



HUNTORTMANN
ATTORNEYS AT LAW

THE CORNERSTONE OF CONSTRUCTION LAW™

California Mechanic's Liens, Stop Payment Notices & Payment Bond Claims



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Mechanic's Liens

- What Is A Mechanic's Lien Really?
 - Secured interest in property
 - Constitutional in origin: “mechanics, materialmen, artisans, and laborers of every class shall have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished; and the legislature shall provide, by law, for the speedy and efficient enforcement of such liens.” California Constitution, Article XIV, section 3.
 - Legislature must provide for “speedy and efficient” enforcement. *Roystone v. Darling*, (1915) 171 Cal. 526
- But Has Limitations:
 - Provides recovery only to the extent of the owner's interest in the property
 - Mechanic's lien behind senior liens and deeds of trust

History Of Revisions

- 1872 – First Codes
- 1951 – First Minor Revision
- 1969 – Second Minor Revision
- 2012 – Major Revision
 - Substantive changes
 - Renumbering
 - Civil Code §§3082-3267 to Civil Code §§8000-8840 and Civil Code §§9000-9566
- The Latest Revision Took Effect On July 1, 2012, Except For The New Mechanic's Lien Form

Terminology

OLD	NEW
Original Contractor	Direct Contractor- any contractor who contracts directly with the owner.
Materialman	Material Supplier
20 Day Preliminary Notice	Preliminary Notice
Stop Notice	Stop Payment Notice
Design Professionals	
Certified architects, registered professional engineers, and licensed surveyors	Certified architects, registered professional engineers, and licensed surveyors, <i>landscape architects</i>

Statutory Implementation

- Persons Entitled To Lien Right: Civil Code §8400
 - Material supplier
 - Direct contractor
 - Subcontractor
 - Equipment Lessor
 - Design Professional (architect, landscape architect, professional engineers, land surveyor)
 - Laborers

Statutory Implementation

- In General:
 - Anyone who furnishes labor, service, equipment or material (L.S.E.M.) for use in and which is used in a work of improvement.
- Claims for Fringe Trust Fund Benefits: **Betancourt v. Storke Housing Investors** (2003) 31 Cal.4th 1157

Statutory Implementation

- Persons **NOT** Entitled To Liens:
 - Unlicensed contractors or subcontractors: B&P Code §7031
 - Material supplier to material supplier
 - A contractor providing “preconstruction services” for a project that was never built. *D’Orsay International Partners v. Superior Court*, 123 Cal.App.4th 836 (2004)

Required Information In Contract- Civil Code § 8170

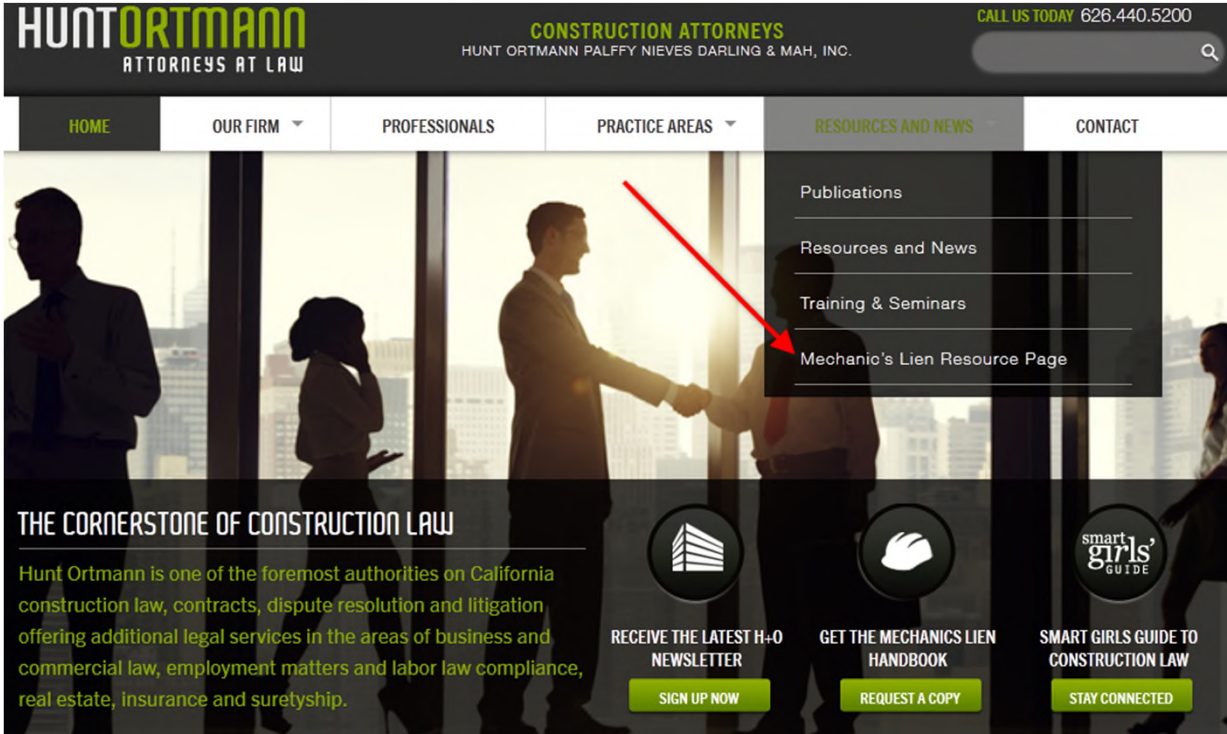
- Direct Contractor And Owner
 - Owner's name, address, and place of business
 - Name and address of construction lender
 - Exception: Home Improvement Contracts
- Direct Contractor-Subcontractor And Subcontractor-Sub-Subcontractor
 - Name address of owner, direct contractor and construction lender

Labor And Services

- General Description Of Labor And Services
 - Known at the time
 - Scope increase will be reflected in the Mechanic's Lien
- Separate Contracts + Same Project = Separate Preliminary Notices

Preliminary Notice

- Revised Preliminary Notice Form Must Be Used
- Download Form At: www.huntortmann.com



The screenshot displays the website for Hunt Ortmann, Attorneys at Law, Construction Attorneys. The header includes the firm's name, contact information (626.440.5200), and a search bar. The navigation menu features links for Home, Our Firm, Professionals, Practice Areas, Resources and News, and Contact. The 'Resources and News' dropdown menu is open, highlighting the 'Mechanic's Lien Resource Page' with a red arrow. Below the navigation, a banner reads 'THE CORNERSTONE OF CONSTRUCTION LAW' and describes the firm's expertise in California construction law. Three promotional tiles are visible: 'RECEIVE THE LATEST H-O NEWSLETTER' with a 'SIGN UP NOW' button, 'GET THE MECHANICS LIEN HANDBOOK' with a 'REQUEST A COPY' button, and 'SMART GIRLS GUIDE TO CONSTRUCTION LAW' with a 'STAY CONNECTED' button.

Preliminary Notice

- Puts The Owner And Lender On Notice Of Your Potential Claim
- Used To Protect The Subcontractor's Rights To Get Payment For Money Owed

* **REMINDER:** Lender **MUST** be served with preliminary notice!

Who MUST Serve A Preliminary Notice?

- EVERYONE!!!
 - Subcontractor
 - Material Supplier
 - Equipment Lessor
 - Laborer
 - Design Professional
- Direct Contractor (with the lender only)

Finding The Lender

- Building Permits
 - Include space for name, branch designation, if any, and address of construction lender
- Contract
- Property Owner
- **NOTE:** Reasonable Effort To Locate A Lender Is Still Necessary

Estimate For Total Price

- Figure Must Be Based On A Rational Analysis
 - Not expected to be exact or precise
 - Requires more than a guess
- Change Orders
 - No psychic powers required
 - Changes in scope (and price) will be reflected in the Mechanic's Lien

When to Serve the Preliminary Notice

- Within 20 Days Of Starting Work
- New Proof Of Notice Declaration
- Hypothetical- Preliminary Lien
 - You're a Sub
 - 50th day of your work on the project
 - Realize you haven't served your 20 Day Preliminary Notice
 - Are you out of luck?
 - What should you do?
 - How far does it go back?

Where to Serve the Preliminary Notice

- Owner: Residence, Place Of Business, Address Shown On Direct Contract, Building Permit, Construction Trust Deed
- Direct Contractors: Residence, Place Of Business, Building Permit, Contractors Contract, Records Of Contractors State Of License Board
- Lender: Residence, Place Of Business, Construction Loan Agreement, Construction Trust Deed
- Building Permit: Civil Code § 8108

How Preliminary Notices Are Served

- Civil Code § 8100 Through § 8118:
 - Notice shall be in writing: Civil Code § 8100
 - Notice shall be given by:
 - Personal Delivery: Civil Code § 8106
 - Mail: Civil Code § 8110
 - Leaving the Notice & mailing a copy: Civil Code § 8106
 - Notice given by mail shall be given by:
 - Registered mail
 - Certified Mail
 - Express Mail
 - Overnight Delivery by an express service carrier: Civil Code § 8110

How Preliminary Notices Are Served

- If Notice Given By Mail, It Is Complete When Deposited In The Mail: Civil Code § 8116(b)
- Proof Of Notice Shall Be By A Proof Of Service Declaration That States: Civil Code § 8118
 - Description of the notice
 - Date, place and manner of service
 - Name and address of person to whom notice was given and if appropriate, the title or capacity in which the person was given notice

How Preliminary Notices Are Served

- If By Mail, Accompanied By: Civil Code § 8118(b)
 - Documentation provided by the United States Postal Service.
 - Documentation provided by an express mail service.
 - A return receipt.
 - Express service carrier.

Required Information In Mechanic's Lien- Civil Code § 8416

- Name Of Owner Or Reputed Owner
- Statement Of Labor And Services
- Contract Price Or Reasonable Value
- Description Of Property
- Name Of Person For Whom Work Performed

Required Information In Mechanic's Lien

NOTICE OF MECHANIC'S LIEN

ATTENTION!

Upon the recording of the enclosed MECHANIC'S 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 mechanic's lien is recorded.

The party identified in the mechanic's 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 mechanic's lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic's lien is released.

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

Amount Of Lien

- Covers Contract Price Or Reasonable Value
- Can Include:
 - Value of changed or extra work
 - Breach of contract damages
 - Extended overhead?
- Cannot Include:
 - Consequential damages
 - Interest for late payment
 - Attorneys' fees

Property Subject To Lien

- “Work of Improvement” Broadly Defined
 - Each prime contract = separate work
 - Separate residential units = separate work
 - Multiple-unit dwellings under one roof = one work
- Notice Of Non-Responsibility: Civil Code § 8444
 - Post and record within 10 days of knowledge
 - Failure to comply with posting and recording allows for lien on entire property

Proof Of Service

- Need to serve the Property Owner or Reputed Property Owner or risk VOIDING your Mechanic's Lien!!!
- The Lien MUST HAVE a Proof of Service Affidavit: Civil Code § 8416(a)(7)

Forfeiture of Mechanic's Lien

- Forfeiture Of Lien For Dishonesty
 - Services, labor, materials or equipment not furnished
 - Overstating the amount owed
 - Cannot use mechanic's lien as false leverage
- Bona Fide Purchaser Without Knowledge
 - Lien so deficient that new owner was not aware

Notice Of Completion

- Notice Of Completion May Be Recorded Upon Completion Of Each Contract On A Multi-Prime Project: Civil Code § 8186
- Potential Trap For Trade Contractors On Owner-Builder Projects:
 - The time for recording a lien on an owner-builder project could expire mid-project!

Time Limits To Record Mechanic's Lien – No Notice of Completion

- Must Record Within 90 Days Of: Civil Code § 8412 & 8414
 - Actual completion
 - Occupation or use and cessation of work
 - Cessation of labor for 60 continuous days
 - Cessation of labor for 30 continuous days and Recording of Notice of Cessation
- Completion usually refers to entire work of improvement

Time Limits To Record Mechanic's Lien - Notice of Completion

- Must Record Within: Civil Code § 8412 & 8414
 - 60 days for prime contractors
 - 30 days for subcontractors and suppliers
- Time Shortened Only If Owner Gives Actual Notice Of Notice Of Completion To Contractor And ALL Persons Who Provided Preliminary Notices
- Notice of Completion – New Law Civil Code § 8182
 - Owner Now Has 15 Days To Record
 - Previously only 10 days To Record

Time Limits To Record Mechanic's Lien - Notice of Completion

- Notice of Completion: Civil Code § 8182
 - Owner estopped to deny validity of NOC: Doherty v. Carruthers (1959) 171 Cal. App. 2d 214: NOC Recorded more than 60 days after completion: liens within 30 days of NOC, but 99 Days after actual completion: owner estopped
 - Howell v. Gunderson (1967) 250 Cal. App. 2d 961: NOC Signed by wrong owner: did not name contractor: NOC invalid
 - Owner responsible to give notice of recordation of a Notice of Completion or Notice of Cessation: Civil Code § 8190

Time Limits To Perfect Mechanic's Lien Through Foreclosure Suit

- Lawsuit MUST Be Filed Within 90 Calendar Days Of Recording: Civil Code § 8460
- *Don't Procrastinate*
- Notice of Pendency of Action Must Be Recorded Within 20 Days Of Filing Lawsuit: Civil Code § 8461

Special Issues Related To Mechanic's liens

- Priority
 - General rule on lien priorities:
 - “First in time, first in right”.
 - Conveyance recorded first generally has priority over any later-recorded conveyance. Cal. Civil Code 2897; First Bank v. E.W. Bank (2011) 199 Cal. App. 4th 1309.
 - “Other things being equal, different items upon the same property have priority according to the time of their creation...”: Civil Code § 2897(c)
 - Runs from date work commenced: Civil Code § 8450, § 8454
 - Offsite work done under separate contract with owner does not give site improvers priority: Civil Code § 8454

Special issues Related to Mechanic's Liens

- Separate Residential Units: Civil Code § 8448
 - Time to file runs from completion of each residential unit
 - Owner may record separate NOC's
- Segregation Of Lien: Civil Code § 8446
 - Two or more buildings owned by same person: segregate amount due if possible or be postponed to other liens; may estimate amount due
 - *Flintkote Co. v. Lisa Construction Co.* (1968) 268 Cal. App. 2d 606: 10 lots; concrete to all 10; nothing paid; court equitably apportioned entire lien to 5 lots remaining
- *ECC Construction Inc. v. Ganson* (2000) 82 Cal. App. 4th 572: on a condominium project, the lien claimant may record a blanket lien, but must notify each owner of the fraction of the total sum due on that unit under Civil Code § 1369

Defenses To Mechanic's Liens And Stop Payment Notices

- Payment:
 - If claimant has knowledge of the source of the funds, it must apply to the job from which payment emanates: *Modesto Lumber Co. v. Wylde* (1933) 217 Cal. 421
- Releases/Waivers: Civil Code 8122 to 8138:
 - Conditional Waiver & Release Upon Progress Payment
 - Unconditional Waiver & Release Upon Progress Payment
 - Conditional Waiver & Release Upon Final Payment
 - Unconditional Waiver & Release Upon Final Payment
- Effect Of Conditional Waivers:
 - *Tesco Controls Inc. v. Monterey Mechanical*, 124 Cal. App. 4th 780:
 - Addressed:
 - Effect of conditional waivers
 - Breach of joint check agreements
 - Who is a subcontractor
 - Prompt payment penalties

Enforcement Of Mechanic's Liens

- ***Timely*** Serving The Preliminary Notice
- ***Timely*** Recording The Notice And Claim
- ***Timely*** Initiating A Foreclosure Lawsuit

Property Owner Files Bankruptcy

- Now What?
 - Mechanic's Lien can be recorded after a bankruptcy is started
- Lawsuit Cannot Be Brought Until Bankruptcy Stay Lifted Or Bankruptcy Completed

Lien Waiver Forms

- Conditional Waiver and Release on Progress Payment
- Unconditional Waiver and Release on Progress Payment
- Conditional Waiver and Release on Final Payment
- Unconditional Final Waiver and Release on Final Payment

Lien Waiver Forms - Progress Waivers

- Latest Revisions To This Form
 - “Through Date” – Term used for identifying effective date of release
 - “Exceptions” – Retention, unpaid extras, contract rights are still reserved

The Exceptions Trap

- Exceptions

“This document does not affect any of the following:

(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):

“\$ _____ ”

- You Must Specify The Previous **Unpaid** Progress Payments

Lien Waiver Forms - Final Payment

- Both The Conditional And Unconditional Final Payment Waivers Allow An Exception For “Disputed Claims For Extras”
- But You Must Indicate An Amount For The Extras
 - “This document does not affect any of the following:
Disputed claims for extras in the amount of: \$_____”
- **Recommendation:** Estimate The Amount Of All Disputed Extras, If Not Known

Stop Payment Notice – Private Works Of Improvement

- A Procedure Whereby Funds In The Hands Of The Construction Lender May Be Held Up By A Stop Payment Notice
- Legislature Has Provided For A Stop Payment Notice Right On Private Works Of Improvement. *Connelly Development, Inc., v. Superior Court*, 17 Cal. 3d 803 (1976)
- Available In Public And Private Works Of Improvement
- Similar Requirements, But Not The Same

Stop Payment Notice Requirements – Private Works Of Improvement

- Preliminary Notice: Civil Code § 8200
- Persons Entitled To Make Stop Payment Claim
 - All claimants under Mechanic's Lien statutes
 - Direct Contractor only has claims against Lender
- Service:
 - Owner
 - Lender – Manager or other Responsible Officer
- Bonded Stop Payment Notice Mandates Lender Withholding: Civil Code § 8536
 - *Connolly Development Inc. v. Superior Court*, 17 Cal. 3d 803
 - Bond equal to 125 percent of claim
 - Prevailing party entitled to attorney's fees: Civil Code 8558
 - Prevailing party entitled to prejudgment interest

Stop Payment Notice Requirements – Private Works Of Improvement

- Request For Election
 - Lender must send copy of Payment Bond for project: Civil Code § 8538
- Filing Action: Civil Code § 8550
 - Cannot file lawsuit within first 10 days after service of Stop Payment Notice
 - Lawsuit must be filed no later than the 90th day after the deadline to record a Mechanic's Lien
- Notice Of Filing Stop Payment Notice Action **Within 5 Days:** Civil Code § 8550(e)

Stop Payment Notice Requirements – Public Works Of Improvement

- Preliminary Notice: Civil Code § 9300
 - 2nd Tier Subcontractors or Material/Equipment Suppliers
- Served On Public Body And Direct Contractor
- Service Of Stop Payment Notice: Civil Code § 9356
 - 30 days with Notice of Completion
 - 90 days without Notice of Completion
- No Bond Required: Civil Code § 9358

Stop Payment Notice Requirements – Public Works Of Improvement

- Filing Action: Civil Code § 8550
 - Not within the first 10 days
 - Not after the 90th day of the last date to file a Stop Payment Notice: Civil Code § 9502
 - Must give notice of suit within 5 days of filing: Civil Code § 9505
- 2 Years To Bring Action To Trial: Civil Code § 9508
- Consolidation Of All Stop Payment Notice Suits: Civil Code § 9506
- Interpleader By Public Entity: Civil Code § 9506

Stop Payment Notice Requirements – Public Works Of Improvement

- Release of Stop Payment Notice
 - Two Methods
 - Release Bond: Civil Code §9364
 - Summary Proceedings: Civil Code §9400 et. seq.
- Release Bond
 - Can be filed by Direct Contractor
 - Amount: 125% of the amount of the Stop Payment Notice Claim
 - Public Entity has discretion to accept
 - Claim shifts from Public Entity to release bond: Public Entity may release funds to Direct Contractor upon receipt of the Release Bond
 - Sureties on release bond jointly and severally liable with surety on payment bond. Therefore, surety on release bond must be different than surety on payment bond. Azusa Western, Inc. v. City of West Covina (1975) 45 Cal. App. 3d. 259

Stop Payment Notice Requirements – Public Works Of Improvement

- Summary Proceedings
- Administrative Process Between Direct Contractor And Claimants
 - Battle of the Affidavits
 - Possibility of quick court battle
 - Affidavit filed by Direct Contractor
 - Grounds
 - Claim not type allowed by Stop Payment Notice Law
 - Claimant not person entitled to a Stop Payment Notice
 - Amount of claim is excessive
 - No basis in law for the claim
 - Contractor serves affidavit on Public Entity
 - Public Entity serves claimant with a copy of the Affidavit

Stop Payment Notice Requirements – Public Works Of Improvement

- Claimant Must File Counter-affidavit Within The Time Stated In The Public Entity's Notice
- If Counter-affidavit Not Filed, Money Released
- If Counter-affidavit Is Filed, Money Held
- Either Party May Sue For Declaratory Relief And File Motion On 15 Day's Notice
- Direct Contractor Has Burden Of Proof
- Affidavits Received In Evidence
- Court May Allow Further Evidence
- Jury Trial Available
- Court Or Jury Rules
- Ruling On Stop Payment Notice Not Res Judicata As To Claim On Bond

Special Issues Related To Public Stop Payment Notice

- If Public Entity Pays Contractor Prematurely, Stop Payment Notice Catches Nothing. Pacific Employers Insurance Co. v. State of California (1970) 3 Cal. 3d 573
- The Public Entity Is Not Required To Anticipate That Stop Payment Notices May Be Filed And May Make Final Payment To The Direct Contractor Even Though The Time For Filing Stop Payment Notices Has Not Expired. American Fidelity Fire Insurance Co. v. United States (N.D. Cal. 1974) 385 F. Supp. 1075

Special Issues Related To Public Stop Payment Notice

- Attorney's Fees To Prevailing Party On Bond
- Subcontractor Allowed To Recover 1 1/2% Interest On Bond Where Such Interest Provided For In Contract: Granite Construction Co. V. American Motorists Ins. Co., 29 Cal. App. 4th 658 (1994)
- Completion Of A Public Work Of Improvement Occurs At The Earliest Of The Following Times
 - Acceptance of the work by the Public Entity
 - Cessation of labor for 60 days: Civil Code § 9200

Special Issues Related To Public Stop Payment Notice

- Public Entity May Record A Notice Of Cessation If There Has Been A 30 Day Cessation Of Labor: Civil Code § 9202(a):
- Public Entity May Record A Notice Of Completion Within 15 Days Of Completion. Civil Code § 9304(a).
- Public Entity On Receipt Of Stop Payment Notice Shall Withhold From Direct Contractor Sufficient Funds To Pay The Claim and To Provide For Public Entity's Reasonable Cost Of Litigation: Civil Code § 9358(c)

Special Issues Related To Public Stop Payment Notice

- Not Later Than 10 Days After The Following Events, The Public Entity Shall Give Notice To A Stop Payment Notice Claimant Within Which To File An Action:
 - Completion of the public work by acceptance or cessation
 - Recordation of a Notice of Cessation or Completion
- This Notice Need Not Be Given Unless The Claimant Paid The Public Entity \$10 At The Time Of Giving The Stop Payment Notice: Civil Code § 9362(a)(b) and (c)

Special Issues Related To Public Stop Payment Notice

- If Funds Withheld Are Not Sufficient To Pay All Claims, They Shall Be Distributed Pro Rata: Civil Code § 9450
- A Person Who Gives A False Stop Payment Notice Or Willfully Includes Work Not Provided For In The Public Works Notice Forfeits All Right To Participate In The Distribution Of Funds Being Held Pursuant To The Stop Payment Notice: Civil Code § 9454

Special Issues Related To Public Stop Payment Notice

- Stop Payment Notice Only Catches Funds Due The Contractor. Harsco Corporation v. Department of Public Works (1971) 21 Cal. App. 3d 272. Contrary to rule on private works
- Can File Stop Payment Notice Even If Money Not “Due”. Central Industrial Engineering Company, Inc. v. Strauss Construction Company, Inc. (1979) 98 Cal. App. 3d 460

Bonds

- Mechanic's Lien Release Bond
 - Civil Code §8424
- Stop Payment Notice Release Bond
 - Civil Code §8510
- Payment Bonds
 - Civil Code § 8600 (Private) and § 9550 (Public)
- Performance Bond
 - Public Contracts Code §10221

Mechanic's Lien Release Bonds

- Mechanic's Lien Release Bonds
 - Amount is 125 percent of Lien
 - Surety Admitted in California
 - On recordation of the bond, the real property is released from the claimed lien and from any action to enforce the lien.
- Trigger For Filing Suit Is Notice
 - 6 months from notice, not date bond obtained
 - Notice to claimant is mandatory
 - Time tolled if no notice

Stop Payment Notice Release Bonds

- Stop Payment Notice Release Bonds
 - Must be at least 125 percent of Stop Payment Notice claim
 - Surety admitted in California
 - On receipt of a release bond, the person withholding funds shall release them
 - 3 year statute of limitation to bring lawsuit to enforce (*Winick Corp v. General Insurance Co.*, 187 Cal.App.3d 142 (1986))
- Contractual Waivers:
 - *Wm. R. Clark Corp. v. Safeco Ins. Co.* (1995) 38 Cal. App. 4th 1655 seems to state liens can only be waived pursuant to waivers set forth in the Civil Code

Payment Bonds - Private Works

- Protects Owner From Future Mechanic's Lien Claims
 - Record direct contract and payment bond of 50 percent of contract value
 - Limits owner's liability based on mechanic's lien claimants in excess of aggregate contract with direct contractor
- Payment Bonds Can Set Time Limitations For Filing Suit
 - Cannot be less than 6 months – normally, 4 years
 - Only valid if bond recorded before work begins
- Preliminary Notice Required To Make Claim: Civil Code § 8612
 - Safe Harbor: Within 15 days of recorded Notice of Completion or within 75 days of actual completion

Payment Bonds – Public Works

- Required On All Public Works Exceeding \$25,000
- Must Be 100% Of Contract Amount: Civil Code § 9554
- Preliminary Notice Required To Make Claim: Civil Code § 9560
 - Same Safe Harbor provision as private payment bonds
 - If claimant failed to give 20 Day Notice, claimant may give notice to principal and surety on bond within 15 days of N.O.C. or if no N.O.C. within 75 days of completion; if Direct Contractor has paid the subcontractor all sums not in dispute or the Direct Contractor has terminated the subcontractor and made all payments not in dispute, then this second notice is not available to claimants who have furnished labor or materials to that subcontractor.
- Action To Enforce Must Be Filed Within 6 Months Of Last Date To Serve Stop Payment Notice: Civil Code § 9558
- Attorney's Fees Awarded To Prevailing Party: Civil Code § 9564

Payment Bonds – Public Works

- Effect Of Failure To Require Bond
 - Public Entity is liable to claimants for failure to require a payment bond: *Walt Rankin & Associates Inc. v. City of Murrieta*, 84 Cal. App. 4th 605 (2000); page 231, supp.; *N.V. Heathorn Inc. v. County of San Mateo*, 126 Cal. App. 4th 1526 (2005)
- Public Entity Has Duty To Determine Sufficiency Of The Bond
 - The bond must be executed by an admitted surety insurer: Civil Code § 9554(a)

Performance Bonds

- Provide Owner Assurance of Contractor Performance
- Performance Bonds Used On Virtually All Public Works
 - State agencies are statutorily required to obtain performance bonds (Public Contracts Code §10221)

Performance Bonds

- The Public Agency Is The Beneficiary Of The Performance Bond (Obligee)
- The Public Agency May Recover:
 - Costs of completion and payments to subcontractors and suppliers
 - Liquidated damages

Questions And Answers

Thank you for joining us. If you have any other questions, please feel free to contact me at the email address below.

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