



## Construction Law Update September 2011

### The Preliminary 20-Day Notice: What You Need to Know about One of the Most Important Forms Out There

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*If you have been to one of our seminars, you heard a lot about preliminary 20-day notices. That is because they are important, really important. If you aren't in the habit of sending them out on your projects, you should be. Below is an explanation of how to fill one out and send it to those required, and why this simple form is so critical to protect contractors' abilities to pursue payment via a mechanic's lien, stop notice and/or payment bond claim.*

#### Why is the Preliminary 20-Day Notice Form So Important?

A preliminary 20-day notice alerts owners, contractors, and lenders to secured claims arising from contracts to which they were not parties and of which they would otherwise have no knowledge. Unless a lien claimant or stop notice claimant is a general/prime contractor, a laborer, or a person/entity to whom a portion of a laborer's compensation is paid, it must serve a preliminary 20-day notice or it is generally barred from enforcing a mechanics' lien or a stop notice claim (on either a public or private work). In addition, in order to make a claim on a payment bond, on either a public or private work, a contractor must either serve a preliminary 20-day notice or provide notice to the bond surety shortly after the work is completed.

Furthermore, if a contractor/supplier fails to serve a preliminary 20-day notice when it was required to do so, and then proceeds to record a lien, serve a stop notice, or pursue a bond claim, such action can subject the contractor to disciplinary action. Specifically, the California Civil Code provides that, if the contract price to be paid to any subcontractor on a particular work of improvement exceeds four hundred dollars (\$400), the failure of that contractor to give a preliminary 20-day notice constitutes grounds for disciplinary action by the Registrar of Contractors. Also, if the notice is required to contain the identity and address of any laborer and any express trust fund to whom employer payments are due (which is required when the contractor has failed to pay all compensation due to his or her laborers on the job), a

failure to give the notice, including that information, that results in the filing of a lien, claim on a payment bond, or the delivery of a stop notice by the express trust fund to which the obligation is owing constitutes grounds for disciplinary action by the Registrar of Contractors against the subcontractor if the amount due the trust fund is not paid.

#### How to Fill Out a Preliminary 20-Day Notice Form

Preliminary 20-day notice forms are generally available through local builders' exchanges. If you cannot obtain one through your local exchange, please contact us and we would be happy to provide you with one. Be sure that your preliminary 20-day notice form contains the following information, all of which is required by California law<sup>1</sup>:

- (1) A general description of the labor, service, equipment, or materials furnished, or to be furnished, and an estimate of the total price thereof. For example, if your contract is for a specific trade (i.e., framing, grading, paving, etc.), list what specific scope you are performing.
- (2) The name and address of the person or entity furnishing that labor, service, equipment, or materials.
- (3) The name of the person or entity who contracted for purchase of that labor, service, equipment, or materials (i.e., the person or entity with whom you contracted).
- (4) A description of the jobsite sufficient for identification.
- (5) The following statement in boldface type:

#### **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,

<sup>1</sup> Note that, effective July 1, 2012, there will be different preliminary notice requirements for private works and public works. Also, beginning July 1, 2012, Civil Code § 8200 (private works) will *require* that direct contractors provide preliminary notices to the construction lender or reputed construction lender.

through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you 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 than residential homeowners of dwellings containing fewer than five units, private project owners must notify the original contractor and any lien claimant who has provided the owner with a preliminary 20-day lien notice in accordance with Section 3097 of the Civil Code that a notice of completion or notice of cessation has been recorded within 10 days of its recordation. Notice shall be by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing. Failure to notify will extend the deadlines to record a lien.

(6) If the notice is given by a subcontractor who has failed to pay all compensation due to his or her laborers on the job, the notice shall also contain the identity and address of any laborer and any express trust fund to whom employer payments are due.

### When Should the Preliminary 20-Day Notice Be Served?

In order for a contractor/supplier who is required to serve a preliminary 20-day notice to be able to record a lien, serve a stop notice, or make a bond claim with respect to all of that contractor's work, the preliminary 20-day notice must be given within the first 20 days after the claimant has first furnished labor, service, equipment, or materials to the jobsite. Note that a claimant can (and should) give a preliminary notice at any time after the first 20 days, but will only be entitled to record a lien, file a stop notice, and assert a claim against a payment bond for the labor, service, equipment, or material furnished within 20 days prior to the service of the preliminary notice, and at any time thereafter. The lesson here is that if a contractor realizes part way through a project that it has forgotten to serve a preliminary 20-day notice, it should do so immediately to at least preserve some of its lien, stop notice, and bond rights.

### To Whom and How Must the Preliminary 20-Day Notice Be Given?

The preliminary 20-day notice must be sent to the owner or reputed owner, to the original contractor, or reputed contractor, and to the construction lender, if any, or to the reputed construction lender, if any. The preliminary

Please be assured that we make every effort to make certain that the information contained in this article is current at the time the article was prepared. Because laws and legislation are constantly changing, please contact us if you are unsure whether this material is still current. Nothing contained herein is meant to be legal advice. Please contact us to answer any questions you may have.

20-day notice may be sent the required person(s)/entities as follows:

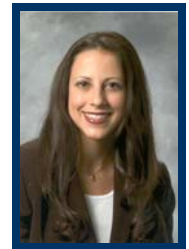
(1) If the person/entity to be notified resides in this state, by delivering the notice personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant a mortgage, deed of trust, or other instrument securing a loan for construction of the project.

(2) If the person/entity to be notified does not reside in this state, by any method enumerated above in subsection (1). If the person cannot be served by any of these methods, then the notice may be given by first-class certified or registered mail, addressed to the construction lender or to the original contractor.

While the law allows a contractor/supplier to personally deliver the preliminary 20-day notice to those required to be notified, we strongly recommend that contractors/suppliers send the preliminary 20-day notice by certified mail, return receipt requested, so that the contractor/supplier will have written evidence proving that the notice was properly sent.



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*Murphy Austin Adams Schoenfeld LLP's Construction Law Team was awarded a Tier One Ranking in the U.S. News & World Report - Best Lawyers "Best Law Firms" 2010 report.*

