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Advice to Contractors During Difficult Times: Zealously Protect Your Collection Rights by Using the Proper Forms and Heeding Deadlines

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Addressing Payment Delays

In these difficult times for the local construction industry, some private project owners are slow to release final progress and retention payments at the end of a project. Unpaid contractors are well advised to sit down with the owner's representative **at the first sign** of unusual delays to try to determine the reasons why payment is not forthcoming. The recurring question for contractors is how to strike a balance between maintaining relationships with private owners (so that they continue to give you work), while zealously preserving all possible avenues for payment. The most important advice to heed if you want to preserve all possible payment remedies is to timely and properly mail (or record, where applicable) the following forms:

- The "Preliminary 20-day Notice (Private Work)" form within 20 days of your first contribution to the project (or as soon thereafter as possible).
- The "Mechanic's Lien" form.
- The written "agreement for extension of time to enforce mechanic's lien," which continues the lien in force until 90 days after expiration of the negotiated period of extension or "credit," but in no case longer than one year from the time of completion of the project.
- The lawsuit to foreclose the mechanic's lien, etc., which must be filed within 90 days after the date of recording the mechanic's lien (unless the deadline is properly extended).
- A "Stop Notice" (i.e., notice to withhold construction funds).
- A written payment bond claim directed to any payment bond surety and the bond principal (the owner).

Timing the Recording of a Mechanic's Lien

The time to record a mechanic's lien is fixed by California law and depends on whether a Notice of Completion was recorded or not, and whether the lien claimant is a prime contractor or a subcontractor, supplier, etc. If you are unsure about the timing of recording your mechanic's lien, consult with counsel to be sure you are timely.

Do not fall prey to an owner's offer to extend your time for *recording* a mechanic's lien so that the two of you can

"work things out." The initial deadline for recording a mechanic's lien cannot be extended, even if both you and the owner agree in writing. Therefore, it is critically important that a contractor record a mechanic's lien if the time to do so is about to expire and the contractor has not yet actually *received* payment. Should the contractor and the owner need more time to negotiate a resolution of a pending payment dispute, an extension of "credit" (i.e., an extension of time to file a lawsuit) can be used to extend the filing deadline.



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Murphy Austin Adams Schoenfeld LLP's Construction Law Team was awarded a Tier One Ranking in the U.S. News & World Report - Best Lawyers "Best Law Firms" 2010 report.



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