

Notice, Claim & Lawsuit Deadlines

by Bernard S. Kamine and Daniel J. Phelps
(a version of this article appeared in the ECA magazine)

DEFINITIONS OF KEY TERMS	1
MISTAKE IN BID.....	3
SUBSTITUTING A LISTED SUBCONTRACTOR	4
CONFIRMING SUPPLIER'S BID	4
"OR-EQUAL" SUBMISSION.....	5
PRELIMINARY NOTICE.....	6
PAYMENT BOND CLAIM NOTICE	8
MECHANICS LIEN.....	9
STOP PAYMENT NOTICE.....	10
GOVERNMENT CLAIMS ACT	11
LAWSUITS	12

Construction activity is so important to the state's economy that assuring payment to improvers of real property - contractors, subcontractors and suppliers - was enshrined long ago in the California Constitution, with implementation left to the legislature (Cal. Const. Art XIV, § 3). For generations, the legislative tug-of-war among owners, contractors, subcontractors, suppliers and lenders has made those laws more and more complex, with numerous, confusing deadlines. Last year the legislature replaced all of the old laws by new Civil Code provisions. The players, and their lawyers, must now relearn the law, including new terminology and new deadlines. Here is a checklist of critical deadlines effective July 1, 2012 – with the new terminology, related required paperwork, and new statutory references. Also included are deadlines for bid withdrawals, subcontractor replacements, supplier bid confirmations, and or-equal submittals.

DEFINITIONS OF KEY TERMS

Work of Improvement: Construction, alteration, repair or demolition of, or on, any building or other structure, ditch, well, tunnel, road or landscaping, or the change in the

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Law PC or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information.

grade of any land (Civ. Code § 8050). In other words, a construction project.

Direct Contractor or Prime Contractor: A contractor who has a direct contractual relationship with an owner (Civ. Code § 8018). Formerly "original contractor," also often "prime" contractor.

Private Work: Any work of improvement contracted for by an owner who is not a public agency. In other words, a privately-owned construction project. Watch out for public agencies and public corporations that look like private owners. What they are, and who actually owns the land, usually will govern.

Public Works Contract: Instead of identifying the project as a "public work" (previous Civ. Code § 3100), the new statute uses the Public Contract Code definition of a "public works contract" (Civ. Code § 8038), which is one for "the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind" (Pub. Cont. Code § 1101). However, the new statute only applies to "a work of improvement contracted for by a public entity" (Civ. Code § 9000). Civil Code § 8036 defines "public entity" as "the state, Regents of the University of California, a county, city, district, public authority, public agency and any other political subdivision or public corporation in the state." But other public agencies, and sometimes private entities, can enter into the kind of "public works contract" the statute defines (see Pub. Cont. Code §§ 1100 and 1100.7 and Labor Code § 1720 et seq.). For them, the public works provisions probably ought to be followed, too.

Completion of a Private Work: Completion is generally the date when the **first** of these events occurs (Civ. Code § 8180(a)):

- (a) The work of improvement is actually completed;
- (b) The work of improvement is occupied and used by the owner and there is a cessation of labor;

-2-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information.

© KAMINE LAW, 2012

- (c) There has been a cessation of labor for 60 continuous days; **or**
- (d) A notice of cessation of labor is recorded, but only if there had been a cessation of labor for 30 continuous days before it was recorded.

However, if the private work must be "accepted" by a public entity (Civ. Code § 8036), *e.g.*, a storm drain being installed in a new subdivision by the developer, which must be "accepted" by the public agency that will operate it, then the work is not complete until the acceptance by the public agency (Civ. Code § 8180(b)).

Completion of a Public Work: Completion of a public work is the earlier of the date

- (a) When the public entity formally accepts the work; **or**
- (b) When, except for state projects, no work has been done on the project for 60 consecutive days (Civ. Code § 9200).

Watch out for projects where work stops for more than 60 days, but later starts up again; the time for stop payment notices and claims against the payment bond may run from the 61st day of the work stoppage, not the later completion and acceptance of the project (*W. F. Hayward Co. v. Transamerica Ins. Co.* (1993) 16 CA4th 1101, 20 CR2d 468). Again, these definitional changes impact deadlines for public works stop notices and bond claims.

MISTAKE IN BID

A contractor cannot refuse to honor its bid on a public work without risking a claim against the bid bond submitted with the bid. There is an exception to this rule for certain mistakes in a bid (Pub. Cont. Code § 5101). But notice of the mistake must be given under the following procedure:

Notice of Mistake in Bid: Deliver notice to the public entity within 5 **working** days, excluding Saturdays, Sundays and state holidays, after the bid opening. The notice must specify in detail how the mistake was made (Pub. Cont. Code § 5103).

SUBSTITUTING A LISTED SUBCONTRACTOR

Most bids for public works must include a list of the subcontractors who will perform more than 1/2 of 1% of the work (Pub. Cont. Code § 4100 et seq.; compare City of Los Angeles Admin. Code § 10.14 which requires listing subcontractors who will do more than 1/2 of 1% or \$10,000 worth of the work, whichever is greater). Listed subcontractors can only be changed with the permission of the public agency under the following procedures:

Notice of Clerical Error in Bid: Deliver notice to the awarding authority, the erroneously listed subcontractor, and the subcontractor who should have been listed within 2 **working** days after the bid opening (Pub. Cont. Code § 4107.5).

Objections by the Erroneously Listed Subcontractor: Deliver objections to the awarding authority and the prime contractor within 6 **working** days after bid opening (Pub. Cont. Code § 4107.5).

Notice of Other Request to Substitute a Subcontractor: No time limit for prime contractor request, but awarding authority (or its duly authorized officer) must send notice by certified mail, stating the reasons why the substitution is sought, to the subcontractor who will be substituted out (Pub. Cont. Code § 4107).

Objections to the Substitution by the Subcontractor: Deliver written objections to the awarding authority within 5 **working** days after the notice of request for substitution is sent. Failure to object amounts to consent to the substitution (Pub. Cont. Code § 4107).

CONFIRMING SUPPLIER'S BID

A subcontractor must honor its bid (a) if the prime contractor relied on that bid in preparing its own bid to the owner and (b) if the prime contractor accepts the subcontractor's bid

-4-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information. © KAMINE LAW, 2012

within a reasonable time (*Drennan v Star Paving Co.* (1958) 51 C2d 409, 413-15, 33 P2d 757). The same rule does not govern supplier's bids. Instead, the following statutory procedures apply:

Oral bid under \$2,500: Does not have to be confirmed by the contractor. Supplier is held to the bid for 90 days, or 10 days after award of the contract, whichever occurs first (Com. Code § 2205).

Oral bid over \$2,500: Confirm supplier's bid in writing within 48 hours of receipt of the bid (not 48 hours of the bid opening), in order to hold the supplier to that bid for 90 days, or 10 days after award of the contract, whichever occurs first (Com. Code § 2205).

Written bid: Does not have to be confirmed by the contractor. Supplier is held to the bid for 90 days, or 10 days after award of the contract, whichever occurs first – unless the bid specifies a different expiration date for the bid (Commercial Code § 2205).

"OR-EQUAL" SUBMISSION

Private Work: Acceptance of "equal" items is **not** mandatory on private works. However, prudent owners often include an "or equal" clause to get the most economical construction. If there is an "or equal" clause in a private work contract, it will set forth the time limit, if any, for submission of data about the proposed equal.

Sole-sourcing on State or Local Agency Public Work: Sole-sourcing of a material, product, thing or service is allowed for only four reasons, and, then, only if the awarding authority or its designee (*e.g.*, the city engineer) made a finding that one of the four reasons applies, **and** that finding is described in the invitation for bids or the request for proposals. If no such justification appears, the agency must accept equals. The four reasons are: (1) to conduct a field test or experiment of the product, (2) to match existing products in use on the particular public work, (3) to obtain a product that is only available from one source, and (4) to respond to an emergency. Public Contract Code §§ 3400(c) and 10129(b).

-5-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information. © KAMINE LAW, 2012

Time to Submit Or-equal Proposal: The contract documents can set forth the period of time prior to or after award of the contract for submission of data substantiating a request for a substitution of an equal item; if no period is specified, the data must be submitted within 35 days after award (Pub. Cont. Code § 3400 for all public agencies except those governed by Pub. Cont. Code § 10129(a), the State Contract Act for projects of state Departments of Boating & Waterways, Corrections, General Services, Transportation, and Water Resources). Subcontractors who will perform work later in the project must be alerted to the need to submit their "or equal" data within the contract time limit.

Federal Project: The or-equal requirements and sole-sourcing prohibition are contained in the Federal Acquisition Regulations and vary from job to job.

PRELIMINARY NOTICE

Penalty for No Notice: If no preliminary notice is given, no stop payment notice or mechanics lien is enforceable (Civ. Code §§ 8410, 8508(a) and 9500(a)). Failure to give the notice also bars any payment bond claim, unless the alternative Payment Bond Claim Notice, below, is given (Civ. Code §§ 8612(a) and 9560(b)).

Scope of Notice: The notice only covers labor, services, equipment or materials furnished during the 20 days before the notice was given and any furnished thereafter (Civ. Code §§ 8204(a) and 9304).

Private Work Preliminary Notice (Civ. Code § 8034(a)): All subcontractors (Civ. Code § 8046), material suppliers (Civ. Code § 8028), design professionals (Civ. Code §§ 8014 and 8300), and providers of services or equipment (Civ. Code §§ 8004, 8022, 8048, 8400, 8520), but not laborers (Civ. Code § 8200(e)(1)), must deliver a preliminary notice, or send it by certified mail, express mail, or overnight delivery by an express service carrier (Civ. Code §§ 8106 and 8110), to the reputed direct (prime) contractor, the reputed owner and the reputed

-6-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information.

© KAMINE LAW, 2012

construction lender. Trade contractors who have direct contracts with the owner are no longer considered to be subcontractors under the preliminary notice requirements (Civ. Code §§ 8018, 8046 and 8200(e)(2)). However, **all** direct contractors now must give a preliminary notice to the reputed construction lender to preserve their mechanics lien and bond claim rights (Civ. Code §§ 8200(c),(d) and (e)(2) 8410 and 8612(a)).

Design professionals must give the notice within 20 days after commencement of work (Civ. Code §8204(b)).

A notice that contains an accurate general description of the labor, services, equipment and materials provided through the date of the notice will cover everything provided after the notice, even things outside the general description in the notice (Civ. Code § 8206(c)).

Public Work Preliminary Notice (Civ. Code § 8034(b)): Neither laborers, nor anyone who has a direct contractual relationship with the direct contractor (*i.e.*, 1st tier subcontractor or supplier), has to give the notice (Civ. Code § 9300(b)(2)). Anyone else who provided labor, service, equipment or materials for the work (Civ. Code §§ 8022, 8048 and 9100), under authority from a direct contractor (Civ. Code § 8018), subcontractor (Civ. Code § 8046), architect, project manager, or other person having charge of any part of the work, must give the notice. It must be delivered, or sent by certified mail, express mail, or overnight delivery by an express service carrier (Civ. Code §§ 8106 and 8110), to the public entity and the direct contractor (Civ. Code §§ 9300 and 9302). For the California Department of Public Works (merged into Caltrans in 1972) or Department of General Services, it must go to the disbursing officer of the department constructing the work (Civ. Code § 9302).

Federal Project: No Preliminary Notice is required on federal projects. See Payment Bond Claim Notice, below.

-7-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information. © KAMINE LAW, 2012

PAYMENT BOND CLAIM NOTICE

Private Work: The following only applies to a recorded, statutory private work payment bond (Civ. Code § 8600); it does not apply to any other payment bond involving a private work (Civ. Code § 8602). No other notice is required, if a timely Preliminary Notice was given (Civ. Code § 8612(a)). If it was **not** given, the subcontractor or supplier must deliver a payment bond claim notice, or send it by certified mail, express mail, or overnight delivery by an express service carrier (Civ. Code §§ 8106, 8110 and 8614), to the payment bond surety and principal (usually the direct contractor, but can be the owner) within 15 days after a Notice of Completion was recorded, and if none was recorded, then within 75 days after completion of the project (Civ. Code § 8612(b)). An attempt has been made to prevent a subcontractor or supplier to a subcontractor (*i.e.*, 2d tier subcontractor or supplier) from saving its bond claim with the bond claim notice if the 1st tier subcontractor received all of the progress payments to which it was entitled (Civ. Code. § 8612(c) and (d)), but the language in the statute is hopelessly ambiguous and confusing.

Public Work: The following only applies to a statutory public work payment bond (Civ. Code § 9550); it does not apply to any other payment bond involving a public work. No other notice is required, if a timely Preliminary Notice was given (Civ. Code § 9560(a)). If it was **not** given, the subcontractor or supplier must deliver a payment bond claim notice, or send it by certified mail, express mail, or overnight delivery by an express service carrier (Civ. Code §§ 8106, 8110 and 9562), to the payment bond surety and principal, usually the direct contractor, within 15 days after a Notice of Completion was recorded, and if none was recorded, then within 75 days after completion of the project (Civ. Code § 9560(b)). An attempt has been made to prevent a subcontractor or supplier to a subcontractor (*i.e.*, 2d tier subcontractor or supplier) from saving its bond claim by giving the bond claim notice if the 1st tier subcontractor received

-8-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information.

© KAMINE LAW, 2012

all of the progress payments to which it was entitled (Civ. Code. § 9560(c) and (d)), but the language in the statute is hopelessly ambiguous and confusing.

Federal Project: No payment bond notice is required from 1st tier subcontractors or suppliers. Second tier and lower subcontractors and suppliers must give notice to the prime contractor (by any means providing written, third-party verification of delivery or as a summons is served) within 90 days after the **last** of the labor, services, equipment or materials were provided, stating the amount claimed and the subcontractor to whom the labor, services, equipment or materials were provided (40 USC § 3133).

MECHANICS LIEN

Notice and Proof of Service: Since January 1, 2011, no lien has been enforceable unless it included (1) a "Notice of Mechanics Lien" and (2) a "proof of service affidavit" showing that both the lien and the notice were served on the reputed owner by certified mail, or first-class mail (evidenced by a certificate of mailing), postage prepaid, addressed to the reputed owner of the property at his/her residence, place of business, address on the building permit or address on the recorded construction trust deed (Civ. Code § 8416(c)).

Direct Contractor Lien: Record lien "**after** the contractor completes the direct contract" and either (1) **before** 60 days after a Notice of Completion or Notice of Cessation is recorded or (2) **before** 90 days after completion (Civ. Code § 8412). If the owner of a project (except the owner's personal residence in a building of four or fewer units) failed to deliver a copy of the Notice of Completion or Notice of Cessation, or send it by certified mail, express mail, or overnight delivery by an express service carrier, to the direct contractor, within 10 days after it is recorded, then the time is extended to **before** 90 days after the notice was recorded (Civ. Code §§ 8106, 8110 and 8190).

-9-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information.

© KAMINE LAW, 2012

Subcontractor or Supplier Lien: Record lien "**after** the claimant ceases to provide work" and either (1) **before** 30 days after the Notice of Completion or Notice of Cessation is recorded or (2) **before** 90 days after completion (Civ. Code § 8414). If the subcontractor/supplier gave the owner a Preliminary Notice, if the project is not the owner's personal residence in a building with four or fewer units, and if the owner failed to deliver a copy of the Notice of Completion or Notice of Cessation, or send it by certified mail, express mail, or overnight delivery by an express service carrier, to the subcontractor/supplier within 10 days after it is recorded, then the time is extended to **before** 90 days after the notice was recorded (Civ. Code §§ 8106, 8110 and 8190).

Design Professional Lien: Design professionals have a special, early lien right between issuance of the building permit, or other governmental approval, and commencement of construction (Civ. Code §§ 8302 and 8304). That early lien expires either (1) when construction starts or (2) 90 days after it was recorded (Civ. Code § 8306). The early lien can be converted into a mechanics lien (Civ. Code § 8319). Once construction starts, the design professional has the same mechanics lien rights as anyone else who provides services to the project (Civ. Code §§ 8312 and 8400).

Public Works, including Federal: No mechanics lien is effective against government property (Civ. Code § 8160; *Mayrhofer v. Board of Education* (1891) 89 Cal 110, 111-14, 26 Pac 646), except post offices (*Loeffler v. Frank* (1984) 486 US 549, 100 LEd2d 549, 108 SCt 1965). On public works projects, statutory payment bonds substitute for the property as security for payment of contractors and suppliers (Civ. Code § 9550; 40 USC § 3131(b)(2)).

STOP PAYMENT NOTICE

The "stop notice" and "bonded stop notice" are now a "stop payment notice" or

-10-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information. © KAMINE LAW, 2012

"bonded stop payment notice" (Civ. Code § 8044).

Private Work – Direct Contractor: Deliver stop payment notice to the construction lender not later than either (1) 60 days after a Notice of Completion or Notice of Cessation was recorded or (2) 90 days after completion (Civ. Code §§ 8412 and 8508). If the stop payment notice is not accompanied by a bond in 125% of the amount of the claim, the construction lender can ignore it (Civ. Code § 8536).

Private Work – Subcontractor or Supplier: Deliver stop payment notice to the owner or construction lender not later than either (1) 30 days after the Notice of Completion or Notice of Cessation is recorded or (2) 90 days after completion (Civ. Code §§ 8414 and 8508). If the stop payment notice is not accompanied by a bond in 125% of the amount of the claim, or if a payment bond was recorded before the **first** stop payment notice was delivered to the construction lender, the construction lender can ignore the stop payment notice (Civ. Code § 8536).

Public Work – Direct Contractor: No stop payment notice rights (Civ. Code § 9100).

Public Work – Subcontractor or Supplier: Deliver stop payment notice to the public entity before expiration of either (1) 30 days after the Notice of Completion or Notice of Cessation is recorded, or (2) 90 days after the earlier of the date (a) when the public entity formally accepted the work or (b) when, except for state projects, no work has been done on the project for 60 consecutive days (Civ. Code §§ 9200 and 9356)

Federal Project: No stop payment notice procedure exists for federal projects.

GOVERNMENT CLAIMS ACT

Prior to suing for breach of contract, and within one year of the last breach, the

-11-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information. © KAMINE LAW, 2012

contractor must present a Government Code § 910 claim (Gov. Code § 911.2) to the public entity, in addition to any claims required under the contract. However, there are exceptions.

No Government Code claim is required for disputes arising out of state contracts (Pub. Cont. Code § 19100). Disputes on State Contracts Act contracts (Pub. Cont. Code § 10100 et seq.), for projects of the Departments of Boating & Waterways, Corrections, General Services, Transportation, and Water Resources, go directly to arbitration (Pub. Cont. Code § 10240 et seq.). Disputes on all other state contracts go to court, and must be commenced within 6 months after either (1) the agency's final written decision under the contract claims provisions (2) or, if there are no contract claim provisions, within 6 months after accrual of the cause of action.

No Government Code claim is required for disputes arising out of local agency contracts (1) if the contract includes a claims resolution procedure (Gov. Code § 930.2), **and** (2) if the contract fails to clearly state that a Government Code Claim is also required (*Arntz Builders v. City of Berkeley* (2008) 166 CA4th 276, 289, 82 CR3d 605). Otherwise, and to be on the safe side, submit the Government Code claim.

LAWSUITS

Warning: An attorney usually needs a few days to get the legal papers together. So, he or she cannot be consulted for the first time on the day before the lawsuit must be filed.

Relief from Forfeiture of a Bid Bond (when the public entity refuses to permit withdrawal of a bid with a mistake in it): File lawsuit **and** serve summons within 90 days after the date of the bid opening (Pub. Cont. Code § 5102).

Mechanics Lien: File within 90 days of recording the lien (Civ. Code § 8460). Within 20 days of filing, record a *lis pendens* (Civ. Code § 8461).

Mechanics Lien Release Bond: Commence within 6 months of date that notice

-12-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information. © KAMINE LAW, 2012

of recording the bond, with a copy of the bond, was delivered, or sent by certified mail, express mail, or overnight delivery by an express service carrier, to the lien claimant (Civ. Code §§ 8106, 8110 and 8424(d)). However, if the bond was recorded after the lawsuit to foreclose the lien was commenced, amend the complaint to proceed against the bond under the Bond and Undertaking Law (CCP § 995.010 *et seq.*; *Grade-Way Construction Co. v. Golden Eagle Ins. Co.* (1993) 13 CA4th 826, 828-37, 16 CR2d 649)

Private Work Stop Payment Notice – Direct Contractor: File within 90 days after expiration of either (1) 60 days after a Notice of Completion or Notice of Cessation was recorded or (2) 90 days after completion (Civ. Code §§ 8412, 8508 and 8550).

Private Work Stop Payment Notice – Subcontractor/Supplier: File within 90 days after expiration of either (1) 30 days after the Notice of Completion or Notice of Cessation is recorded or (2) 90 days after completion (Civ. Code §§ 8414, 8508 and 8550).

Public Work Stop Payment Notice – Subcontractor/Supplier: File within 90 days after expiration of either (1) 30 days after the Notice of Completion or Notice of Cessation is recorded or (2) 90 days after the earlier of the date (a) when the public entity formally accepted the work or (b), except for state projects, when no work has been done on the project for 60 consecutive days (Civ. Code §§ 9200, 9356 and 9502).

Stop Payment Notice – All: Within 5 days of filing, deliver, or send by certified mail, express mail, or overnight delivery by an express service carrier, a notice of commencement of the action to the people served the stop payment notice (Civ. Code §§ 8550, 9354 and 9504).

Private Work Payment Bond: File lawsuit within 6 months after completion of the project, though longer statute of limitations may apply in some circumstances (Civ. Code §§ 8609 and 8610).

-13-

KAMINE LAW PC

REPRESENTING CONTRACTORS, SUPPLIERS, SURETIES AND OWNERS SINCE 1976.

phone: 213/972-0119. fax: 213/972-0005. website: www.KamineConstructionLaw.com

DISCLAIMER: This article is offered without charge; please pass it on to others who may find it useful. Providing this article in no way creates an attorney-client relationship between any reader and Kamine Phelps, P.C. or the author(s).

WARNING: Changes in the law may affect the accuracy of this article, and the information here may not be applicable to your particular situation. You should contact an attorney before using this information.

© KAMINE LAW, 2012

State or Local Public Work Payment Bond: File **after** claimant ceases providing work, but not later than six months after expiration of either (1) 30 days after the Notice of Completion or Notice of Cessation is recorded or (2) 90 days after the earlier of the date (a) when the public entity formally accepted the work or (b), except for state projects, when no work had been done on the project for 60 consecutive days (Civ. Code §§ 9200, 9356 and 9558). The time must be counted in exactly that sequence, because the number of days in the month in which the notice was recorded affects the calculation. Thus, if the notice of completion was recorded on April 15 the limitation is: 30 days to May 15 plus 6 months to November 15 (in other words, 7 months from the recording date). However, if the notice was recorded on May 15 the calculation would be 30 days to June 14 plus 6 months to December 14 (in other words, one day less than 7 months from the recording date).

Money Withheld Under a Notice of Civil Wage and Penalty Assessment (Labor Commissioner) or Notice of Withholding for Violation of Prevailing Wage Laws (agency awarding contract): Request a hearing from the office of the Labor Commissioner that appears on the notice within 60 days after service of the notice. The hearing is an administrative proceeding, which can be reviewed by the courts. Labor Code § 1742.

Federal Project Payment Bond: File within one year after the **last** day on which labor, services, equipment or materials were provided (40 USC § 3133).