

California Construction Law Basics

**A Pocket Guide
for Contractors**

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California Construction Law Basics: A Pocket Guide for Contractors

Published by William J. Ward, Esq.

Distributed by:

Action Circle Publishing Company

P.O. Box 1564

Ukiah, CA 95482

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Printed and bound in the United States of America

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Published 2014

Second Edition published 2010

First Edition published 1999

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Foreword

A contractor who fails to take a few simple legal steps *on every project* could lose all the money owing on it if the owner or general contractor for some reason does not pay. The loss could run—and has run—into hundreds of thousands of dollars. This pocket construction law guide is intended to provide contractors with a short, simple outline for securing their legal collection rights on all public and private projects in California. The guide is intentionally short and simple. Read each word as if it is worth \$5.00. If you ever need the information in this guide, each word could be worth a hundred times that.

You Can Read This Booklet in One Sitting — Do It More Than Once

1. How to Use This Guide

Before you take any of the steps discussed in this booklet, read it all. It is intentionally brief so you can go through it in one sitting. After reading it, put it aside. Then in a day or two read it again. Over the next week or two read one section a day until each section begins to settle in. Don't worry if you don't "get it" the first or second time. Not even lawyers can do that. It's important to take in this material in small bites. By the end of about 10 days you will have a memory "hook" for what legal step to take at each stage of a job.

Read the book to know the material. You *don't* have to memorize it. The book is small enough to keep in your shirt or jacket pocket. You can use it to check your rights whenever you have a payment problem. Also, when you start a new job, re-read Sections 2 through 9 to refresh your understanding.

There is a checklist of procedures in the back. It's a simple way to see when to do what. Don't rely on that alone. Before you take any of the steps outlined in the checklist, read the section that relates to each step to be sure you do it right.

Now go out and buy a stack of Preliminary Notices, Mechanic's Liens, and Stop Payment Notices, so you will have them ready for every job.

First, Send Out Preliminary Notices

2. The Preliminary Notices

To record a valid Mechanic's Lien in California the law requires that any person or business that furnishes equipment, services, or material to a construction jobsite—*but does not have a direct contract with the owner*—first “serve” a Preliminary Notice on

- the general contractor,
- the owner,
- the lender, and
- the “surety” (see Section 6).

It applies to subcontractors, suppliers, equipment lessors, and the like. It doesn't apply to the general contractor or anyone else who *does* have a direct contract with the owner—though a general is now required to serve a notice on the lender. No law says a general contractor can't also serve an owner. If an owner sends back or posts a Notice of Nonresponsibility, it's a tip-off that you're working for someone who does not own the property; you should *not* lien that property!

To “serve” notices (give them properly as the law requires), hand them over personally, use registered or certified mail with return receipt requested, express mail, or express overnight delivery. Keep the paperwork the Post Offices gives you, including the sealed envelope if it’s returned as not accepted. Also keep a copy of your notice and all the other papers mentioned in this guide.

If a husband and wife own the property, serve each a notice. Corporations have agents you must serve; ask the general contractor who it is. *Write down who, when, and how you served.*

We used to call this form a “20-day” notice because it reaches back to protect all you contributed to the job, starting 20 days before you served it. To protect your entire claim, serve within 20 days of *first* furnishing labor, materials, etc., to the jobsite. (You’ll need a calendar or notepad to mark these important dates.)

Try to record the Preliminary Notice with the County Recorder in the county where the project is located. If the Preliminary Notice is recorded, the County Recorder is required to notify you when the notice of completion is recorded for the project. This may be crucial for recording a Mechanic’s Lien (see Section 3).

Make sure all information on the form is complete and accurate. An illustration of the notice appears in the Forms section of this booklet. The actual forms have instructions on the back.

If You're Not Getting Paid, Record a Mechanic's Lien

3. The Mechanic's Lien

As soon as it's clear you won't be paid on a project where you've completed your part (and served any needed Preliminary Notices), you should record a Mechanic's Lien against the property at the County Recorder's Office in the county where the property is located. The deputy recorders will help you do this. You must also file a Notice of the Mechanic's Lien as well as a Proof of Service on the owner, general contractor, and lender. An illustration of the lien and accompanying documents are shown in the Forms section. A recorded Mechanic's Lien will secure your right to payment by preventing the property's sale until you've settled your claim and you release the property's owner from the duty to pay you. (We'll discuss releases later.)

The property you "lien" in this way may be sold only if its owner either pays you or posts a Release Bond

with a surety company. If the owner posts a Release Bond, then you can sue to collect your money from the bond instead of the property. In effect, the surety that issues the bond becomes a stakeholder for the funds you claim from the owner.

As with the Preliminary Notice, all the information on your Mechanic's Lien form must be accurate and complete, including any extra work and/or change orders (see Section 8). If you leave out relevant information or don't "verify" the lien, a court will rule that the lien is defective and worthless. Verifying means signing a part of the form that declares the truth of your information under penalty of perjury.

Play-Safe (Not Statutory) Deadlines

When to Record. You can record a Mechanic's Lien at any time during the job after the completion of your work. For practical purposes, the last safe date to record is 30 days after the owner records a *Notice of Completion* or a *Notice of Cessation* of the project at the County Recorder's Office. Just ask the owner or general contractor to find out when such a notice was recorded, or check the records at the County Recorder's Office in the county where the job is. When work just stops and nobody records a notice, record your lien at once.

When to Sue. Mechanic's Liens are good for only 90 days, so you must file lawsuits based on them within 90 days of recording. If the job is still going on, you can renew a lien that lapses after 90 days. But if work stops or the owner records a Notice of Completion or Cessation, you get only one 90-day chance to sue. And you'd better have recorded your lien within 30 days of that windup event.

That is, you can renew a lapsed lien during the job—but once the owner records, think 30 DAYS TO RECORD AND 90 TO SUE. If the work just stops—no Notice—get moving! Record. Sue. If you don't sue within 90 days of recording your lien, it won't become "perfected." The court will consider it void and not enforceable. *(These are safe, simple time periods—not the confusing 30-, 60-, 90-day maze the code calls for.)*

When to Sue on the Bond. If, after you record your lien or file your lawsuit, the owner records a Release Bond with the County Recorder, you'll have six months from the bond's recording date to file a lawsuit against it. A tip-off that a Release Bond has been filed might be that the property goes up for sale. You must be diligent, in any case, about checking at the Recorder's Office.

A “Bonded” Stop Payment Notice to the Lender Freezes Money You Claim

4. Stop Payment Notices

If the **owner** is in trouble and doesn't pay, serve a Stop Payment Notice on the project's lender. That forces it to hold back the money you claim from the owner.

You should already have served a Preliminary Notice on a proper agent of the lender—its branch manager or similar responsible officer—either in person, by registered or certified mail with return receipt requested, express mail, or express overnight delivery. When you record your Mechanic's Lien, serve your Stop Payment Notice the same way. Write down the details of the service. Serve the owner and surety, too.

You *must* serve a Stop Payment Notice on an owner who demands it. That's a legal way to make sure

you'll go after money the lender is holding for the project, rather than the owner's interest in the property.

The law requires a subcontractor, supplier, etc., who serves a Stop Payment Notice on a private project's lender, to take out a bond for 125% of the money claimed. When you send the lender a copy of that bond along with the notice, it becomes a "bonded" Stop Payment Notice. If you don't include a copy of the bond, the lender can ignore the Stop Payment Notice; so be sure to serve the lender with both papers.

You don't need a bond for a Stop Payment Notice on a public project. You just serve the notice on whatever public entity is funding the project.

Also, while a Preliminary Notice precedes the Stop Payment Notice on a private project, you don't need it on a public project *if you have a contract directly with the general contractor*. But remember, if you're ever in doubt about having a contract with the general contractor or about anything else, serve the Preliminary Notice. When it's time for the Notice of Completion at the end of a public project, that notice gets filed with the funding public entity—not the County Recorder.

You Can Sue for Breach of Contract, But—

5. Contract Rights

In addition to your legal rights under Mechanic's Lien and Stop Payment Notice laws, you can always sue on your contract with the owner or general contractor—even if you didn't serve the necessary notices and record a lien. If you have an oral contract, you generally have two years from the date of nonpayment in which to sue for a failure to pay. A written contract generally gives you four years to sue after breach of the contract by nonpayment. The trouble is that, if you win your contract case but don't have a lien, it will often be harder to get money out of the contractor or owner than if you had a Mechanic's Lien against the property or a Release Bond, or a right to payments that the stop payment-noticed lender withheld.

Lawyers Want a “Paper Trail”

The best policy for any contractor, besides serving and recoding all necessary notices and liens, is to have

everything in writing. If the other party won't put it in writing, write and date it yourself *at the time it happens* and keep your records in a safe place. A simple spiral notepad may save you thousands of dollars. Write down delays and changes in the work, and extra work orders you are directed to perform. You might have to supplement the notepad with a job book for big projects. A few minutes spent in "tedious paperwork"—like sending the owner a memo or letter about any changes (and keeping a copy for yourself), or making an entry in your "diary"—can be evidence to help you nail down payment for the job.

Secure Your Claim on the Payment Bond

6. Payment and Performance Bond Claims

There's someone else to serve with the Preliminary Notice. It's the "surety." The owner on a project may require the general contractor to put up *Payment and Performance Bonds* from an insurance company, which technically is called the surety. These bonds make sure the general contractor will do the job as promised and will pay the subcontractors and suppliers. *Always* find out who the surety is and serve it with a copy of your Preliminary Notice.

When the project is complete but you haven't been paid, or as soon as the general contractor starts to have payment problems, notify the surety in writing of what the general owes you. State in your letter or memo:

- the work performed,
- when you performed it, and
- the general contractor for whom you did the work. Then
- tell the surety how much the general contractor owes you, and
- demand that the surety pay you.

These steps are for materials supplied, too. Send all your correspondence to the surety and general contractor by registered or certified mail with return receipt requested, express mail, express overnight delivery or by personal service. And, as always, keep copies of your receipts and correspondence.

Public works projects nearly always require general contractors to purchase payment bonds. You should be able to get the surety's name from the public agency funding the project. Usually it will supply this information routinely to all contractors. The general contractor on federal projects must post a Miller Act Bond, which we discuss in Section 7, below.

If you must sue for payment on any private or public project that is guaranteed by a surety bond, your lawyer will want to sue the surety that issued the payment bond. That's why you send the surety a copy of the Preliminary Notice.

A Miller Act Bond on a Federal Job Assures the Money Is There

7. Miller Act Claims

When a general contractor performs work on a *federal project*, it posts a Miller Act Payment Bond to ensure payment to everyone who supplies labor or material for the work that the general contractor contracted to do. “Everyone” includes all “first-” and “second-tier” subcontractors and material suppliers. First-tier subcontractors have contracts directly with the “prime” or general contractor. Second-tier subcontractors deal directly with first-tier subcontractors only. A Miller Act Bond unfortunately covers only suppliers who furnish materials to the prime contractor or first-tier subs.

Preliminary Notice requirements are a little different on a Miller Act project. First-tier contractors, who contract directly with the prime contractor, along with second-tier contractors and eligible suppliers must serve a Preliminary Notice on the prime within 90 days after *last* furnishing labor or materials to the site. The notice, which is simply a letter to the prime contractor, identifies:

- the project's prime contractor
- the labor or materials supplied
- the amounts owed, and it
- demands that the prime contractor pay.

This preliminary notice goes to the prime contractor by *registered*, not certified, mail. You have one year from mailing the notice to file a lawsuit, but do it early. There's no requirement to file a Mechanic's Lien, because you don't lien a federal project.

Write Memos for All Extra Work and Change Orders

8. Extra Work and Change Orders

Work that isn't in your original contract will cost more money. Make sure it isn't your money. "Extra work" or "change orders" can turn up on any construction job. These terms are typically used interchangeably for new items of work. Most contracts require a written agreement before you do extra work. The general contractor or owner must ask you to do any work outside the scope of the original contract and let you quote a price for the new work. Then you both sign a new written agreement for it. Problems arise when the general contractor or owner believes the item is neither extra nor a change in the original contract. When that happens you have to proceed carefully.

When you're asked to do what you consider to be extra work, do it but put all the details about it in writing as either a memo or letter to the contractor or owner – whichever you have a contract with. You'll need just a few short statements of your position on the new work. Tell:

- what the new work involves,
- why you believe it isn't part of the job you agreed to do, and
- how much you expect it to cost.

Always keep track, too, of any delays caused by changes in the work, because often you're entitled to payment for the cost of delays as well. When delays or extras occur on the project, you *must* notify the general contractor or owner in writing *at the time they happen*. Always send a brief written notice, whether it's the owner, another trade, or nature that causes the delay. You may have heard that weather is an act of God and can't be compensated for. That isn't always true. For example, another trade's actions may push a tightly planned project into the rainy season. The rain could slow down your work, and you may be entitled to recover costs for the delay.

Watch Out for Releases

9. Releases

Often the owner, upon paying, will ask a contractor to sign a release to cancel Mechanic's Liens and Stop Payment Notice rights. California law permits four kinds of releases. Briefly, they are the (1) Conditional and (2) Unconditional Waiver and Release upon *Progress* Payment, and the (3) Conditional and (4) Unconditional Waiver and Release upon *Final* Payment. We illustrate all of them in the Forms section. Familiarize yourself with each one's language.

Releases sometimes have language that forfeits all of your rights, including disputed items and change-order work you were not paid for. Once you sign a release, regardless of whether you have been paid or not, you've given up your Mechanic's Lien and Stop Payment Notice rights on that project. Take very great care in signing a release. If you have not been paid, sign a *conditional* release. Make sure that the release covers *only* the percentage of work you've completed and been paid for.

The Legal System Protects Your Earnings - Use It!

10. Conclusion

Now you've read the fundamentals of what you need to know for protecting your payment rights for any job. With luck, of course, you may never have to do more than serve Preliminary Notices. If you talk to other contractors, however, you will find that few of them have ever had that kind of luck. Then you'll be glad you served your notices, recorded your liens, and wrote things down. Getting paid for your hard work is just too important to leave to chance or luck.

We intended this booklet to help you use the legal mechanisms designed to *remove* the element of chance from getting paid. By taking the simple, inexpensive

steps outlined above, you will have a sound basis for a lawsuit if you ever need to hire a lawyer to collect your earnings. Getting through these steps will be a little confusing the first time. That's true of anything worthwhile. But once you use these mechanisms, you will see they are a very powerful tool. You will never fail to use them again.

We believe this book will repay your \$5.00 investment many times over. We also believe this information will help assure your good fortune.

IMPORTANT NOTICE!

We've done our best to give your essential, useful, and accurate information. It will serve you well. But it's your job to make sure the information fits your situation. Also, laws and procedures change often; courts and boards interpret them differently. For these reasons, the author and publisher cannot guarantee any results from your use of this book's information or forms and cannot make a warranty, express or implied, or assume any liability for their use. For legal advice suited exactly to each special case, you must see a lawyer.

Glossary

Change Orders. Modifications, and requests for extra work. Oral change orders cause the most disputes between contractors and owners. That's why they should always be in writing. If they aren't, write them up and send out what you wrote immediately.

Contract. A legally binding agreement by which parties promise to exchange things of value. Contracts carry a lot of weight and have to be done exactly right for a court to enforce them.

Contract, Oral. A spoken agreement that qualifies as a contract. The wronged party must generally sue within two years of the date when the other party breaks its word. The time is short because people soon forget what was said.

Contract, Written. A contract whose terms you can actually see to argue over. It generally gives twice as long (four years) from the breach date to sue the renegeing party.

Extra Work. See Change Orders.

Limitations, Statute of. The law gives strict time periods in which it considers the evidence still good enough to support a lawsuit. After that, the wronged side is out of luck.

Mail, Certified. The U.S. Postal Services lets you pay extra to paste an officially numbered sticker on an envelope. You keep a receipt tag with the same number for your records. It doesn't prove the addressee got the envelope, just that you mailed it. **Return Receipt.** If you pay even more the Postal Service will let you attach a self-addressed postcard that your addressee has to sign in order to get the envelope. The signed postcard is your proof of receipt. Individuals sometimes refuse to sign return receipts. Businesses like insurance companies always sign.

Mail, Registered. The Postal Service goes a step further and makes its own record of your return receipt. This costs even more.

Mechanic's Liens. Trades, suppliers, and laborers of every class have a legal right, guaranteed by the California constitution, to place a lien on real estate on which they have bestowed their labor or materials without pay.

Miller Act. Congress's Miller Act requires a payment bond (See, Payment Bond) from any contractor hired to do any work that the U.S. government spends money for, has an interest in, and does for the public.

Notarizing. See Verifying.

Notice of Cessation. An owner puts this notice in the County Records that work on the project has just *stopped*. The 30-day clock for recording a Mechanic's Lien starts to run from when the owner records it.

Notice of Completion. An owner puts this notice in the County Records that work on the project was *completed* on a certain date. The 30-day clock for recording a Mechanic's Lien starts to run from the recording date, *not* the completion date.

Payment Bond. An owner can ask a contractor for any kind of security, including a bond from an insurer to guarantee the owner that the contractor will pay all the bills for labor and materials on the job.

Performance Bond. This is a security that a contractor buys from an insurance company to guarantee that, if the contractor does not do the job, the owner can use the bond money to pay another one that will.

Preliminary Notice. In 1959 the California legislature created this notice to protect property owners from having Mechanic's Liens recorded against them without advanced notice. It stops claims that used to come from out of left field.

Recorder's Office, County. In this local government office, copies of documents relating mostly to real estate, are registered, indexed, and stored. Forever. These records are the best legal evidence on title to, and claims against, property.

Release. The written surrender of a legal right, claim, or privilege held against a person, business, or government body.

Release Bond. A bond from an insurer that guarantees to fund money worth 150% of what a Mechanic's Lien claims. Anybody (but usually the owner) can buy one

and record it at the County Recorder's Office. It releases the property from the lien by switching the contractor's claim to the money that the bond guarantees.

Return Receipt Requested. See Mail, Certified.

Service, Serving. Simply the delivery of written papers to people, government bodies, or businesses in such a way that the law will hold them responsible for knowing what was in the papers when they should have known it.

Statute of Limitations. See Limitations.

Stop Payment Notice. In 1951 the California legislature made it illegal for owners or lenders who got proper notice to pay a contractor, funds claimed by an unpaid contractor, supplier, or the like.

Surety. A surety company is usually an insurer incorporated to take the responsibility (for a fee based on how much money is involved) to pay for any losses caused by the surety bond's buyer (the contractor). The company's business is sometimes called "guaranty insurance."

Verification. Notarizing requires a public officer (the notary public) to administer oaths to signers of certain documents, then to “attest and certify” by hand and official seal as to the signers and their signatures. It gives the documents enough legal credit and authenticity for a reliable public record. *Verification* cuts out all but the oaths, which the signers administer to themselves on paper and under penalty of perjury.

Forms & Checklist

CALIFORNIA PRELIMINARY NOTICE for PRIVATE WORKS

Pursuant to California Civil Code § 8034 (a), 8102, 8110, 8106, 8200 et seq.

*****THIS IS NOT A LIEN*****

NOTICE TO PROPERTY OWNER, EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances.

This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or person employed by you on the construction project.

If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are residential homeowner of a dwelling containing four or fewer units.

TO**OWNER (or Reputed Owner):**

Name: _____
 Address: _____
 City/State/Zip: _____ California

DIRECT CONTRACTOR (or Reputed Direct Contractor):

Name: _____
 Address: _____
 City/State/Zip: _____ California

CONSTRUCTION LENDER (or Reputed Construction Lender):

Name: _____
 Address: _____
 City/State/Zip: _____ California

OTHERS (Surety, Subcontractor):

Name: _____
 Address: _____
 City/State/Zip: _____ California

FROM

YOUR ATTENTION IS HEREBY NOTIFIED THAT THE UNDERSIGNED CLAIMANT:

SAMPLE

Company Name: _____ License # _____
 Address: _____ Phone # _____
 City/State/Zip: _____ California

Has supplied materials or equipment, or performed work or services as follows:

For improvement of the property defined as:

Address: _____
 City/State/Zip: _____ California
 APN: _____ or Description _____

In the Amount of:

This is an estimated amount, and is not a limitation of claimant's total amount

Under contract with:

Company Name _____ License # _____
 Address: _____ Phone # _____
 City/State/Zip: _____ California

PROOF OF SERVICE AFFIDAVIT (Pursuant to California Civil Code §8106)

I, _____ declare that I served copies of the above Preliminary Notice for Private Works by:

- personal delivery to _____ Name/Title _____ Address _____ Date _____ Time _____
 personal delivery to _____ at _____ on _____
- Pursuant to California Civil Code §8110, via Registered or Certified Mail, Express Mail, or overnight delivery by an express service carrier to each of the parties and respective addresses as listed above on _____
- Pursuant to California Civil Code §8106, via registered or certified Mail, express mail, or overnight delivery by an express service carrier to each of the parties and respective addresses as listed above on _____

I declare under penalty of perjury that the foregoing is true and correct.

Signed _____, on _____

MECHANICS LIEN

NOTICE IS HEREBY GIVEN that Claimant _____

_____ (legal name and address), claims a lien for labor, service, equipment, or material under Section 8000 et. seq. of the Civil Code of the State of California, upon the premises hereinafter described, and upon every estate or interest in such structures, improvements and premises held by any party holding any estate therein. The work was furnished for the construction of those certain buildings, improvements, or structures, now upon that certain parcel of land situated in the County of _____, State of California, said land described as follows:

STREET ADDRESS:

and/or

LEGAL DESCRIPTION:

The lien is claimed for the following labor, services, equipment or materials furnished by the Claimant:

_____ (describe generally). Claimant is owed \$ _____ for work furnished to the work of improvement, after deducting all just credits and offsets, plus interest at the legal rate from the date of this lien.

The name of the person or company by whom Claimant was employed, or to whom Claimant furnished the work is: _____.

The name(s) and address(es) of the owner(s) or reputed owner(s) of the real property is/are:

Name of Claimant: _____

Date: _____

By: _____

Signature

Print Name & Authorized Capacity

Verification

I, the undersigned, declare: I am the _____ (authorized capacity/title), for the Claimant named in the foregoing claim of mechanics lien: I am authorized to make this verification for the Claimant: I have read the foregoing claim of mechanics lien and know the contents thereof, and the same is true of my knowledge. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 20____ at _____ California. _____

Signature of Claimant or Authorized Agent

NOTICE OF MECHANICS LIEN

ATTENTION!

(Civil Code § 8416)

Upon the recording of the enclosed MECHANICS LIEN with the County Recorder's Office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanics lien is recorded.

The party identified in the mechanics lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanics lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanics lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS STATE LICENSE BOARD WEBSITE AT www.cslb.ca.gov.

PROOF OF SERVICE AFFIDAVIT
California Civil Code section 8416

Failure to serve the Mechanics Lien and Notice of Mechanics Lien on the owner, or alternatively if the owner cannot be served on the lender or original contractor, shall cause the Mechanics Lien to be unenforceable as a matter of law (Civil Code Section 8416(e)). Service of the Mechanics Lien and Notice of Mechanics Lien must be by (1) registered mail, (2) certified mail, or (3) first-class mail evidenced by a certificate of mailing, postage prepaid, and to a residence or business address for the owner, lender or contractor. Further, a Proof of Service Affidavit (below) must be completed and signed by the person serving the Mechanics Lien and Notice of Mechanics Lien. This page should be completed (either one of the sections below) and recorded with the County Recorder along with the Mechanics Lien and Notice of Mechanics Lien.

AFFIDAVIT FOR SERVICE ON THE OWNER

California Civil Code Section 8416 (a)(7) and (c)(1)

I, _____ (name), declare that I served a copy of this Mechanics Lien and Notice of Mechanics Lien by registered mail, certified mail, or first-class mail evidenced by a certificate of mailing, postage prepaid, addressed as follows to the owner(s) or reputed owner(s) of the property:

Company /Person served: _____

Title or capacity of person or entity served: _____

Service Address: _____

Said service address is the owner's residence, place of business, or address shown by the building permit on file with the permitting authority for the work or the address identified on the construct trust deed.

Executed on _____, 20____ (date), at _____ (city), California.

By: _____
(signature of person serving)

ALTERNATE AFFIDAVIT FOR SERVICE ON THE CONSTRUCTION LENDER OR ORIGINAL CONTRACTOR

California Civil Code Section 8416 (a)(7) and (c)(2)

I, _____ (name), declare that the owner or reputed owner cannot be served with a copy of this Mechanics Lien and Notice of mechanics Lien by registered mail, certified mail, or first-class mail. Pursuant to California Civil Code section 8416, I served a copy of this Mechanics Lien and Notice of Mechanics Lien by registered mail, certified mail, or first-class mail evidenced by a certificate of mailing, postage prepaid, addressed as follows to the construction lender or original contractor as follows:

Company /Person served: _____

Title or capacity of person served (if appropriate): _____

Service Address: _____

Executed on _____, 20____ (date), at _____ (city), California.

By: _____
(signature of person serving)

Stop Payment Notice

CALIFORNIA CIVIL CODE SECTION 8044

NOTICE TO: _____

(If Private Job - File with responsible officer or person at office or branch of construction lender administering the construction funds or with the owner - CIVIL CODE SECTIONS 8500 - 8560)

(If Public Job - file with office of controller, auditor, or other public disbursing officer whose duty it is to make payments under provisions of the contract - CIVIL CODE SECTIONS 9350 - 9510)

Direct Contractor: _____

Sub Contractor (If Any): _____

Owner or Public Body: _____

Improvement known as _____

County of _____, State of California.

Claimant, a _____

furnished certain labor, service, equipment or materials used in the above described work of improvement. The name of the person or company by whom claimant was employed or to whom claimant furnished labor, service, equipment, or materials is _____

The kind of labor, service, equipment, or materials furnished or agreed to be furnished by claimant was: _____

Total value of labor, service, equipment, or materials agreed to be furnished \$ _____

Total value of labor, service, equipment, or materials actually furnished is \$ _____

Credit for materials returned, if any \$ _____

Amount paid on account of any \$ _____

Amount due after deducting all just credits and offsets \$ _____

SAMPLE

YOU ARE HEREBY NOTIFIED to withhold sufficient monies held by you on the above described project to satisfy claimant's demand in the amount of \$ _____ and in addition thereto sums sufficient to cover interest, court costs and reasonable costs of litigation, as provided by law.

A bond (CIVIL CODE SECTION 8532) _____ attached. (Bond required with Stop Payment Notice served on construction lender on private jobs - bond not required on public jobs or on Stop Payment Notice served on owner on private jobs)

Date: _____ Name of Claimant: _____

By: _____

VERIFICATION

I, the undersigned, state: I am the _____ of the claimant named in the foregoing Stop Payment Notice; I have read said claim of Stop Payment Notice and know the contents thereof, and I certify that the same is true of my own knowledge. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at _____, State of California.

REQUEST FOR NOTICE OF ELECTION

(Private Works Only)

If an election is made not to withhold funds pursuant to this Stop Payment Notice by reason of a payment bond having been recorded in accordance with Sections 8600, 8536 or 8542, please send notice of such election and a copy of the bond within 30 days of such election in the enclosed preaddressed stamped envelope to the address of the claimant shown above. This information must be provided by you under Civil Code Section 8538.

Signed: _____

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____
Amount(s) of unpaid progress payment(s): \$ _____

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn.

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Unconditional Waiver and Release

SAMPLE
This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Checklist of Legal Steps

PRIVATE PROJECTS

PRIVATE PROJECT HAS BEGUN

Preferably within 20 days of first furnishing labor or materials to jobsite, if *no direct contract* with owner.

Serve Preliminary Notice on owner, general contractor, lender, and surety either in person, by registered or certified mail with return receipt requested, express mail, or express overnight delivery.

If direct contract with owner (and preferably within 20 days of first furnishing labor, etc., to jobsite).

It's okay to serve a Preliminary Notice on owner and lender, as above.

Later: Subcontractors, suppliers, etc., with no direct contract.

Demand payment from surety as necessary.

PRIVATE PROJECT HAS ENDED

No later than 30 days after Notice of Cessation or of Completion is recorded (*immediately* if work stops without Notice recorded).

Record Mechanic's Lien. Subcontractors, suppliers, etc.: Serve Stop Payment Notice on owner, surety, and lender. Along with notice, the lender gets a copy of a bond for 125% of the claim.

Within 90 days of recording Mechanic's Lien.

File a lawsuit based on the lien.

Within 6 months after owner records a Release Bond.

File a lawsuit against the bond.

PUBLIC PROJECTS (STATE & LOCAL)

PRIVATE PROJECT HAS BEGUN

Subcontractors, suppliers, etc. preferably within 20 days of first providing labor or materials to site.

Serve Preliminary Notice on funding agency *if you don't have a contract directly with general contractor*. Get name of surety for Payment Bond from public agency funding the project and serve copy of Preliminary Notice on surety.

Subcontractors, suppliers etc., later during job.

Demand that surety pay if general contractor does not.

PUBLIC PROJECT HAS ENDED

No later than 30 days after Notice of Completion is filed with public entity funding the project.

Serve Stop Payment Notice on public entity funding project (Preliminary Notice required if no contract with the nonpaying general contractor).

Within 90 days of serving Notice.

File Lawsuit.

FEDERAL PROJECTS

FEDERAL PROJECT HAS ENDED

Within 90 days after last furnishing labor or materials to site.

Second-tier subcontractors and eligible suppliers must serve a 90-day Preliminary Notice on prime contractor and surety by *registered mail*.

Within 1 year after last furnishing labor or materials to site.

File lawsuit based on Preliminary Notice.

License Classification

- A Genral Engineering
- B General Building

Specialty Classifications

- C C-2 Insulation and Acoustical
- C-4 Boiler, Hot-Water Heating, System Fitting
- C-5 Framing and Rough Carpentry
- C-6 Cabinet, Millwork and Finishing Carpentry
- C-7 Low Voltage Systems
- C-8 Concrete
- C-9 Drywall
- C-10 Electrical
- C-11 Elevator
- C-12 Earthwork and Paving
- C-13 Fencing
- C-15 Flooring and Floor Covering
- C-16 Fire Protection
- C-17 Glazing
- C-20 Warm-Air Heating, Ventilation and Air-Conditioning
- C-21 Building Moving / Demolition
- C-23 Ornamental Metal
- C-27 Landscaping