

Preliminary 20 Day Notices Are Still Valuable In This Down Real Estate Market

By Tim Ducar

To record a mechanic's lien, the lien claimant must have sent out a preliminary twenty day notice ("20 day notice"). Many people have questioned whether 20 day notices are still cost justifiable. Also, people have questioned whether 20 day notices are effective for roofers when they are performing maintenance work. Finally, others are unsure about whether a 20 day notice will cause tension with the owner or general contractor. This article will address these questions.

In this market, 20 day notices are still valuable collection tools for four reasons. First, irrespective of the health of the real estate market, many owners or generals give priority to paying contractors who have submitted 20 day notices. Owners who receive 20 day notices who are using generals are more likely to pay a subcontractor using a joint check or to ask for a waiver and release on payment, both of which greatly increase the subcontractor's chances of getting paid.

Second, if the loan on a property is not being paid, the lender will foreclose the deed of trust that secures the loan. In that case, if the deed of trust was recorded prior to ten days after the commencement of the project, the foreclosure of the deed of trust will eliminate, or "wipe out", the mechanics liens on the project. However, most construction projects do not have these issues with the lender. Thus, in the overwhelming majority of cases, the owner will pay the amount of the lien to have the lien removed.

Third, mistakes happen from which you could benefit if you have served a 20 day notice and recorded a lien. Banks are refinancing, buying and selling loans more than ever. In more circumstances than one would expect, during the refinance or buy/sell process, the bank may make a mistake and lose priority over the lien. In that situation, the bank will likely pay the lien.

Fourth, having a 20 day notice prepared will enable

you to serve a stop notice. In many circumstances, an unbonded stop notice that is served upon the lender will cause the lender to cut off payments to the owner or general contractor on the project until the issue of whether payment is due is resolved.

I recommend any roofer to have a 20 day notice prepared at the beginning of any installation or maintenance project that is in excess of \$750.00. I do not recommend them for projects valued less than \$750.00, as the expense and time become harder to justify. And, recall that to record a lien on homes, you need a written contract with the homeowner.

The requirement of a written contract with an owner-occupant can prove to be impractical for maintenance projects.

While 20 day notices provide valuable information to lenders and owners, 20 day notices do not affect credit histories or Dunn and Bradstreet ratings of the owners. Occasionally, an owner can become offended when it receives a 20 day

notice. However, at the outset, the 20 day notice is not recorded in the recorder's office or filed in court. It is a private document that no one knows about except the lender, owner, and, if there is one, the subcontractor with whom you contracted. A lender who receives a 20 day notice will not decide to stop funding based upon its receipt of a 20 day notice.

You should choose a reputable lien preparation company to prepare your 20 day notices. This is because it is very easy to make a mistake on a 20 day notice. While you may be able to use the erroneous 20 day notice, it is better to avoid the error by allowing a lien preparation company to prepare the 20 day notice, particularly because the charge for having a 20 day notice prepared is quite reasonable.

In summary, 20 day notices should be used on installation and maintenance projects. They are cheap insurance that will greatly enhance your chances of getting paid.



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