

Secure Your Receivables

Unique Tools for Construction Credit



Scarcity of Resources



Unique Credit Decisions





*I can't pay you
because
I haven't been
paid!!!*

Extending Credit Construction Challenges

- Financial information difficult to verify
- Transient business
- Lease in lieu of purchasing assets
- Financially undisciplined industry
- Pay when paid environment

**Selling to contractors
can be risky!**



**How can you improve your odds
when selling to contractors?**

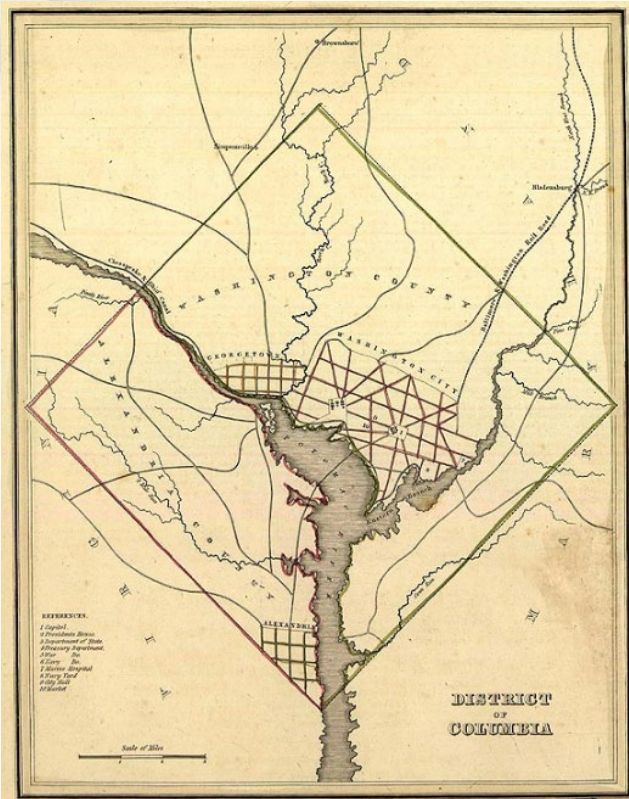
**How can you improve your odds
when selling to contractors?**

**Maintain your right
to file a lien in the future.**

Keep your options open.



History Break



Before mechanic's lien laws, contractors, materials suppliers and service providers had no recourse against the property owner in the event of non-payment.

The Property is the Asset

Public

Private

Residential

Commercial

Federal

Owner Occupied

Leased/Tenant

Bonded

Condo

State/Highway

Subdivision

Lender Financed



Now for the FUNSTUFF!

Lien Rights are Defined by State Law

**While, each state is different,
there are fundamentals that relate to all states.**

Different States Different Laws

State and Federal Statutes

Case Law

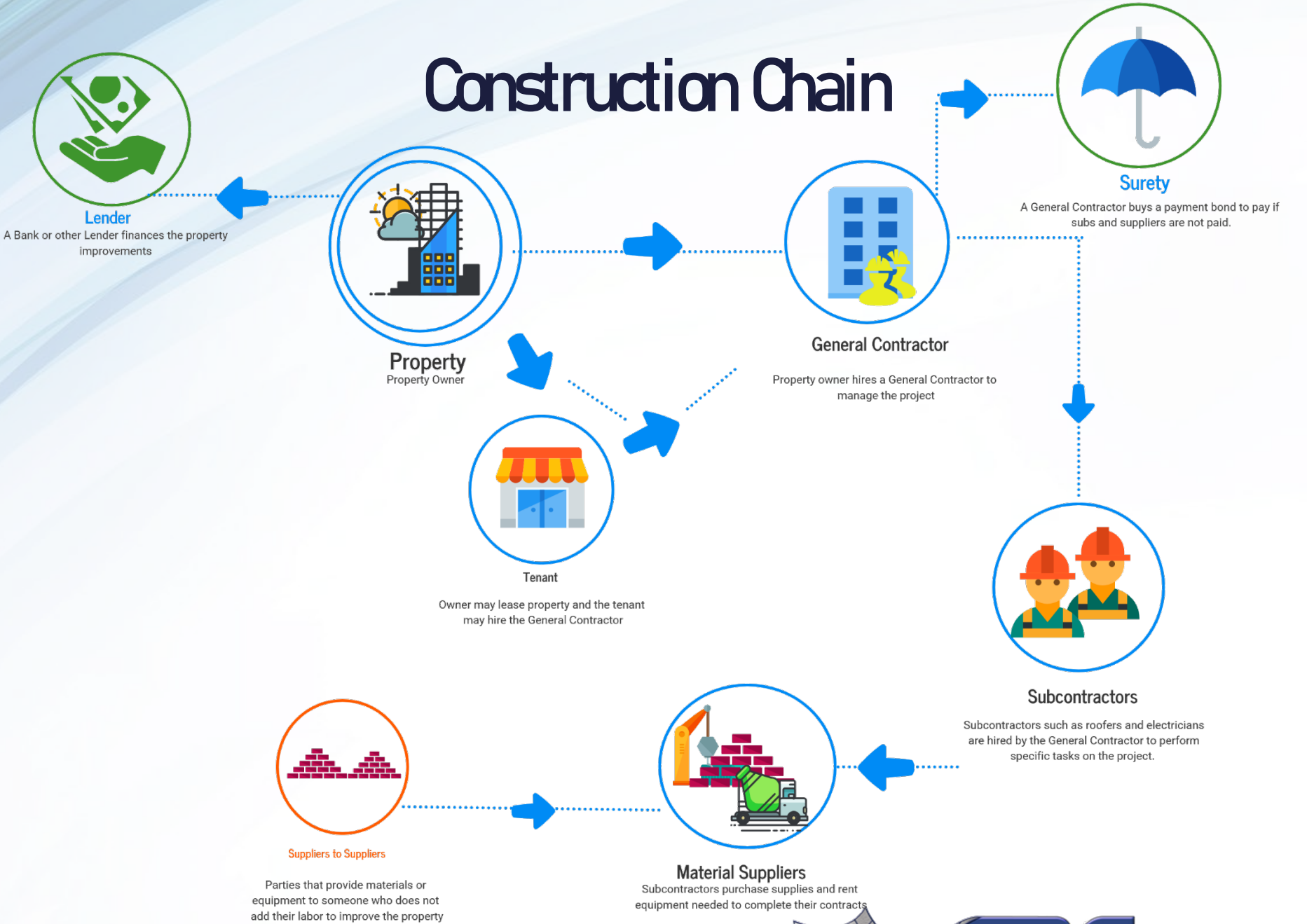
- Who has the right to lien
- Notice Formats
- Required Language
- Parties to Notice
- Delivery Requirements
- Deadlines to Notice
- Almost All are Informational
- Some Require Owner Action



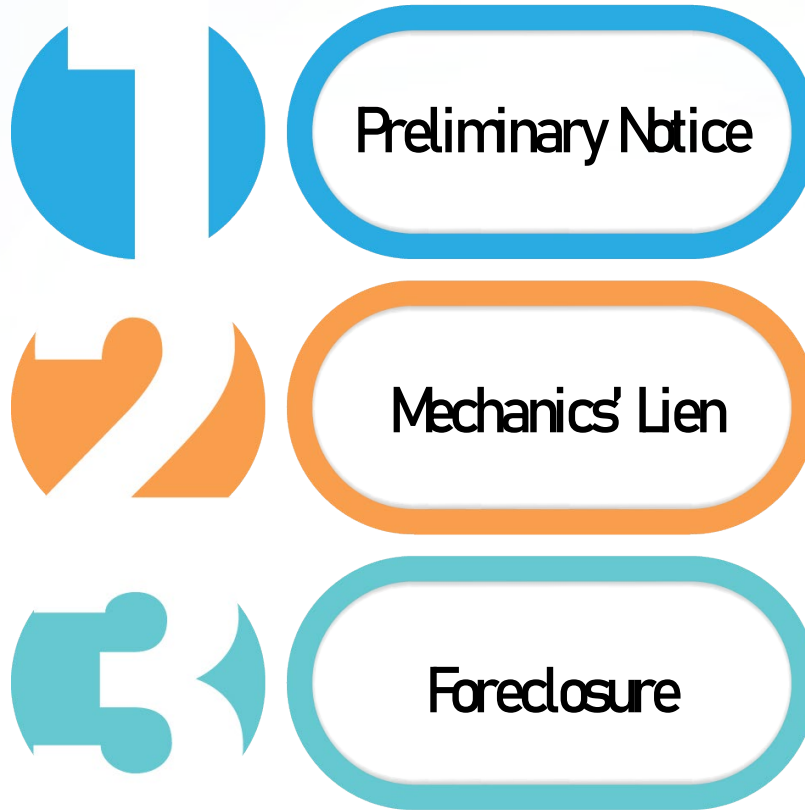
Do I have Rights?

- Furnishing must be used to improve real property.
- Construction Chain
- Supplier to Supplier

Construction Chain



3 Step Process



Communication is Beneficial to All

- Owners do not want liens filed on their property.
- Once the owner receives a notice, then they can protect themselves.
- Contractors and suppliers don't want to file liens.
- The owner is responsible for all debts related to the construction of their project.
- You invoice a contractor to prompt payment.
- You send a notice to the owner for the same reason.

Research Considerations

- Valid property identification
- Real property improvement
- Project: commercial, residential or subdivision?
- Property ownership: public, private, combo?
- Owner Occupied? Condo?
- Leased property?
- Who owns the property?
- Who is contracted with the owner?
- Who is between you and the owner?
- Payment Bond?
- Lender?



How Do Notices Effect the Owner?

- Only legal effect is to secure a right to file a lien in the future. No liens are created from notices.
- Unlike liens, notices are not recorded and are not public information.
- Notices do not appear on credit reports.
- Owners are made aware of potential lien claimants and can monitor payments to prevent liens.
- Prompt Payment

Job Information Sheet



P.O. Box 99999,
City, CA 95159
Phone 999-999-9998

FAX TO: 999-999-9889 Or EMAIL TO: credit@company.com	Date <input type="text"/>	Submitted By <input type="text"/>
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**Preliminary Notice Information
PLEASE PROVIDE THE FOLLOWING INFORMATION FOR YOUR JOB**

Customer Information (Your Company Info) - Required					
Customer	<input type="text"/>				
Your Address	<input type="text"/>		Address 2	<input type="text"/>	
Your City	<input type="text"/>		State	<input type="text"/>	Zip <input type="text"/>
Your Contact Name	<input type="text"/>		Your Email Address	<input type="text"/>	
Your Phone Number	<input type="text"/>		Your Fax Number	<input type="text"/>	
Job Information - Required					
Job Name	<input type="text"/>			PO/Job Number	<input type="text"/>
Job Address 1	<input type="text"/>		Job Address 2	<input type="text"/>	
Job City	<input type="text"/>		State	<input type="text"/>	Zip <input type="text"/>
Estimated Material Cost	\$ <input type="text"/>	Date of First Labor or Materials Supplied <input type="text"/>			
Private Job? YES <input type="checkbox"/> NO <input type="checkbox"/>	Residential Job? YES <input type="checkbox"/> NO <input type="checkbox"/>	Is the Job Bonded?		YES <input type="checkbox"/> NO <input type="checkbox"/>	
Public Job? YES <input type="checkbox"/> NO <input type="checkbox"/>	Federal Job? YES <input type="checkbox"/> NO <input type="checkbox"/>	Is There a Construction Lender?		YES <input type="checkbox"/> NO <input type="checkbox"/>	
Property Owner Information - Required					
Owner Name	<input type="text"/>				
Address 1	<input type="text"/>		Address 2	<input type="text"/>	
City	<input type="text"/>		State	<input type="text"/>	Zip <input type="text"/>
Phone Number	<input type="text"/>		Contact Name	<input type="text"/>	
General Contractor Information - Required					
General Contractor	<input type="text"/>				
Address 1	<input type="text"/>		Address 2	<input type="text"/>	
City	<input type="text"/>		State	<input type="text"/>	Zip <input type="text"/>
Phone Number	<input type="text"/>		Contractor Number	<input type="text"/>	
Fax Number	<input type="text"/>		Email	<input type="text"/>	
Construction Lender Information - If Applicable					
Construction Lender	<input type="text"/>				
Address 1	<input type="text"/>		Address 2	<input type="text"/>	
City	<input type="text"/>		State	<input type="text"/>	Zip <input type="text"/>
Phone Number	<input type="text"/>		Loan Number	<input type="text"/>	
Payment Bond Information - If Applicable					
Surety Name	<input type="text"/>				
Address 1	<input type="text"/>		Address 2	<input type="text"/>	
City	<input type="text"/>		State	<input type="text"/>	Zip <input type="text"/>
Phone Number	<input type="text"/>		Bond Number	<input type="text"/>	
For Customer USE ONLY		As Is? YES <input type="checkbox"/> NO <input type="checkbox"/>		Joint Check Requested? YES <input type="checkbox"/> NO <input type="checkbox"/>	
Job Number	<input type="text"/>	Rush? YES <input type="checkbox"/> NO <input type="checkbox"/>	<input type="text"/>	Branch (XXX or XX Only)	<input type="text"/>



Get Paid

Access to credible and timely job information is essential to how much you get paid and how quickly you are paid.

If you are not being paid by the sub, call the GC, the owner, the bank. This can dramatically impact your DSO.



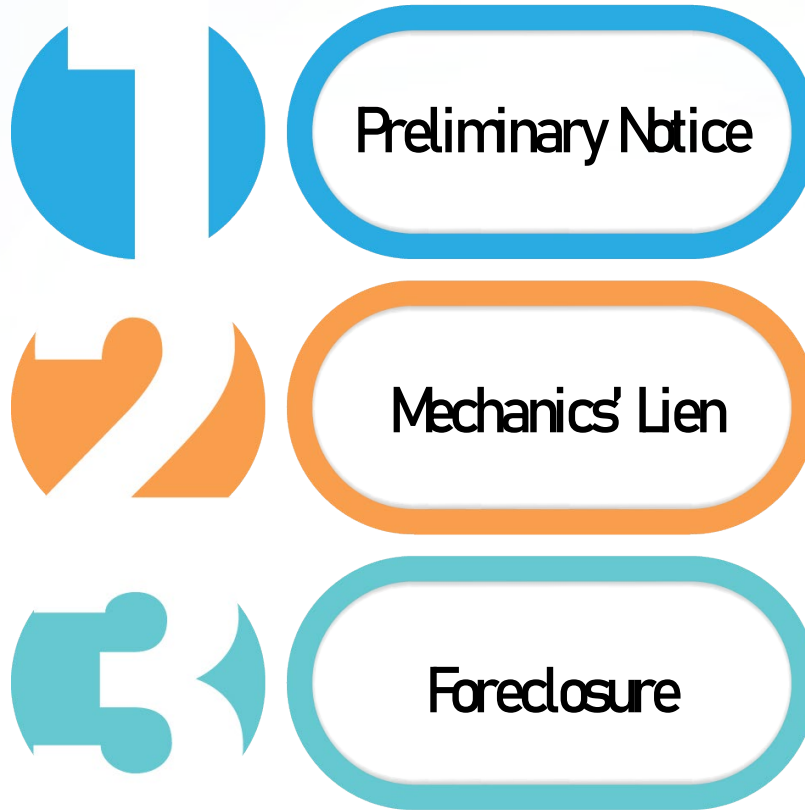
**Be Prepared
to
Answer
Your
Customers' Questions**



Why Your Customers May React When They Receive a Notice

- They think you have filed a lien.
- They don't want the owner and GC to know they haven't paid you.
- They are mad because now they know they have to pay you, and pay you timely.

3 Step Process



Post Preliminary Notice Options

A **Mechanics' Lien** is Filed on Private Property

Private

Banks
Hotels
Big Box Retail
Manufacturing

Public

County
City
Municipality
Federal

A **Bond Claim** is Used for Public Property

What is a Mechanics Lien? Legal Definition

A mechanic's lien is a legal process which seeks to guarantee payment for contracted services rendered on an improved piece of property. Depending on the laws of a particular state, contractors, subcontractors and suppliers can file a mechanic's lien within a certain amount of time after the work has been completed and payment has not been received. A mechanic's lien extends to both the structure and the land beneath it. Until the debt is paid, the landowner does not own a clear title.



A Legal Right

If you follow the rules you have the right.
Consent is not required from
your customer, the owner, the bank, etc.

Important!

Know Your Lien Deadline Date

Use Your Lien Rights to Leverage Your
Collection Efforts



After you have filed your lien is the best time
to increase your collection efforts



The window of time between filing the mechanics lien and perfection is typically dead. Now that the mechanics lien is filed, legally you can make contact with all the legal parties involved (not just your customer) to secure payment.



3 Step Process



Property Owned by the Public

County

Schools

City

Municipality

Federal Government

Military Bases

Army Corps of Engineers

Payment Bond is the Asset

The Payment Bond is purchased by the General Contractor from an insurance company or a “surety”. If a subcontractor or supplier is not paid, those parties may make a claim against the bond to secure payment.

The property owner is protected. A private owner can require their General Contractor to purchase a bond as well.

Unlike typical “insurance” the surety will seek repayment from the General Contractor.



Performance vs. Payment Bonds

The Performance Bond secures the contractor's promise to perform the contract in accordance with its terms and conditions, at the agreed upon price, and within the time allowed.

The Payment Bond protects certain laborers, material suppliers and subcontractors against nonpayment. Since mechanic's liens cannot be placed against public property, the payment bond may be the only protection these claimants have if they are not paid for the goods and services they provide to the project.



The Miller Act

In the United States, the law requiring contract surety bonds on federal construction projects is known as the Miller Act (40 U.S.C. Section 3131 to 3134). This law requires a contractor on a federal project to post two bonds: a performance bond and a labor and material payment bond. A corporate surety company issuing these bonds must be listed as a qualified surety on the Treasury List which the U.S. Department of the Treasury issues each year.



MILLER ACT

The Miller Act provides that, before a contract that exceeds \$100,000 in amount for the construction, alteration, or repair of any building or public work of the United States is awarded to any person, that person shall furnish the federal government with the following:

A performance bond in an amount that the contracting officer regards as adequate for the protection of the federal government.

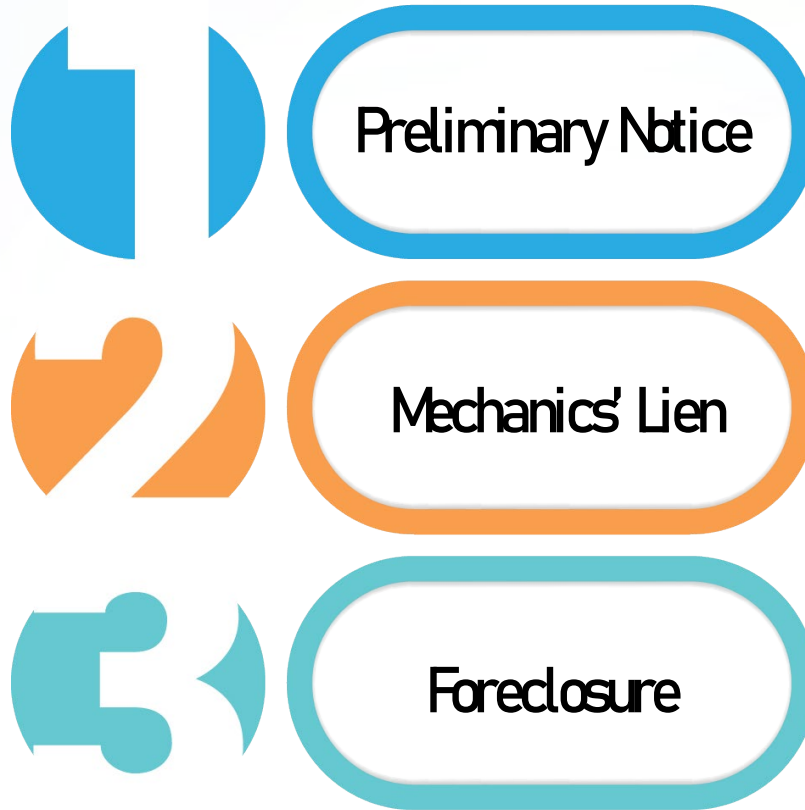
A separate payment bond for the protection of suppliers of labor and materials. The amount of the payment bond shall be equal to the total amount payable by the terms of the contract unless the contracting officer awarding the contract makes a written determination supported by specific findings that a payment bond in that amount is impractical, in which case the amount of the payment bond shall be set by the contracting officer. The amount of the payment bond shall not be less than the amount of the performance bond.



SUMMARY

- Obtaining credible job information is essential to being able to manage the mechanic's lien process.
- Sending notices is often the only step you have to take.
- File liens on private projects and file bond claims on Public and Federal projects.
- Use the credit tools at your disposal.

3 Step Process



Foreclosure

- Lien & Bond Lawsuit Required, Attorney Required
- Of the three steps, foreclosure is used the least.
- For 95 % of jobs, sending the notice is the only step required.
- For 3 % of jobs, filing a lien (or the threat of filing a lien) is required.
- Less than 1 % of jobs may require litigation. Foreclosure is the LAST resort. Often, a settlement can be reached.

CALIFORNIA



CALIFORNIA PRELIMINARY NOTICE REQUIREMENTS

The California Preliminary Notice must be sent within 20-days of first supplying labor or materials to the job site. However, California does allow for late notices.

A late notice will relate back 20 days from the notice date and cover the duration of the job.

THE MATERIAL SUPPLIER MUST NOTICE

- Owner
- Prime Contractor
- Lender (if any)
- Surety (for bond claim)



SAMPLE OF CRF SOLUTIONS CALIFORNIA PRELIMINARY NOTICE



9171 9690 1000 3002 3718 61

3/18/2014 CAL562 797407

BROOKFIELD OFFICE PROPERTIES
ATTN ABIGAIL CERVERA
601 S. FIGUEROA ST
LOS ANGELES, CA 90017

IMPORTANT NOTICE PLEASE READ CAREFULLY

Enclosed you will find a notice that is being sent to you on behalf of California Wholesale Material Supply, LLC. Dba CALPLY in regards to the construction project known as T-MOBILE AT FIG&7TH #2629 120255-118 and located at 735 S. FIGUEROA ST, LOS ANGELES, CA 90017.

It is important to note that this notice is not a lien. This is a routine procedure to comply with certain state requirements that may exist and should not reflect in any way on the integrity or credit standing of any of the known interested parties associated with this job.

If any information is incorrect, or if you are not associated with this job, please do not hesitate to contact California Wholesale Material Supply, LLC. Dba CALPLY at 818-890-1897.

File: 797407 (CA PV)
Notice Requested by:
California Wholesale Material Supply, LLC. Dba CALPLY
PO Box 890422
Temecula, CA 92589-0422 818-890-1897

Customer: T-Wall Enterprise 96217
Customer #: 120255
Job Name: T-MOBILE AT FIG&7TH #2629
Job# / PO#: 120255-118 /
Cert #: 9171 9690 1000 3002 3718 61
APN #:

PRELIMINARY NOTICE

This is not a lien. This is not a reflection on the integrity of any contractor or subcontractor, but the notice prescribed in California Civil Code section 8200 et seq.

TO THE OWNER OR REPUTED OWNER
BROOKFIELD OFFICE PROPERTIES
601 S. FIGUEROA ST
ATTN ABIGAIL CERVERA
LOS ANGELES, CA 90017

TO THE DIRECT CONTRACTOR
Market Contractors LTD
10250 Northeast Marx Street
Portland, OR 97220
503-255-0977

TO THE LENDER/SURETY
Advised No Lender

Bond/Loan #

See Exhibit B for Additional Legal Parties

- The following is a general description of the labor, service, equipment or materials furnished or to be furnished by the undersigned:
Drywall, Steel, Acoustical, Plastering, Insulation, Doors and/or various building materials and supplies
- Estimated Price: **\$5,500.00**
- The name of the person who furnished that labor, service, equipment or materials is:
**California Wholesale Material Supply, LLC. Dba CALPLY
PO Box 890422
Temecula, CA 92589-0422 8188901897**
- Date labor, service, equipment or materials first furnished: **3/13/2014**
- The name of the person who contracted for purchase of that labor, service, equipment or material is:
**T-Wall Enterprise
15008 Chaleo St
La Mirada, CA 90638**
- The description of the jobsite is:
**T-MOBILE AT FIG&7TH #2629 #120255-118
735 S. FIGUEROA ST,
LOS ANGELES, CA 90017**

NOTICE TO PROPERTY OWNER

EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances. This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or the person employed by you on the construction project. If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.

Dated: 3/18/2014

By: 
Laura Pavey / CRF Solutions
Authorized Agent For:
California Wholesale Material Supply, LLC. Dba CAL

PROOF OF NOTICE DECLARATION

I declare that I served a copy of the above Preliminary Notice, and any related documents, by (as required by law) first-class, certified or registered mail, postage prepaid, addressed to the above named parties, at the addresses listed above, on 3/18/2014. I declare under penalty of perjury that the foregoing is true and correct. Executed at Simi Valley, CA on 3/18/2014.

By: 
Laura Pavey / Lien Administrator



CALIFORNIA WAIVERS

What is a waiver?

In the Mechanics Lien Process, a waiver is a document from a Contractor, Sub-Contractor, Material Supplier, or other party to the construction project that states they have received payment and will waive any lien rights to the property. In California, there are four types of waivers.

- Conditional Progress
- Unconditional Progress
- Conditional Final
- Unconditional Final

California does have statutorily mandated lien waiver forms. If someone asks you to use a waiver form that is not one of the statutory forms, the waiver will be invalid.



CALIFORNIA WAIVERS

Conditional Waiver and Release on Progress Payment

A conditional waiver on a progress payment will waive rights based on the "condition" you are paid.

It is usually for a partial payment made through a specific date. The waiver is given based on the understanding that a payment will be made or that the check will be property endorsed from the bank.



McDougall Building Supply
2051 Royal Ave.
Simi Valley, CA 93065
Tel 805-823-8001
Fax: 805-522-1544

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Websters Grading
10229 Elm Street
Simi Valley, CA 93065

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: **McDougall Building Supply**
Name of Customer: **Websters Grading**
Job Location: **CA Kalvi Building 986532 - 2051 Royal Ave, Simi Valley, CA 93065**
Owner: **Sunbelt Properties**
Through Date: **3/31/2014**

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: **Websters Grading**
Amount of Check: **\$7,252.00**
Check Payable to: **McDougall Building Supply**

Exceptions:

This document does not affect any of the following:

1. Retentions.
2. Extras for which the claimant has not received payment.
3. The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
 - a. Date(s) of waiver and release:
 - b. Amount(s) of unpaid progress payment(s):
4. Contract rights, including:
 - a. a right based on rescission, abandonment, or breach of contract, and
 - b. the right to recover compensation for work not compensated by the payment.

Dated 4/4/2014

By: 
Stacy Ford, Director, Client Service
McDougall Building Supply



CALIFORNIA WAIVERS

Unconditional Waiver and Release on Progress Payment

An unconditional waiver on a progress payment will waive rights completely for the expected payment through a specific date.

If your customer does not pay you, or the check is returned from your bank, you will not have lien rights for the amount of the waiver.

NOTE: Always know what kind of waiver you are sending and why. Do not use an unconditional waiver if you have not been paid.



McDougall Building Supply
2051 Royal Ave.
Simi Valley, CA 93065
Tel 805-823-8001
Fax: 805-522-1544

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Websters Grading
10229 Elm Street
Simi Valley, CA 93065

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: **McDougall Building Supply**
Name of Customer: **Websters Grading**
Job Location: **CA Kalvi Building 986532 - 2051 Royal Ave, Simi Valley, CA 93065**
Owner: **Sunbelt Properties**
Through Date:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below.

The claimant has received the following progress payment: **\$7,525.00**

Exceptions:

This document does not affect any of the following:

1. Retentions.
2. Extras for which the claimant has not received payment.
3. Contract rights, including:
 - a. a right based on rescission, abandonment, or breach of contract, and
 - b. the right to recover compensation for work not compensated by the payment.

Dated 4/4/2014

By: 
Stacy Ford, Director, Client Service
McDougall Building Supply



CALIFORNIA WAIVERS

Conditional Waiver and Release on Final Payment

A conditional waiver on final
payment will waive rights based
on the “condition” you have been
paid in full for all shipments for
this job.

It is used when final payment is to
be made.



McDougall Building Supply
2051 Royal Ave.
Simi Valley, CA 93065
Tel 805-823-8001
Fax: 805-522-1544

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Websters Grading
10229 Elm Street
Simi Valley, CA 93065

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: **McDougall Building Supply**
Name of Customer: **Websters Grading**
Job Location: **CA Kalvi Building 986532 - 2051 Royal Ave, Simi Valley, CA 93065**
Owner: **Sunbelt Properties**

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: **Websters Grading**
Amount of Check: **\$7,525.00**
Check Payable to: **McDougall Building Supply**

Exceptions:
This document does not affect any of the following:

1. Disputed claims for extras in the amount of: **\$0.00**

Dated **4/4/2014**

By: 
Stacy Ford, Director, Client Service
McDougall Building Supply



CALIFORNIA WAIVERS

Unconditional Waiver and Release on Final Payment

An unconditional Final Waiver will waive rights completely. Do not use an Unconditional Final Waiver if you have not been paid in full.

If your customers check is returned as NSF, you will have waived your rights and will not have lien rights for this job. Only use an Unconditional Final Waiver if you have been paid in full and the funds have cleared your bank.

NOTE: Always know what kind of waiver you are sending and why. Do not use an unconditional waiver if you have not been paid



McDougall Building Supply
2051 Royal Ave.
Simi Valley, CA 93065
Tel 805-823-8001
Fax: 805-522-1544

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Websters Grading
10229 Elm Street
Simi Valley, CA 93065

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: **McDougall Building Supply**
Name of Customer: **Websters Grading**
Job Location: **CA Kalvi Building 986532 - 2051 Royal Ave, Simi Valley, CA 93065**
Owner: **Sunbelt Properties**

Unconditional Waiver and Release


This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions:

This document does not affect any of the following:

1. Disputed claims for extras in the amount of: **\$0.00**

Dated **4/7/2014**

By: 
Stacy Ford, Director, Client Service
McDougall Building Supply



Notice Waivers

- Limit those who sign off on lien waivers to ones who understand the process. The waiver has power!
- Manage the paper flow.
- Have a standard lien waiver form.
- Make sure the funds have cleared the bank before signing a lien waiver, especially when waiving lien rights on large dollars.



Mechanics Lien

What is the deadline to file a Mechanics Lien in California?

- A material supplier must wait to record a lien until after they are done providing materials to the job site.
- A material supplier has up to 90 days after the completion of the work or improvement of the property to record the lien. If the owner records a Notice of Completion or Cessation, the material supplier has 30 days to record the lien.
- If a material supplier sends a preliminary notice, the owner must provide the supplier with a copy of the Notice of Completion or Cessation (10 days). If not, the time frame is not shortened. 8190
- Once the lien has been recorded, the material supplier has 90 days to “perfect” or “foreclose” on said lien.



Stop Payment Notices

There are other options a *material supplier* has in California to help expedite payment.

Stop Payment Notice - Private or Public

A Stop Payment Notice will prevent the property owner from disbursing funds to the direct contractor. It will require the Property Owner to withhold the disputed funds from the Direct Contractor until the dispute is resolved or waived.

A Private Stop Payment Notice must be bonded. This must be sent to the lender of the job, as well as to the director contractor. If the Private Stop Payment Notice is not bonded, the lender is not obligated to withhold funds.

A Public Stop Payment Notice is sent to the public entity and the director contractor. It is not required to be bonded.

You must serve the Stop Payment Notice before the earlier of: (1) 90 days from completion of the "work of improvement"; or (2) within no later than 30 days after the Property Owner records a Notice of Completion or a Notice of Cessation.

However, since the Stop Payment Notice is only effective if the Property Owner is still in possession of construction funds, you should consider serving the Stop Payment Notice as soon as you anticipate a payment dispute over materials already provided to the Property.



Public Property vs. Private Property

- Private Funds on Public Improvement:

California Paving and Grading Co. v. General Insurance Company

It held that the Mechanics' Lien Law defines a "public work" as "any work of improvement contracted for by a public entity."

- Stop Payment Notice, Bonded Stop Payment Notice

- Payment Bond



Reputed Owner

- Did the claimant make a reasonable inquiry into the owner's identity. Did the claimant reasonably research the ownership of the property.
- The court in *Brown Co. v. Appellate Department* defined term: "reputed owner" ... is a person or entity reasonably and in good faith believed to be the owner by those involved with the work of improvement including the general contractor and those furnishing labor, service, equipment or material to be used in the work of improvement.



Notice of Completion

- Private CA Civil Code 8190
- Owner must give anyone who sent preliminary notice a copy of NOC within 10 days of the date of the notice. If they fail to do so the time frame is not shortened.
- Public Jobs have no such protection
- Grantee-Grantor Index – How to determine which project?
- Bottom line, don't wait for project completion.

2013 California Lien Law Changes

- Must serve lender, regardless of your standing in the construction chain
- Owners must now provide all entities who served it with a preliminary notice with the name and address of any construction lender who issued a post-commencement construction loan to the project.
- Mailing proof of preliminary notice now includes Documentation provided by the USPS showing that payment was made to mail the notice using registered or certified mail or express mail.



2013 California Lien Law Changes

- The term “stop notice” has been replaced with “stop payment notice.”
- The term “original contractor” has been replaced with “direct contractor.”
- The term “materialman” has been replaced with “material supplier.”



CA Preliminary Notice – Estimated Balance

- CA law requires an estimated balance on preliminary notice
- It doesn't need to be exact or even close to actual final balance
- Amended Notices not required and open up possibility of changing the date of your first notice.
- You need a reasonable methodology for arriving at the estimated balance, using information available at the time the notice was sent.



CA – Owner/Tenant Issues

- Notice of Non-Responsibility
- Participating Owner Doctrine invalidates Notice of Non-Responsibility
 - Mandatory Improvements – Active Role in Improvements
- Always Notice Owner
 - In *Young Kim v. JF Enterprises et al.*, the California Court of Appeals for the 2nd Appellate District - mechanics lien claim against a property based upon work furnished to a tenant, and not the property owner. The court declared the mechanics lien invalid because preliminary notice was never sent to the owner. The fact that the claimant contracted with the tenant was irrelevant because the tenant was not the “owner.”





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