



News leaks

Golf Reminder



Salute to Larry Cook

Earlier this month, APMC held a “Salute to Larry Cook”, in celebration of his anticipated retirement from Airco Mechanical and the plumbing industry. Bank of Sacramento hosted the event at their Howe Avenue branch.

Larry is a 1965 graduate of CSUS. Following graduation, Larry joined his father’s business, Ray O. Cook Mechanical Contractor, where he learned the construction trade from the ground up. After ascending the learning curve in the field, Larry moved into the office where he honed his drafting and mechanical systems design skills as well as estimating and project management on major projects throughout California.

In 1984, Larry joined Airco Mechanical where he oversaw the overall function of construction with respect to organizational administration, day to day operations, contract documents, financial requirements, project budgets and estimates.

Larry holds a California State Contractor’s License in fourteen classifications plus a hazardous waste certification, and is LEED AP certified.

After nearly fifty years of dedicated service to the plumbing industry we wish Larry all the best in his retirement.



DIR Returns Unpaid Wages

Record \$17.7 Million in Unpaid Wages Returned to Workers on Public Works Projects in 2013

Oakland—California Labor Commissioner Julie A. Su announced that in 2013, over 10,000 workers statewide received checks which returned a cumulative \$17.7 million in unpaid prevailing wages on public works projects across the state.

The payments were collected from public works investigations that uncovered prevailing wage and other violations of state public works laws in over 400 publicly-funded projects. In 2012, the Labor Commissioner's office collected the highest amount in the last decade when it reinstated \$8.2 million to approximately 7,400 public works employees. The \$17.7 million figure for 2013 doubles the record set in the previous year.

"The Labor Commissioner plays a critical role in enforcing the prevailing wage laws and in holding employers who skirt the law accountable," said Christine Baker, Director of the Department of Industrial Relations (DIR). The Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement, is a division of DIR.

"We are doing better, more thorough and more timely investigations but it is not enough to just uncover wage theft and issue citations; it is our job is to get the wages earned into workers' pockets," said Labor Commissioner Julie A. Su. "We are now doing this at the highest level in the history of the Division. If we are to truly enforce the law and level the playing field, this has to be our end game."

One of the largest settlements in the history of the Labor Commissioner's office was reached in July on behalf of workers of the [Hilton San Diego Bayfront Hotel project](#). The case involved 173 different contractors and over 2,000 construction workers who were reinstated a total of \$8,072,273 in wages they had earned.

In a case related to the construction of San Jose Fire Station #36, eight workers were issued payments averaging \$12,800 in owed wages. Contractor Diversified Electric Company/Applegate Johnston Inc., failed to pay the correct prevailing wage to employees classified as electrician, inside wireman and laborer. During the investigation, the employer admitted that he had submitted a low bid in order to win the contract and then was unable to pay the appropriate prevailing wage.

Among its wide-ranging enforcement responsibilities, the Labor Commissioner's office inspects workplaces for wage and hour violations, adjudicates wage claims, enforces prevailing wage rates and apprenticeship standards in public works projects, investigates retaliation complaints, issues licenses and registrations for businesses and educates the public on labor laws.

The most recent information related to California labor laws is available on DIR's [website](#) as well as on our [Facebook](#) and [Twitter](#) pages. Employees with work-related questions or complaints may call the toll-free California Workers' Information Line at (866) 924-9757 for recorded information, in English and Spanish.

Finding More Efficient Water Use Strategies



FINDING MORE EFFICIENT WATER USE STRATEGIES BEGINS WITH INDOOR WATER USE CALCULATIONS

The Plumbing Contractors of America's (PCA) held a webinar this month focusing on indoor plumbing water use calculations. The amount of water and energy savings provided by high efficiency water fixtures makes water use calculations an important factor when selecting fixtures. These calculations are also required on every LEED project. And, plumbing contractors are often required to assist in making these calculations. This webinar, led by Courtney France of France Sustainable Solutions, will take you through the calculation process and review common water saving strategies implemented on LEED projects. This webinar is free for MCAA/MSCA members as a benefit of membership. You may view the archived webinar at <https://mcaa.webex.com>. Click on "Event Recordings" and select "Calculating Indoor Plumbing Water Efficiency".

PAYMENT PRECEDENCE OVER LENDER

By Kenneth S. Grossbart

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The recent case of *Brewer Corp. v. Point Center Financial, Inc.* dealt with Stop Payment Notice claims and priority of the project funds. This particular project had a lender and various contractors, many of which ended up filing Stop Payment Notices throughout the course of the project. The lender did not withhold funds pursuant to all of the Stop Payment Notice claims that were received. The lender actually disbursed all funds and in return multiple legal actions were filed against the lender and owner (the owner filed bankruptcy).

Before getting into the outcome of the case, it is important to discuss the rights that are afforded to contractors and material suppliers. The right to a Mechanic's Lien has its roots in the California Constitution with special provisions made to protect the interests of workers or suppliers who help improve real property and await payment. There is a section which provides for a Mechanic's Lien -- a claim against the real property on which the claimant has bestowed labor or furnished material for the value of the labor done or material furnished. Subsequently, statutes were written to refine the notion, create a lien process, and specify the exact categories of persons entitled to the lien remedy.

Given this, Mechanic's Liens are intended to give contractors or material suppliers who contribute to a private work of improvement on real property a security interest in that real property for the value of their improvement. In other words, if a contractor performs on a work of improvement and is not paid, a Mechanic's Lien can be recorded and then a suit filed in order to collect what is owed.

A Stop Payment Notice is also a very effective tool to collect monies that are due for work that you have performed on a construction project, whether it is a private works or a public works project (unlike the Mechanic's Lien, which is for private works projects only). Stop Payment Notices are not as common as Mechanic's Liens, but oftentimes can be a much more effective method by which to collect monies since you are not required to physically foreclose upon a piece of real property. In effect, what you are foreclosing on is a fund of money. The holder of construction funds must set aside a sufficient amount of money from the construction fund to pay the amount of a properly prepared and served Stop Payment Notice as well as the cost of litigation. A Stop Payment Notice on a private works project must be bonded when served on the construction lender. Serving an un-bonded Stop Payment Notice on a construction lender for a private works project is essentially the same as serving a document that has no legal effect. The lender is not required to set aside any monies unless the Stop Payment Notice is bonded on a private works project.

In order to make a project owner aware of the obligations being created by a contractor or material supplier, a Preliminary Notice must be provided to the owner and any construction lender within 20 days of providing performance (whether it is labor or the provision of equipment or materials). That notice describes the work to be done or the materials provided, the name of the subcontractor or supplier, the name of the person contracting for the work or materials, the value of the work, and the fact that non-payment may result in a Mechanic's Lien or Stop Payment Notice action. One Preliminary Notice will preserve the Mechanic's Lien as well as a Stop Payment Notice right.

In public works projects, only those persons who are not in a direct contractual relationship with the direct contractor are required to serve a Preliminary Notice. That means that first tier subcontractors do not need to serve a Preliminary Notice on public works. However, if there is a lender on the project, they must also be served a Preliminary Notice, even by the direct contractor. This issue caused one of the parties in the *Brewer* case to lose their Stop Payment Notice rights - they did not serve the lender with a Preliminary Notice believing they did not need to do so since they had a direct contract with the owner. Because of this, they lost the protection that the Stop Payment Notice afforded them.

The main issue in the *Brewer* case was whether the lender's right to pay itself all interest, loan fees, and other pre-allocated expenses took precedence over the claims of those that filed and served the proper Stop Payment Notice. As you can imagine, if the lender took their money first, there would be even less for the contractors to split between them on their Stop Payment Notice claims. However, the court ruled in favor of the contractors stating that the Stop Payment Notice claims did come before the lender's fees. The court also awarded costs, prejudgment interest and attorneys fees per statute to the contractors. This is important information to have when you are involved in a Stop Payment Notice Action - the contractor's payment comes before the lender's fees. Just make sure that you follow all of the laws in place so that your Stop Payment Notice or Mechanic's Lien can help you collect your money!

[Download a PDF Copy of Payment Precedence Over Lender](#)

Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 30 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at ksq@agrlaw.com, or at www.agrlaw.com

CLC UPDATE

California's prompt payment laws are scattered throughout the state's Business and Professions Code, Public Contracts Code and Civil Code, and their applicability varies depending on the type of project, the type of payment, and who is paying.

Keeping the statutory payment requirements straight can at times become confusing. To help, below we have provided a summary of the state laws regarding payment timelines, payment withholdings and penalties.

Private Projects

- **Progress Payments – Owners to Direct Contractors**

(1) **Deadline:** An owner must pay a direct contractor within **30 days** after notice demanding payment pursuant to the contract. (Civil Code §8800)

(2) **Waivable:** Yes, waivable in writing. (Civil Code §8800)

(3) **Good Faith Disputes:** If there is a good faith dispute between the owner and a direct contractor as to a progress payment otherwise due, the owner may withhold from the progress payment up to **150%** of the disputed amount. (Civil Code §8800)

(4) **Penalty:** If an owner wrongfully withholds a progress payment it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recovery of its reasonable attorney's fees and costs. (Civil Code §8800)

- **Retention Payment – Owner to Direct Contractors**

(1) **Deadline:** If an owner has withheld retention from a direct contractor, the owner must pay the direct contractor within **45 days** after completion of the work of improvement. However, if a part of the work of improvement will become property of a public entity, the owner may condition payment of retention on acceptance by the public entity of the part of the work improvement. (Civ. Code §8812)

(2) **Waivable:** No. (Civ. Code §8820)

(3) **Good Faith Disputes:** If there is a good faith dispute between the owner and the direct contractor as to retention otherwise due, the owner may withhold from the retention up to **150%** of the disputed amount. (Civ. Code §8812)

(4) **Completion of Disputed Work:** If a direct contractor gives notice to the owner that work in dispute has been completed in accordance with the contract, the owner must give notice to the direct contractor of acceptance or rejection of the disputed work within **10 days**. If accepted, the owner must pay the direct contractor the retention withheld relating to the disputed work within **10 days**. (Civ. Code §8816)

(5) **Penalty:** If an owner wrongfully withholds retention it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Civ. Code §8818)

(6) **Applicability to Lenders:** Does not apply to a retention payment withheld by a lender pursuant to a construction loan agreement. (Civ. Code §8822)

- **Progress Payments – Direct Contractor to Subcontractors and Subcontractors to Other Subcontractors**

(1) **Deadline:** A direct contractor must pay its subcontractors, and a subcontractor must pay its subcontractors, within **7 days** after receiving a progress payment. (Bus. & Prof. Code §7108.5)

(2) **Waivable:** Yes, waivable in writing. (Bus. & Prof. Code §7108.5)

(3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor, or between a subcontractor and its subcontractor, as to a progress payment otherwise due, the direct contractor or subcontractor may withhold from the progress payment up to **150%** of the disputed amount. (Bus. & Prof. Code §7108.5)

(4) **Penalty:** If a direct contractor or subcontractor wrongfully withholds a progress payment the direct contractor or subcontractor is liable for prompt payment penalties of **2% per month** and **discipline** by the California Contractors State License Board. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Bus. & Prof. Code §7108.5)

- **Retention Payment – Direct Contractor to Subcontractors**

(1) **Deadline:** If a direct contractor has withheld retention from one or more of its subcontractors, the direct contractor must pay its subcontractors within **10 days** after receiving all or a portion of retention, unless the retention received is specifically designated for a particular subcontractor. (Civ. Code §8814)

(2) **Waivable:** No. (Civ. Code §8820)

(3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor as to retention otherwise due, the direct contractor may withhold from the retention up to **150%** of the estimated value of the disputed amount. (Civ. Code §8814)

(4) **Completion of Disputed Work:** If a subcontractor gives notice to the direct contractor that work in dispute has been completed in accordance with the contract, the direct contractor must give notice to the subcontractor of acceptance or rejection of the disputed work within **10 days**. If accepted, the direct contractor must pay the subcontractor the retention withheld relating to the disputed work within **10 days**. (Civ. Code §8816)

(5) **Penalty:** If a direct contractor wrongfully withholds retention it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Civ. Code §8818)

Note: While Business and Professions Code §7108.5 (progress payments) applies to both direct contractors and subcontractors, Civil Code §§8814 *et seq.* (retention) only applies to direct contractors.

State Public Works Projects

- **Progress Payments – Public Entities to Direct Contractors**

(1) **Deadline:** A public entity must pay a direct contractor within **30 days** after receipt of an undisputed payment request. (Pub. Contracts Code §10261.5)

(2) **Waivable:** Not addressed.

(3) **Disputes:** A payment request determined not to be proper must be returned to the direct contractor not later than **7 days** after receipt. (Pub. Contracts Code §10261.5)

(4) **Penalty:** If a public entity fails to timely make a progress payment it is subject to interest at the rate of **10% per year**. (Pub. Contracts Code §10261.5)

- **Retention Payment – Public Entities to Direct Contractors**

(1) **Deadline:** A public entity must pay a direct contractor within **60 days** after completion of the work of improvement. (Pub. Contract Code §7107)

(2) **Waivable:** No. (Pub. Contract Code §7107)

(3) **Disputes:** If there is a dispute between a public entity and the direct contractor as to retention otherwise due, the public may withhold from the retention up to **150%** of the disputed amount. (Pub. Contract Code §7107)

(4) **Penalty:** If a public entity wrongfully withholds retention it is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Pub. Contract Code §7107)

- **Progress Payments – Direct Contractor to Subcontractors and Subcontractors to Other Subcontractors**

(1) **Deadline:** A direct contractor must pay its subcontractors, and a subcontractor must pay its subcontractors, within **7 days** after receiving a progress payment. (Bus. & Prof. Code §7108.5; Pub. Contracts Code §10262)

(2) **Waivable:** Yes, waivable in writing. (Bus. & Prof. Code §7108.5)

(3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor, or between a subcontractor and its subcontractor, as to a progress payment otherwise due, the direct contractor or subcontractor may withhold from the progress payment up to **150%** of the disputed amount. (Bus. & Prof. Code §7108.5; Pub. Contracts Code §10262.5)

(4) **Penalty:** If a direct contractor or subcontractor wrongfully withholds a progress payment the direct contractor or subcontractor is liable for prompt payment penalties of **2% per month, discipline** by the California Contractors State License Board, and **termination** by the contracting agency. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Bus. & Prof. Code §7108.5; Pub. Contracts Code §§10262, 10262.5)

- **Retention – Direct Contractors to Subcontractors**

(1) **Deadline:** A direct contractor must pay its subcontractors within **7 days** after receiving all or any portion of retention, unless the retention received is specifically designated for a particular subcontractor. (Pub. Contracts Code §7107)

(2) **Waivable:** No. (Pub. Contracts Code §7107)

(3) **Bona Fide Disputes:** If there is a bona fide dispute between a direct contractor and a subcontractor as to retention otherwise due, the direct contractor may withhold from the retention up to **150%** of the estimated value of the disputed amount. (Pub. Contracts Code §7107)

(4) **Penalty:** If a direct contractor wrongfully withholds a retention payment the direct contractor is liable for prompt payment penalties of **2% per month** in lieu of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Pub. Contracts Code §7107)

Note: While Business and Professions Code §7108.5 (progress payments) applies to both direct contractors and subcontractors, Public Contracts Code §7107 (retention) only applies to direct contractors.

Public Utility Projects

- **Progress Payments – Direct Contractor to Subcontractors**

(1) **Deadline:** A direct contractor must pay its subcontractors within **21 days** after receiving a progress payment. (Civ. Code §8802)

(2) **Waivable:** Yes, waivable in writing. (Civ. Code §8802)

(3) **Good Faith Disputes:** If there is a good faith dispute between the direct contractor and a subcontractor as to a progress payment otherwise due, the direct contractor may withhold from the progress payment up to **150%** of the disputed amount. (Civ. Code §8802)

(4) **Penalty:** If a direct contractor wrongfully withholds a progress payment it is liable for prompt payment penalties of **2% per month**. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to recover its reasonable attorney's fees and costs. (Civ. Code §8802)

California State University Projects

- **Progress Payments – CSU to Direct Contractors**

(1) **Deadline:** CSU must pay its direct contractors within **39 days** after receipt of an undisputed and properly submitted payment request. (Pub. Contracts Code §10853)

(2) **Waivable:** Not addressed.

(3) **Disputes:** A payment request determined not to be proper must be returned to the direct contractor not later than **7 days** after receipt. (Pub. Contracts Code §10853)

(4) **Penalty:** If CSU fails to timely make a progress payment it is subject to interest at the rate of **10% per year**. (Pub. Contracts Code §10853)

Local Public Works Projects

- **Progress Payments – Local Public Entities to Direct Contractors**

(1) **Deadline:** A local public entities must pay a direct contractors within **30 days** after receipt of an undisputed and properly submitted payment request. (Pub. Contracts Code §20104.50)

(2) **Waivable:** Not addressed.

(3) **Disputes:** A payment request determined not to be proper must be returned to the direct contractor not later than **7 days** after receipt. (Pub. Contracts Code §20104.50)

(4) **Penalty:** If a local public entity fails to timely make a progress payment it is subject to interest at the rate of **10% per year**. (Pub. Contracts Code §20104.50)