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2024 Real Property Law Retreat

Establishing and Enforcing Design Professional's and Mechanic's Liens and Other
Payment Rights

Saturday, March 9, 2024
10:15am - 11:15am

Speakers: Pam Schofield and John Dacey

Conference Reference Materials

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REAL PROPERTY LAW



SESSION: Establishing and Enforcing Design Professional's and Mechanic's Liens and Other Payment Rights

TOPIC: Mechanic's Liens, Stop Payment Notices, and Payment Bonds

Presented By:

Pam Scholefield – Scholefield Construction Law

March 9, 2024

TYPES OF PROJECTS

Private Works
(restaurants, offices, stores)

TYPES OF PROJECTS

Private Works
(restaurants, offices, stores)

CA Public Works
(State, city, school districts, Caltrans)



TYPES OF PROJECTS

Private Works
(restaurants, offices, stores)

CA Public Works
(State, city, school districts, Caltrans)

Federal Projects
(Navy bases, Camp Pendleton, US
Government)

Private Works

CA Public Works

Federal Projects

Mechanic's Liens

Mechanic's Lien Statutes [CA Civil Code §§ 8400 – 8494]

8400.

A person that provides work authorized for a work of improvement, including, but not limited to, the following persons, has a lien right under this chapter:

- (a) Direct contractor.
- (b) Subcontractor.
- (c) Material supplier.
- (d) Equipment lessor.
- (e) Laborer.
- (f) Design professional.

Mechanic's Lien Statutes [CA Civil Code §§ 8400 – 8494]

8402.

A person that provides work authorized for a site improvement has a lien right under this chapter.

Mechanic's Lien Statutes [CA Civil Code §§ 8400 – 8494]

8404.

Work is authorized for a work of improvement or for a site improvement in any of the following circumstances:

- (a) It is provided at the request of or agreed to by the owner.
- (b) It is provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the work of improvement or site improvement.

Private Works

CA Public Works

Federal Projects

Mechanic's Liens

Stop Payment Notices

Stop Payment Notices

Stop Payment Notice Statutes – Private Works [CA Civil Code §§ 8500 – 8560]

8500.

The rights of all persons furnishing work for any work of improvement, with respect to any fund for payment of construction costs, **are governed exclusively by this chapter**, and no person may assert any legal or equitable right with respect to the fund, other than a right created by a written contract between that person and the person holding the fund, except pursuant to the provisions of this chapter.

Stop Payment Notice Statutes – Public Works [CA Civil Code §§ 9350 – 9510]

9350.

The rights of all persons furnishing work pursuant to a public works contract, with respect to any fund for payment of construction costs, **are governed exclusively by this chapter**, and no person may assert any legal or equitable right with respect to that fund, other than a right created by direct written contract between the person and the person holding the fund, except pursuant to the provisions of this chapter.

Persons Entitled to Serve a Stop Payment Notice – Public Works [CA Civil Code § 9100]

- (1) A person that provides work for a public works contract, **if the work is authorized** by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the public works contract.
- (2) A laborer.
- (3) A person described in Section 4107.7 of the Public Contract Code.

NOTE: In general, no material suppliers to material suppliers.
[See *Theisen v. County of Los Angeles* (1960) 52 C2d 170].

Bonded Stop Payment Notices to Construction Lender [Civil Code 8530 et seq.]

- If not bonded, then Lender is not obligated to hold back funds.
- If bonded, then Lender must hold back funds (unless a payment bond is recorded before the stop payment notice is served).
- If Lender as defendant wins, the bond covers all damages to the owner, direct contractor, or construction lender that result from the stop payment notice or recordation of the claim of lien, not exceeding the amount of the bond.
- Prevailing Party attorneys' fees.

Private Works	CA Public Works	Federal Projects
Mechanic's Liens		
Stop Payment Notices	Stop Payment Notices	
Payment Bonds	Payment Bonds	Payment Bonds (Miller Act)

Payment Bonds – Private Works [CA Civil Code §§ 8600 – 8614]

8606.

(a) A payment bond under this title shall **be conditioned for the payment in full of the claims of all claimants** and shall by its terms inure to the benefit of all claimants so as to give a claimant a right of action to enforce the liability on the bond. The bond shall be given by an admitted surety insurer.

(b) An owner, direct contractor, or subcontractor may be the principal on the bond.

(c) A claimant may enforce the liability on the bond in an action to enforce a lien under this part or in a separate action on the bond.

Payment Bonds – Public Works

[CA Civil Code §§ 9500 – 9655]

[State Agencies - See Also Public Contract Code §7103]

9554.

(a) A payment] bond shall be in an amount **not less than 100 percent of the total amount payable pursuant to the public works contract.** The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer.

(b) [Persons who can make a claim - see next slide]

(c) The payment bond shall be conditioned for the payment in full of the claims of all claimants and by its terms inure to the benefit of any person authorized under Section 9100 to assert a claim against a payment bond so as to give a right of action to that person or that person's assigns in an action to enforce the liability on the bond.

Persons Entitled to Make a Claim Against a Payment Bond – Public Works [CA Civil Code §9554 Cont'd]

(b) The payment bond shall provide that if the direct contractor or a subcontractor fails to pay any of the following, the surety will pay the obligation and, if an action is brought to enforce the liability on the bond, **a reasonable attorney's fee**, to be fixed by the court:

- (1) A person authorized under **Section 9100** to assert a claim against a payment bond.
- (2) Amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the public works contract.
- (3) Amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the work and labor.

Persons Entitled to Make a Claim Against a Payment Bond (and Serve a SPN) [CA Civil Code § 9100]

In general, a material supplier to material supplier cannot make a bond claim nor serve a Stop Payment Notice.

But can a “material supplier” ever be considered a “subcontractor”?

.....YES!

“In our opinion the essential feature which constitutes one a **subcontractor** rather than a **materialman** is that in the course of performance of the prime contract he constructs a definite, substantial part of the work of improvement in accord with the plans and specifications of such contract, not that he enters upon the job site and does the construction there.”

[*Theisen v. County of Los Angeles* (1960) 52 C2d 170, 183]

Payment Bonds – Federal Projects

“Miller Act” Bonds

[40 U.S. Code §§ 3131 – 3134]

3131

(b)TYPE OF BONDS REQUIRED.—Before any contract of more than \$100,000 is awarded...

(2)PAYMENT BOND.—A payment bond ...for the protection of all persons supplying labor and material in carrying out the work The amount of the payment bond shall equal the total amount payable [under the prime contract] ... unless the officer awarding the contract determines, ... that a payment bond in that amount is impractical... .

Rights of Persons Furnishing Labor or Material

[40 U.S. Code §3133]

(b) (1) In general. Every person that has furnished labor or material in carrying out work provided for in a contract for which a payment bond is furnished

(2) Person having direct contractual relationship with a subcontractor.

Allowed Claimants (in general):

Prime Contractor > **First Tier Subcontractor** > **Second Tier Subcontractor**

Prime Contractor > **First Tier Subcontractor** > **Material Supplier**

[See also *J.W. Bateson Co. v. U.S. ex rel Bd. of Trustees* (1978) 434 US 586].

Private Works	CA Public Works	Federal Projects
Mechanic's Liens • 20-Day Prelim		
Stop Payment Notices • 20-Day Prelim	Stop Payment Notices • 20-Day Prelim	
Payment Bonds • 20-Day Prelim	Payment Bonds • 20-Day Prelim	Payment Bonds (Miller Act)

Preliminary Notices

[Private Works - CA Civil Code §§ 8200 - 8216]

[Public Works - CA Civil Code §§ 9300 – 9306]

8204.

(a) A preliminary notice shall be given not later than 20 days after the claimant has first furnished work on the work of improvement. [If late, protection is] “only for work performed within 20 days prior to the service of the preliminary notice, and at any time thereafter.”

9304.

A claimant may give a stop payment notice or assert a claim against a payment bond only for work provided within 20 days before giving preliminary notice and at any time thereafter.

20-Day Preliminary Notice

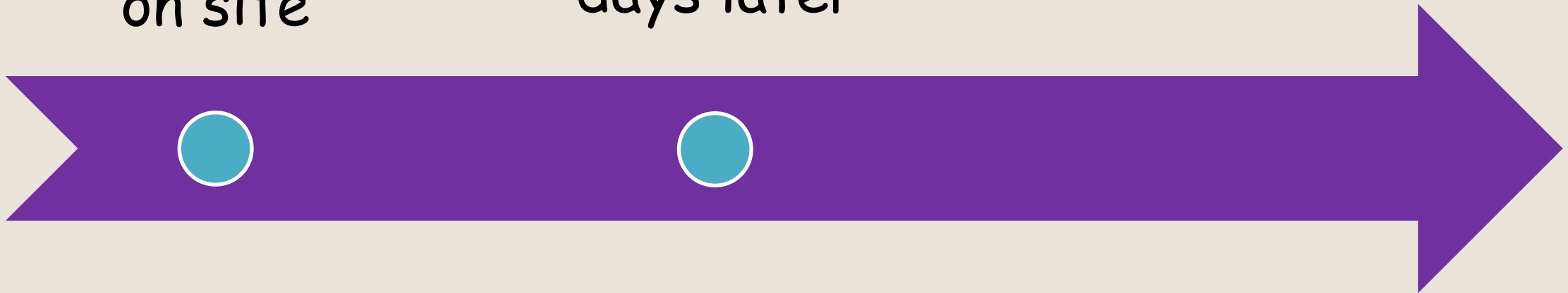
First day
on site



20-Day Preliminary Notice

First day
on site

Prelim Due 20
days later

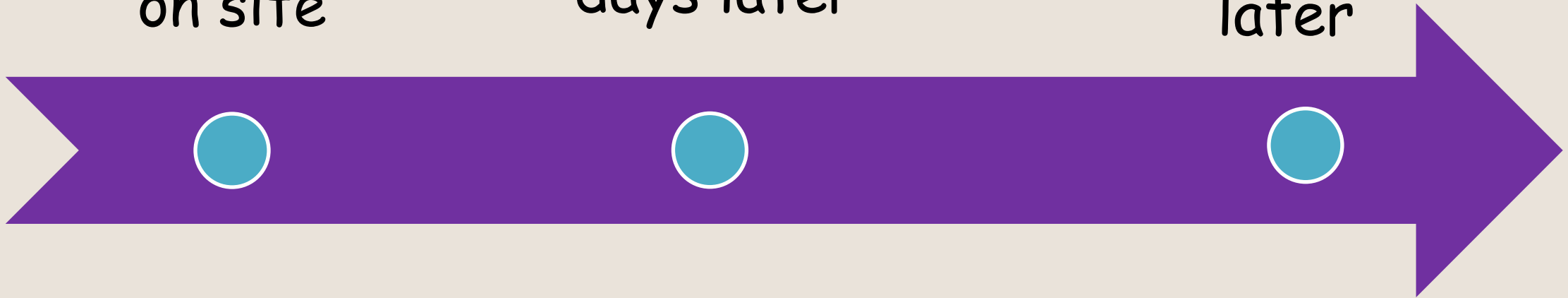


20-Day Preliminary Notice

First day
on site

Prelim due 20
days later

Not sent
until 60 days
later

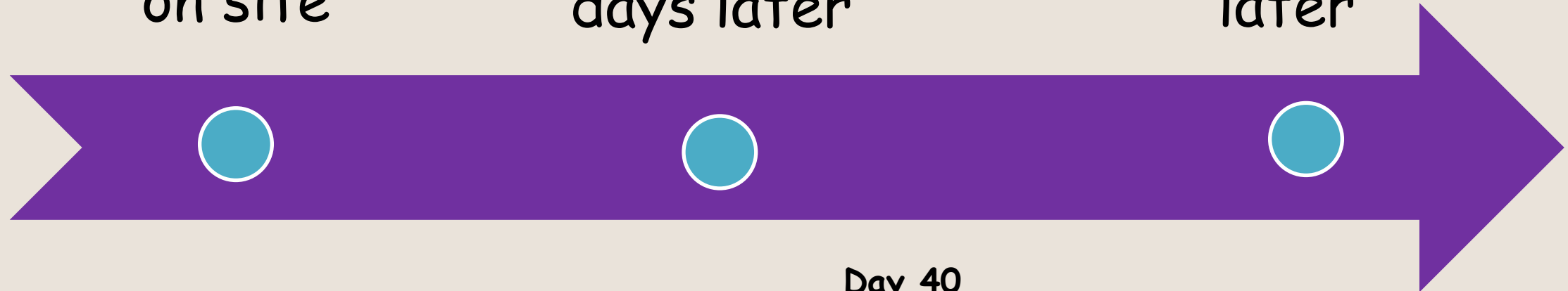


20-Day Preliminary Notice

First day
on site

Prelim due 20
days later

Not sent
until 60 days
later



Day 40



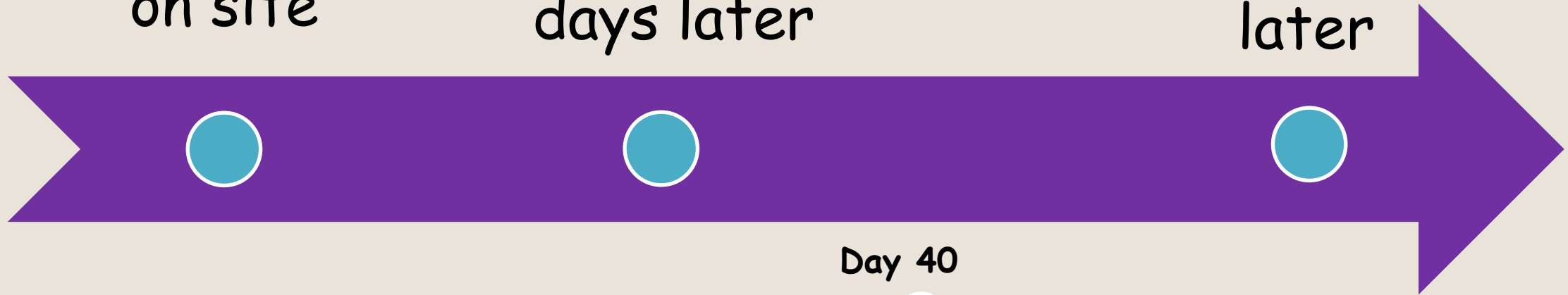
“Lien” rights start here,
20 days before the Prelim Sent

20-Day Preliminary Notice

First day
on site

Prelim Due 20
days later

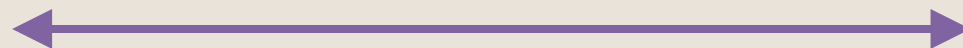
Not Sent
until 60 days
later



Day 40



"Lien" rights start here,
20 days before the Prelim Sent



No "lien" rights for the first
40 days of work

20-Day Preliminary Notice

Direct Contractor to Owner does not need to serve one – WHY?

“Last Chance” if No Preliminary Notice Given [Public Works - CA Civil Code §9560 (c)]

If a required preliminary notice was not given, “**that person may enforce a claim by giving written notice to the surety and the bond principal,** as provided in Section 9562, within **15 days** after recordation of a notice of completion...” or within **75 days** after completion if no notice has been recorded.

But Subsection (d) states that **this does not apply** if “all progress payments, except for those disputed in good faith, have been made to a subcontractor who has a direct contractual relationship with the general contractor to whom the claimant has provided materials or services.”

Here Come the Statutes of Limitations.....

And two very “busy” slides that break all Power Point Rules!

Private Works

CA Public Works

Mechanic's Liens

CA Civil Code §§ 8412, 8414

- Record in 90, 60, or 30 days
 - Depends on whether claimant is a direct contractor or subcontractor or supplier, etc.
 - Depends on whether Notice of Completion was timely recorded.

CA Civil Code §8460

- File suit within 90 days of recording

CA Civil Code §8461

- Record Lis Pendens within 20 days of filing suit

Private Works

Stop Payment Notices

CA Civil Code §8508

- Serve before expiration of the time within which a claim of lien must be recorded.

CA Civil Code §8550

- File suit no earlier than 10 from serving the SPN, no later than 90 days after expiration of the time within which a SPN must be given.
- Within 5 days after if filing suit, serve notice of commencement of the action to the persons to whom the stop payment notice was given.

CA Public Works

Stop Payment Notices

CA Civil Code §9356

- Serve within 30 of recordation of notice of completion, acceptance, or cessation.
- If no recordation, serve within 90 days after completion or cessation.

CA Civil Code §9502

- File suit no earlier than 10 from serving the SPN, and no later than 90 days of last day to serve SPN

CA Civil Code §9504.

- Within 5 days of filing of suit, serve notice of commencement of action on public entity.

Private Works

Payment Bonds

CA Civil Code §8609

- Bond provision can't shorten the SOL under CCP 337 (4 years - contract) under either of the following circumstances:
 - (a) If the [bond] provision attempts to limit the time for commencement of an action on the bond to a shorter period than six months from the completion of any work of improvement.
 - (b) As applied to any action brought by a claimant, unless the bond is recorded before the work of improvement is commenced.

CA Public Works

Payment Bonds

CA Civil Code §9558

- File suit at any time after the claimant ceases to provide work, but not later than six months after the period in which a stop payment notice may be given under Section 9356.

Protecting the Owner (and General Contractor)

- Use of Lien Releases is **EXTREMELY** important!
- Form is dictated by the Civil Code.

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

[Civil Code 8132]

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
[Civil Code 8134]

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

[Civil Code 8136]

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:

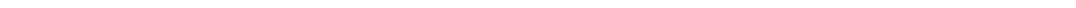
Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____



UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

[Civil Code 8138]

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 the following:

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

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____



Federal Projects

Payment Bonds (Miller Act)

40 U.S. Code § 3133 (b)(2)

- If not in contractual privity with Prime Contractor, serve 90-day notice to Prime Contractor after CLAIMANT last provided material or labor.

40 U.S. Code § 3133 (b)(1) and (4)

- Whether or not in contractual privity with Prime Contractor, file suit after 90 days but before 1 year of when CLAIMANT last provided material or labor.

REAL PROPERTY LAW



SESSION: Establishing and Enforcing Design Professional's and Mechanic's Liens and Other Payment Rights

TOPIC: Design Professional Liens

Presented By:

Pam Scholefield – Scholefield Construction Law

March 9, 2024

DESIGN PROFESSIONAL LIENS IN CALIFORNIA [Civil Code, §§ 8300 et seq.]

(“The up, down, and dirty once you dig in”)

I. Fundamental principles:

- The evaluation regarding availability of Design Professional Liens must begin with the fundamental concept that under the law there are two types of “works of improvement”, public projects and private projects.
- Like a Mechanic’s Lien, Design Professional Liens, only apply to private works of improvement for public policy reasons.
- Design Professional Liens are a creature of statutory law in California, and unlike a Mechanics Lien which is the only Constitutionally protected construction related lien protected by the California Constitution, have definite limitations.
- However, the Design Professional (defined hereinbelow) has options!

II. Overview Points Regarding Design Professional Lien Rights:

- The Design Professional must have a direct written contract with the project owner;
- The Design Professional must record the Design Professional Lien “before any construction on the project starts”;
- If the Design Professional fails to record the Design Professional Lien “before any construction on the project starts”, the Design Professional can record a Mechanic’s Lien.
- Further nuances are outlined hereinbelow.

III. The Important Specifics are as follows regarding Who Can File:

- A “Design Professional” for purposes of the statutory lien law are defined as licensed: Architects, Landscape Architects, registered professional engineers, and land surveyors who provide services to an owner of a project under a direct written contract with the owner of a project for the design, engineering or planning of a private work of improvement;

IV. The Important Specifics Regarding the Ability to Record are also:

- They must have a direct written contract with the property owner;
- There must be a building permit or other governmental approval obtained and in place recognizing the services provided by the Design Professional;
- Construction of the project has not started yet;
- The property owner must be in default/breach of a payment obligation to the Design Professional;

- And the Design Professional must give at least 10 business days notice of the breach for non-payment, demanding payment and that a breach/default has occurred under the written contract and the amount thereof;
- Over-stating the amount due could be used by a property owner to limit or defend against this type of Lien;
- The Design Professional Lien is not available for single family owner occupied residences where the expected construction costs are less than one hundred thousand dollars;
- Also, if the Design Professional “knows or has reason to know that a private work of improvement will not start”, a Design Professional who has not moved to foreclose the lien has 90 days from either of the foregoing or otherwise the Lien is “null and void”;

V. **The Important Specifics Regarding Filing a Civil Action:**

- Also, the following particulars should be kept in mind;
- A Design Professional must file a lawsuit to foreclose on the Design Professional Lien within 90 days after such Lien is recorded. A Notice or Pendency of Action is also required to be recorded within 20 days of such filing;
- No Preliminary Notice is required for a Design Professional Lien; and
- The Civil Action must be brought to trial within 2 years after the Civil Action is filed.

VI. **What Happens if the Design Professional Cannot Pursue its Design Professional Lien Rights?**

- The Design Professional in many situations, but not all, can record a Mechanic’s Lien and pursue rights and remedies under that Constitutional Lien. The Design Professional will likely have breach of contract and perhaps other remedies.

VII. **Other Rights and Remedies:**

- The foregoing is not meant to be an exhaustive summary of all of the foregoing topics, but rather to identify the most practical options and differences between Mechanic’s Liens and Design Professional Liens.

APPLICABLE CIVIL CODE SECTIONS:

8300.

For purposes of this chapter, a "design professional" is a person described in Section 8014 who provides services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8302.

(a) A design professional has, from the date of recordation of a claim of lien under this chapter, a lien on the site notwithstanding the absence of commencement of the planned work of improvement, if the landowner who contracted for the design professional's services is also the owner of the site at the time of recordation of the claim of lien.

(b) The lien of the design professional is for the amount of the design professional's fee for services provided under the contract or the reasonable value of those services, whichever is less. The amount of the lien is reduced by the amount of any deposit or prior payment under the contract.

(c) A design professional may not record a claim of lien, and a lien may not be created, under this chapter unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services provided by the design professional.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8304.

A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied:

(a) The work of improvement for which the design professional provided services has not commenced.

(b) The landowner defaults in a payment required under the contract or refuses to pay the demand of the design professional made under the contract.

(c) Not less than 10 days before recording a claim of lien, the design professional gives the landowner notice making a demand for payment, and stating that a default has occurred under the contract and the amount of the default.

(d) The design professional records a claim of lien. The claim of lien shall include all of the following information:

(1) The name of the design professional.

(2) The amount of the claim.

(3) The current owner of record of the site.

(4) A legal description of the site.

(5) Identification of the building permit or other governmental approval for the work of improvement.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8306.

- (a) On recordation of the claim of lien, a lien is created in favor of the named design professional.
- (b) The lien automatically expires and is null and void and of no further force or effect on the occurrence of either of the following events:
 - (1) The commencement of the work of improvement for which the design professional provided services.
 - (2) The expiration of 90 days after recording the claim of lien, unless the design professional commences an action to enforce the lien within that time.
- (c) If the landowner partially or fully satisfies the lien, the design professional shall execute and record a document that evidences a partial or full satisfaction and release of the lien, as applicable.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8308.

- (a) Except as provided in subdivision (b), no provision of this part applies to a lien created under this chapter.
- (b) The following provisions of this part apply to a lien created under this chapter:
 - (1) This chapter.
 - (2) Article 1 (commencing with Section 8000) of Chapter 1 of Title 1.
 - (3) Section 8424.
 - (4) Article 6 (commencing with Section 8460) of Chapter 4.
 - (5) Article 7 (commencing with Section 8480) of Chapter 4.
 - (6) Article 8 (commencing with Section 8490) of Chapter 4.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8310.

This chapter does not affect the ability of a design professional to obtain a lien for a work of improvement under Section 8400.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8312.

A design professional shall record a claim of lien under this chapter no later than 90 days after the design professional knows or has reason to know that the work of improvement will not be commenced.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8314.

The creation of a lien under this chapter does not affect the ability of the design professional to pursue other remedies.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8316.

(a) No lien created under this chapter affects or takes priority over the interest of record of a purchaser, lessee, or encumbrancer, if the interest of the purchaser, lessee, or encumbrancer in the real property was duly recorded before recordation of the claim of lien.

(b) No lien created under this chapter affects or takes priority over an encumbrance of a construction lender that funds the loan for the work of improvement for which the design professional provided services.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8318.

A design professional may not obtain a lien under this chapter for services provided for a work of improvement relating to a single-family, owner-occupied residence for which the expected construction cost is less than one hundred thousand dollars (\$100,000).

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

8319.

(a) A design professional may convert a recorded design professional lien to a mechanics lien if all of the following requirements are met:

(1) The design professional lien expires pursuant to paragraph (1) of subdivision (b) of Section 8306.

(2) The design professional lien remains fully or partially unpaid.

(3) Within 30 days of the expiration of the design professional lien pursuant to paragraph (1) of subdivision (b) of Section 8306, the design professional records a mechanics lien for the amount of the unpaid design professional lien.

(4) The recorded mechanics lien states that it is a converted design professional lien but shall be recorded and enforced as a mechanics lien, except the design professional need not provide a preliminary notice to enforce this mechanics lien. This mechanics lien shall be effective as of the date of recordation of this mechanics lien and shall be given priority pursuant to the provisions of Section 8450.

(b) This section shall not apply if a design professional lien expires pursuant to paragraph (2) of subdivision (b) of Section 8306.

(Added by Stats. 2011, Ch. 127, Sec. 1. (SB 424) Effective January 1, 2012. Operative July 1, 2012, by Sec. 2 of Ch. 127.)

REAL PROPERTY LAW

CALIFORNIA
LAWYERS
ASSOCIATION

**SESSION: Establishing and Enforcing Design Professional's and Mechanic's
Liens and Other Payment Rights**

TOPIC: Protecting Owners – Notices of Nonresponsibility

Presented By:

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March 9, 2024

Protecting Owners

Notices of Nonresponsibility

Notices of Nonresponsibility

Allows a “non-participating” property owner to shield their own interest in the property from being subject to mechanic’s liens.

(CA Civil Code §§ 8442, 8444)

Notices of Nonresponsibility

Sounds easy enough – but, as always, there are a lot of *hurdles to clear* to have an effective “Shield”.

Hurdles to Clear for Notices of Nonresponsibility

- Owners must strictly comply with several procedural requirements, AND
- They need to meet the definition of “Nonparticipating” Owner

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5. Must include name of a purchaser under contract, if any, or lessee, if known.

Procedural Hurdles for Notices of Nonresponsibility

1. Owner did not contract for the work of improvement
2. Must be “signed and verified by owner”
3. Must “comply with the requirements of Chapter 2” (CC § 8100 et seq. – same notice requirements as for liens.)
4. Must include “nature of owner’s title or interest.”
5. Must include “name of a purchaser under contract, if any, or lessee, if known.”
6. Must include “a statement that the person giving the notice is not responsible for claims arising from the work of improvement”

Procedural Hurdles for Notices of Nonresponsibility

Plus

The Notice of Nonresponsibility is “**Not effective** unless, within 10 days after the person giving notice has knowledge of the work of improvement, the person both posts and records the notice.”

And, there are even hurdles to clear for posting the
Notice of Nonresponsibility!

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1. Must be posted in a conspicuous place on the jobsite
2. Can't be posted until **actual** construction has commenced, not knowledge of intended construction. (*Arthur B. Siri, Inc. v. Bridges* (1961) 189 CA2d 599)
3. What constitutes “construction commencing” is a question of a fact (*Id.* at 601, 602)

**There are more hurdles to clear to be deemed a
“Nonparticipating” Owner....**

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3. Lease requires improvements and rent is based on % of Tenant's business income (*Los Banos Gravel Co. v. Freeman* (1976) 58 CA3d 785)

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2. Improvements were not optional, and the owner promised to repay lessee a major portion of the improvements out of future rents (*Id.*).
3. Lease requires improvements and rent is based on % of Tenant’s business income (*Los Banos Gravel Co. v. Freeman* (1976) 58 CA3d 785)
4. Improvements required to conduct Tenant’s business, Owner has right to approve plans or supervise, and Owner stands to gain from the improvements. (*Howard S. Wright Constr. Co. v. Superior Court* (2003) 106 CA4th 314).

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**Thank You for Your Attention -
Enjoy the Rest of the Retreat!**