



MFC NEWS

“Building Understanding”

MFC will find out the truth about buildings and answer the hard questions.

Summer 2012

Volume 7 Issue 3

What’s New at MFC...

MFC Inspector/Consultants participated in 4 joint experts meetings, testified in 1 deposition, arbitrated 2 disputes, mediated 2 disputes, and performed 226 site inspections from January through June 2012.

~

In June we welcomed our new Administrative Assistant, Diana Dake, who has an extensive background in graphic design and office management. We're glad she's here. You will have her friendly support when you call.

Quote of the Day

If you cannot be on the project each day to check on things, then you should not try and be your own contractor.

~ Robert Metcalfe

What’s Wrong in this Photo?



Our thanks to inspector Chris McDougall for the photo in this issue. Chris may be reached at Apex Home Inspection: 831-566-2258.

Wisdom Corner

Thank you to Chris Hersey and Jeff Lisenbee of Miller, Morton, Caillat & Nevis, LLP, for contributing this update on important laws.

There are numerous changes to California’s existing mechanics lien and construction laws that took effect on **July 1, 2012**. The new laws contain significant changes that affect owners, contractors, and lenders, including the use of new forms for proving preliminary notice and releasing claims for payment. Understanding these changes is a must for anybody involved in California construction projects.

Following is a summary of the significant changes that took effect on July 1, 2012.

Where can you find the new laws?

The previous mechanics lien laws were codified in §§ 3082-3268 of the California Civil Code. Beginning July 1, 2012, however, those sections were repealed and the mechanics lien laws were recodified in §§ 8000-9566 of the Civil Code. The new code provisions, unlike the old ones, are segregated into general provisions that govern (1) all works of improvement, (2) private construction projects, and (3) public jobs.

What are the major changes?

In addition to several important changes in terminology (e.g., the term “original contractor” in the existing law has been replaced with the more descriptive term “direct contractor” to define all contractors that are in direct contractual privity with the project owner), there are four specific substantive changes in the law that will immediately affect your construction project.

continued on page 2

Wisdom Corner...continued from page 1

The four substantive changes include:

Preliminary Notices – Formerly called 20-Day Preliminary Notices, subcontractors and material suppliers expecting to have mechanics lien or stop notice rights must still serve a Preliminary Notice. But, there are two important changes to be aware of: (1) the specific language of the new Preliminary Notice has changed and can be found in new Civil Code § 8202, and (2) the new laws clarify that any contractor in a direct contractual relationship with the owner is now required to provide Preliminary Notice to the construction lender.

Completion – Under the new laws, “acceptance by owner” is no longer the equivalent of completion for private works of improvement. “Completion” for private works occurs upon (i) actual completion of all work on the project, (ii) occupation or use by owner accompanied by a cessation of labor, or (iii) a cessation of labor for 60 continuous days (or 30 days after recordation of a notice of cessation). For a public work of improvement, completion may continue to be achieved by the public entity’s acceptance of the project.

Notices of Completion – One of the most significant changes in the new laws is that owners working with multiple “direct contractors” will now be allowed to record a separate Notice of Completion with respect to each direct contractor’s scope of work. This change can greatly affect claimants’ time periods relating to mechanics liens, stop notices, and payment bond claims. Additionally, owners of either a public or private work of improvement will now be entitled to record a Notice of Completion within 15 days following actual completion (previous law requires the Notice be filed within 10 days).

Waiver & Release Forms – The forms used by contractors to request and confirm payment, called Waiver and Release forms, are changing. Accepting the old forms from contractors and subcontractors may no longer be sufficient to protect the project owner and lender from further payment claims. The new forms can be found in Civil Code §§ 8132-8138.

In addition to the changes explained above, the new laws also revise provisions regarding payment bond claims, limit the amount of retention that can be withheld on public jobs, and change the laws regarding the procedures for bonding around or expunging invalid mechanics liens.

If you wish to discuss the broader implications of these new laws or have any questions regarding its impact on your situation, please contact Myles F. Corcoran Construction Consulting, Inc., or attorneys Chris Hersey or Jeff Lisenbee of Miller, Morton, Caillat & Nevis, LLP, at (408) 292-1765:

Christopher J. Hersey, Partner
chersey@millermorton.com

Jeffrey R. Lisenbee, Associate
jlisenbee@millermorton.com

About MFC News

MFC News is the e-zine published quarterly by the Editorial team at MFC Construction Consulting, Inc. It is circulated to our colleagues in the construction and construction-related fields.

Please help us make this a “Construction Community” endeavor by sending us your feedback, comments, wisdom, and ideas for future issues. Call 831-476-4502 or email us at: mfcnews@mfcbuild.com.