



SCHWARTZ SEMERDJIAN

Attorneys at Law

Mechanic's Lien Webinar
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Mechanic's Liens

- ▶ Secured interest in property
- ▶ Constitutional remedy: those contributing to a private work of improvement have rights to a mechanics lien. Cal. Const. art. XIV, §3.
- ▶ Limitations:
 - ▶ Each mechanics lien recorded against property has equal priority against all other timely recorded mechanics liens.
 - ▶ Mechanics liens are behind senior liens and deeds of trust.

Persons Entitled to Lien Rights: Civil Code §8400

- ▶ Material suppliers
- ▶ Direct contractors
- ▶ Subcontractors
- ▶ Equipment lessors
- ▶ Design professionals (architect, landscape architect, professional engineers, land surveyor)
- ▶ Laborers

Persons Not Entitled to Liens:

- ▶ Unlicensed contractors or subcontractors.
- ▶ Material supplier to material supplier
- ▶ A contractor providing preconstruction services for a project that was never built. *D'Orsay International Partners v. Superior Court* (2004) 123 Cal.App.4th 836.

PRELIMINARY NOTICE



- ▶ Give notice to owner, general contractor, and construction **lender** not later than 20 days after first supplying labor or materials.
- ▶ On CA public work, notice is given to contractor and public agency
- ▶ Suggestion: notice via certified mail return receipt requested

CALIFORNIA PRELIMINARY NOTICE

*In accordance with section 8102, 8202 and 9303, California Civil Code. THIS IS NOT A LIEN.
This is NOT a reflection on the integrity of any contractor or subcontractor.*

CONSTRUCTION LENDER OR REPUTED CONSTRUCTION LENDER

Name and address of claimant giving notice:

has furnished or will furnish labor, service, equipment or material of the following general description:

OWNER OR REPUTED OWNER(S)/PUBLIC ENTITY

Description of job site sufficient for identification:

The name of the person or firm who contracted for the purchase of such labor, service, equipment or material furnished is:

An estimate of the total price of the labor, service, equipment or material provided or to be provided is:
\$ _____

DIRECT CONTRACTOR OR REPUTED DIRECT CONTRACTOR

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.

OTHER

Date: _____

Signature: _____

Who must serve a preliminary notice?

- ▶ Direct Contractor (to the lender only)
- ▶ Everyone else to Owner, Lender & General Contractor:
 - ▶ Subcontractor
 - ▶ Material supplier
 - ▶ Equipment lessor
 - ▶ Laborer
 - ▶ Design Professional
- ▶ How do you find the Lender?
 - ▶ Reasonable effort is required
 - ▶ Building permits, contract, property owner

Serving Preliminary Notice

- ▶ If Notice given by mail, it is complete when deposited in the mail.
- ▶ Proof of notice shall be by a proof of service declaration.
 - ▶ Description of notice
 - ▶ Date, place and manner of service
 - ▶ Name and address of person to whom notice was given and if appropriate, the title or capacity in which the person was given notice

Hypothetical

- ▶ You've been on the job 25 days but haven't served your 20 day preliminary notice.
- ▶ What should you do?
- ▶ What is covered?

Lien Waiver Forms

- ▶ Conditional Waiver & Release Upon Progress Payment
- ▶ Unconditional Waiver & Release Upon Progress Payment
- ▶ Conditional Waiver & Release Upon Final Payment
- ▶ Unconditional Waiver & Release Upon Final Payment

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT (CALIFORNIA CIVIL CODE SECTION 8138)

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: _____
Name of Customer: _____
Job Location: _____
Owner: _____

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 the following:
Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT (CALIFORNIA CIVIL CODE SECTION 8136)

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.

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. This document is enforceable against you only if you have been paid in full from the financial institution on which the following

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT (CALIFORNIA CIVIL CODE SECTION 8134)

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

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 through the date that this document is signed by the claimant, 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 below. The claimant has received the following progress payment:

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____
Disputed claims for extras in the amount of: \$ _____
Disputed claims for extras in the amount of: \$ _____
Disputed claims for extras in the amount of: \$ _____

Signature: _____
Title: _____
Date: _____

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT (CALIFORNIA CIVIL CODE SECTION 8132)

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.

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment or material delivered, to the customer on this job through the date that this document is signed by the claimant, 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 below. This document is enforceable against you only on the claimant's receipt of payment from the financial institution on which the following

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____
Disputed claims for extras in the amount of: \$ _____
Disputed claims for extras in the amount of: \$ _____
Disputed claims for extras in the amount of: \$ _____

Signature: _____
Title: _____
Date: _____

Lien Waiver Forms – Final Payment

- ▶ Both the conditional and unconditional final payment waivers allow an exception for “Disputed Claims For Extras”
- ▶ You must indicate an amount for the extras:
 - ▶ “This document does not affect any of the following: Disputed claims for extras in the amount of: \$ _____”
 - ▶ **RECOMMENDATION:** Estimate the amount of all disputed extras, if not known

Mechanic's Lien Claims

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Mechanics' Lien

(Claim of Lien)

(To be recorded in the county recorder's office in the county in which the property is located.)

NOTICE IS HEREBY GIVEN: That _____ as claimant claims a lien for labor, service, equipment, or materials under Section 8000 et Seq. of the Civil Code of the State of California, upon the premises hereinafter described, and upon every estate or interest in such structures, improvements and premises held by any party holding any estate therein.

Said labor, service, equipment or materials were furnished for the construction of those certain buildings, improvements, or structures, now upon that certain parcel of land situated in the County of _____ State of California, said land described as follows:

STREET ADDRESS: _____

LEGAL DESCRIPTION: _____

Said lien is claimed for the following labor, services, equipment or materials: (describe labor, services, equipment, or materials in detail) _____

Amount due after deducting all just credits and offsets...\$ _____

The name of the person or company by whom claimant was employed or to whom claimant furnished labor, services, equipment, or materials is: _____

That _____

is/are the reputed owner(s) of said building and/or premises, or some interest therein.

DATED: _____ Name of Claimant: _____

By: _____

(Print Name)

(Signature)

VERIFICATION

(Advised Capacity)

I, the undersigned, certify that I am the _____ of the claimant named in the foregoing Mechanics' Lien, and that I am informed and believe the facts herein to be true, and, on that ground, allege that the facts stated in the foregoing Mechanics' Lien are true.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, in the City of _____, State of _____.

, Its Agent

NOTICE OF MECHANICS LIEN ATTENTION!

Upon the recording of the enclosed MECHANICS LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanics lien is recorded.

The party identified in the mechanics lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanics lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanics lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

PROOF OF SERVICE AFFIDAVIT California Civil Code section 8416(a)(7) and (c)

AFFIDAVIT FOR SERVICE ON THE OWNER

California Civil Code Section 8416 (a)(7) and (c)(1)

I, _____ (name), declare that I served a copy of this Mechanics' Lien and Notice of Mechanics' Lien by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the owner(s) or reputed owner(s) of the property:

Name and title of person or entity served: _____

Service Address: _____

Said service address is the owner's residence, place of business, or address shown by the building permit on file with the permitting authority for the work.

Executed on _____, at _____.

By: _____

Time Limits: No Notice of Completion

- ▶ **Must record within 90 days of:**
 - ▶ Actual completion
 - ▶ Occupation or use and cessation of work
 - ▶ Cessation of labor for 60 continuous days
 - ▶ Cessation of labor for 30 continuous days and recording of notice of cessation
- ▶ **Note: completion usually refers to entire work of improvement**

Time Limits: Notice of Completion

- ▶ **Must record within:**
 - ▶ 60 days for prime contractors
 - ▶ 30 days for subcontractors and suppliers
- ▶ Time shortened only if owner gives actual notice of notice of completion to contractor and all persons who provided preliminary notices
- ▶ **Notice of Completion**
 - ▶ Owner has 15 days to record

Amount of Lien

- ▶ Covers contract price or reasonable value of work performed.
- ▶ Can include:
 - ▶ Value of changed or extra work
 - ▶ Breach of contract damages
- ▶ Cannot Include:
 - ▶ Consequential damages
 - ▶ Interest for late payment
 - ▶ Attorneys' fees

Time Limits to Perfect Mechanic's Lien through Foreclosure Suit

- ▶ Lawsuit must be filed within 90 calendar days of recording mechanic's lien
- ▶ Notice of pendency of action must be recorded within 20 days of filing lawsuit.

Bonds

- ▶ Mechanic's Lien Release Bond
- ▶ Stop Payment Notice Release Bond
- ▶ Payment Bond
- ▶ Performance Bond
- ▶ Contractors' License Bond
- ▶ Miller Act Payment Bond

Mechanic's Lien Release Bond

- ▶ Can be filed by Direct Contractor
- ▶ Amount: 125% of the amount of the stop payment notice claim
- ▶ Public entity has discretion to accept
- ▶ Claim shifts from public entity to release bond: public entity may release funds to direct contractor upon receipt of release bond

Stop Payment Notice – Private Works

- ▶ A procedure that requires the lender to hold funds upon receipt of a stop payment notice.
- ▶ Legislature has provided for a stop payment notice right on private works of improvement. *Connelly Development, Inc. v. Superior Court* (1976) 17 Cal.3d 804

Bonded Stop Notice (Private Work)

- ▶ Preliminary notice: Civil Code § 8200
- ▶ Persons entitled to make stop payment claim:
 - ▶ All claimants under mechanic's lien statutes
 - ▶ Direct contractor only has claims against lender
- ▶ Service:
 - ▶ Certified mail to construction lender prior to expiration of lien recording period.
 - ▶ Owner
- ▶ Mandates lender Withholding: Civil Code § 8536
 - ▶ Bond equal to 125% of claim
 - ▶ Prevailing party entitled to attorneys' fees & prejudgment interest

Payment Bonds



- ▶ Protects suppliers, subs & laborers
- ▶ Notice to Surety: certified mail to surety before expiration of lien recording period (if bond is recorded and no mechanic's lien filed).
- ▶ Liability of surety is limited to the amount of its bond.

Payment Bonds – Private Works

- ▶ **Protects owner from future mechanic's lien claims**
 - ▶ Record direct contract and payment bond of 50% of contract value
 - ▶ Limits owner's liability based on mechanic's lien claimants in excess of aggregate contract with direct contractor
- ▶ **Preliminary notice required to make claim: Civil Code §8612**
 - ▶ Safe harbor: within 15 days of recorded notice of completion or within 75 days of action completion

Ninety-Day Public Works Preliminary Bond Notice

- ▶ Certified mail to contractor within 90 days from last labor or materials

Payment Bonds – Public Works

- ▶ Required on all public works exceeding \$25,000
- ▶ Must be 100% of contract amount
- ▶ Preliminary notice required to make claim
 - ▶ If claimant failed to give 20 day notice, claimant may give notice to principal and surety on bond within 15 days of Notice of Completion of if no Notice of Completion, within 75 days of completion;
 - ▶ If direct contractor has paid the subcontractor all sums not in dispute or the direct contractor has terminated the subcontractor and made all payments not in dispute, then this second notice is not available to claimants who have furnished labor or materials to that subcontractor
- ▶ Action to enforce must be filed within 6 months of last date to serve stop payment notice
- ▶ Attorneys' fees awarded to prevailing party.

Stop Notice on California Public Work

STOP PAYMENT NOTICE—PUBLIC WORKS
LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS
(CA CIVIL CODE §§ 8044, 9350 et seq.)

TO:

<small>PUBLIC ENTITY (CA Civ. Code §§ 8036, 9354)</small>	<small>DIRECT CONTRACTOR (CA Civ. Code § 8018)</small>	<small>CONSTRUCTION LENDER, if any (CA Civ. Code § 8006)</small>
NAME: _____	_____	_____
ADDRESS: _____	_____	_____

YOU ARE HEREBY NOTIFIED THAT (Claimant):

Name (Use correct legal name): _____

Address: _____

Relationship to the parties of the one giving this notice (subcontractor, supplier, describe if otherwise): _____

HAS FURNISHED WORK, LABOR, ADDRESS, EQUIPMENT OR MATERIAL OF THE FOLLOWING GENERAL DESCRIPTION:

FOR THE BUILDING, STRUCTURE OR OTHER WORK OF IMPROVEMENT LOCATED AT THE FOLLOWING ADDRESS OR SITE OTHERWISE DESCRIBED SUFFICIENTLY FOR IDENTIFICATION:

Address: _____

or Description: _____

THE PERSON OR FIRM TO WHOM SUCH WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL IS PROVIDED:

Name: _____

Address: _____

THE VALUE OF THE WHOLE AMOUNT OF WORK, LABOR, SERVICES, EQUIPMENT AND/OR MATERIALS TO BE PROVIDED IS:

Amount \$ _____

THE VALUE OF WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL PROVIDED TO DATE IS:

Amount \$ _____

CLAIMANT HAS BEEN PAID THE SUM OF \$ _____
AND THERE REMAINS UNPAID AFTER DEDUCTING ALL JUST CREDITS AND OFFSETS THE SUM OF \$ _____
TOGETHER WITH INTEREST AT THE RATE OF _____ % PER ANNUM, FROM _____, _____ (date).

UNDER CALIFORNIA CIVIL CODE § 9358 YOU ARE REQUIRED TO SET ASIDE SUFFICIENT FUNDS TO SATISFY THIS CLAIM WITH INTEREST, COURT COSTS AND REASONABLE COSTS OF LITIGATION, AS PROVIDED BY LAW. YOU ARE ALSO NOTIFIED THAT CLAIMANT CLAIMS AN EQUITABLE LIEN AGAINST ANY CONSTRUCTION FUNDS FOR THIS PROJECT WHICH ARE IN YOUR HANDS.

DATE: _____ **NAME OF CLAIMANT:** _____
(Firm Name)

BY: _____
(Signature of Claimant or Authorized Agent)

VERIFICATION

I, _____, state I am the _____ (Owner of, President of, Authorized Agent of, Partner of, etc.) the claimant named in the foregoing STOP PAYMENT NOTICE – PUBLIC WORKS. I have read said STOP PAYMENT NOTICE – PUBLIC WORKS and know the contents thereof; 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 _____, _____ (date), at _____ (City), _____ (State).

(Signature of Claimant or Authorized Agent)

- ▶ Preliminary Notice:
 - ▶ 2nd tier subcontractors & material/equipment suppliers
- ▶ Served on public body & general contractor
- ▶ Certified mail to public agency within 30 days after recordation of notice of completion (or acceptance or cessation). If no notice of completion or cessation, serve within 90 days after completion or cessation.

Complaint on stop notice (public work)

- ▶ File in proper court after 10 days from service of stop notice and within 90 days from expiration of period within which stop notices must be filed.
- ▶ May be combined with action on payment bond.
- ▶ 2 years to bring action to trial

Notice of Proceedings (on stop notice, private or public work)

▶ Release of Stop Payment Notice

- ▶ Must be at least 125 % of stop payment notice claim
- ▶ Two Methods:
 - ▶ Release bond
 - ▶ Summary of proceedings

Stop payment notice requirements – public works

- ▶ Summary Proceedings – Administrative process
 - ▶ Battle of affidavits
 - ▶ Expedited process
 - ▶ Grounds:
 - ▶ Claim not type allowed by stop payment notice law
 - ▶ Claimant not person entitled to a stop payment notice
 - ▶ Amount of claim is excessive
 - ▶ No basis in law for claim
- ▶ Contractor serves affidavit on public entity
- ▶ Public entity serves claimant with a copy of the affidavit
- ▶ Claimant files counter-affidavit
- ▶ If counter-affidavit not filed, money released
- ▶ If counter-affidavit filed, money held
- ▶ Either party may sue for declaratory relief and file motion on 15 days' notice
- ▶ Direct contractor has burden of proof

Complaint on Payment Bond (California public work)

- ▶ File in proper court within 6 months after the period within which stop notices must be filed.

Complaint on Payment Bond (federal work)

- ▶ File in proper court after 90 days from claimant's last labor or materials and within 1 year therefrom.
- ▶ May be combined with action on stop notice

Performance Bonds

- ▶ Provides owner assurance of contractor performance
- ▶ Used on virtually all public works
- ▶ Public agency may recover:
 - ▶ Costs of completion and payment to subcontractors and suppliers
 - ▶ Liquidated damages

Action on Lien Release Bond

- ▶ File action (or supplement complaint to foreclose lien if action already filed) within 6 months of recordation of the bond.

Contractor's License Bond or Deposit

- ▶ Bond must be \$15,000
- ▶ Effective January 1, 2019, CSLB no longer accepts certificates of deposit, savings account passbooks, savings and loan association certificates in place of bond requirement. Okay to have cash deposit to replace bond.
- ▶ Bond is for the benefit of consumers for defective construction and employees who have not been paid wages
- ▶ Complaint on license bond: File in proper court within 2 years after expiration of license period.

Federal (Miller Act Bond Claim)

- ▶ Neither mechanic's liens nor stop notices are available on federal work.
- ▶ Performance bond and payment bond required for federal projects over \$100,000.
- ▶ Purpose to protect claimants who would have been entitled to mechanics lien under state law.



Federal (Miller Act Bond Claim): Preliminary Notice

- ▶ Notice required to enforce payment bond (not performance bond)
- ▶ Notice not required if direct contractual relationship with contractor
- ▶ Registered mail to contractor within 90 days from last labor or materials

Federal (Miller Act Bond Claim): Payment Bond Suit

- ▶ Lawsuit must be brought no less than 90 days after the amount becomes due, but no later than 1 year after the claimant last performed labor or supplied material on the jobsite.



California's Prompt Payment Act – Private Projects

▶ Owners → Direct Contractors

- ▶ Progress Payments: Owner must pay a direct contractor within 30 days of the contractor's request for payment (unless agreed to different schedule or good faith dispute over amount due).
- ▶ If good faith dispute, can withhold up to 150% of amount in dispute.
- ▶ Retainage: If retainage is withheld, Owner must pay it within 45 days after completion of the improvement (unless good faith dispute – can withhold 150% of disputed amount)

California's Prompt Payment Act – Private Projects

▶ Direct Contractors → Subcontractors

- ▶ General contractors must pay subcontractors within 7 days of receiving each progress payment relating to the sub's work. The same exceptions that apply to direct contractors also apply to subcontractors.
 - ▶ Timeframe can be changed by contract;
 - ▶ Payment can be withheld for good faith dispute (up to 150%)
- ▶ Penalties:
 - ▶ 2% per month interest penalty when violated
 - ▶ Attorneys' fees & court costs.

Prompt Payment – Public Projects

▶ Public Entity → Direct Contractors

- ▶ Cal State university – must pay within 39 days
- ▶ State & local agencies – must pay within 30 days of request
- ▶ If request objected, written explanation within 7 days.
- ▶ Retainage – must be released within 60 days

▶ Direct Contractors → Subs

- ▶ General contractors must pay subs within 7 days of receiving progress payment.
- ▶ Timeframe can be changed by contract
- ▶ Can withhold disputed amount up to 150%

▶ Penalties:

- ▶ If progress payment improperly withheld, 10% interest per year. If retainage improperly withheld, 2% per month.
- ▶ Attorneys fees & court costs

Contract Rights

- ▶ Statute of limitations for breach of contract in California is four years from the date the contract was broken. Code of Civil Procedure section 337(a).
- ▶ Need to prove:
 - ▶ Existence of Contract;
 - ▶ Performance by the claimant or some justification for nonperformance;
 - ▶ Failure to perform the contract by defendant; and
 - ▶ Resulting damage



SCHWARTZ SEMERDJIAN

A t t o r n e y s a t L a w

Questions? We can be reached at:

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Thank you for joining us today.