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SUMMARY FOR ENFORCING CLAIMS
ON PRIVATE AND PUBLIC PROJECTS
IN CALIFORNIA

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**SHORT SUMMARY FOR ENFORCING CLAIMS
ON PRIVATE AND PUBLIC JOBS**

MECHANICS' LIEN (PRIVATE WORK)

1. Preliminary Notice must be sent to owner, contractor and lender within 20 days after first delivery.
2. Record lien in county recorder's office within 30 days of notice of completion or 90 days of completion if no notice of completion.
3. Bring, suit to foreclose lien within 90 days of recording.

NOTE: Effective 1/1/2011-Claimant must serve the owner with the Mechanic's Lien at time of recording and shall record a Notice of Lis Pendens on or before 20 days of filing the law suit.

STOP NOTICE (PRIVATE WORK)

1. Same as #1 under Mechanic's Lien.
2. Serve bonded Stop Notice on lender within same times as set forth in above.
3. Bring suit on Stop Notice no sooner than 10 days after service and no later than 90 days after lien period expires.

BOND (PRIVATE WORK)

1. Record lien or give notice to surety within lien period.
2. Bring suit on Bond within 6 months of completion.

STOP NOTICE (PUBLIC WORK)

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1. Serve 20 days notice on prime and public body within 20 days of first delivery.
2. Serve Stop Notice on public body within 30 days of notice of completion.
3. Bring suit on Stop Notice within 90 days from expiration of Stop Notice filing period (N.C. + 30 days; total time to bring suit = 90 days & 30 days = 120 days).

BOND (PUBLIC WORK)

1. Serve Notice to Surety on prime and bonding company within 15 days of completion, if Notice of Completion filed, or 75 days after actual completion (if no Notice of Completion filed).
2. Bring suit within 6 months after expiration of time to file Stop Notice (6 months + 30 days).

MILLER ACT (FEDERAL PUBLIC JOBS)

1. Serve 90 day Bond Notice on prime within 90 days of last delivery.
2. Bring suit within 1 year after last delivery.

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PROCEDURAL STEPS FOR ENFORCING MECHANIC'S LIENS, STOP NOTICES AND BOND RIGHTS ON PRIVATE JOBS

CHECKLIST

I. MECHANIC'S LIEN

A. 20-DAY NOTICE (CC §3097)

1. When Given:

Must be given within 20 days after claimant first furnishes labor, services, equipment or material to the job site (CC §3097c). Claimant may also give notice at any time during the job, in which case he will be entitled to file a lien or stop notice for labor, services, equipment or materials furnished 20 days prior to the notice and at any time after the notice. (CC §3097d).

2. By Whom Given:

All persons claiming a lien or stop notice except the prime contractor and wage claimants (persons performing labor for wages) must give the notice. (CC §3097a, b)

3. To Whom Given:

Everyone, except a subcontractor dealing with an owner-builder, must give the notice to:

- a) Owner or reputed owner;
- b) Original contractor or reputed contractor, and
- c) Construction lender or reputed construction lender (CC §3097a).

A subcontractor, material supplier or anyone dealing directly with an owner/builder when there is no prime contractor must give the notice to the construction lender or reputed construction lender. (CC §3097b).

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4. Where Given:

The notice may be served at one of the following locations of the person to be served if that person resides in California:

- a) Residence;
- b) Place of Business;
- c) Address shown on building permit; or
- d) Address shown on construction trust deed. (CC §3097f(1))

If the person to be notified resides outside California, service can be made in the same manner as for a person residing in California, but if the person cannot be so served, then the notice can be addressed to the construction lender or the original contractor. (CC §3097f (2))

NOTE: Statute provides that the contract between the owner and original contractor shall provide space for the name and address of the owner and construction lender and that the original contractor shall make that information available to any person seeking to serve a preliminary notice. (CC §3097(1)(m))

5. How Given:

- a) Personal Service;
- b) Registered mail; or
- c) Certified mail.

NOTE: When the notice is sent by registered or certified mail, service is complete when mailed. Therefore, this method of service is recommended. (CC § (3097f(3))

6. Contents of the Notice:

- a) A general description of the labor, services, equipment or materials furnished.

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- b) If there is a construction lender he must be furnished with an estimate of the total price of the labor, services, equipment or materials.

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- c) The name and address of the person giving the notice.
- d) The name of the person who contracted for purchase of the labor, services, equipment or materials.
- e) A description of the job site sufficient to identify it.
- f) The following notice in boldface type:

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor or (2) any other method or device which is appropriate under the circumstances.

- g) If the notice is given by a subcontractor who, under a collective bargaining agreement, is required to pay supplemental fringe benefits into an express trust fund, then the notice must identify and give the address of the trust fund. (CC §3097c).

NOTE: The statute provides that, if an invoice contains the required information, it may be sent as a notice under the statute. (CC §3097c). The author has never seen an invoice that contained all of the above information.

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NOTE: An architect, registered engineer or licensed land surveyor who has furnished design services for the work of improvement may give his notice within 20 days after the work of improvement has commenced. (CC §3097c).

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7. How Many Given:

Only one notice need be given for each job on which the claimant has furnished labor, services, equipment or materials, unless he contracts with more than one subcontractor. In that case he must give a notice for each subcontractor. (CC §3097g).

8. Proof of Service of Preliminary Notice:

- a) If served by mail, then by proof of service affidavit accompanied by the return receipt of certified or registered mail or a photocopy of the record of delivery and receipt maintained by the post office showing, the date of delivery and to whom delivered or, in the event of non-delivery, the return envelope itself.
- b) If served personally, then by proof of service affidavit.
- c) The "proof of service affidavit" is an affidavit of the person making service showing:
 - (1) Time of service;
 - (2) Place of service;
 - (3) Manner of service;
 - (4) Fact showing service was made in accordance with CC §3097; and
 - (5) Name and address of person served and title and capacity in which he was served, if appropriate. (CC §3097.1).

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9. Disciplinary Action:

If a licensed contractor has a contract to supply more than \$400 worth of labor, services, equipment or materials, then failure to give notice is a ground

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for disciplinary action. (CC §3097h). Failure of the subcontractor to include the name and address of trust funds he contributes to that, results in the filing of a lien or stop notice also constitutes grounds for disciplinary action if the amount due the trust fund is not paid. (CC §3097h). Finally, if a contractor or subcontractor is delinquent in paying fringe benefits, he must so notify the construction lender or reputed construction lender, setting forth the name of the owner and contractor, a description of the job site sufficient for identification. The identity and address of the trust fund the total straight time and overtime hours that are delinquent on each job and the amount then past due and owing. If the construction lender is not so notified within five days of the date payment was due, this will also constitute grounds for disciplinary action. (CC §3097k).

10. A copy of the preliminary notice may be filed with the county recorder. There is a fee for filing that varies from county to county. If the preliminary notice is filed with the county recorder, then the county recorder will mail to the claimant a notification that a notice of completion or a notice of cessation has been recorded. Failure of the recorder to comply with this requirement shall not affect the time for filing a lien.

B. RECORDING THE LIEN

1. A general contractor cannot record a lien until he completes his contract. (CC §3115). All others cannot record their liens until they have ceased furnishing labor, services, equipment or materials. (CC §3116).
2. Notice of Completion:
 - a) Where a valid notice of completion has been recorded, the general contractor then has 60 days to record. All others have 30 days. (CC §3115-3116).

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3. No Notice of Completion, But Actual Completion:
 - a) All persons have 90 days from actual completion to record. (CC §3115-3116).

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4. If there is no notice of completion and no actual completion of the job, the following are deemed equivalents of completion and all persons have 90 days from the following events to record their liens:
 - a) Occupation and use of the work of improvement by the owner or his agent accompanied by a cessation of labor. (CC §3086a).
 - b) Acceptance of the work of improvement by the owner or his agent. (CC §3086a).
 - c) A cessation of labor for a continuous period of 60 days. (CC §3086c).
5. Notice of Cessation of Labor:
 - a) If the owner records a notice of cessation of labor (after a 30-day cessation) then this is the same as a notice of completion and the prime contractor has 60 days, and all others have 30 days, to record their liens. (CC §3086, 3092, 3115-3116).
6. Where recorded:

In the office of the county recorder where the real property is located.
7. If the work of improvement is made pursuant to two or more original contracts, each covering a particular portion of the work of improvement, then the owner may record a separate notice of completion within 10 days after the completion of each separate contract. The lien period is then the same as set forth above. (CC §3117).

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8. Contents of Mechanic's Lien (CC §3084):
 - a) A statement of claimant's demand, after deducting, all just credits and offsets.
 - b) Name of owner or reputed owner, if known.

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- c) A general statement of the kind of labor, services, equipment or materials furnished.
- d) A description of the job site sufficient for identification.

NOTE: The lien must be signed and verified by the claimant or his agent. It need not be acknowledged.

NOTE: Effective 1/1/2011, Claimant must also serve the owner with a copy of the Mechanic's Lien at the time that it is recorded.

9. Suit:

- a) Must be commenced within 90 days after the lien is recorded in the county where the real property is located. (CC §3144). The time to sue may be extended for up to one year from completion, provided a proper extension of time to foreclose is recorded within 90 days of recording the lien. (CC §3144).
 - b) The suit should name as defendants all parties who have any interest in the property. Suggested sources of names: lot book report, mechanic's lien guaranty or preliminary title report.
 - c) The court may exercise discretionary dismissal if the suit is not brought to trial within two years. (CC §3147).
 - d) Lis pendens should be recorded as soon as the suit is filed. (CC §3146).
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- e) Mechanic's lien actions on the same property may be consolidated. (CC §3149).
 - f) Plaintiff can get an attachment in a lien foreclosure action. (CC §3152).

II. STOP NOTICE

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- A. In general, everything said about mechanic's liens on preliminary notice requirements and the time for filing applies to stop notices.
- B. Anyone entitled to a mechanic's lien is also entitled to file a stop notice. (CC §3158-3159).
- C. The stop notice is served on the owner, construction lender or any other person holding construction funds. (CC §3103).
 - 1. If a payment bond has been recorded, then withholding by the owner or construction lender pursuant to the stop notice becomes optional as to all claimants except the prime contractor who furnished the payment bond. (CC §3161-3162). If the claimant sends a written request and a self-addressed envelope with the stop notice to the owner and/or construction lender, then the owner and/or construction lender must notify the claimant of the election not to withhold and send a copy of the payment bond.
- D. In order to make withholding of funds mandatory by the construction lender, the stop notice must be bonded 1-1/4 times the amount of the claim. (CC §3083).
- E. Service of Stop Notice (CC §3083):
 - 1. Personal service,
 - 2. Registered mail, or
 - 3. Certified mail.

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NOTE: The stop notice must be served on the manager or other responsible officer or person at the office of the construction lender at the branch where the construction funds are being administered. (CC §3083). If the job involves use of a joint control agency, a stop notice should be filed there as well, because there will be funds at both locations.

- F. Contents of a Stop Notice:

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1. Signed and verified by claimant or his agent;
2. Kind of labor, services, equipment or materials furnished;
3. Name of person to whom labor, services, equipment or materials furnished;
4. Amount already furnished and the total amount agreed to be furnished. (CC §3103).
5. The name and address of the claimant. If the claimant wants notice of election not to withhold by the owner and/or construction lender because of a payment bond, then the claimant must request the notice of election in writing and provide a self-addressed stamped envelope.

G. Suit:

1. May not be filed within the first 10 days after service, but must be filed no later than 90 days after expiration of the stop notice filing period. (CC §3210).
2. Notice of suit must be given within 5 days after commencement. (CC §3211).
3. Cannot be brought to trial until 90 days after the lien period expires. (CC §3212).

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4. The court may exercise discretionary dismissal if the suit is not brought to trial within 2 years. (CC §3173).
5. Stop notice suits may be consolidated, and the owner and lender may compel claimants to implead in one action. (CC §3175).

III. PAYMENT (LABOR AND MATERIAL) BONDS

- A. If the original contract is filed with the county recorder and a payment bond in an

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amount not less than 50% of the contract price is recorded before a work of improvement is commenced, the court must, when it would be equitable to do so, restrict recovery on mechanic's liens to the amount found due from the owner to the contractor and render judgment against the surety for the deficiency. The intent of the law is to limit the owner's liability to his contract price (CC §§3235-3236).

B. Preliminary Notice:

1. In order to recover on a payment bond, the claimant must have either recorded a lien or served the surety with written notice within the lien period. (CC §3240). The notice must state the kind of labor, services, equipment or materials furnished, the name of the person to whom the labor, services, equipment or materials were furnished and the amount already furnished and the whole amount agreed to be furnished. (CC §240). This notice may be served on the surety by personal service or certified or registered mail. (CC §3241).

C. Suit:

1. Must be brought within six months after completion of the work of improvement. (CC §3239-3240).

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PROCEDURAL STEPS FOR ENFORCING BOND AND STOP NOTICE RIGHTS ON STATE PUBLIC WORKS

IV. STOP NOTICE

A. 20 DAY NOTICE (CC §3098)

1. Who Gives:

All persons who do not have a contractual relationship with the prime contractor except a person who performed actual labor for wages or an express trust fund described in CC §3181.

2. When Given:

Within 20 days after the claimant has first furnished labor, services, equipment or material to the jobsite. (CC §3098(a)).

NOTE: If a claimant fails to give notice as required by CC Section 3098(a), a claimant may still give the required notice at any time thereafter. However, the claimant shall be entitled to assert a claim against a payment bond and file a stop notice only for labor, service, equipment or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter.

3. To Whom Given:

Contractor and public agency. (CC §3098(a)).

4. How Given:

First-class mail, registered mail or certified mail, or personal service. CC §3098(a). This also is different than private works where first-class mail is not allowed.

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5. Where Given:

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To the contractor at any place he maintains an office or conducts his business, or his residence. In case of any public works constructed by the Department of Public Works or the Department of General Services of the state, send to the office of the disbursing officer of the department constructing the work. (CC §3098(a)).

6. When Service is Complete:

If service by personal service, then at the time of service. If service by registered or certified mail, then service complete at time of deposit of mail. Code is silent as to when service complete if by first-class mail, but can be inferred that service not complete until receipt by contractor and public body. Therefore, recommend service by registered or certified mail. (CC §3098(a)).

7. Contents of Notice:

General description of labor, service, equipment or materials furnished or to be furnished and the name of the party to whom the same was furnished. (CC §3098(a)).

8. Disciplinary Action:

Where the contract price to be paid any subcontractor exceeds \$400,000 the failure to give the notice constitutes grounds for disciplinary action. (CC §3098 (b)).

B. FILING THE STOP NOTICE

1. Contents:

Written notice signed and verified by the claimant stating:

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- a) The kind of labor, service, equipment or materials furnished or agreed to be furnished by the claimant.

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- b) The name of the person to or for whom the same was done or furnished.
- c) The amount in value, as near as may be, of that already done or furnished and of the whole agreed to be done or furnished. (CC §3103).
- d) The name and address of the claimant.

Although the statute does not require it, most stop notice forms also contain the amount paid and the balance due and the date from which interest is claimed.

- 2. Who May Serve Stop Notice: All persons furnishing labor, service, equipment or material to the job, (except the original contractor) and persons furnishing provisions, provender or other supplies. (CC §3181).
- 3. How Served: Personal service, registered mail or certified mail. (CC §3103).
- 4. Upon Whom Served:

In the case of any public work for state, file with the director of the department which let the contract. In the case of any other public work, then with the office of the controller, auditor or other public disbursing officer whose duty it is to make payments under the contract, or with the commissioners, managers provisions o trustees, officers, board of supervisors, board of trustees, common council or other body by whom the contract was awarded. (CC §3103).

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- 5. Time For Service:

If a notice of completion (many times referred to as a notice of acceptance

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on public works) or notice of cessation is recorded, then the stop notice must be filed within 30 days. If there is no notice of completion or cessation recorded, then within 90 days of completion. CC §3184 (a) and (b). If the work of improvement is subject to acceptance of any public entity, the completion shall be deemed the date of acceptance; provided, however, that except as to contracts awarded under the State Contract Act, Chapter 3 (commencing with Section 14250), Part 5, Division 3, Title 2 of the Government Code, a cessation of labor on any public work for a continuous period of 90 days shall be a completion. (CC §3086).

C. SUIT

In order to finally perfect a stop notice, a suit must be brought. Suit on the stop notice is brought no sooner than 10 days after its service and no later than 90 days after the expiration of the time for filing stop notices. (CC §3210). Notice of suit must be given to the public body within five days after commencement. (CC §3211). Court has discretionary right to dismiss if not brought to trial within two years. (CC §3212). Claimants may join in one section. Separate stop notice suits may be consolidated. The public body may require interpleader. (CC §3214).

V. LABOR AND MATERIAL BOND

A. NOTICE TO PRINCIPAL AND SURETY (CC §3252, 3253)

1. Who Gives:

All claimants except laborers, trust funds and claimants with a direct contractual relationship with the original contractor. (CC §3098).

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2. When Given:

Within 15 days after recordation of a Notice of Completion or if no Notice of Completion filed, within 75 days after completion of the project.

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(CC §3252, 3253)

3. To Whom Given:

To the Surety and General Contractor. (CC §3252)

4. How Given:

Personal service or registered or certified mail. (CC §3091). Note: No first-class mail is allowed as is the case with regard to the 20 day notice relating to stop notices.

5. Where Given:

Where surety or general contractor maintains an office or conducts business or at his place of residence. (CC §3252).

6. Contents:

The name of the claimant, the kind of labor, services, equipment or material furnished by the claimants, the amount claimed due, and the name of the person to or for whom the labor, services, equipment or material were furnished. (CC §3252, 3227)

B. SUIT

In order to perfect the claim on the labor and material bond, the claimant must file suit after claimant has furnished last labor and material and no later than six months after period for filing stop notices expires. (CC §3249).

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PROCEDURAL STEPS TO ENFORCE CLAIM ON MILLER ACT BOND

There are two procedural steps to enforcing a claim under the Miller Act Bond.

1. Preliminary Notice.
2. Suit on the bond.

If the claimant does not have a direct contractual relationship with the prime contractor, then the claimant must, as a condition precedent to his right to sue on the bond, send a notice in writing to the prime contractor by registered mail within 90 days after the claimant last furnished labor or material to the job. Conversely, if you have a direct contractual relationship with the prime contractor, then no preliminary notice is necessary.

If you are not paid, then suit on the Miller Act bond must be brought in the U.S. Federal District Court where the job is located within one year after your last furnishing of labor and material.

U.S.C. 2708 (b).

It is clear under the cases interpreting the Miller Act, that if you are beyond the Third Tier on the job you cannot recover under the Miller Act. Clifford F. MacEvoy Co. v. U.S. ex. rel. Calvin Tomfine Co. (1944) 322 U.S. 102)

Example:

Prime Contractor		First Tier
Subcontractor		Second Tier
Subcontractor	Material Supplier	Third Tier (covered)
Subcontractor or Material Supplier		Fourth Tier (cannot recover)

If you are relying on the Miller Act bond in extending credit on a federal construction project, then you must take care that your customer is either the prime contractor or is a person with a contractual relationship with the prime contractor.

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In summary:

1. The Miller Act applies to federal construction projects.
2. If you do not have a direct contractual relationship with the prime contractor, you must give written notice of your claim by registered mail to the prime contractor within 90 days of your last furnishing of labor or material to the job.
3. Suit on the bond must be brought in federal court within one year after last furnishing of labor or material.