

Design Professionals' Guide to Stop Notices (California)



Step 1: BEFORE performing services for your client, you must:

- Be sure that you have the proper names and addresses of the following:
 - Customer/client; the owner/public entity, including the disbursing officer; the project location, including the physical/legal descriptions; if there is a lender and/or payment bond surety.
- Determine the estimated completion date of the project.
- Send the current CALIFORNIA PRELIMINARY 20-DAY NOTICE by certified mail, to the owner, general contractor, surety bonding company and **construction lender**, no later than 20 days after first providing services to the project. IF YOU DON'T DO THIS, YOU MAY LOSE SOME OR ALL OF YOUR MECHANIC'S LIEN (Civil Code section 3097).
- Set up a separate billing account for each project.
- Make sure each invoice references the specific project for which the services are provided.

Step 2: Be Vigilant with Receivables:

- DO NOT LET THE ACCOUNT BECOME PAST DUE.
- You may be asked to sign CONDITIONAL/UNCONDITIONAL lien releases before your invoice(s) for services paid. Note that when you sign a lien release, it releases all your rights through the date specified on the release, even if you haven't billed or received payment for services prior to that date. (Civil Code section 3262). *Practice Point – use exact forms and exact statutory language.*

Step 3: Time Frame to Serve Stop Notice to Owner/Lender:

- Private Works Project: Stop Notice on private works of improvement will serve to freeze any unexpected construction funds in the possession of the owner and funds that are still being held by the construction lender:
 - Time limits to serve a stop notice on the owner and lender are the same for recording a mechanic's lien (Civil Code section 3159; 3160).
 - One exception is that a stop notice is not premature if served prior to the claimant completing its work on the project (Civil Code section 3116).
 - Must serve a stop notice with **90 days** of the completion date of the Project (Civil Code section 3086) if no notice of completion or cessation is recorded by the owner (Civil Code section 3116; 3159). If a notice of completion or cessation is recorded by the owner a stop notice must be served within 30 days.

- Public Works Project: Stop Notice will require the public agency to withhold the public funds that are remaining for the project (Civil Code section 3162).
 - o Same time frame and limits listed above apply for stop notices on public works projects.

Step 4: Prepare and Serve Stop Notice on Lender/Owner:

- Stop Notice to Lender on Private Works:
 - o If the Stop Notice is not accompanied by bond for 125% of claim, then the lender has the option of withholding the funds (Civil Code section 3083; 3162). *Recommended that the stop notice for private works always be bonded;*
 - o Prepare the required stop notice to enforce your rights. Serve stop notice via certified mail to the office or branch administering or holding the construction funds (Civil Code section 3103).
- Stop Notice to Owner on Public Works:
 - o Prepare the required stop notice to enforce your rights. Serve stop notice via certified mail to the director of the department, which let the contract or in the office of the controller, auditor or public disbursing officer whose duty it is to make payments (Civil Code section 3103).

Step 5: File Lawsuit for Enforcement of Stop Notice:

- File lawsuit to Enforce Stop Notice within 90 days after the expiration of the period within which to record a mechanic’s lien (Civil Code section 3172).

	Private Project	Public Project
Stop Notice	Serve by certified mail or personal delivery on lender or, if no lender, on owner. Use the same time limits as for recording a mechanics lien. It is strongly recommended that you get a bond for your stop notice if serving it on a construction lender.	Serve on public entity by certified mail or personal delivery within 30 days after Notice of Completion/ Cessation is recorded or, if there is no Notice, within 90 days of actual completion.

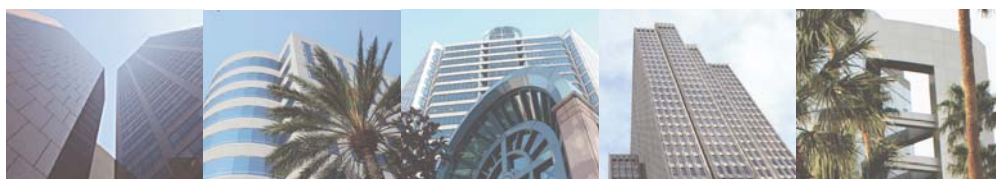
If you serve a stop notice, contact legal counsel if final payment is not received immediately after serving the stop notice. A lawsuit must be filed to enforce these rights, often within 90 days after the completion date of the Project or sooner is the owner records a valid notice of completion of notice of cessation of labor.

Remember: While these are the general rules for projects in California, these rules are not exhaustive. You should contact Morris Polich & Purdy regarding specific projects and/or questions. A consultation with counsel early in a project may save you time and money later on.

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