



LEGAL UPDATES

Contractors Have A Powerful Tool To Stop Work If They Aren't Paid

Contractors may have more protection from non-payment than they realize. California Civil Code Sections 8830-8848, known as the Stop Work Notice law, can be an effective tool to help a general contractor respond to an owner's failure to pay for work performed and to limit the contractor's resulting exposure to subcontractor claims.

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Contractors may have more protection from non-payment than they realize. California Civil Code Sections 8830-8848, known as the Stop Work Notice law, can be an effective tool to help a general contractor respond to an owner's failure to pay for work performed and to limit the contractor's resulting exposure to subcontractor claims. The Stop Work Notice law is a piece of the broader Prompt Payment statutory scheme created by California's Legislature. Many construction industry professionals are familiar with the Prompt Payment laws, e.g., the "150% Rule" restriction on owner withholding, and the penalty interest and attorney's fees that can be imposed for excessive withholding. The Stop Work Notice law, meanwhile, provides the general contractor with another potentially powerful, albeit rarely used, remedy against an owner who is wrongfully holding undisputed funds.

The Stop Work Notice law allows a general contractor to issue a formal, statutory Stop Work Notice to demand payment of undisputed amounts within 10 days of the Notice. The process applies only in situations where "there is no dispute as to the satisfactory performance of the contractor," and the general contractor "is not paid the amount due... within 35 days after the date payment is due." (Compare: the "Prompt Payment" statute where an owner can withhold up to 150% of amounts in a "good faith dispute" – a standard that is broadly defined in the case law.) If the owner does not comply with a Stop Work Notice, the contractor and subcontractors may (notwithstanding whatever the owner-contractor agreement says on the issue) stop their work. Civ. C. §8842. In addition to shutting down the project, the contractor (or the owner or the contractor's surety) can immediately file suit and obtain expedited trial date ("... and shall take precedence over all other cases."). Civ. C. §8844. This is a significant component of the Stop Work Notice law remedy because preferential treatment for civil lawsuits is rarely given.

Before issuing the Stop Work Notice, the contractor is required to post a five-day Notice of Intent to give a Stop Work Notice at the site, and notify all first tier subcontractors. When the owner receives a Stop Work Notice, it is required to give a copy to the construction lender. If the notice and posting requirements are met, the contractor, the subcontractors and the sureties are not liable for any delays on the project as a result of the work stoppage. In addition, the general contractor's liability to the subcontractors is limited to the amount the

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subcontractor could otherwise recover under its mechanic's lien/stop notice rights. Civ. C. §8838.

The Stop Work Notice law has a narrow application because, even if an owner doesn't assert a "good faith" dispute to justify amounts withheld, it very likely would assert some dispute and thereby seemingly avoid the Stop Work Notice law. However, by using the Stop Work Notice law as a sword, an aggressive contractor could challenge the owner by arguing there actually is no dispute over the unpaid work, and exercise its statutory rights to shut down the project and pursue the expedited proceeding remedy in court. This could be a powerful mechanism to exert leverage against the owner.

In considering whether to pursue the expedited hearing, both sides should be aware that the scope of the expedited hearing will be limited to the amount claimed under the Stop Work Notice, and the issue before the court will be limited to whether there really is "no dispute as to the satisfactory performance of the contractor" for that particular claim. The procedure, consequently, is not an invitation to "bootstrap" all claims on the project that may be in dispute. The parties also should be aware of the potential applicability of an attorney's fees recovery clause in their contract (e.g., a clause providing for the award of attorney's fees and costs to the prevailing party in any action arising under the contract). Outside of the potential recovery under such a contract provision, there is no statutory entitlement to attorney fees under the Stop Work Notice law.

The priority access to the civil court system is a unique feature of this statute, and utilizing the process may be an effective mechanism/leverage point to force the issue, for better or for worse, particularly in circumstances where a project is in financial distress and there is uncertainty over continued funding. Under circumstances where funding is either suspended or delayed or even cut off for undisputed payments due to the general contractor, the right to stop the work and take the owner to court with precedence over "all other cases" can be quite valuable. Even if the process allows the general just to limit its exposure to subcontractors, mitigate its own damages, and achieve a prompt closure on a terminated project, when an owner doesn't pay, contractors should analyze the situation carefully to determine if the Stop Work Notice laws can be used to their advantage.

Should you have any specific questions regarding these issues, please contact any member of our Construction team.