, Florida 33306

FLORIDA JUNIOR COLLEGE
Building Construction Technology
101 W. State Street
Jacksonville, Florida 32202

Mr. Hoyt G. Lowder
FAILS MANAGEMENT INST.
5301 West Cypress Street
Tampa, Florida 33622

GULF COAST COMMUNITY COLLEGE
Building Construction
5230 West Highway, 98
Panama City, Florida 32401

Mr. Clark Jennings
Department of Legal Affairs
Tallahassee, Florida 32399-1050

HILLSBOROUGH COM. COLLEGE
Architectural and Construction
P. O. Box 30030
Tampa, Florida 33630-3030

BROWARD COMMUNITY COLLEGE
FIU/Broward Construction Management
3501 S.W. Davie Road
Ft. Lauderdale, Florida 33314

INDIAN RIVER COM. COLLEGE
Building Construction
3209 Virginia Avenue
Fort Pierce, Florida 33498

MANATEE JUNIOR COLLEGE
Technology
5840 26th Street, West
Bradenton, Florida 34207

MIAMI DADE COMMUNITY COLLEGE
Building Construction Technology
11011 S. W. 104th Street
Miami, Florida 33176

OKALOOSA-WALTON COM. COLLEGE
Technical Ed. & Economical Dev.
100 College Blvd.
Niceville, Florida 32578

PALM BEACH JUNIOR COLLEGE
Construction Engineering
4200 Congress Avenue
Lake Worth, Florida 33641

PASCO HERNANDO COM. COLLEGE
Vocational & Technical Programs
2401 State Highway 41, North
Dade City, Florida 33525

PENSACOLA JUNIOR COLLEGE
Engineering & Construction
1000 College Blvd.
Pensacola, Florida 32504

POLK COMMUNITY COLLEGE
Station 61 - Lakeland
Business and Technology
999 Avenue H. NE
Winter Haven, Florida 33881

SANTA FE COMMUNITY COLLEGE
Building Construction I-50
3000 N.W. 83rd. Street
Gainesville, Florida 32602

SEMINOLE COMMUNITY COLLEGE
Construction Engineering Technology
100 Weldon Blvd.
Sanford, Florida 32771-6199

SOUTH FLORIDA JUNIOR COLLEGE
Technical and Industrial
600 West College Drive
Avon Park, Florida 33825

ST. PETERSBURG JUNIOR COLLEGE
Building Arts Program
2465 Drew Street
Clearwater, Florida 33575

VALENCIA COMMUNITY COLLEGE
Construction Technology Program
P. O. Box 3028 MC 4-23
Orlando, Florida 32802

FLORIDA A & M UNIVERSITY
Dept. of Construction Technology
P. O. Box 164
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FLORIDA INTERNATIONAL UNIVERSITY
Construction Mgmt Dept. V H 230
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Miami, Florida 33199

UNIVERSITY OF FLORIDA
School of Building Construction
FAC 101
Gainesville, Florida 32611

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College of Engineering
Dept. of Civil & Environmental Engineering
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AGC Florida East Coast Chapter
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UNIVERSITY OF NORTH FLORIDA
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AGC Mid-Florida, Inc.
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Tampa, Florida 33622

UNIVERSITY OF WEST FLORIDA
Building Construction
Building 70
Pensacola, Florida 32504

AGC Northeastern Florida Chapter
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ABC Central Florida Chapter
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Winter Park, Florida 32789

AGC Northwest Florida Chapter
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ABC Florida Gold Coast Chapter
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BA of Manatee County
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ABC Florida Space Coast Chapter
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Melbourne, Florida 32902-2296

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Port Charlotte, Florida 33952

HBA of Lake County
1102 N. Joanna
Tavares, Florida 32778

DAYTONA BEACH HBA
2435 S. Ridgewood Avenue
South Daytona , Florida 32019

HBA of Mid Florida
544 Mayo Avenue
Maitland, Florida 32751

MARION COUNTY HBA
409 N.E. 36th Avenue
Ocala, Florida 32670

HBA of Okaloosa/Walton Co.
1980 Lewis Turner Road
Ft. Walton Beach, Florida 32548

OKEECHOBEE BLDRS CHAPTER
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Okeechobee, Florida 33473

HBCA of Palm Beach County
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West Palm Beach, Florida 33407

Mr. Jay Daggner
Lake City Division of Planning &
Development Bldg Dept.
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Tavares, Florida 32778

Hernando BA
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Brooksville, Florida 34613

Mr. Lionel Lesperanze
J. L. W. Vo-Tech Center
3702 Estay Avenue
Naples, Florida 33942

Highlands County BA
906 S. E. Lakeview Drive
Sebring, Florida 33870

LEE BIA
4571 Colonial Blvd.
Ft. Meyers, Florida 33912

CITRUS COUNTY BA
1196 S. LeCanto Hwy, 491
LeCanto, Florida 32661

NORTHEAST FLORIDA BA
P. O. Box 17339
Jacksonville, Florida 32245

ABC Florida Gulf Coast Chapter
P. O. Box 152107
Tampa, Florida 33684

ABC Florida Chapter
1230 North Adams Street
Tallahassee, Florida 32302

Flagler County/Palm Coast BA
One Florida Park Drive #332
Palm Coast, Florida 32037

Florida Atlantic BA
3200 N. Military Trail
Boca Raton, Florida 33431

Florida Home Builders Association
P. O. Box 1259
Tallahassee, Florida 32302

Gainesville HBA
2217 N. W. 66th Court
Gainesville, Florida 32601

HBCA Brevard
1500 W. Eau Gallie Blvd.
Melbourne, Florida 32935

APPENDIX "C"

LETTERS FROM TRADE ASSOCIATIONS

1. ASSOCIATED GENERAL CONTRACTORS OF AMERICA
2. AMERICAN SUBCONTRACTORS ASSOCIATION



Florida AGC Council
Associated General Contractors of America

322 Beard Street • Tallahassee, Florida 32303 • Post Office Box 10569 • Tallahassee, Florida 32302-2569
Phone 904/222-2421 • Fax 904/222-2911

March 31, 1992

Mr. Daniel A. Whiteman
School of Building Construction
University of Florida
423 S.W. 10th Street
Gainesville, Florida 32601

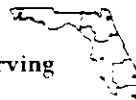
Re: Lender Responsibility Study

Dear Dan:

I am pleased to report that Committee Substitute for Senate Bill 972 was passed on the last day of the Regular Session of the 1992 Florida Legislature. CS/SB 972 includes the creation of a new section in the Construction Lien Law entitled Lender Responsibility. This bill requires lenders to notify the contractor and any subcontractors or suppliers who have given the lender a notice to owner if the lender decides to cease funding under the construction financing. There are also restrictions on the owner and the lender from reducing the construction budget more than 5 percent or \$100,000, whichever is less, without prior notice to the contractor and to the subs and suppliers who have given notice.

The interest and activity on these issues was generated, in large part, due to the study which you were conducting on behalf of the Building Construction Industry Advisory Council (BCIAC). I am confident that the results of your study (and any follow-up studies which are done in this area) will give the construction industry and the Legislature guidance to the extent problems relating to construction financing may still exist.

Representing and Serving



Florida AGC Chapters

Northwest Florida

Northeastern Florida

Mid-Florida

Florida East Coast

South Florida

"Build with the Best"

Mr. Daniel Whiteman
March 31, 1992
Page 2

On behalf of the Florida Council of Associated General Contractors, I wish to thank you for your work. The Lender Responsibility Study has a very practical and tangible benefit to the construction industry.

Sincerely yours,

Mark S. Woodall
Executive Director

MSW/tf

cc: Florida AGC Council
Neil H. Butler, Esq.

LEIBY FERENCIK LIBANOFF AND BRANDT

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

REPLY TO MIAMI

LARRY R. LEIBY
ROBERT E. FERENCIK, JR.
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MIAMI, FLORIDA 33169-6457

DADE (305) 949-8003
BROWARD (305) 525-3553
FAX (305) 949-7982

420 N.E. THIRD STREET
FORT LAUDERDALE, FL 33301

BROWARD (305) 487-2727
DADE (305) 949-8003
FAX (305) 523-3240

March 24, 1992

Mr. Daniel E. Whiteman
423 Southwest 10th Street
Gainesville, Florida 32601

Dear Mr. Whiteman:

I was glad to see the type of survey that you are doing at the University of Florida in connection with lender payment practices. I was also pleased to be able to participate. Apparently, the most pleasing activity is the fact that some results have taken place already in the last legislative session as a result of the interest promoted by activities such as your study. If you have an opportunity I would like to see the results of your study or a report of your study.

Best personal regards,


LARRY R. LEIBY

LRL:njm