

California Preliminary Notice (Private Works of Improvement)

This is not a lien. This notice is given pursuant to Civil Code Sections 8034(a), 8102, & 8200 et seq.

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.

DATE: _____

You are hereby notified that the undersigned has furnished or will furnish labor, services, equipment, or material of the following description:

Person Furnishing Labor, Services, Equipment, Or Material

(Name) _____

(Address) _____

(City) _____ (State) _____ (Zip) _____

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

Description Of Labor, Work, Services, Equipment Or Material Supplied/ Provided, Or To Be Supplied/Provided

The Name And Address Of Person Contracting For The Above (Your Customer) Is:

Jobsite (Street And Legal Description, If Known):

An Estimate Of The Total Price Of The Labor, Work, Services, Equipment Or Materials Provided Or To Be Provided Is:

\$ _____

To: Owner Or Reputed Owner

(Name) _____

(Address) _____

(City) _____ (State) _____ (Zip) _____

To: Direct or Reputed Direct (Prime or Original) Contractor

(Name) _____

(Address) _____

(City) _____ (State) _____ (Zip) _____

To: Construction Lender Or Reputed Construction Lender, If Any

(Name) _____

(Address) _____

(City) _____ (State) _____ (Zip) _____

Trust Funds To Which Supplemental Fringe Benefits Are Payable

(Name And Address) _____

(Only Subcontractors Are Required To Identify The Trust Fund)

If this circle checked, the names and addresses of any laborers to whom employer payments are due as of the date of this notice are contained on Attachment A, which is incorporated herein and made a part hereof.

(Signature) _____ (Date) _____

(Name of Person Signing) _____

(Title) _____

PROOF OF SERVICE AFFIDAVIT

I, _____, declare that I served copies of the above PRELIMINARY NOTICE (check appropriate circle):

- (a) By personally delivering copies to _____ (name(s) and title(s) of person served) at _____ (Address) on _____ (date), at _____ (time).
- (b) By Registered or Certified Mail, Express Mail or Overnight Delivery by an express service carrier, addressed to each of the parties at the address shown above on _____ (date).
- (c) By leaving the notice and mailing a copy in the manner provided in Section 415.20 of the California Code of Civil Procedure for service of Summons and Complaint in a Civil Action.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Signed at _____, California, on _____

Signature of person making service _____

Attach Receipts
Of Certified Or
Registered Mail
When Returned



Attachment "A" to California Preliminary Notice (Private Works)

Pursuant to Civil Code Section 8202 (b), this notice is given by a subcontractor that has not, at the time of serving the Preliminary Notice, paid all compensation due to a laborer and/or person or entity described in subdivision (b) of CA Civil Code Section 8024. Civil Code Section 8024(b) defines "Laborer" to include a person or entity to which a portion of a laborer's comepnasation for a work of imprpovement, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with a laborer or collective bargaining agent of that laborer.[DO NOT include this Attachment "A" to THE PRELIMINARY NOTICE if Attachment "S" does NOT apply]

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

(Laborer Name) _____ (Address) _____

Additional names (if any) continue on attachment sheet(s)

Instructions for Completion and Service of the Preliminary Notice – Private Works

This form is for private works only. CLCA recommends that contractors serve a different Preliminary Notice for private works than for public works.

In the event that you have any doubt as to whether your project is a public works or private works project, particularly if you are doing work where public funds are involved (as an example HUD projects), you may want to use both forms.

If you are a subcontractor, and on the date that you serve the Preliminary Notice you owe any amounts to your laborers, then you must provide an attachment that includes the names and addresses of all your laborers to whom employer payments are due. There is a check box on the front of the form to indicate that the attachment is provided for the full amount you are owed.

It is also important that your estimate of the total price of the labor, work, services, equipment or materials to be furnished is an accurate estimate, either based upon purchase orders from your contractor, or based upon your experience dealing with the particular type of project and your relationship with your customer. You should not merely guess just to fill in a number. Be as accurate as possible.

Service of the Preliminary Notice is most important. Failure to serve the notice properly — within 20 days after you first furnish labor, services, equipment, or supplies on a private work — may result in a determination that the Preliminary Notice was served improperly late and may prevent you from enforcing, in full or in part, a mechanics lien, stop payment notice or payment bond claim.

Preliminary Notices are generally served in one of four ways. The first is by personal service. The second is by first-class certified or registered mail with a return receipt. The third is by express mail. The fourth is by overnight delivery by an express service carrier. Personal service is not recommended because it is difficult to establish proof of service to the satisfaction of a court. Regardless of the method used, a Proof of Service Affidavit must be filled out by all persons and/or entities that serve the Preliminary Notice. The Proof of Service Affidavit is found on the bottom of the Preliminary Notice.

To personally serve a Preliminary Notice for a private work you must actually hand the Preliminary Notice to the following three persons or entities: 1) owner, reputed owner; 2) the prime contractor or reputed or original contractor; and 3) the construction lender or reputed construction lender. Again, personal service is not recommended due to difficulty of proof.

Service by U.S. Mail of a Preliminary Notice for a private work must be done by first-class certified or registered mail with a return receipt. The law provides that, when using the U.S. Postal Service, you must mail it in this manner. The notice, if sent by mail, must be 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 to securing a construction loan. The law does not provide that the mailing must be accepted by the recipient. Therefore, if the certified or registered mail envelope is refused, you should take the return envelope and put it in your job file and keep it there, sealed. Service is complete at the time of the deposit of that registered or certified mail. If you choose to serve by mail, you must serve every person and/or entity referred to in the Preliminary Notice and then attach the receipts of the certified or registered mail to your copy of the Preliminary Notice when returned. If you serve by express mail or by overnight delivery by an express service carrier, you must save your applicable documentation to demonstrate that service has been made.

We strongly recommend serving a Preliminary Notice at the time that the contract for work on a project is entered into. There can never be an argument that a Preliminary Notice was served too early. On the other hand, a Preliminary Notice never relates back more than twenty days and due to legislative changes effective July 1, 2012, there are some fears with respect to Civil Code Section 8116(b), which refers to a Code of Civil Procedure section pertaining to service by mail. The code section suggests that you must give an additional five days' notice due to the fact that the notice is being served by mail. (That same section also shortens that five days to two days for Federal Express mail, and there is no extension for personal delivery.) The section in question pertains to litigation matters and gives additional time for a response when something is mailed rather than hand delivered. At least one commentator has suggested that the effect of the legislation, including a reference to Section 1013 of the Code of Civil Procedure, means that a Preliminary Notice must be served no more than fifteen days after material is first delivered, or else it will only relate back fifteen days when served by mail. While we are not sure that this necessarily applies, good business practice is to serve the notice as quickly as possible to avoid any such argument.

You may also "file" this Preliminary Notice with the County Recorder where the jobsite is located. The recorder should then send you a postcard if a Notice of Cessation or Notice of Completion is recorded on the project (assuming the County Recorder's office is not too backlogged to do this). The County Recorder's failure to notify you of a Notice of Cessation or Notice of Completion however, cannot be used as an excuse for missing a deadline for recording a Mechanics Lien or serving a Stop Payment Notice or Payment Bond Claim.

If there is a bond on the project, you should also serve this notice on the bonding company in lieu of serving a separate bond notice.

Remember... You Should Serve Your Preliminary Notice Within 20 Days Of When You First Provide Labor Or Supply Materials To The Jobsite. Serving The Notice After This Time Will Result In Your Mechanics Lien Or Stop Payment Notice Or Payment Bond Claim Rights To Apply Only To The Period Of Time Starting 20 Days Prior To The Time You Served The Preliminary Notice.