

# So You're Really Insane Enough to Have a Construction Business in California?



**GIBBS  
GIDEN**

*Presented By*

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# Introduction



# Ongoing Challenges in the Broader Economy

- Inflation persists
- Looming recession?
- Lingering labor scarcity
- Increased wages
- Interest rate instability
- Rising material costs
- Tighter lending standards
- Weakened Commercial Real Estate Fundamentals
- Continued COVID-19 flare-ups
- International conflicts rage on
- Industry transformations (e.g., auto)

# Bankruptcies are Up

- Bankruptcy filings surged 18% in 2023
- Commercial Chapter 11 filings up 72%



## US bankruptcies surged 18% in 2023 and seen rising again in 2024 -report

Reuters

January 3, 2024 1:36 PM PST · Updated 2 days ago



# Unbalanced Year for Construction in 2023

Nonresidential Spending Growth, Millions of Dollars, Seasonally Adjusted Annual Rate

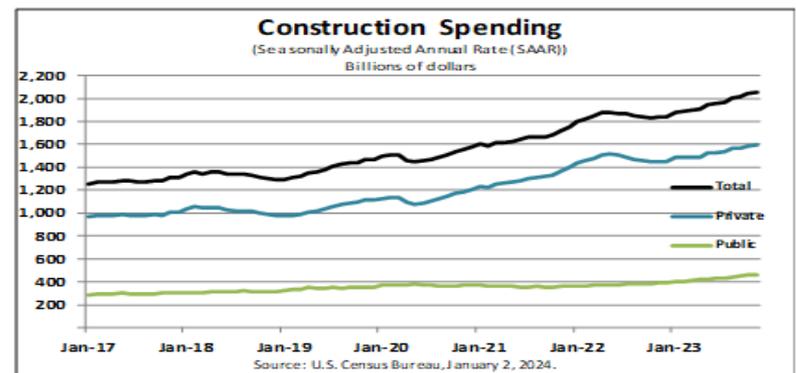
	October 2023	September 2023	October 2022	1-Month % Change	12-Month % Change
Total Construction	\$2,027,072	\$2,014,718	\$1,830,477	0.6%	10.7%
Residential	\$895,130	\$884,184	\$887,097	1.2%	0.9%
Nonresidential	\$1,131,941	\$1,130,534	\$943,380	0.1%	20.0%
Public safety	\$14,022	\$13,428	\$11,421	4.4%	22.8%
Conservation and development	\$12,243	\$11,987	\$9,985	2.1%	22.6%
Religious	\$3,521	\$3,478	\$2,612	1.2%	34.8%
Water supply	\$28,744	\$28,456	\$24,756	1.0%	16.1%
Power	\$124,883	\$123,637	\$107,732	1.0%	15.9%
Manufacturing	\$206,845	\$204,977	\$120,839	0.9%	71.2%
Communication	\$25,338	\$25,213	\$24,724	0.5%	2.5%
Educational	\$121,366	\$120,940	\$102,629	0.4%	18.3%
Office	\$101,176	\$101,211	\$92,991	0.0%	8.8%
Amusement and recreation	\$33,289	\$33,381	\$30,395	-0.3%	9.5%
Transportation	\$64,657	\$64,853	\$60,000	-0.3%	7.8%
Sewage and waste disposal	\$43,170	\$43,324	\$33,362	-0.4%	29.4%
Lodging	\$24,317	\$24,406	\$21,867	-0.4%	11.2%
Highway and street	\$132,867	\$133,364	\$117,944	-0.4%	12.7%
Health care	\$62,620	\$62,954	\$55,941	-0.5%	11.9%
Commercial	\$132,885	\$134,925	\$126,182	-1.5%	5.3%
Private Nonresidential	\$694,847	\$694,222	\$567,845	0.1%	22.4%
Public Nonresidential	\$437,094	\$436,312	\$375,535	0.2%	16.4%

Source: U.S. Census Bureau

# Unusually Strong Performance in 2023

- Nonresidential construction up 20%
  - Private nonresidential construction up 22.4%
  - Public nonresidential construction up 16.4%
- Real gains in construction activity vs. inflation in labor and material prices?
- Residential up 0.9%

CONSTRUCTION SPENDING	
NOVEMBER 2023	\$2,050.1 billion
OCTOBER 2023 (revised)	\$2,042.5 billion
Next release: February 1, 2024	
Seasonally Adjusted Annual Rate (SAAR)	
Source: U.S. Census Bureau, January 2, 2024	



# Construction Forecast for 2024 and 2025

Consensus		Estimated \$ 2023	Forecast % Change	
			2024	2025
Dodge Construction Network	Nonresidential Total	—	4.0	1.2
S&P Global, Market Intelligence	Commercial Total	—	-0.7	0.2
Moody's Analytics	Office	—	-1.7	-0.7
	Retail & Other Commercial	—	-1.2	-0.4
	Hotel	—	7.4	5.9
FMI	Industrial Total	—	8.9	-0.8
ConstructConnect	Institutional Total	—	5.1	3.1
	Health	—	3.6	3.5
Associated Builders and Contractors	Education	—	5.8	3.9
	Religious	—	1.1	1.0
	Public Safety	—	9.8	3.6
Wells Fargo Securities	Amusement & Recreation	—	3.7	3.1
Markstein Advisors				
Piedmont Crescent Capital				

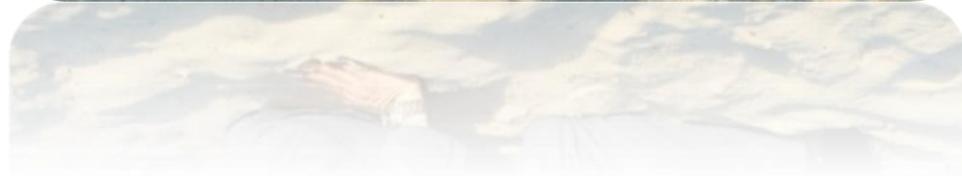
Screenshot from [https://info.aia.org/aiarchitect/2024/Charts/Jan%202024/ccf\\_011724.html](https://info.aia.org/aiarchitect/2024/Charts/Jan%202024/ccf_011724.html)

# Construction Forecast for 2024 and 2025

- The construction sector will see weaker conditions this year and next
- Slowdown is already underway
- Institutional projects offer most upside
- Overall, 4% growth in 2024 + 1% growth in 2025
- Headwinds:
  - Tighter credit
  - Inflation
  - Declines in commercial property values

# Our Time Together

~~Reactive~~  
Proactive



# New Legislation for 2024

- 3,028 bills introduced during 2023-2024 legislative session
- 400 bills signed into law
- 56 housing bills signed into law
- Laws to increase granny flats have been particularly successful, with ADUs accounting for more than 10% of all housing units built since 2018 and 18% of all completed units in 2022.
- Home prices expected to grow at 6% in 2024

# Familiarize Yourself with New Laws



# New Legislation for 2024

- SB 630: Requires contractors to provide a valid email address at the time application or renewal.
- AB 1204: Prohibits specialty contractors from using more than one subcontractor in the same license classification unless the subcontractor employs persons who are classified as employees to perform work at the same single project
  - This new law tries to curtain licensed specialty contractors from not subcontracting with other specialty contractors to avoid having “employees.”

# New Legislation for 2024

- AB 336: Effective July 1, 2024, requires contractors, who have on file a certificate of workers' compensation insurance or certification of self-Insurance, to certify on the license renewal form the workers' compensation classification codes endorsed on the licensee's policy.

# New Legislation

## ADUs

- **AB 976 (Ting)**: Permits ADUs to be built on property without owner residing at same property (makes AB 881 (2019) permanent).
- **AB 1033 (Ting)**: Local governments can allow property owners to sell ADU separate from the primary residence, essentially turning that casita into a condominium.

# New Legislation

## Environmental Restrictions Removed

- **AB 1449 (Alvarez)**: This law exempts 100% affordable housing projects from CEQA
- **AB 1307 (Wicks)**: Noise from students in university housing does not fall under the purview of CEQA
- **AB 1633 (Ting)**: Withholding clearance of a housing development that otherwise meets the requirements of the CEQA is a violation of state housing law.

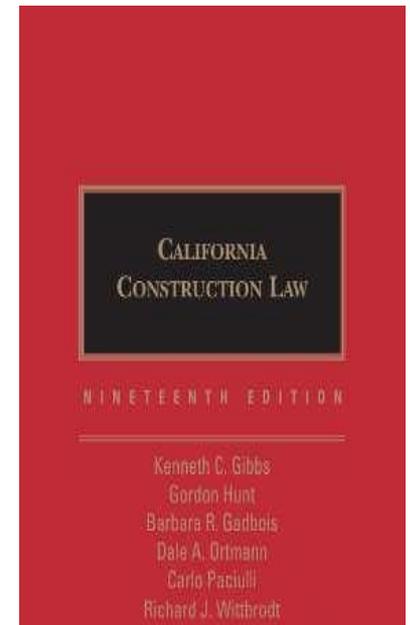
# New Legislation

## Housing Production

- **SB 4 (Wiener)**: The third year was the charm for the so-called “Yes in God’s Backyard” law. It allows 100% affordable housing developments to be built on land owned by religious institutions and nonprofit colleges or universities. It also exempts those projects from CEQA and requires construction workers to be paid the prevailing wage.
- **SB 423 (Wiener)**: Extends SB 35 which requires cities to approve certain housing projects that meet minimum affordable housing requirements if the city has not met its state-mandated housing targets.
- **SB 684 (Caballero)**: The law streamlines the approval process for small, infill apartment buildings with up to 10 units on vacant lots in neighborhoods where apartments are already allowed.

# New Law Puts Contractors at Increased Risk

- AB 607: License Bonds-\$25,000 (1/1/23)
- AB 830: Qualifier Employment Duty Statement (80%/32+ hours)
- AB 569: Enhanced Penalties (\$8,000/\$30,000) and Workers' Comp.
- AB 1565 (Labor Code § 218.7): Amends Labor Code § 218.7 to impose direct contractor liability for subcontractors' failure to pay wages and benefits
- AB 569/1747: Enhanced penalties (up to \$30,000) for willful failure to secure Workers' Compensation / building permits



# Watch for New Cases!



# Keep up with Relevant Judicial Decisions

- **Precision Framing Systems, Inc. v. Luzuriaga**  
Mechanics lien deemed premature and unenforceable when claimant performed repair work after lien recording.
- **Domestic Linen Supply Co. v. LJT Flowers**  
Inconspicuous arbitration (and possibly other contract) clauses will not be enforced.

# Keep up with Relevant Judicial Decisions

- **Graylee v. Castro**  
Stipulated judgment will be unenforceable penalties when there is no meaningful effort to anticipate amount of damages that may flow from breach of the stipulation.
- **Precision Framing Systems, Inc. v. Luzuriaga**  
Mechanics lien deemed premature and unenforceable when claimant performed repair work after lien recording.
- **Crosno Construction, Inc. v. Travelers**  
“Pay-when-paid” provisions in subcontracts are void when payment is delayed for an unreasonable amount of time.

# Sure You Want to Post that Review?!

A rare win for California home improvement contractors! Contractors often find themselves on the wrong side of homeowner complaints made on review sites such as Yelp, Angie's List, and even personal blogs -- but as the California Court of Appeal reminds us in ***Paglia & Associates Construction, Inc. v. V.J. Hamilton*** filed on 12/27/23, "[u]sing the internet to speak publicly is every American's right but, if people wish to defame private figures [contractors] online, they do so at their own risk." The litigation privilege to defamation does not protect a homeowner's public denunciations of a contractor posted on online review websites which are entirely outside the litigation context. [https://lnkd.in/gA8W48\\_K](https://lnkd.in/gA8W48_K)

# Use Properly Licensed Subcontractors



# Use Licensed Subcontractors!



## ABA Forum on Construction Law



Christopher Ng

16h •



Christopher Ng

Managing Partner of Gibbs Giden Locher Turner Senet & Wittbrodt, LLP

16h •

A significant contractor's licensing case was just handed down by the California Court of Appeal holding that a general contractor who utilizes an unlicensed subcontractor may not turn to the courts to recover compensation for those services if a dispute arises. The decision from the Sixth District reaffirms the principle that Business & Professions Code section 7031 bars all actions, regardless of the equities and however they are characterized, which effectively seek compensation for unlicensed contract work. We will publish a complete summary of this decision in the coming days. To read the case, see *Kim v. TWA Construction (Wong)* (May 13, 2022) <https://lnkd.in/eMW7pCmr> #construction #licensing

# Use Licensed Subcontractors

- **SB 216 (Amends B&P Code Section 7125):** Requires C-8 concrete contractors, C-20 HVAC contractors, C-22 asbestos abatement contractors, and D-49 trade service contractors to carry workers' compensation regardless of whether they have employees; **all contractors must have workers' compensation in 2026...period!**
- **Kim v. TWA Construction (Wong):** General contractor who utilizes an unlicensed subcontractor may not recover compensation for that subcontractor's work

# Don't Round Employee Time!



# Don't Round Employee Time

- 2012 – *See's Candy Shops v. Superior Court*
- Held that time rounding does not violate California law so long as the policy is **neutral**
- Many employers use neutral time policies that round time to the nearest 5, 10, or 15 minute increment

# Wage Payment Laws

## Labor Code section 510

- Establishes the 8-hour work day, overtime, and alternative work day
- Interpreted by the California courts as requiring pay for all work performed

## IWC Wage Orders

- 17 Wage Orders separated by Industry
- Wage Order 16 applies to most on-site construction workers
- Establish the 8-hour work day, overtime, employee classifications, etc.
- Interpreted by the California courts as requiring pay for all work performed



### OFFICIAL NOTICE

INDUSTRIAL WELFARE COMMISSION  
ORDER NO. 16-2001  
REGULATING

WAGES, HOURS AND WORKING CONDITIONS IN THE

### CERTAIN ON-SITE OCCUPATIONS IN THE CONSTRUCTION, DRILLING, LOGGING AND MINING INDUSTRIES

Effective January 1, 2002 as amended

Sections 4(A) and 10(C) amended and republished by the Department of Industrial Relations,  
effective January 1, 2024, pursuant to SB 3, Chapter 4, Statutes of 2016 and section 1182.13  
of the Labor Code

*This Order Must Be Posted Where Employees Can Read It Easily*

Visit [www.dir.ca.gov](http://www.dir.ca.gov)

IWC FORM 1114 (Rev. 11/2023)  
OSP 06 98774

# Recent Decisions Overturn *See's Candy*

- **Troester v. Starbucks (2018)**  
Held that there is no de minimus wage violation; strongly suggests that employers must implement accurate timekeeping systems
- **Donahue v. AMN Services, Inc. (2021)**  
Rounding stop and start times for meal breaks is not permitted
- **Camp v. Home Depot (2023)**  
Time rounding is not permitted when timekeeping systems are accurate. Did not address where time rounds were used when actual time could not be accurately recorded.

# Meal and Rest Break Compliance



# Meal and Rest Break Compliance

## ○ Meal Breaks

- Must be a minimum of 30 minutes
- Must be uninterrupted
- Employees relieved of all duties
- Must begin before the end of the 5<sup>th</sup> hour of employment
- Does not need to be paid

## ○ Rest Breaks

- 10 minutes for each 4 hours worked or major fraction thereof
- Must be uninterrupted
- Employees relieved of all duties
- Must be paid

# Common Violations

Failure to Relieve  
All Duties

Breaks are too  
Short

Combining Meal  
and Rest Breaks

Meal Break  
Started After the  
5<sup>th</sup> Hour

# Premium Wages

Employees are owed a premium wage for every non-compliant meal or rest break

One hour of pay at the employee's regular rate of pay

Employees may be entitled to two premium wages for violations of meal and rest breaks on the same day

Considered a wage – Failure to pay is also a wage violation

# Risks

Individual Action

Class Action

PAGA

# Damages

- Hypothetical:
  - 100 employees
  - Combined meal and rest breaks
  - Time rounding
  - Average rate of pay is \$20/hour
  - Bi-monthly pay
- Meal violations
  - \$1,600,000
- Rest violations
  - \$1,600,000
- Pay stub violations
  - \$240,000
- Time rounding
  - Wages owed + liquidated damages
- Mandatory attorney's fees, costs, interest, waiting time penalties

# Make Sure Your Contract is Legal

**BNi FORM 101-HI**

## HOME IMPROVEMENT CONTRACT

(Business and Professions Code §7159)  
(As of January 1, 2021)

This AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ Between:

**The "NOTICE OF CANCELLATION" may be sent to the contractor at the following address:**

**Owner:** \_\_\_\_\_ **Contractor:** \_\_\_\_\_  
(Owner's Name) (Contractor's Name)  
AND  
(Owner's Street Address) (Contractor's Street Address)  
(City, State and Zip) (City, State and Zip)

**You are entitled to a completely filled in copy of this agreement, signed by both you and the Contractor, before any work may be started.**

The Project is: \_\_\_\_\_  
Address: \_\_\_\_\_  
Description of the Project and Description of the Significant Materials and Equipment to be Installed:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
List of Documents Attached and Incorporated by Reference: \_\_\_\_\_  
1. Notice of Cancellation Form (BNi Form 101-HI) Contract Price: \$ \_\_\_\_\_  
2. Home Improvement Checkoff Form (BNi Form 101-HI) Down Charge: \$ \_\_\_\_\_ (if applicable)  
3. California Residential Contract for Hire (Attachment No. 10) Down Payment \$ \_\_\_\_\_  
4. \_\_\_\_\_  
5. \_\_\_\_\_

**THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10% OF THE CONTRACT PRICE, WHICHEVER IS LESS**

**Schedule of Progress Payments**

Work to be completed and materials and equipment supplied:	Amount due:	When Due:
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

see attachment for remaining progress payments.

**The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWN PAYMENT.**

Upon satisfactory payment made for any portion of the work performed, the Contractor, prior to any further payment being made, shall furnish to the Owner a full and unconditional release from any potential lien claimant claim or mechanics lien authorized pursuant to Sections 8400 and 8404 of the Civil Code for that portion of the work for which payment has been made.

Approximate Start Date: \_\_\_\_\_ Approximate Completion Date: \_\_\_\_\_  
Substantial commencement of the work shall mean when the first installation of work or delivery of materials occurs at the Project.

**WORKERS' COMPENSATION INSURANCE (check one):**  
 This Contractor has no employees and is exempt from workers' compensation requirements.  
 This Contractor carries workers' compensation insurance for all employees.

**BNi Building News** FORM 101-HI 1 of 5 - © 2021 - A BNi Form Prepared by GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT, LLP - WWW.GIBBSGIDEN.COM

# The Business and Professions Code is Your Friend!

## California *Business and Professions Code* ("BPC") §§ 7150 – 7173

\*\* Specifically, **BPC § 7159** sets out the  
express requirements for home improvement  
contracts.

# #1 - Downpayment Limitations

- If a downpayment will be charged, the downpayment shall not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever amount is less.
- The contract must include a heading for “Downpayment” with the amount of the downpayment, and a notice in 12-point bold type: **“THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”**
- Except for a downpayment, the contractor shall neither request nor accept payment that exceeds the value of the work performed or material delivered.

# #2 – Contract Price and Progress Payments

1. Heading “Contract Price” followed by the **exact amount** in dollars and cents in writing.
  - Must include the entire cost of the contract, **including** profit, labor, and materials.
2. If using progress payments, must include a schedule showing:
  - The amount of the payment
  - When each payment will be made
  - What work that payment covers

# #3 – Change Order and Extra Work Authorization

- A change order form for changes or extra work is only incorporated into/becomes part of the contract if it is in writing **and signed by the parties** prior to the commencement of any work covered by a change order.
- Change order is not enforceable unless it identifies all of the following in writing:
  - The scope of work encompassed by the order.
  - The amount to be added or subtracted from the contract.
  - The effect the order will make in the progress payments or the completion date.
- Contract must include provisions addressing these requirements.

# #4 – Legally Required Notices

- The contract MUST include 2 legally required notices:
  - Mechanics Lien Warning: Notifies the homeowner of what mechanics liens are and what their rights are.
  - CSLB Information: Gives detail as to how to contact the CSLB.
- Full provisions are provided in the statute (BPC 7159)

# #5 – Three Day or Five Day Right to Cancel

- Provision notifying the buyer that they have a right to cancel within 3 business days from signing the contract.
- Must be in a form that the buyer can sign and return to the contractor at a specific address.
- If the buyer is 65+ years of age, the cancellation period is increased to 5 business days.

**CODE** Business & Professions Code

**VIOLATION** 7159

**DESCRIPTION** Vi

**CODE** B

**VIOLATION** 71

**DESCRIPTION** P

**CODE** B

**VIOLATION** 71

**DESCRIPTION** D

**CODE** B

**VIOLATION** 71

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**VIOLATION** 71

**DESCRIPTION** N

**CODE** Business & Professions Code

**VIOLATION** 7159.D8B

**DESCRIPTION** No space for the actual down payment

**CODE** Business & Professions Code

**VIOLATION** 7159.D8C

**DESCRIPTION** Excessive down payment

**CODE** Business & Professions Code

**VIOLATION** 7159.D10A

**DESCRIPTION** No notice describing substantial commencement of work

**CODE** Business & Professions Code

**VIOLATION** 7159.D10B

**DESCRIPTION** No approximate start date heading

**CODE** Business & Professions Code

**VIOLATION** 7159.D10C

**DESCRIPTION** No date as to the beginning of work

**CODE** Business & Professions Code

**VIOLATION** 7159.D11A

**DESCRIPTION** No approximate completion date heading

**CODE** Business & Professions Code

**VIOLATION** 7159.D11B

**DESCRIPTION** No approximate completion date

**CODE** Business & Professions Code

**VIOLATION** 7159.D12

**DESCRIPTION** No heading re: list of documents being part of the contract

**CODE** Business & Professions Code

**VIOLATION** 7159.E6B

**DESCRIPTION** HIC No three day right to cancel language

**CODE** Business & Professions Code

**VIOLATION** 7159.5A3

**DESCRIPTION** Exceeded down pymnt of \$1000 or 10% whichever is least

# Send Preliminary Notices

**ENR FORM 105-C**

## PRELIMINARY 20-DAY NOTICE

(This form may be used on both public and private projects)

**TO: CONSTRUCTION LENDER (Or Reputed Construction Lender) (if any)**  
 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

**TO: OWNER (Or Reputed Owner) (On Private Work)      PUBLIC AGENCY (On Public Work)**  
 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

**TO: ORIGINAL CONTRACTOR (Or Reputed Original Contractor)**  
 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

General description of the labor, service, equipment, or materials furnished, to be furnished and an estimate of the total price: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

**NAME AND ADDRESS OF CONTRACTOR GIVING NOTICE**  
 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

**NAME AND ADDRESS OF SUBCONTRACTOR WHO CONTRACTED TO PURCHASE THE LABOR SERVICE, EQUIPMENT, OR MATERIALS**  
 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_

**DESCRIPTION OF PROJECT SITE SUFFICIENT FOR IDENTIFICATION**  
 \_\_\_\_\_  
 \_\_\_\_\_

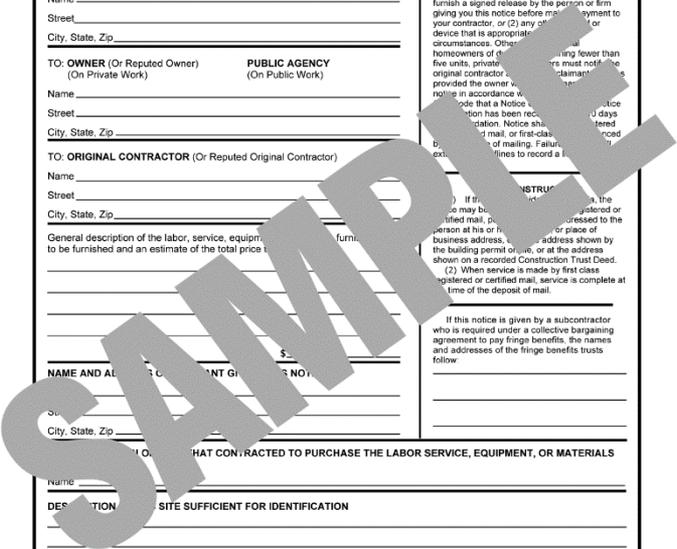
**PROOF OF SERVICE AFFIDAVIT (Pursuant to California Civil § 3097 and 3098)**  
 I, \_\_\_\_\_ declare that I served copies of the above Notice by (check one):  
 personal delivery to \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
 by First Class Certified or Registered Mail, postage paid, addressed to each of the parties as listed above on \_\_\_\_\_  
 Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**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 may 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 that is appropriate under the circumstances. Other persons who are not homeowners of the property including fewer than five units, private clubs, and cooperatives must note the original contractor's name and claimant's name provided the owner who is not a homeowner in accordance with the statute. It is noted that a Notice of Completion has been recorded \_\_\_\_\_ days after the date of mailing. Failure to record a copy of this notice to the contractor within \_\_\_\_\_ days to record a copy of this notice to the contractor within \_\_\_\_\_ days after the date of mailing. Failure to record a copy of this notice to the contractor within \_\_\_\_\_ days after the date of mailing.

(1) If this notice is given by a subcontractor who is required under a collective bargaining agreement to pay fringe benefits, the names and addresses of the fringe benefits trusts follow: \_\_\_\_\_

(2) When service is made by first class certified or certified mail, service is complete at the time of the deposit of mail.

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# Procedures for Enforcing Statutory Remedies

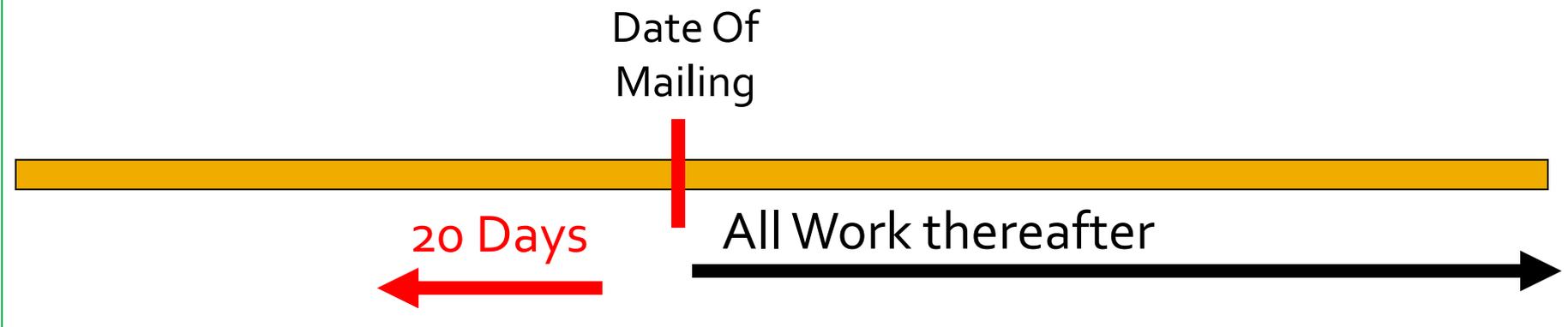
1. Timely service of a preliminary notice
2. Timely service of mechanics lien, stop payment notice, or payment bond claim
3. Timely recording mechanics lien (for mechanics lien claim only)
4. Timely initiating lawsuit





# When to Serve the Preliminary Notice

1. Within **20 days** after claimant first performs Work.
2. If claimant failed to serve Preliminary notice at the outset of performance...



# The Preliminary Notice

**PRELIMINARY NOTICE**  
(California Civil Code §§ 8200, 9300)  
(This form may be used on both public and private works)

**TO: CONSTRUCTION LENDER (Or Reputed Construction Lender) (If Any)**  
Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**TO:  OWNER (Or Reputed Owner) (On Private Work)      TO:  PUBLIC ENTITY (On Public Work)**  
Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**TO: TENANT (If Applicable)**  
Tenant Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**TO: DIRECT CONTRACTOR (Or Reputed Direct Contractor)**  
Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

General description of the labor, service, equipment, or materials provided, or to be provided:  
Estimated total price of work provided and to be provided: \$ \_\_\_\_\_

**NAME AND ADDRESS OF CLAIMANT GIVING THIS NOTICE:**  
Name: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_

**NAME OF PERSON TO OR FOR WHOM THE WORK IS PROVIDED:**  
Name: \_\_\_\_\_

**DESCRIPTION OF PROJECT SITE SUFFICIENT FOR IDENTIFICATION, INCLUDING THE STREET ADDRESS (IF ANY):**  
\_\_\_\_\_

**NOTICE REGARDING LABOR AGREEMENTS**  
Note: If this Preliminary Notice is given by a subcontractor that has not paid all compensation due to a laborer, the notice shall include the name and address of the laborer and any person or entity described in subdivision (b) of Section 8024 to which payments are due. "Laborer" includes a person or entity to which a portion of a laborer's compensation for a work of improvement, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with that laborer or the collective bargaining agent of that laborer.

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**Verification**

On \_\_\_\_\_, I served copies of this Preliminary Notice on the persons identified above, at the addresses set forth above, in accordance with the provisions of Civil Code § 8106. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_, at \_\_\_\_\_  
(Date this Document was Signed) (City and State Where Notice Signed)

\_\_\_\_\_  
(Signature)

This Preliminary Notice must be served in the manner prescribed by Civil Code § 8106 at the addresses set forth in § 8108 (see reverse).  
If you have a contract directly with the Owner or reputed Owner, you are only required to give this Preliminary Notice to the Construction Lender or reputed Construction Lender (if any). Civil Code § 8200(a)(2).

- "Estimated total price" is important
  - *Rental Equipment v. McDaniel*
- When should claimant serve an amended notice?



# You Are Not Alone...

- **Has your customer ever asked you not to send a preliminary notice on a job account?**
  - Subcontractors **MUST** serve preliminary notices (*Civil Code § 8216*)

# Understand Your Lien Rights

<b>RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:</b>	
Name	
Address	
City & State	

Space above this line for recorder's use only  
(To be recorded in the county recorder's office in the county in which the work of improvement is located.)

### MECHANICS LIEN\*

NOTICE IS HEREBY GIVEN that the undersigned claimant \_\_\_\_\_ ("Claimant"), with an address at \_\_\_\_\_, claims a Mechanics Lien against \_\_\_\_\_ (Name(s) of Owner(s) or Reputed Owner(s)) and the following described real property, together with all structures and improvements situated thereon:

(Description) \_\_\_\_\_

(Legal Description, if available) \_\_\_\_\_

The lien is claimed for labor, services, equipment, materials or work ("Work") of the following kind: \_\_\_\_\_

\_\_\_\_\_ Claimant is owed \$ \_\_\_\_\_ for the Work, after deducting all just credits and offsets, plus interest at the legal rate from \_\_\_\_\_

The name of the person or company by whom Claimant was employed, or to whom Claimant furnished the work, is \_\_\_\_\_

Date: \_\_\_\_\_ (Name of Claimant)

By: \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name & Authorized Capacity)

#### VERIFICATION

I, the undersigned, say: I am the \_\_\_\_\_ (President Of, Manager Of, A Partner Of, Owner Of, Agent Of, Etc.) for the Claimant named in the foregoing claim of mechanics lien; I am authorized to make this verification for the Claimant. I have read the foregoing claim of mechanics lien and know the contents thereof, and the same is true of my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_ (Date this Document was Signed) (City and State Where Document Signed)

\_\_\_\_\_ (Signature)

\* NOTE: Claimant is required to serve this Mechanics Lien and the Notice of Mechanics Lien upon the owner or reputed owner. Service upon construction lender or direct contractor is optional unless the owner or reputed owner cannot be served.

Mechanics Lien (2012 version)

© Gibbs, Giden, Locher, Turner & Senet LLP — www.ggits.com (Effective July 1, 2012)

# The Mecha

- Claim o
- Notice c
- Proof of

<b>RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:</b>
Name
Address
City & State

Space above this line for recorder's use only  
*(To be recorded in the county recorder's office in the county in which the work of improvement is located.)*

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NOTICE IS HEREBY GIVEN that the undersigned claimant \_\_\_\_\_ ("Claimant"), with an address at \_\_\_\_\_, claims a Mechanics Lien against \_\_\_\_\_ (Name(s) of Owner(s) or Reputed Owner(s)) and the following described real property, together with all structures and improvements situated thereon:

(Description) \_\_\_\_\_

(Legal Description, if available) \_\_\_\_\_

The lien is claimed for labor, services, equipment, materials or work ("Work") of the following kind: \_\_\_\_\_

\_\_\_\_\_ Claimant is owed \$ \_\_\_\_\_ for the Work, after deducting all just credits and offsets, plus interest at the legal rate from \_\_\_\_\_.

The name of the person or company by whom Claimant was employed, or to whom Claimant furnished the work, is \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
 (Name of Claimant)

By: \_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Print Name & Authorized Capacity)

**VERIFICATION**

I, the undersigned, say: I am the \_\_\_\_\_, ("President Of," "Manager Of," "A Partner Of," "Owner Of," "Agent Of," Etc.) for the Claimant named in the foregoing claim of mechanics lien; I am authorized to make this verification for the Claimant; I have read the foregoing claim of mechanics lien and know the contents thereof, and the same is true of my knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_, at \_\_\_\_\_  
 (Date this Document was Signed) (City and State Where Document Signed)

\_\_\_\_\_  
 (Signature)

**\* NOTE:** Claimant is required to serve this Mechanics Lien and the Notice of Mechanics Lien upon the owner or reputed owner. Service upon construction lender or direct contractor is optional unless the owner or reputed owner cannot be served.

# The Stop Payment Notice



**STOP PAYMENT NOTICE**  
**LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS**  
**PRIVATE AND PUBLIC WORKS**  
 (California Civil Code §§ 8500 et seq., 9350 et seq.)

Bonded Stop Payment Notice — Bond Attached

To: \_\_\_\_\_  
(Name and Address of Construction Lender or Owner/Reputed Owner or Public Entity)

\_\_\_\_\_  
(Description of Project Site — Sufficient for Identification, Including Street Address, if any — § 8102(a)(4))

\_\_\_\_\_  
(Name and Address of Owner)

\_\_\_\_\_  
(Name and Address of Direct Contractor)

\_\_\_\_\_  
(Claimant's Name, Address and Relationship to the Parties - § 8102(a)(5))

\_\_\_\_\_  
(Name of the Person to or for Whom the Work is Provided - § 8102(a)(6)(b))

\_\_\_\_\_  
(General Description of Work Provided and to be Provided — §§ 8102(a)(6)(a), 8502(b), 9352(b))

- Estimate of total amount in value of the work to be provided: \$ \_\_\_\_\_
- Total amount due claimant for work provided through the date of this Stop Payment Notice, after deducting all just credits and offsets: \$ \_\_\_\_\_

**VERIFICATION**

I, the undersigned, say: I am the \_\_\_\_\_  
(“President Of,” “Manager Of,” “A Partner Of,” “Owner Of,” “Agent Of,” Etc.)

the claimant named in the foregoing Stop Payment Notice; I have read said Stop Payment Notice and know the contents thereof, and the same is true of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_, at \_\_\_\_\_  
(Date This Document was Signed) (City and State Where Document Signed)

\_\_\_\_\_  
(Signature of The Individual Who Is Verifying That The Contents Of Stop Payment Notice are True)

**REQUEST FOR NOTICE OF ELECTION**  
(Private Works Only) (California Civil Code §§ 8522, 8600, et seq.)

If an election is made not to withhold funds pursuant to this stop payment notice by reason of a payment bond having been recorded in accordance with §§ 8522, 8600, et seq., please send notice of such election and a copy of the bond within 30 days of such election in the enclosed preaddressed stamped envelope. (CLAIMANT MUST ENCLOSE SELF-ADDRESSED STAMPED ENVELOPE.) This information must be provided by you under California Civil Code §§ 8522, 8600, et seq.

Signed: \_\_\_\_\_  
(PRINT NAME)

**Note:** Claimant must serve this Stop Payment Notice in accordance with the provisions of Civil Code § 8106 and should complete and maintain a Proof of Notice Declaration in accordance with Civil Code § 8118.

## What is it...

- A notice to the public entity, owner, or construction lender to withhold construction funds
- Public projects: Creates a lien on undisbursed construction funds
- Private projects:
  - *Owner-Funded:* Lien on undisbursed construction funds
  - *Construction Lender:* Lien also on funds paid to it itself

# The Stop Payment Notice (CA)



**STOP PAYMENT NOTICE**  
**LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS**  
**PRIVATE AND PUBLIC WORKS**  
 (California Civil Code §§ 8500 *et seq.*, 9350 *et seq.*)

Bonded Stop Payment Notice — Bond Attached

To: \_\_\_\_\_  
 (Name and Address of Construction Lender or Owner/Reputed Owner or Public Entity)

\_\_\_\_\_  
 (Description of Project Site — Sufficient for Identification, Including Street Address, if any — § 8102(a)(4))

\_\_\_\_\_  
 (Name and Address of Owner)

\_\_\_\_\_  
 (Name and Address of Direct Contractor)

\_\_\_\_\_  
 (Claimant's Name, Address and Relationship to the Parties - § 8102(a)(5))

\_\_\_\_\_  
 (Name of the Person to or for Whom the Work is Provided - § 8102(a)(6)(b))

\_\_\_\_\_  
 (General Description of Work Provided and to be Provided — §§ 8102(a)(6)(a), 8502(b), 9352(b))

- Estimate of total amount in value of the work to be provided: \$ \_\_\_\_\_
- Total amount due claimant for work provided through the date of this Stop Payment Notice, after deducting all just credits and offsets: \$ \_\_\_\_\_

**VERIFICATION**

I, the undersigned, say: I am the \_\_\_\_\_  
 ("President Of," "Manager Of," "A Partner Of," "Owner Of," "Agent Of," Etc.)

the claimant named in the foregoing Stop Payment Notice; I have read said Stop Payment Notice and know the contents thereof, and the same is true of my own knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on \_\_\_\_\_, at \_\_\_\_\_  
 (Date This Document was Signed) (City and State Where Document Signed)

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Signed: \_\_\_\_\_  
 \_\_\_\_\_  
 (PRINT NAME)

**Note:** Claimant must serve this Stop Payment Notice in accordance with the provisions of Civil Code § 8106 and should complete and maintain a Proof of Notice Declaration in accordance with Civil Code § 8118.

# California Lien Law Guide for Contractors

**GIBBS GIDEN** ATTORNEYS AT LAW  
LOCHER TURNER SENET & WITTBRODT LLP  
40+ YEARS

## DIRECT CONTRACTORS GUIDE

To Enforce and Protect Against Mechanics Liens, Stop Payment Notices and Payment Bond Claims in California

By Gibbs Giden Locher Turner Senet & Wittbrodt LLP ([www.gibbsgiden.com](http://www.gibbsgiden.com))

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### STEPS TO TAKE BEFORE CONSTRUCTION

1. **KNOW THE PROJECT AND THE OWNER.** Obtain exact names and addresses of the owner/public entity, the construction lender (if any) and disbursing branch office. Obtain exact project address and legal description.
2. **PROJECT SECURITY REQUIRED ON CERTAIN PRIVATE WORKS.** Certain private project owners are required to post project security for the benefit of the direct contractor. Determine if this applies to your project BEFORE you sign your contract and which type of project security you should accept.
3. **BE SURE YOU AND YOUR SUBCONTRACTORS ARE PROPERLY LICENSED.** California contractor's license law imposes strict penalties on unlicensed contractors. Those penalties could seriously affect your legal rights in the event of a dispute.
4. **KNOW YOUR SUBCONTRACTORS.** Get the exact names, addresses and contractor's license numbers of all your subcontractors. Obtain the names of all suppliers and subcontractors they will use on the project, and cross-check these names against Preliminary Notices received.
5. **HAVE SIGNED CONTRACTS.** Obtain signed contracts with the owner and all subcontractors. Be as specific as possible as to duties and responsibilities under the contracts.
6. **SEND CALIFORNIA PRELIMINARY NOTICE.** For private jobs with a lender, serve a Preliminary Notice on the lender, via certified mail, no later than 20 days after first furnishing labor or materials to the project.

### STEPS TO TAKE DURING CONSTRUCTION

7. **BE VIGILANT.** Thoroughly document problems, including delays, backcharges, changes, etc. Catching problems early can often avoid serious complications later.
8. **OBTAIN RELEASES.** Use the prescribed statutory releases and review content carefully to limit exposure to claims by subcontractors and suppliers and preserve right to collect for disputed items.
9. **PAY SUBCONTRACTORS / MATERIAL SUPPLIERS PROMPTLY.** Use joint checks to ensure subcontractors pay sub-subcontractors and suppliers.
10. **OBTAIN WRITTEN CHANGE ORDERS.** All changes/extra work should be confirmed in a signed writing. Include a request for additional time to complete the work, if necessary.

### STEPS TO TAKE AFTER CONSTRUCTION

11. **DETERMINE** the last date that any work required by direct contract and change orders was performed on the project.
12. **YOUR RIGHTS DEPEND ON THE TYPE OF PROJECT—PRIVATE, PUBLIC OR FEDERAL.**  
These rights are described on the reverse side.

#### PRIVATE PROJECT

**A. MECHANICS LIEN.** Record a proper Mechanics Lien together (with the "Notice of Mechanics Lien" and proof of service affidavit) with the County Recorder's Office in county where the project is located, within 60 days after valid Notice of Completion or Cessation is recorded or, if no valid Notice of Completion or Cessation is recorded, within 90 days of actual completion.

Claimants MUST serve the proper Mechanics Lien form (with the "Notice of Mechanics Lien" and Proof of Service affidavit) upon the owner/reputed owner prior to and concurrently with recording of the Mechanics Lien.

**B. BONDED STOP PAYMENT NOTICE.** Serve on lender or fund control, by certified mail, registered mail, personal delivery, or overnight delivery within the same time limits for recording a Mechanics Lien.

#### PUBLIC PROJECT

**GOVERNMENT CODE § 900.** You must file a claim within one year from date of breach/accrual of cause of action. Government agency has 45 days to reject or agree to pay your claim. If agency rejects the claim, you must file a lawsuit within 6 months of rejection. If the agency takes no action, you have two years from breach/accrual to file your lawsuit.

#### FEDERAL PROJECT

File a claim with the Contracting Officer (C.O.) for the project. The C.O. MUST issue a decision within 60 days of receiving the claim. If the C.O. does not issue a decision, the claim is deemed rejected. If C.O. does not pay the claim, you must file either an appeal or a lawsuit within 90 days of the C.O.'s decision.

CONTACT AN ATTORNEY IF FINAL PAYMENT IS NOT RECEIVED IMMEDIATELY AFTER RECORDING A MECHANICS LIEN, SERVING A STOP PAYMENT NOTICE OR MAKING A CLAIM ON OWNER'S SECURITY. A LAWSUIT MUST BE TIMELY FILED TO ENFORCE THESE RIGHTS, OFTEN WITHIN 90 DAYS.

#### COMMON DEFENSES TO SUBCONTRACTOR AND SUPPLIER CLAIMS

1. The subcontractor is not properly licensed.
2. The subcontractor has failed to pay material suppliers or sub-subcontractors on the project.
3. The materials for which the material supplier is making a claim were not used or consumed in the construction of the project.
4. The claimant failed to serve a Preliminary Notice and failed to notify the surety and the direct contractor.
5. The claimant has signed releases and/or endorsed joint checks for some or all of the labor and materials included in the claim.
6. The claimant has failed to complete the work, has delayed completion, or has breached the contract in other ways, making the claim subject to offsets, reductions or backcharges.
7. The Mechanics Lien was not recorded, was not recorded on time, was recorded in the wrong county, or was not properly served with a Notice of Mechanics Lien or proof of service affidavit.
8. The Stop Payment Notice was not served on time, was not properly served, or was served on the wrong location.
9. For payment bond claims on private projects and public works projects in California, the 15/75 Bond Notice was not served on time or after the direct contractor paid the subcontractor for the labor or materials mentioned in the Notice.
10. On federal projects, the claimant failed to serve a proper 90-Day Bond Notice or failed to serve the Notice in a timely manner.
11. The lawsuit enforcing the claimant's rights was not filed on time or was filed in the wrong court.
12. Claimant failed to record a "notice of pendency of proceedings" (lis pendens) within 20 days after filing the lawsuit to enforce Mechanics Lien.

To Enforce and Protect Against Mechanics Liens, Stop Payment Notices and Payment Bond Claims in California

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12. Claimant failed to record a "notice of pendency of proceedings" (lis pendens) within 20 days after filing the lawsuit to enforce Mechanics Lien.

# Questions



# So You're Really Insane Enough to Have a Construction Business in California?



*Presented By*

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