

California Construction Law Basics

**A Pocket Guide
for Contractors**

**William Ward, Esq.
THE WARD FIRM**

Contractors!

California law provides a few simple mechanisms to protect your earnings. Learn here about:

- Serving ***PRELIMINARY NOTICES***
- Recording a ***MECHANIC'S LIEN*** and following up on it
- Locking up your earnings with a ***STOP PAYMENT NOTICE***
- Using ***PAYMENT BONDS*** to your advantage
- Getting Paid for ***CHANGE ORDERS*** and ***EXTRA WORK***
- Making federal ***MILLER ACT CLAIMS***
- Suing on your ***CONTRACT RIGHTS***
- Dealing with ***RELEASES***

\$25.00

About the Author

Author William Ward, whose experience in the construction industry spans many years, has handled a number of construction claims for various contractors throughout California.

Prior becoming an attorney, Mr. Ward was employed by a large general contractor in California where he obtained substantial experience and knowledge of numerous construction projects.

Mr. Ward has received an AV rating from Martindale-Hubbell, which is the highest rating for an attorney in The United States. He has served as a Construction Arbitrator for the American Arbitration association and has been rated in the America's Top 50 Lawyers for California Construction Law. The Ward Firm has also been continuously recognized in San Diego Magazine as one of San Diego's top lawyers in Construction Law. Mr. Ward has been recognized in other publications including Legal Leaders: Southern California's Top Rated Lawyers for Construction Law.

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Foreword

Since the original publication of this pocket guide, we have reached out to numerous contractors and other construction specialists, including attorneys, with the goal of providing valuable information regarding the timely filing of Mechanics Liens and Stop Payment Notices, as well as important information regarding construction claims. In this, we have been a success. This Third Edition of the pocket construction law guide is still intended to provide contractors with a short, simple outline for securing their legal collection rights on all public and private projects in California.

We wish you every success in pursuing any and all potential construction claims with the use of this pocket guide.

First, Send Out Preliminary Notices

1. *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 over-night 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.

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

2. 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. You must serve the lien and 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.

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 make a claim and/or bring suit 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 9). If you leave out relevant information or don’t “verify” the lien, a court will rule that the lien is defective and worthless.

Lien information must be complete in order for lien to be valid. We recommend using a service to prepare and file, since they routinely prepare and file these documents for numerous contractors.

When to Record. You can record a Mechanic’s Lien at any time during the job after the completion of your work or within 90 days after construction or within 30 days after the owner

records a Notice of Completion or a Notice of Cessation of the project at the County Recorder's Office. You can 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. It is best to find a lawyer who is familiar with construction law when filing suit to foreclose on the Lien.

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

3. *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.

On an unbonded Stop Payment Notice, it is within the discretion of the lender to withhold funds.

Public Works. 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—

4. *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.

It is Always Best to Have a “Paper Trail”

The best policy for any contractor or supplier, besides serving and recording all necessary notices and liens, is to have everything in writing. Try to notify the Owner and General Contractor as these changes occur in writing.

Secure Your Claim on the Payment Bond

5. 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. 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, you will want to sue the surety that issued the payment bond. That's why you send the surety a copy of the Preliminary Notice.

Street Improvement Bonds. For any construction work done in a public Right of Way, usually there is a public works Street Improvement Bond so make sure you check with the agencies when performing work in the street to determine who to notify for preliminary notices and asserting bond claims against the right surety. This is for all works involving cities, counties, public utilities, water agencies and any other public entity.

Contractors License Bond Claims

6. Contractors License Bonds

In every situation where a general contractor is involved with a payment issue, always remember that the general contractor has a Contractors License Bond posted with the license board. This bond is established for, in part, nonpayment issues, where the contractor is found to have willfully withheld payment without good reason or fault of the subcontractor.

There is usually a bond limit for the Contractors License Bond of \$25,000. Currently, the limit reserved for subcontractors is \$7,500. The remainder is for homeowners, employees, etc. You can make this claim in writing as a bond claim to the surety. The surety information is readily available on the Contractor's Board site.

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.

You Can Get Paid for Delays

8. *Delay Claims*

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.

Delay claims can constitute direct job costs from the job or indirect job costs, i.e. home office costs or overhead. Always look at your original job estimate. When the job runs over your original estimate, there are likely delay claims.

You should consider submitting a change order for *time* and *compensation* to the general contractor. Time is important to give you additional time to complete the project in event of delays, liquidated damages, etc.

Make Sure You Document All Extra Work and Change Orders

9. Extra Work and Change Orders

“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 writing 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 the agreed price is put in writing. Sometimes 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.

Make sure you document any changes or extra work that are disputed.

Watch Out for Releases

10. 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!

11. 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.

IMPORTANT NOTICE!

We've done our best to give you 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 reneging 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

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 use on Private or Public Works, *This is not a lien*)

See California Civil Code section 8100 et. seq., 8200 et seq., 9300 et seq.

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 the 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 a residential homeowner of a dwelling containing four or fewer units.

Please take notice that Claimant

(name) _____

(address) _____

(relationship to the parties, eg. Direct Contractor, Subcontractor, Supplier, etc.) _____

has furnished or will furnish the following labor, service, equipment or material:

to the work of improvement located at (description of the site sufficient for identification, including the street address of the site, if any):

The person or business to or for whom the work is provided is:

(name) _____

(address) _____

This preliminary notice is being served on the following persons and businesses at the indicated addresses:

☐

Owner or Reputed Owner

(name) _____

(address) _____

☐

Direct Contractor or Reputed Direct Contractor

(name) _____

(address) _____

☐

Construction Lender or Reputed Construction Lender

(name) _____

(address) _____

Estimated price of labor, services, equipment or materials to be provided is \$ _____

Recording requested by (name): _____

When recorded, mail to (name and address): _____

Recorder's Use Only

CLAIM OF MECHANICS LIEN

(Cal. Civ. Code § 8416)

Declaration of Exemption From Gov't Code § 27388.1 Fee

- ☐ Transfer is exempt from fee per GC § 27388.1(a)(2):
☐ recorded concurrently "in connection with" transfer subject to DTT
☐ recorded concurrently "in connection with" a transfer of residential dwelling to an owner-occupier
☐ Transfer is exempt from fee per GC 27388.1(a)(1):
☐ Fee cap of \$225.00 reached ☐ Not related to real property

1. _____ ("claimant") claims a mechanics lien for the labor or services or equipment or materials described in paragraph 2, furnished for a work of improvement on that certain real property located in the County of _____, State of California, and more particularly described as (address and/or sufficient description): _____

2. After deducting all just credits and offsets, the sum of _____, together with interest at the rate of _____ per annum from _____ (date when balance became due), is due claimant for the following labor, materials, services, or equipment: _____

3. Claimant furnished the labor or services or equipment or materials, at the request of _____ (employer, person, or entity to whom labor, materials, services, or equipment were furnished).

4. The name and address of the owner or reputed owner of the real property is/are: _____

5. Claimant's address is: _____

Dated _____

Claimant

Signature of Claimant or Authorized Agent

Print Name and Title

VERIFICATION

I, _____, am the: _____ ("owner," "president," "authorized agent," "partner," etc.) of claimant on the foregoing claim of mechanics lien, and am authorized to make this verification for and on its behalf. I have read the foregoing claim of mechanics lien and know the contents of the claim of mechanics lien to be true of my own knowledge.

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

Dated _____

Signature

**NOTICE OF MECHANICS LIEN CLAIM
ATTENTION!**

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 enclosed 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 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 release.

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 WEB SITE AT www.cslb.ca.gov.

PROOF OF SERVICE AFFIDAVIT
California Civil Code section 8416

Failure to serve the Mechanic's Lien and Notice of Mechanic's Lien on the owner, or alternatively if the owner cannot be served on the lender or direct contractor, shall cause the Mechanic's Lien to be unenforceable as a matter of law (Civil Code Section 8024(d)). Service of the Mechanic's Lien and Notice of Mechanic's 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 Mechanic's Lien and Notice of Mechanic's Lien. This page should be completed (either one of the sections below) and recorded with the County Recorder along with the Mechanic's Lien and Notice of Mechanic's Lien.

PROOF OF SERVICE AFFIDAVIT (ON OWNER)
California Civil Code section 8416(a)(7) and (c)(1)

I, _____ (name), declare that I served a copy of this Mechanic's Lien and Notice of Mechanic's 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 served (if appropriate): _____

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.

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

By: _____
(Signature of person making service)

ALTERNATE PROOF OF SERVICE AFFIDAVIT (ON LENDER OR DIRECT 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 Mechanic's Lien and Notice of Mechanic's Lien by registered mail, certified mail, or first-class mail. Pursuant to California civil Code section 8416(c)(2), I served a copy of this Mechanic's Lien and Notice of Mechanic's 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 direct contractor as follows:

Company/Person Served: _____

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

Service address: _____

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

By: _____
(Signature of person making service)

STOP PAYMENT NOTICE

LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS (Public or Private Work of Improvement) (Per California Civil Code Section 8520, 8530 & 9350)

To: _____
(Name of owner, public entity or construction lender)

Project: _____
(Name)

(Address, if directed to a California address of borrower holding funds)

(Street Address or Legal Description)

(If directed to public entity, to the department or officer whose duty it is to make payments)

Name and address of the Project Owner (or reputed owner): _____

Name and address of the Direct Contractor: _____

Name and address of the Construction Lender (if any): _____

TAKE NOTICE THAT _____ (Claimant)

whose address is _____ (Legal name of the person or firm claiming the stop payment notice)

has performed labor and furnished materials for a work of improvement described above as Project. The relationship of the
Claimant to the other parties is: _____ (Address of person or firm claiming stop notice)

The work furnished by claimant is: _____ (Generally describe labor, goods, materials or materials furnished or agreed to be furnished or done)

The labor and materials were furnished at the request of the following party: _____

Total value of the whole amount of labor and materials agreed to be furnished is \$ _____

The value of the labor and materials furnished to date is: \$ _____

Claimant has been paid the sum of: \$ _____

and there is due, owing and unpaid the sum of: \$ _____

You are required to set aside sufficient funds to satisfy this claim as provided by law. You are also notified that claimant claims an equitable lien against any construction funds for this project which are in your hands.

Dated _____ NAME: _____
(Name of stop notice claimant)

By: _____
(Owner or agent of stop notice claimant must sign here and verify below)

Authorized Capacity: _____

VERIFICATION

I, the undersigned, state: I am the _____ of the claimant named in the
(Title - President, Partner, Owner, Agent, etc.)

foregoing Stop Notice; I have read said Stop Notice and know the contents thereof; the same is true of my own knowledge. I 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.

(Date this document was signed)

(Name of city where stop notice signed)

By: _____
(Personal signature of individual who is swearing to the contents of the stop notice is due)

REQUEST FOR NOTICE OF ELECTION

(Private Works Only)

(Per California Civil Code Section 8536 & 8538)

If an election is made not to withhold funds pursuant to this stop notice by reason of a payment bond having been recorded, **please send notice** of such election and a copy of the bond within 30 days of such election in the enclosed preaddressed stamped envelope. This information must be provided by you under Civil Code Sections 8536 & 8538.

Signed: _____
(Claimant must enclose self-addressed stamped envelope)

PROOF OF NOTICE DECLARATION

(Per California Civil Code Section 8118)

I, _____, declare that I served a copy of the Stop Payment Notice on the party at the address and on the date shown below:

To Construction Lender/Owner/Public Entity/Or Other Person Holding Construction Funds:

(name) _____

(title or capacity of individual given notice) _____

(address) _____

(date) _____

Stop Payment Notice should be served at the following location:

(a) To an owner other than a public entity, the owner's address shown on the direct contract, the building permit or a construction trust deed.

(b) To a public entity, the office of the public entity or another address specified by the public entity in the contract or elsewhere for service of notices, papers or other documents. A Stop Payment Notice for a public works contract of the state shall be given to the director of the department that awarded the contract, and to a public entity other than the state, to the office of the controller, auditor or other public disbursing officer whose duty it is to make payment pursuant to the contract (see Civil Code § 8354 for more information).

(c) To a subcontractor, at the contractor's address shown on the building permit, on the direct contract, or on the record of the Contractors' State License Board.

In the following manner (check appropriate box):

☐ By personal delivery

☐ By Registered or Certified Mail (postage prepaid)

☐ Express mail

☐ Overnight delivery by _____, an express service carrier

I declare under penalty of perjury, that the foregoing is true and correct. Executed on _____, at _____, California.

(Signature of person making service)

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: _____

7/1/12

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:

7/1/12

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:

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. 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:

7/1/12

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

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 any of the following:
Disputed claims for extras in the amount of: \$

Signature

Claimant's Signature:

Claimant's Title:

Date of Signature:

7/1/12

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. Sub-contractors, 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)

PUBLIC 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 RPROJECT 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 General Engineering
- B General Building
- B-2 Residential Remodeling

Specialty Classifications

- C
 - C-2 Insulation and Acoustical
 - C-4 Boiler, Hot-Water Heating and Steam 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

Specialty Classifications (con't.)

- C C-21 Building Moving / Demolition
- C-22 Asbestos Abatement
- C-23 Ornamental Metal
- C-27 Landscaping
- C-28 Lock and Security Equipment
- C-29 Masonry
- C-31 Construction Zone Traffic Control
- C-32 Parking and Highway Improvement
- C-33 Painting and Decorating
- C-34 Pipeline
- C-35 Lathing and Plastering
- C-36 Plumbing
- C-38 Refrigeration
- C-39 Roofing
- C-42 Sanitation System
- C-43 Sheet Metal
- C-45 Sign
- C-46 Solar
- C-47 General Manufactured Housing
- C-49 Tree and Palm
- C-50 Reinforcing Steel
- C-51 Structural Steel
- C-53 Swimming Pool
- C-54 Ceramic and Mosaic Tile

Specialty Classifications (con't.)

- C C-55 Water Conditioning
- C-57 Well Drilling
- C-60 Welding
- C-61 Limited Specialty

Certifications

- ASB Asbestos Certification
- HAZ Hazardous Substance Removal
 Certification

‘Of course I’ve got lawyers. They are like nuclear weapons, I’ve got em ‘cause everyone else has them.’

- **Danny DeVito**
in *Other People’s Money*