

PROTECTING LIEN AND BOND CLAIM RIGHTS IN 2013 AND BEYOND

You are a first tier subcontractor on a large, multi-family construction project. The project has gone well for you, and payments have been timely. As you wind down your work, you are looking for the retainage. Weeks pass and the check fails to arrive. You need this money to finish paying one of your prime material suppliers on the project. You keep track of your last date of furnishing and notify your attorney 60 days after that date to begin preparing a Notice of Claim of Lien and Claim of Lien to protect your rights to lien the project.

Prior to April 1, 2013, you are in good shape. But, due to important legislative changes to the lien laws, after April 1, 2013, you may have lost your lien rights, and you may have become personally liable for amounts due to subs and suppliers with which you had no direct contract.

In the 2012 legislative session, significant changes were made to the mechanic's lien laws and the bond statutes, which can affect the rights of all parties from the owner to the very lowest tier material supplier.

With regard to the lien laws, the new legislation requires owners of projects costing \$30,000 or more to appoint a lien agent. The lien agent is a title insurance company, and everyone from the general contractor on down must give written notice of their contract on the project to the lien agent in order to preserve lien rights. The owner, who designates the lien agent, must place the lien agent's contact information in the building permit or post it on a sign at the project. For any subcontractor or supplier that does not furnish labor and materials at the site of the project, the party with which that subcontractor or supplier contracts must give said party notice containing the lien agent's contact information within three (3) days of contracting. If the proper notices are not given to the lien agent, a general contractor or subcontractor can lose rights to lien the property in the event of a transfer of the property. Moreover, if a contractor fails to give notice to a subcontractor or supplier that does not work at the project site, that contractor can become personally liable to pay lower tier subcontractors and suppliers that lose their lien rights due to lack of notice.

Effective January 1, 2013, there are new requirements for public projects, as well. The new requirements start with the general contractor, which must furnish a "project statement" that provides vital information including the name and mailing address of the agent authorized by the contractor to accept service of request for the payment bond, notice of public subcontract and notice of claim on the payment bond. The subcontractors that do not deal directly with the general contractor must provide a notice of their subcontract to the general contractor or agent listed in the project statement or they can lose rights to make claims on the bond.

General contractors and subcontractors, as well as suppliers, will have to specifically comply with these requirements in order to preserve their rights. In some cases, these notices must be sent as early as within three (3) days of contracting. In addition, the statutes specify a number of different methods, most of which require a delivery receipt. General contractors, subcontractors and suppliers will need to be responsible for giving these specific legal notices and keeping track of delivery receipts. Following this article is a chart which specifies all of the notice requirements for owners, general contractors, subcontractors and suppliers that now exist or will come into existence

in 2013. Attached to the chart is a set of forms for the various types of notices which must now be sent.

It is certainly advisable for all general contractors, subcontractors and suppliers to consult with a competent construction attorney who can give guidance in setting up systems for giving notice and retaining records necessary to show that the proper notices have been given. The days of waiting until a payment is 45-60 days past due to contact legal counsel may be a thing of the past. All general contractors, subcontractors and suppliers should become familiar with these important changes to the lien and bond statutes in order to protect their rights in 2013 and beyond.