

PROTECTING YOUR LIEN, STOP PAYMENT & PAYMENT BOND RIGHTS AS A CONTRACTOR IN CALIFORNIA

STEP 1

SERVE PRELIMINARY NOTICE



WHEN TO GIVE PRELIM NOTICE

Private/Public Projects: Within **20 days** of first furnishing labor, services, equipment, or materials to the project. (§§ 8204, 9304)*

*All citations are to the CA Civil Code unless otherwise indicated.

Late Notice: Serving a preliminary notice past the first 20 days still preserves important lien, stop payment notice, and bond rights as to work furnished after giving the notice and for the 20 days before the notice is given. (§8204)

Failure to Give Notice: Claimants can still preserve payment bond rights with written notice to the surety & the payment bond principal within **75 days** after completion of the project or **15 days** after the recordation of a notice of completion or a notice of cessation. (§§ 8612(b), 9560(b))

PROPER NOTICE TIPS

(utilize these tips for giving proper notice of each action in Steps 1, 2, and 3)

- Always get proof of service and save the return receipt (green card).
- See CA Civil Code for reference: §8102 (notice content), §8106 (manner of notice), §8108 (where to give), §8118 (proof of service via declaration).

WHO MUST GIVE NOTICE?

Private Projects: All potential claimants EXCEPT for laborers. (§ 8200)

Public Projects: Same as private projects except that first-tier subcontractors are also NOT required to give notice (but we still recommend giving notice). (§ 9300)

NOTICE TO WHOM?

Private Projects: The owner, the prime contractor*, and the construction lender. (§ 8200)

*The prime contractor is only required to give preliminary notice to the construction lender.

Public Projects: The prime contractor and the owner. (§ 9300)

NOTE: The "prime contractor" is the party who has a direct contractual relationship with the owner.

Private Projects

Mechanics Lien, Stop Payment Notice

Prepare (§ 8416), serve on the owner (§ 8416) & record mechanics lien and/or serve stop payment notice on the owner/lender (§ 8506) either (a) within **90 days** after completion of the project or (b) if a notice of completion or a notice of cessation is recorded, subcontractors and suppliers must record a lien and/or serve a stop payment notice within **30 days** after the recording date; prime contractors within **60 days**. (§8412, 8414, 8508)

STEP 2*

RECORD/SERVE LIEN, STOP PAYMENT NOTICE**



*Do not complete step 2 until after your work is finished or your contract is completed.

**Only record/serve if you believe there is a chance of a payment issue in the future.

Public Projects

Stop Payment Notice

Serve stop payment notice on the public entity (§ 9354) either (a) within **90 days** after project completion or cessation or (b) if a notice of completion or a notice of cessation is recorded, the stop payment notice must be served within **30 days** after the recording date. (§ 9356)

Note: paying the public entity \$10 at time of filing ensures that you get notice when the project is complete. (§ 9362)

STEP 3

FILE COURT ACTION



Private Projects

Mechanics Lien: File suit to foreclose mechanics lien within **90 days** after lien was recorded. (§ 8460)

Stop Payment Notice: File suit on stop payment notice within **90 days** after last day stop payment notice could be recorded. (§8550)

Payment Bond: Varies, but typically must file suit within **6 months** from completion of the project (this suit does NOT require step 2 above). (§ 8610)

Public Projects

Stop Payment Notice: File suit on stop payment notice after **10 days** of serving stop payment notice & within **90 days** after last day stop payment notice could have been served. (§ 9502)

Payment Bond: File suit on bond after claimant stops work & within **6 months** of last day stop payment notice could have been served (this suit does NOT require step 2 above). (§ 9558)

What Constitutes Project Completion?

Private Projects: (1) Actual completion of project, (2) occupation or use by the owner together with cessation of labor, (3) cessation of labor for a continuous period of 60 days, (4) recordation of notice of cessation after cessation of labor for 30 days, or (5), if applicable, acceptance by the public entity. (§ 8180)

Public Projects: The earlier of (1) the date of acceptance or (2) cessation of labor on the project for a continuous period of 60 days. (§ 9200)
Exception – this does NOT apply to contracts awarded under the State Contract Act. (§ 9200; see Pub. Contract Code § 10100 et seq)

Provided by Tao Rossini, APC | www.TaoRossini.com | (714) 761 – 3007

The content provided is for informational purposes only, is not exhaustive, and does not constitute legal advice. You should contact a lawyer licensed in your jurisdiction for advice on specific projects and specific legal issues.