

# **The 2012 Cardinal “Change Order” to California’s Works of Improvement Statutes**

Presented by

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# HIGHLIGHTS

# A Rose by Any Other Name

## CALIFORNIA “Works of Improvement”

- Previously Civil Code sections 3082 through 3267
- Now Civil Code sections 8000 through 9566

*Effective July 1, 2012*



# What's in an Apostrophe

IT'S NOT

MECHANICS' LIENS ANYMORE

IT'S

MECHANICS LIENS

(See Civil Code, Part 6, Title 2, Chapter 4)



# New Name for Stop Notices

Prior “Stop Notice” is now “Stop Payment Notice.”

§8044, formerly §3103



“The aurora borealis. Which is why you should never name something with your mouth full.”

# Original/Direct/General/Prime ????

The “Original Contractor” is now  
the “Direct Contractor”

But, what happened to the  
“General Contractor” and  
the “Prime Contractor”?

§8018, formerly §3095



# “It’s about time” msk

“Materialman” is now “Material Supplier”

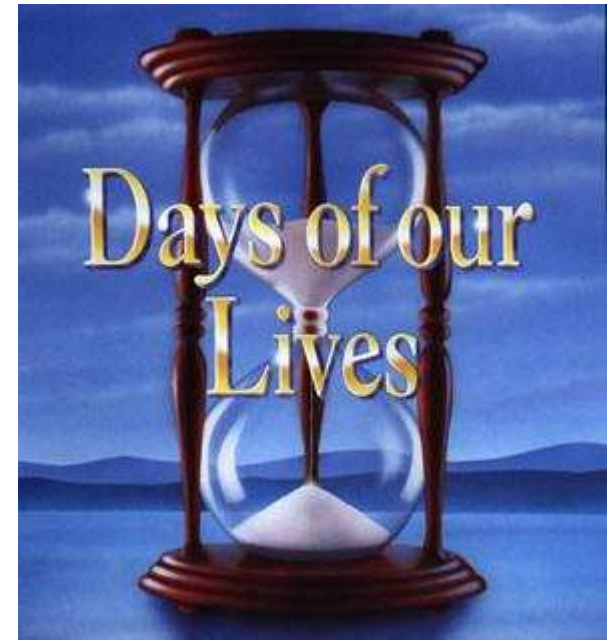
§8028, formerly §3090



# Days of Our Lives

Notices of Completion from 10 days to **15 days** after completion

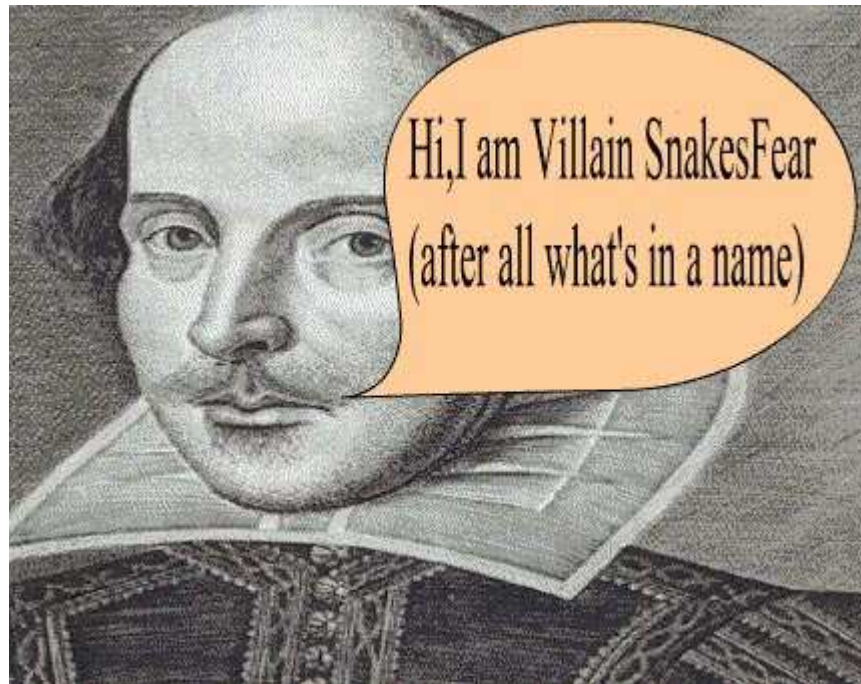
8182 (private) and §9204 (public),  
formerly §3093





# What's in a Name

“Good and sufficient sureties” now, “admitted surety insurer,”  
defined in *Code of Civil Procedure* §995.120



§8606 (private payment bond), §8424 (release of lien bond),  
§9554 (public payment bond) and §9364 (stop payment notice  
release bond), formerly §3096

# Mechanics Lien Release Bond Amounts

Mechanics lien release bonds went down from “**1½**” times the claim to “**125%**” of the claim

§8424, formerly §3143



# Six of One/Half a Dozen of the Other

## PRIVATE WORKS

Stop payment notice release bonds always have been **1<sup>1</sup>/<sub>4</sub>** times the claim

§8532, formerly §3171

## PUBLIC WORKS

Stop payment notice release bonds always have been **125%** of claim

§9364, formerly §3196



# “Persons” now Defined

- Individual
- Corporation
- Public Entity



- Business Trust
- Partnership
- Estate
- Limited Liability Company
- Trust
- Association
- Other Entity



§ 8032

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**SECOND**

**BITE AT**

**THE APPLE**

# The Second Bite at the Apple



Before—

If 20-day preliminary notice not given, claimant could enforce claim if gave surety notice within 15/75 days, depending upon whether valid notice of completion §3242(b) [private]; §3252(b) [public]

Now—

The same with two major exceptions.

§8612 [private]; §9560 [public]

# The Second Bite at the Apple



- If claimant has “no direct contractual relationship with the **contractor**” – (laborers excepted)
- 15/75 day notice to surety and bond principal will not save the claimant **IF**
  - (1) All progress payments, except good faith disputes, are paid to “subcontractor” with direct contractual relationship with “**general contractor,**” or
  - (2) Subcontractor terminated and all progress payments, except good faith disputes, paid as of termination

§8612(d) [private]; §9560(d) [public]

# The Second Bite at the Apple



## IN LAYMAN'S TERMS:

A sub-subcontractor or supplier/claimant who fails to timely serve a Preliminary Notice, does not get a second bite at the apple if (1) all progress payments, except those disputed in good faith, have been made to its subcontractor, or (2) the subcontractor was terminated and all progress payments, except those disputed in good faith, were made as of the termination.



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THE  
TIMELINE  
ROADMAP

# When is a Payment Bond Claim Timely?

A claimant may commence an action on a Public Works Payment Bond after the claimant stops providing work, but no later than six months after the period in which a stop payment notice may be given.



§9558, formerly §3249

# A Stop Payment Notice Must be Given to the Public Entity

- Within 30 days of the recording of a notice of completion, acceptance or cessation; or
- If no notice is recorded, within 90 days of *cessation or completion*.

§9356, formerly §3184



# What Constitutes Project Completion?

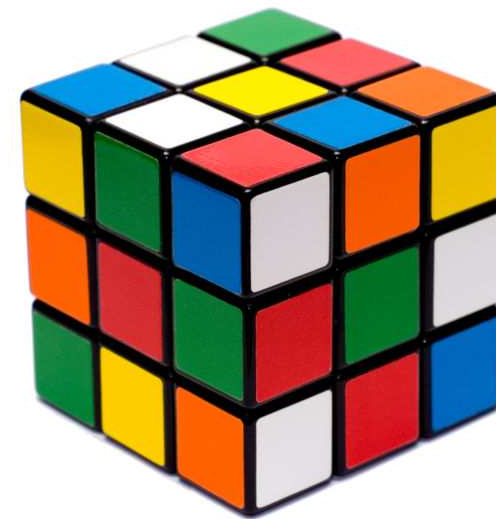
Completion occurs when the work of improvement is either accepted by the public entity or there has been a cessation of labor for a continuous period of 60 days (except on contracts under the State Contract Act – *Public Contract Code* §10100).

§9200, formerly §3086 – occupation or use of a work of improvement *combined with* cessation no longer constitute a “completion.”



## Huh? Deadline for Stop Payment Notice— 90 or 150 Days After Cessation of Labor?

90 days after cessation *or completion*. If there is a cessation for 60 days, but work resumes before 90 days, completion occurred on day 60. A stop payment notice claimant would then have *90 days after completion* to file a stop payment notice; i.e. 150 days from the time work initially ceased.



§9200, §9556

# When May a Notice of Cessation be Recorded?

An Owner may record a Notice of Cessation if there has been a continuous cessation of labor for at least 30 days. This recording will shorten the time periods for both Stop Payment Notices and Payment Bond Claims.



§9202, formerly §3092

## When May a Notice of Completion be Recorded?

A Notice of Completion must now be recorded within *15 days* after date of completion, extending the prior time period of 10 days. A late recording of the Notice is not effective and does not shorten the claim period

§9204, formerly §3093



# If the Public Entity **Does** Record a Notice of Completion or Cessation:

A Stop Payment Notice must be given  
within 30 days  
§ 9356



An action to enforce a Payment Bond claim  
must be filed 6 months after the expiration  
of the 30 day period.

§9558

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9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO  
11  
12 WILLIAM A. STRANGE, individually Case No.:  
13 and as Guardian ad Litem for RYLAND  
14 STRANGE and JORIE STRANGE, minors;  
15 RONALD E. SIMS, as Guardian ad Litem  
16 for KLEGAN SIMS, a minor,  
17 Plaintiffs, COMPLAINT FOR WRONGFUL DEATH  
18 v.  
19 ENTERCOM SACRAMENTO, LLC,  
20 ENTERCOM COMMUNICATIONS,  
21 COMP. JOHN LEAVEY, STEVE WEEB,  
22 ROBIN PECHOTA, LIZ DIAZ, ADAM  
23 COO, STEVE MANN, PATRICIA SWEET,  
24 MATT CARTER and DOES 1 through 40,  
25 inclusive,  
26 Defendants.  
27  
28 Plaintiffs complain against Defendants and allege:  
29  
30 **FIRST CAUSE OF ACTION**  
31 **WRONGFUL DEATH- NEGLIGENCE**  
32  
33 1. The true names and capacities, whether individual, corporate, associate or  
34 otherwise of Defendants, DOES 1 through 40, are unknown to Plaintiffs, who therefore  
35 sue Defendants by such fictitious names, and Plaintiffs will amend this Complaint to show  
36 their true names and capacities when the same have been ascertained. Plaintiffs are

Complaint for Wrongful Death -1-



# If the Public Entity **Does Not** Record Notice of Completion or Notice of Cessation:

A Stop Payment Notice must be given

- Within 90 days of completion or cessation; or
- Within 90 days of a 60 day cessation period (i.e. completion)

§9356

An action to enforce a Payment Bond claim must be filed 6 months after the expiration of the applicable period.

§9558



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**THE  
INCORPORATION  
DOCTRINE**

# The Incorporation Doctrine

Before -- Persons entitled to lien




“Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement....” §3110

# The Incorporation Doctrine

Before -- Persons entitled to lien

“Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, electricians, plumbers, machinists, builders, teamsters, and all persons and laborers of every trade who furnish labor upon or bestowing skill or services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power contributing to a work of improvement....” §3110



# Who Is Entitled To Lien—Private Work

A person that provides work authorized for a work of improvement, including, but not limited to, the following persons, has a lien right under this chapter:

- (a) Direct contractor**
- (b) Subcontractor**
- (c) Material supplier**
- (d) Equipment lessor**
- (e) Laborer**
- (f) Design professional**



§8400

# Who Is Entitled To Stop Payment Notices and Payment Bond Claims—Public Work

Except a direct contractor, any of the following persons that have not been paid in full:

(1) A person that **provides work** for the public works contracts, if properly authorized by a person having charge of the public works contract.

(2) A laborer.

(3) A hazardous waste hauler per *Public Contract Code* §4107.7

§9100



# The Incorporation Doctrine

Before -- Persons entitled to lien

“Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment **to be used or consumed in** or furnishing appliances, teams, or power contributing to a work of improvement...” §3110



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**WAIVED  
AND  
RELEASES**



## What is “substantially”?

If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver that the claimant has, in fact, been paid for the final payment, the waiver and release shall be null, void, and unenforceable unless it is in **substantially** the following form, with the text of the “Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

§8124, § 8132, § 8134, § 8136, §8138

# Unconditional Waiver and Release of Payment Bond Surety on Final Payment

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.

# Unconditional Waiver and Release of Payment Bond Surety on Final Payment

## Identifying Information

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Surety on Payment Bond: \_\_\_\_\_

# Unconditional Waiver and Release of Payment Bond Surety on Final Payment

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.

# Unconditional Waiver and Release of Payment Bond Surety on Final Payment

## Exceptions

This document does not affect any of the following:

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

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

# Release of Surety and Assignment Agreement--Preface

\_\_\_\_\_ (Surety) issued Payment Bond Number \_\_\_\_\_ on behalf of \_\_\_\_\_ (Contractor) (hereinafter referred to as “Principal”) for the work of improvement described as \_\_\_\_\_, (hereinafter referred to as the “Project”) for \_\_\_\_\_ (Public Entity) (hereinafter the “Obligee”). \_\_\_\_\_ (Claimant) was a \_\_\_\_\_ to Principal which provided \_\_\_\_\_ (describe labor, services or materials provided) \_\_\_\_\_ to the Project.

## **Release of Surety and Assignment Agreement--Release**

In consideration and upon Surety's payment to Claimant in the amount of \$\_\_\_\_\_, Claimant hereby waives and releases all payment bond rights Claimant has for all labor, services, equipment and material provided to the Project, including, but not limited to all labor, services, equipment, or materials provided to the Project pursuant to a written change order that has been fully executed by the parties prior to the date that Claimant signs this document.

## **Release of Surety and Assignment Agreement--Assignment**

Claimant hereby assigns, transfers, and sets over to Surety any and all right, title and interest in and to claims, actions, or causes of action which Claimant has or may have, whether known or unknown, against Principal and Obligees (including mechanics lien and stop payment notice rights) related to the Project. Claimant appoints Surety as its attorney-in-fact to demand, receive, and enforce payment of said claims at the Surety's own expense.



# **Release of Surety and Assignment Agreement—Guarantees & Warranties**

In further consideration of the above payment, Claimant hereby agrees that all guarantees and warranties required under the terms of Claimant's contract(s) pertaining to the work, labor and/or materials provided to the Project shall remain in full force and effect in accordance with their terms which, however, shall not be extended nor enlarged hereby.

## **Release of Surety and Assignment Agreement—Payment to Vendors**

Claimant warrants, represents and certifies that all just and lawful billings, accounts and/or amounts due from Claimant and/or its subcontractors or material suppliers for labor, material, and equipment related to the Project have been fully paid in accordance with the terms and conditions of any applicable contract and that there are no amounts for which Claimant would be responsible to pay on the Project.

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**CAL. REGS.**

**NOTICES**

# **Statute of Limitations Notification**

**(if claimant not represented by counsel)**

“Except where a claim has been settled by payment, every insurer shall provide written notice of any statute of limitation or other time period requirement upon which the insurer may rely to deny a claim. Such notice shall be given to the claimant not less than 60 days prior to the expiration date. If notice of claim is first received by the insurer within 60 days of the expiration date and such date is known to the insurer, then notice of the expiration date must be given to the claimant immediately....”

Cal. Regs. §2695.10(g)

# Public Works Payment Bond

*California Civil Code* section 9560 sets forth the time limit for the **prerequisites** for claims against California Public Works Payment Bonds.

*California Civil Code* sections 9558 and 9356 define the statute of limitations applicable to claims on California Public Works Payment Bonds.

# Public Works Performance Bond

*California Code of Civil Procedure* sections 337, 337.1, 337.15, or 338 may apply as the statutes of limitation applicable to claims on California Public Works Performance Bonds.

# Public Works Stop Payment Notice Release Bond

*California Civil Code* section 9500 sets forth the time limit for the **prerequisites** for claims against California

Public Works Stop Payment Notices that should apply to Release Bonds as well.

*California Code of Civil Procedure* section 338 is the statute of limitations applicable to claims on California Public Works Stop Payment Notice Release Bonds.

# Private Works Payment Bond

*California Civil Code* section 8612 sets forth the time limit for the **prerequisites** for claims against California Private Works Payment Bonds.

*California Code of Civil Procedure* section 337 and *California Civil Code* sections 8609 or 8610 may apply as the statute of limitations applicable to claims on California Private Works Payment Bonds.



# Private Works Performance Bond

*California Code of Civil Procedure* sections 337, 337.1, or 337.15 may apply as the statute of limitation applicable to claims on California Private Works Performance Bonds.

\*\*\*\*

If the performance bond contains a contractual limitations period:

Paragraph \_\_\_\_ of the bond sets forth a contractual limitations period applicable to a claim on this California Private Works Performance Bond.

# Private Works Stop Payment Notice Release Bond

*California Civil Code* section 8508 sets forth the time limit for the **prerequisites** for claims against California Private Works Stop Payment Notices that should apply to Release Bonds as well.

*California Code of Civil Procedure* sections 337 or 338 may be the statute of limitations applicable to claims on California Private Works Stop Payment Notice Release Bonds.

# Private Works Mechanics Lien Release Bond

*California Civil Code* sections 8410, 8412, and 8414 set forth the time limit for the **prerequisites** for claims against California Private Works Mechanic's Liens.

*California Civil Code* section 8424(d) is the statute of limitations applicable to claims on California Private Works Mechanic's Lien Release Bonds.

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Q & A

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