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## CALIFORNIA LIEN LAW SUMMARY

Prepared by  
Levy · von Beck & Associates, P.S.  
600 University Street, Suite 3300  
Seattle, WA 98101  
(206) 626-5444  
[www.levy-law.com](http://www.levy-law.com)

California Civil Code  
(As of 06/09)

### QUESTIONS

#### PRIVATE WORKS

[Civil Code sec. 3083 et seq., 7019 et seq.;  
Bus. & Prof. Code 7020 et seq.]

#### PUBLIC WORKS

[Civil Code sec. 3100 et seq., 3181 et seq.;  
Public Contract Code 7100 et seq.]

What work is covered?

All private works of improvement. Note that the work done must be permanent. Note also that there must be actual visible work on the land or the delivery of construction materials to the jobsite in order for a mechanic's lien to attach. The removal or demolition of a building need not be part of a larger project leading to something more than the removal or demolition, in order to be a "work of improvement" justifying mechanic's liens. An architect, surveyor or engineer may obtain a design professional's lien, which does not require actual visible work, but a contractor cannot currently obtain a design professional's lien. [3115, 3116; D'Orsay Int'l Partners v. Superior Ct. of Los Angeles County, 123 Cal. App. 4<sup>th</sup> 836 (2004); United Rentals Northwest, Inc. v. Snider Lumber Products, Inc. --- Cal.Rptr.3d ----, 2009 WL 1693216 (Cal.App. 5 Dist.), 09 Cal. Daily Op. Serv. 7681]

Any work of improvement contracted for by a public entity. [3100] For payment bond, project must exceed \$25,000. [3247] NOTE that where the project is on public property leased to a private entity, and the contract is with the private entity and not the public body, then there are no lien rights. [North Bay Const., Inc. v. City of Petaluma, 143 Cal.App.4th 552, 49 Cal.Rptr.3d 455 (Cal.App. 1 Dist.,2006)] Note that, from now until January 1, 2014, retainage is not to be withheld on a Department of Transportation project. [7202]

Who may have a stop notice, lien or claim against the bond?

Licensed contractors, licensed sub-contractors of any tier, or suppliers of labor or materials to these parties. Suppliers to suppliers are not entitled to bring any claim. There is also a statute to

Supplier of labor, services, equipment, or materials to at least a subcontractor may obtain stop notice. The general contractor cannot give a stop notice. Suppliers to

protect those attempting to collect other benefits, such as health and welfare trust funds. Contractors who perform “site improvement” work, such as demolition, grading, or excavating, have lien rights. [Civ. Code 3089, 3112; Bus. & Prof. Code §§7031; Cushman update at §6.02[D]] NOTE THAT where contractors or subcontractors are required to be licensed, they must have such a license in order to bring any action for compensation for work performed or materials provided, and that includes both breach of contract AND mechanic’s lien claims. In fact, If a contractor is not licensed, an owner can sue to recover compensation already paid to the contractor. Note that contractor who is unlicensed when entering into contract, but licensed when the work begins will have lien rights, but contractor that starts the work without a license but obtains a license during the project will not have any lien rights for the project. [Bus. & Prof. Code §7031; Banis Restaurant Design, Inc. v. Serrano, 36 Cal.Rptr.3d 532, 134 Cal.App.4th 1035 (App. 3 Dist. 2005); MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc. 30 Cal.Rptr.3d 755, 36 Cal.4th 412, 115 P.3d 41 (2005).] Note that as to a stop notice, a general contractor may only file a bonded stop notice, and may not file a stop notice that is not bonded. Note also that where a bonded stop notice is given, attorney’s fees will be awarded to the prevailing party, and if the claimant recovers much less than originally sought, they might not be the prevailing party. [3110, 3112, 3158, 3162] [3104 case law] [Cushman at § 6.02]

There is also a provision for an OWNER to provide security to a general contractor, when the project exceeds \$5 million, or for a TENANT to provide security to the general contractor where the project exceeds \$1 million. The security is not required, however, where the project is construction of a single-family dwelling, nor where the

suppliers cannot give a stop notice. [Case law to 3181] Subs of every tier, and apparently their suppliers, may bring a claim against the payment bond. Despite this broad language in the case law, per the author of the Cushman chapter (Kent Lindsay) suppliers to suppliers probably do not have lien rights. The question has not yet been squarely decided. [3181, 3159, 3248; Union Asphalt, Inc. v. Planet Ins. Co., 27 Cal. Rptr. 2<sup>nd</sup> 371, 21 Cal. App. 4<sup>th</sup> 1762 (1994)] Generally, one who transports materials to a jobsite has no lien rights EXCEPT where (1) the hauler owns the materials and the hauling is part of the cost; (2) the hauler participates in the work of improvement, or (3) the hauler is hired by an agent of the owner. Ivy Trucking, Inc. v. Creston Brandon Corp. 100 Cal.Rptr.2d 582, 84 Cal.App.4th 85, (App. 4 Dist. 2000)

owner is a sufficiently large corporation. (Basically, either publicly traded, or privately held with at least \$50 million net worth.) There are no provisions for anyone other than the general contractor to recover against the security. [3110.5]

Note that the court has stated that generally, one who transports materials to a jobsite has no lien rights EXCEPT where (1) the hauler owns the materials and the hauling is part of the cost; (2) the hauler participates in the work of improvement, or (3) the hauler is hired by an agent of the owner. Ivy Trucking, Inc. v. Creston Brandon Corp. 100 Cal.Rptr.2d 582, 84 Cal.App.4th 85, (App. 4 Dist. 2000)

**NOTE:** Filing a stop notice is not a prerequisite to claiming a lien against the property, though filing a preliminary notice is a prerequisite to filing a stop notice. [3160]

What is the claim against?

**Stop notice:** Unexpended construction funds. (Stop notice operates by requiring the holder of funds to withhold from the general contractor funds sufficient to cover claim.) [3159]

**Lien:** The project itself, the land it is on, and a convenient space surrounding it. Note that an owner may exempt its property interest from the lien by recording and posting on the project site a "Notice of Nonresponsibility" within 10 days after the owner learns of the work of improvement. Such a notice will not, however, protect an owner who knows that its tenant is having the improvements made. NOTE ALSO that the claim of a subcontractor or general contractor will be limited, as each is only entitled to recover the amount due to it less all other claims for labor, services, equipment or materials included within his or her contract. [3128; 3094; 3129; Howard S. Wright Constr. Co. v. Superior Court, 106 Cal. App. 4<sup>th</sup> 314 (2003); 3140]

**Payment bond:** A claimant can also bring a claim against the payment bond, where the owner, contractor or sub provides one. [3096]

**Other:** There are provisions for collecting against the retainage, if any is withheld. See "other remedies" section at the end of this

**Stop notice:** Funds to be paid to general contractor.

**Payment bond:** The contractor's payment bond, or, if public entity fails to ensure that a contractor provides a sufficient bond with a valid insurer, or fails to ensure that the contractor provides a payment bond at all, then the public entity will be liable to unpaid subcontractors. [Electrical Electronic Control, Inc. v. Los Angeles Unified School Dist., 24 Cal.Rptr.3d 316, 126 Cal.App.4th 601(App. 2 Dist. 2005)]

**Retention:** There is a provision to recover unpaid retention. [7107] Note, however, that from now until January 1, 2014, retainage is not to be withheld on a Department of Transportation project. [7202]

summary. [3260] NOTE that a subcontractor claimant MAY not be allowed to bring a quantum meruit claim against an owner, though the owner may remain indebted to the general contractor for the outstanding amount. [Preston Pipelines, Inc. v. JCW-Cypress Home Group, 2006 WL 1119161, Not reported in Cal.Rptr.3d (Cal.App. 3 Dist. Apr 28, 2006)]

Who must give preliminary notice?

**General Contractors:** NOTE that there are specific notices that must be included in all general contractors' contracts with owners. Failure to include the information leaves the contractor subject to disciplinary action. [7030]

**Stop Notice, Lien, and Payment bond:** Every claimant, except the contractor, trust funds, and people performing actual labor for wages. [3097, 3114, 3160, 3242]

**Home Improvement or Swimming Pool work:** There is a special notice a general contractor is required to give a homeowner when doing home improvement or swimming pool construction, prior to entering into the contract. A 'home improvement contract' is a contract exceeding \$500, between a contractor and an owner or tenant, and regardless of the number of units in the building. It must be in writing. See Form G for the preliminary notice form. Failure to include these paragraphs is a misdemeanor. There are numerous other requirements pertaining to information that must be included in the home improvement contract itself, which are not discussed here. [7159.5]

NOTE ALSO that all contractors who have had their license suspended or revoked two or more times within an eight-year period, must shall disclose this to the owner on any residential project of four or fewer units. [B&P §§7019, 7159; 7030.1]

To whom is preliminary notice given?

**General Contractors:** To the party with whom the contractor is contracting. After January 1, 2006, Notice F will not need to be included in home improvement contracts or in service and repair contracts. [7030]

**Stop notice:** Owner and Construction lender. [3158, 3159]

**All claims other than home**

**Stop notice:** All claimants. Remember that the general contractor cannot give any kind of a stop notice on a public project. [3181, 3183, 3098]

**Payment bond:** The following claimants are required to give the preliminary notice: Every claimant except trust funds, people who perform actual labor for wages and one who has a direct contract with the general. **If, however, the claimant fails to give the preliminary notice, they may still bring a claim against the payment bond by timely giving the final notice discussed below.** [American Buildings Co. v. Bay Commercial Construction, Inc., 21 Cal. Rptr.2d 539, 99 Cal.App.4th 1193 (App. 3 Dist. 2002)] Furthermore, if a claimant is not required to give the preliminary notice, but gives it anyway, they are not required to give the final notice. [3098, 3252]

General contractor, and public agency concerned. [3098, 3252] If the public agency is the Department of Public Works or the Department of General Services, send notice to Office of the disbursing officer of the department constructing the work, or serve the officer personally. It is no longer required to send the notice to the subcontractors with

**improvements or swimming pools:**

- OWNER or reputed owner
- ORIGINAL CONTRACTOR (NOTE that per case law, a subcontractor contracting directly with the original contractor will be excused from providing the original contractor with a copy of the preliminary notice, but it is recommended to give the notice in all cases anyway. Industrial Asphalt, Inc. v. Garrett Corp. 180 Cal App. 3d 1001, 226 Cal. Rptr. 17 (1986).)
- CONSTRUCTION LENDER, if any
- PAYMENT BOND PRINCIPAL and SURETY, for claim against payment bond.
- COUNTY RECORDER is recommended but not required, for the reasons stated below.

It is no longer required to send the notice to the claimant's SUBCONTRACTOR/CUSTOMER, but it is recommended to do so. [3097, 3242] If the claimant is not the general contractor but contracts directly with the owner, the claimant must give notice to the lender. If the Notice is filed with the County Recorder, then the Recorder is required to notify the claimant of any filing of a Notice of Completion or Notice of Cessation. [3097]

**Home Improvement or Swimming Pool**

**work:** The contractor must give the owner a copy of the contract, signed by the contractor and the buyer, prior to starting work. This contract will contain a lot of information and various warnings, which are not set out here. Regarding the notice pertaining to license suspensions or revocations, presumably the notice is given to the property owner. [B&P §§7159; 7030.1]

When must preliminary notice be given?

**General Contractors:** The notice must be included in all contracts with respect to which the contractor is the prime contractor. [7030]

**Stop notice and lien:** Within 20 days after claimant first furnishes labor, materials, etc. (If given later, will only cover materials, etc. supplied 20 days prior to giving notice, and thereafter.) If notice is given by registered or certified mail, service is complete at the time it is deposited as certified or registered mail. [3097]

whom the claimant has contracted, but it is recommended to do so.

Within 20 days after claimant first furnishes labor, materials, etc. (If given later, will only cover materials, etc. supplied 20 days prior to giving notice, and thereafter.) If notice is given by registered or certified mail, service is complete at the time it is deposited as certified or registered mail. [3098, 3252]

**NOTE, HOWEVER, that IF no preliminary notice is given, claimant may preserve claim by giving final notice to surety and bond principal within 15 days after notice of completion is filed, or within 75 days after**

**Payment bond:** Same as above - BUT if no preliminary notice is given, claimant may preserve claim by giving final notice to surety and bond principal within 15 days after notice of completion is filed, or within 75 days after completion of project, if no notice of completion is filed. HOWEVER - IT IS STRONGLY recommended that the preliminary notice be timely given. Though the statute does not specify, it is recommended that this 15-day notice be received by the surety and bond principal within that time period. [3242]

**Home Improvement or Swimming Pool work:** The contractor must give the owner a copy of the contract, signed by the contractor and the buyer, prior to starting work. Numerous notices are required to be provided to the owner in or with the contract prior to entering into a contract to perform work on the residential property. [B&P §§7159; 7030.1]

completion of project, if no notice of completion is filed. IT IS STRONGLY RECOMMENDED, HOWEVER, that the preliminary notice be timely given. Though the statute does not specify, it is recommended that this 15-day notice be received by the surety and bond principal within that time period. American Buildings Co. v. Bay Commercial Construction, Inc., 21 Cal.Rptr.2d 539, 99 Cal.App.4th 1193 (App. 3 Dist. 2002) [3252]

Contents of preliminary notice?

**General Contractors:** See Forms F and G.

**Stop notice, lien and payment bond:**

- General description of labor, materials, services or equipment furnished or to be furnished;
- An estimate of the total price of labor, materials, etc. supplied;
- Name and address of claimant;
- Name of person who contracted for purchase from claimant;
- Description of jobsite sufficient for identification
- If claimant is a subcontractor who has failed to pay all compensation due to his or her laborers on the job, the notice shall also contain the identity and address of any laborer and any express trust fund to which employer payments are due.
- Attached statement (Form A) in bold face type [3097]. NOTE that this language must be followed EXACTLY! [Cushman at §6.02[A][1]]
- NOTE that if an invoice for materials includes all the above information, it will suffice as notice, if given according to the requirements set out here. [3097]

**Home Improvement or Swimming Pool work:** The contractor must give the owner a copy of the contract, signed by the

General description of labor, materials, etc. furnished or to be furnished, and the name of the party to whom furnished [3098]. To require the public entity to withhold funds pursuant to a stop notice, the stop notice must be bonded. [3098, 3159, 3162]

contractor and the buyer, prior to starting work. This new contract form requires a lot of information and several warnings to the customer, which are not all set out here. See Form G. Among other things, the notice of suspensions or revocations must be written either in capital letters in 10-point roman boldface type or in contrasting red print in at least 8-point roman boldface type, and must disclose any disciplinary license suspension or license revocation during the last eight years resulting from any violation of the relevant statutes. [B&P §§7159 - 7159.6; 7030.1]

How must preliminary notice be given?

**General Contractors:** Included in at least 10-point type on all written contracts. [7030]

**Stop notice, lien and payment bond:**

-As to construction lender, must be delivered to the manager or other responsible officer or person at the office of the construction lender, either by personal service or registered or certified mail.

-As to owner or agent, must be delivered personally by leaving it at business or residence with person in charge OR by registered or certified mail to home or office, or to address on building permit.

-If a person cannot be otherwise served, send the notice addressed to the lender or contractor. [3097]

-**PROOF OF SERVICE IS REQUIRED** in form of an affidavit showing time, place and manner of service plus name, address and title of person served. [3097.1]

**Home Improvement or Swimming Pool work:** All forms – no method specified. As to the disclosure of license revocations or suspensions, it may be given in a bid, estimate, or other document prior to entering into a contract. No specific method of providing it to the owner is discussed. [7030.1]

Who must give final notice (stop notice or notice of claim)?

**Stop notice:** All claimants unless a payment bond has been recorded. **Note:** one who receives from the owner a written demand to file a notice must do so, or will forfeit the right to claim a lien.

**Lien:** All claimants. [3158-3159]

Personal service or by first class mail, registered mail, or certified mail to home or any office. [3098]

**Stop notice:** Every claimant. [3162, 3181]

**Payment bond:** Every claimant who did not give the preliminary notice – but recommend giving the final notice anyway. [3252]

**Payment bond:** All claimants who fail to give a preliminary notice – but it doesn't hurt to give the final notice anyway. [3227]

To whom is final notice given?

**Stop notice:** Owner or architect (if any) and construction lender, if any. The notice to the construction lender must be given to the manager or other responsible officer AT THE BRANCH HOLDING AND ADMINISTERING THE CONSTRUCTION FUNDS. [3103]

**Lien:** County recorder where property is located. [3116]

**Payment bond:** Surety and bond principal. [3227]

When must final notice be given?

**Stop notice:** Within 30 days after notice of completion or cessation is filed, or within 90 days after completion of project if no notice of completion or cessation is filed. For a general contractor filing a bonded stop notice, the notice must be given within 60 days after a notice of completion or cessation is filed, or within 90 days after completion of project otherwise. To be safe, recommend giving notice within 90 days after claimant's last delivery. **IF, HOWEVER,** the owner records a Notice of Completion or Notice of Cessation and fails to timely notify the contractor or a lien claimant who has given a preliminary notice, then the deadline for filing the lien is extended to 90 days after the Notice was recorded. The owner is required to send the contractor and claimant notice of the recording within 10 days of recording it. **NOTE, HOWEVER,** that this requirement of sending out a copy of the Notice of Cessation or Notice of Completion, and the possibility of extending the lien-filing deadline, only applies to non-residential properties, and residential properties of five or more units. [3184, 3160, 3259.5, Cushman at §6.03[D]]

**NOTE THAT** completion means actual completion of the project, but any of the following are also equivalent to completion: (1) The occupation or use of the improvement by the owner, or his agent, and the cessation of labor on the project; (2) The acceptance by the owner, or his agent, of the work of improvement;

**Stop notice:**

State job: Director of department that let contract.

Any other job - Filed with controller, auditor, or other disbursing officer, or with managing body awarding contract. [3103] (Recommended giving notice to general contractor, too.)

**Payment bond:** Surety and bond principal. [3252]

**Stop notice:** If notice of completion, cessation or acceptance is filed, within 30 days of filing. If none filed, within 90 days after cessation or completion. [3184]

**NOTE THAT** for public works, the date of completion is determined by the date of acceptance by the public body, or where there is a cessation of labor on any public work for a continuous period of 30 days. [3086]

**Payment bond:** **If no preliminary notice was given, then you MUST give notice within 15 days of recording of notice of completion or 75 days after completion where no notice of completion is recorded.** It never hurts to give this notice anyway, however. [American Buildings Co. v. Bay Commercial Construction, Inc., 21 Cal.Rptr.2d 539, 99 Cal.App.4th 1193 (App. 3 Dist. 2002); 3252]

**NOTE THAT** for public works, the date of completion is determined by the date of acceptance by the public body, or where there is a cessation of labor on any public work for a continuous period of 30 days. [3086]

or (3) After the commencement of the work, a cessation of labor on it for a continuous period of 60 days, or a cessation of labor for a continuous period of 30 days or more if the owner files for record a notice of cessation. [Civ. Code §3086]

**Lien:**

-By original contractor, after completing its contract but within 90 days after completion, or within 60 days after Notice of Completion or Notice of Cessation filed. If, however, the owner records a Notice of Completion or Notice of Cessation and fails to timely notify the contractor, then the contractor's deadline for filing its lien is extended to 90 days after the Notice was recorded. The owner is required to send the contractor notice of the recording within 10 days of recording it. **NOTE, HOWEVER,** that this requirement of sending out a copy of the Notice of Cessation or Notice of Completion, and the possibility of extending the lien-filing deadline, only applies to non-residential properties, and residential properties of five or more units. [3115, 3259.5]

-By all other claimants, after completion of the claimant's contract, and within 90 days after completion of the entire project where no notice of completion is filed, or within 30 days after notice of completion or of cessation recorded. **IF, HOWEVER,** the claimant gave a preliminary notice, and the owner records a Notice of Completion or Notice of Cessation but fails to timely notify the claimant of the recording of the Notice, then the claimant's deadline for filing its lien is extended to 90 days after the Notice was recorded. The owner is required to send the contractor notice of the recording within 10 days of recording it. **NOTE, HOWEVER,** that this requirement of sending out a copy of the Notice of Cessation or Notice of Completion, and the possibility of extending the lien-filing deadline, only applies to non-residential properties, and residential properties of five or more units. [3116, 3259.5]

Note: Where the project involves the construction of two or more separate residential units (including one structure

with several condominiums) the time for filing a lien against each unit begins to run upon the completion of each unit. If, however, the claimant is unable to attribute the amounts to different units, the claimant is still entitled to its lien. [3131]

**NOTE ALSO** that completion means actual completion of the project, but any of the following are also equivalent to completion: (1) The occupation or use of the improvement by the owner, or his agent, and the cessation of labor on the project; (2) The acceptance by the owner, or his agent, of the work of improvement; or (3) After the commencement of the work, a cessation of labor on it for a continuous period of 60 days, or a cessation of labor for a continuous period of 30 days or more if the owner files for record a notice of cessation. [Civ. Code §3086] **NOTE ALSO** that a contract is “complete” for purposes of filing a lien when all work under the contract has been performed, excused, or otherwise discharged. [Cushman at 6.02[B], Howard S. Wright Construction Co. v. BBIC Investors, 136 Cal. App. 4<sup>th</sup> 228 (2006)]

**Payment bond:** If no preliminary notice was given, then give notice within 15 days after Notice of Completion was filed, or within 75 days after completion of the improvement, if no Notice of Completion is filed. However, it never hurts to give this notice regardless of whether the preliminary notice was given. [3242]

**NOTE THAT** completion means actual completion of the project, but any of the following are also equivalent to completion: (1) The occupation or use of the improvement by the owner, or his agent, and the cessation of labor on the project; (2) The acceptance by the owner, or his agent, of the work of improvement; or (3) After the commencement of the work, a cessation of labor on it for a continuous period of 60 days, or a cessation of labor for a continuous period of 30 days or more if the owner files for record a notice of cessation. [Civ. Code §3086]

Contents of final notice?

**Stop notice:**

- General statement of kind of labor, materials, etc. furnished or to be furnished
- Name of person to or for whom furnished
- Value of that already furnished AND of the whole agreed to be furnished.
- Name and address of claimant.
- Must be verified by the claimant or the claimant's agent. Case law does not clarify whether the claimant's attorney is a sufficiently authorized agent.
- Strongly recommend including a written request for notice of construction lender's and/or owner's election regarding withholding of funds, as well as a self-addressed stamped envelope. If you do so, then you will receive notice of their decision, and the construction lender will send you a copy of the payment bond, if any.

NOTE: Where an owner receives a stop notice or a construction lender receives a bonded stop notice, each is required to withhold payments unless the general contractor has provided a payment bond. If the payment bond was given, then they may withhold the funds if they so choose, EXCEPT that the construction lender MUST withhold the funds if the general contractor gave the bonded stop notice, regardless of whether a payment bond was provided. If the OWNER chooses not to withhold funds, then within 30 days after receiving the stop notice, the owner must give the claimant details of the general contractor's bond. If the CONSTRUCTION LENDER chooses not to withhold funds, where the claimant is not the general contractor, and the claimant requests notice of the lender's decision and includes an SASE, then the lender must provide the claimant a copy of the bond. [3103, 3162]

**Lien:**

- Statement of claimant's demand less credits and offsets. (NOTE that the lien is to be in the amount of the reasonable value of the work and materials furnished or the price agreed upon by the parties, WHICHEVER IS LESS. NOTE ALSO that the lien may include amounts due based on a written modification of the contract or as a result of

**Stop notice:**

- General statement of kind of labor, materials, etc. furnished or agreed to be furnished;
- Name of person for whom furnished;
- Value of that already furnished AND of the whole agreed to be furnished
- Name and address of the claimant
- Must be verified by the claimant or the claimant's agent. Case law does not clarify whether the claimant's attorney is a sufficiently authorized agent. [3103]

**Payment bond:**

- Amount/value of labor, materials, etc. furnished or to be furnished
- Name of party to whom materials furnished
- Kind of labor, materials, etc. furnished or agreed to be furnished. [3227]
- Apparently may also include 2% penalty for late payment of undisputed progress payments, under the Public Contract Code. [Washington Int'l v. Superior Court, 62 Cal. App. 4<sup>th</sup> 981 (1998)]

the rescission, abandonment or breach of the contract.) [3123]

-Name of owner or reputed owner, if known

-General statement of the kind of materials or labor supplied

-Name of person to whom claimant supplied labor or materials

-Description of the site sufficient for identification

-Must be verified by the claimant or the claimant's agent. Per case law, verification by the claimant's attorney is sufficient.

[3084] Note that the form for a notarial acknowledgement is now attached as Form H.

Note: If claim is against two or more structures, with same owner and same person employing claimant, claim must designate amount due on each project.

Note also: Where the claimant performed work or supplied labor to a condominium project, pursuant to a contract with the homeowner's association, the claimant must keep track of the amount worked on each unit and segregate it by owner in order to claim a lien for that work. Work performed on, or materials supplied to, the common areas must be apportioned by shares. Otherwise, the claimant will only have a claim against the homeowner's association, and not against the individual homeowners.

[ECC Construction, Inc. v. Ganson, 98 Cal.Rptr.2d 292, 82 Cal.App.4th 572 (Cal.App. 2 Dist., 2000); 3130]

**Payment bond:**

-Kind of labor, materials, etc. furnished

-Name of person to or for whom labor, materials, etc. were furnished

-Amount/value of labor, materials, etc. furnished or to be furnished. [3227]

How is final notice given?

**Stop notice:** Personal service or registered or certified mail (for lender, serve on manager or other responsible officer at branch administering funds). [3103]

**Lien:** By filing with county recorder [3116]

**Payment bond:** Personal service or registered or certified mail. [3227]

**Stop notice:** Filed with above-mentioned entity, recommend serving the disbursing officer of the entity constructing the project, or on the director of the department, which let the contract, if the project is for the state.

**Payment bond:** Personal service, or registered or certified mail. [3252]

Time to start suit?

**Stop notice:** More than 10 days after notice served and less than 90 days after the time to file a lien. (In other words, more than 10

**Stop notice:** More than 10 days after stop notice served but within 90 days after the time to file a stop notice expires. (In other

days after serving notice but less than 120 days after the notice of completion or cessation is recorded, or within 180 days after completion of the work if no notice is filed.) [3172, Cushman at §6.03[F]]

**Lien:** Within 90 days after claimant records its lien. **NOTE** that where a lien was timely recorded but no foreclosure action was filed, and the lien was then released and refiled within the allotted time for filing final notice, the court allowed the claimant to timely foreclose on the second lien. [3144; Cushman at §6.02[E]; Koudmani v. Ogle Enterprises, Inc. (App. 4 Dist. 1996) 55 Cal.Rptr.2d 330, 47 Cal.App.4th 1650.]

**NOTE THAT** when a contractor or subcontractor brings an action to recover compensation for work performed, he or she must allege that he or she was a duly licensed contractor at all times during the performance of the contract. [B&P §7031]

**Payment bond:** Within 6 months after completion of the work of improvement, as long as the surety recorded the bond with the county recorder before the work was completed. If it has not been recorded, the claimant has 4 years to bring an action against the surety. Not recommended that you wait that long. [3239, 3240; Cushman at §6.04[B]]

Are attorney fees allowed?

**Stop notice:** Yes, but note that they are awarded to the prevailing party in a bonded stop notice, and that determination might not always be favorable where the claimant recovers a lot less than sought. [3176]

**All other claims:** As to retention, attorney's fees are allowed where a claimant must sue to recover it. [3260] As to other claims, there are no specific provisions, except that fees are allowed, up to \$2,000, where no foreclosure suit is timely filed, and the owner petitions to have the property released from the lien. According to Cushman, attorney's fees are not allowed unless a suit includes other causes of action that do allow attorney's fees. [3154, Cushman at §6.02[C][2]] They also may be allowed in some instances where an arbitrator awards them. [Taylor v. Van-Catlin Const. 30 Cal.Rptr.3d 690, 130 Cal.App.4th 1061(App. 6 Dist. 2005)]

words, more than 10 days after serving notice but less than 120 days after the notice of completion or cessation is recorded, or within 180 days after completion of the work if no notice is filed.) [3184, 3210, Cushman at §6.03[F]]

**Payment bond:** After all materials, labor, etc. supplied but within six months after time to file a stop notice expires. [3184, 3249]

**Retention:** Retention is to be released by the public entity within 60 days after the date of completion of the improvement. If it is not released, it accrues interest at the rate of 2% per month. The contractor is to pay retention to the subcontractor within 7 days after the contractor receives the funds. If suit is to be brought, it needs to be brought after these time periods. [7107]

Yes. [3248, 3250, 3262.5] They are also allowed to the prevailing party where one pursues the release of retention. [7107]

NOTE that in a breach of contract action, an owner MAY be able to enforce an attorney's fee provision in a contract between a general contractor and a subcontractor, where the court determines that the owner is an intended third-party beneficiary of the contract, and the contract does not explicitly exclude others from the entitlement to fees. [Loduca v. Polyzos, 153 Cal.App.4th 334, 62 Cal.Rptr.3d 780 (Cal.App.3Dist., 2007)]

Are claims assignable?

No specific provision, although an assignment by the owner will not take priority over a stop notice. [3166]

**Stop notice:** No specific provision.

**Payment bond:** Yes, but may affect priority of claim. [3249]

How are liens ranked?

**Stop notice:** No priorities - divided pro rata among claimants who gave stop notices, regardless of when served or type of claim. [3167]

**Stop notice:** Divided pro rata among claimants who gave stop notices. [3190, 3252]

**Lien:** Preferred to subsequent encumbrances and to prior unrecorded encumbrances of which claimant had no notice. [3134]

**Payment bond:** Divided pro rata among claimants who filed 90-day notice. [3251, 3252]

Can lien rights be waived?

Yes, but only in writing, and rights to retainage cannot be required to be waived. NOTE, HOWEVER, that by signing a lien waiver the subcontractor or materialman waives his or her lien rights, stop notice rights and bond rights for all services rendered and all materials provided up to the date stated on the release, even if those services or materials were not covered by the progress payment, so be sure that the waiver is correct. Note that the claimant does not waive his or her rights to pursue compensation for unpaid services and materials under the terms of the contract, or to exercise lien rights to recover payments for services and goods provided **after** the date specified in the release. [3262, 3260; Tesco Controls, Inc. v. Monterey Mechanical Co., 21 Cal.Rptr.3d 751, 124 Cal.App.4th 780 (App. 3 Dist. 2004)] Release and waiver forms in connection with payments are specifically set out in the statute, so see forms B - E. The owner, however, cannot waive its lien rights. [3262]

Yes, although a surety cannot avoid paying a claimant by relying on a waiver given to a general contractor, if the claimant was not actually paid. [Oldcastle Precast Inc. v. Pinner Const. Co., Inc., 2006 WL 1303313, \*4 (Cal.App. 4 Dist. May 11, 2006) (NO. G035133)] Contracts with public entities may not include provisions that acceptance of a payment that is otherwise due to the contractor is a waiver, nor may the contract condition payment upon submission of a release of all claims against the public entity. [7100]

Other remedies?

If retention is withheld, the owner must

Not applicable.

release it within 45 days of completion and the general must do so within 10 days after release by the owner. If there is a bona fide dispute between the owner and the general or the general and a sub, the owner or general may withhold up to 150% of the disputed amount. Once the disputed work is complete, the general or sub should give the owner or general written notice of its completion. The owner or general must then notify the general or sub whether it is accepted or rejected. If it is accepted, the retention must be released within 10 days. If retention is not timely released, the owner or general must pay 2% interest per month as long as it is withheld improperly. Also, the prevailing party will then be entitled to attorney fees, if an action is filed. [3260]

Also, within 30 days of receiving a written demand for any progress payment, the owner must pay the contractor any undisputed amounts from that payment. If there is a dispute, the owner may withhold 150% of the disputed amount. If funds are wrongfully withheld, the contractor will be entitled to a penalty against the owner. [3260.1]

If the general contractor is not paid within 35 days after payment is due pursuant to a written contract, then he or she can give a 10-day stop work notice, and ultimately shut down the project. [3260.2]

#### Special Provisions

1) If claimant is employed by general or sub to provide labor, services, equipment or materials, the claimant's lien cannot include work/materials not provided for in the owner-contractor contract, if the claimant had actual or constructive knowledge of that contract before furnishing the labor, services, equipment or materials. If that contract is filed with the county recorder before the commencement of work, the parties are deemed to have actual notice. [3124]

2) Owner, general, sub or sub-sub can post a bond for 1-1/2 times the amount of the lien and thereby release the lien or avoid the stop notice. [3143]

3) After the complaint has been filed, recommend filing Lis Pendens to give notice to prospective buyers. [3146]

No mandatory retainage on public works jobs.

A subcontractor can include in its claim against the general contractor's payment bond a two percent penalty imposed by the Public Contract Code for late payment of undisputed progress payments. [Washington Intern. Ins. Co. v. Superior Court, 62 Cal. App.4th 981, 73 Cal.Rptr.2d 282, (Cal. App. 2 Dist., 1998)]

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