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Make Time for Change: *Now is the Time to Understand the Upcoming Overhaul of California's Statutory Remedy Laws Affecting Public Entities, Private Owners, Contractors, Design Professionals, Engineers, Material Suppliers and Others.*

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To comply with the new statutory requirements, which will go into effect on July 1, 2012, it is essential that contractors, suppliers and other claimants on private and public works of improvements understand the new mechanic's lien law. **Any claimant that fails to either comply with the new notice requirements or update their notice forms (including the preliminary notice, mechanic's lien and stop payment notice forms) risks waiving their statutory rights.**

History

California's mechanics lien rights, which are the only creditors' remedy derived from the California Constitution, have been in existence since California became a state in 1850. Mechanics lien rights have been fairly consistent throughout their existence in California, with the initial comprehensive statutory plan being enacted in 1872, with an overhaul in 1951. Since 1951, however, only minor adjustments have been made to the mechanics lien statutes, thus enabling owners, contractors and material suppliers to have a consistent set of rules and case law that outlined the precise requirements needed to protect their respective interests.

Change in the Law

The California legislature has completely reorganized the mechanics lien statutes, primarily based upon the passing of Senate Bill 189 ("SB 189") and related legislation. The new legislation was an effort to make the statutes easier to read and provide substantive changes to more adequately reflect the current practices and nomenclature in the construction industry. One of the key changes involves organizing the statutes into three categories: **general requirements; private works requirements; and public works requirements.** Though the legislature did not intend to change the substance of a majority of the statutes, the new legislation requires all claimants to update almost all of their statutory and other forms and some of their business practices.

Key Modifications

- SB 189 provided modifications to fundamental nomenclature within the statutes, such as:
 - ✓ **“Direct Contractor”** replacing **“Original Contractor,”**
 - ✓ **“Preliminary Notice”** replacing **“20-Day Preliminary Notice”**
 - ✓ **“Stop Payment Notice”** replacing **“Stop Notice”**
- Moreover, the statutes were reorganized, causing all current claim forms to become obsolete on July 1, 2012.
- There are critical changes in the notice requirements for mechanics liens, stop notices, and payment bond claims.

Construction Industry Insight

There are no provisions in the new law to bridge construction contracts issued prior to the change in the law. Notice requirements, changes in forms and other contractual accommodations must be included in contracts **starting now** to accommodate the changes effective July 1, 2012.

Gibbs, Giden, Locher, Turner & Senet, LLP has been a construction industry legal services leader for over thirty (30) years. We provide ongoing legal education to the construction industry and are currently offering seminars concerning the new statutory remedy laws in California to clients, prospective clients, and friends of the firm.

Our 18th Annual Review Preview Construction Law Seminar, held on January 26, 2012, will provide attendees with an overall California legislative and case law update including the changes outlined above.

Please visit our website at <http://www.gglts.com/event> to register for this event online.

Questions or Comments? Contact Us at:

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