



## **The Green Law Group, LLP**

Construction and Business Attorneys

1777 E. Los Angeles Ave.

Simi Valley, CA 93065

---

### **What to Do When You Are Not Paid in Accordance With Your Contract**

#### **Create a paper trail.**

Payment disputes often take months, if not years to resolve. The lawyers, mediators, arbitrators, judges and/or jurors who may someday be deciding the outcome of your case will be looking carefully at the key documents that were created by both sides at the time of the dispute. Witness testimony is important, but if you have not taken the time and effort to accurately document and maintain the key evidence in support of your claim, your chances of ultimately prevailing will be diminished.

To create a strong paper trail promptly follow-up your unpaid invoices with a written request for payment. When you write your follow-up letter make sure to ask for payment and include a request for a written explanation if your customer disputes your right to payment.

#### **Respond promptly to requests for additional information.**

If your customer responds to your request for payment with a complaint about your performance, make a good faith effort to resolve the dispute. If you can't reach an agreement, consider offering a written compromise.

#### **Keep the tone of your writing reasonable and act in good faith.**

When writing keep in mind that although your letter is addressed to your customer that the ultimate reader may be a judge or jurors who will be ruling on your dispute. Judges and jurors tend to respond favorably to parties that act reasonably and in good faith by honestly addressing complaints.

#### **Besides writing letters what other documents are part of a good paper trail?**

Other than your correspondence, the key documents are your contract, preliminary notice, change orders, invoices, and your customer's correspondence.

#### **What should I look for in the contract?**

Review the contract's payment requirements to make sure your invoices are in compliance. Specifically, check to make sure that you invoiced on time, correctly calculated the amount due, used the correct form, included required supporting documents, and provided the appropriate lien release (conditional progress, unconditional progress, conditional final, or unconditional final release).



## **The Green Law Group, LLP**

Construction and Business Attorneys

1777 E. Los Angeles Ave.

Simi Valley, CA 93065

### **When do I need a Preliminary Notice?**

Unless your contract was directly with the property owner, California law requires that you provide written notice to the property owner, general contractor, and construction lender that you are working on the project and expect to be paid for your work. That notice requirement is fulfilled by mailing a Preliminary Notice to the owner, general contractor, and construction lender by certified mail. To fully protect your rights, Preliminary Notices should be mailed no later than the 20th day after you first provide labor, materials, or equipment to a project. If your Preliminary Notice isn't mailed on time, a late notice may still preserve a portion of your claim and help you get paid. Sending a Preliminary Notice puts you in a position to secure your claim for payment with a mechanics lien, stop payment notice, and/or payment bond claim.

### **What if my requests for change orders are not approved?**

Payment disputes over change orders for extras are extremely common. Most well drafted construction contracts require that change orders for extra work be approved in writing prior to performance, yet change order work is often performed before the paperwork is completed. If you perform extra work without prior written approval, create a paper trail by drafting a letter to your customer explaining (1) why the work was performed, (2) who requested the work, (3) the cost of the work, and (4) whether the extra work will impact the completion schedule for the project. Close the letter by requesting that your customer let you know if any additional information or documentation is necessary to process your payment request.

### **What approach should I take when I write to create a paper trail to document our position?**

Make sure your facts are accurate, keep the tone of your writing reasonable, and request a written response to your letter within 2 to 5 business days. If you get a written reply, write back to correct any misinformation in the reply and offer a compromise to resolve the dispute. If you don't get a written reply to your first letter within the time frame you requested, then write a follow-up letter confirming the lack of a reply and state your assumption that the absence of a reply indicates agreement with the facts and requests outlined in your original letter.

### **What about protecting my lien rights?**

Whenever you're involved in a payment dispute, keep your eye on the clock because your lien rights can expire as soon as 30 days from the completion of the project. When in doubt about the time remaining to protect your rights with a lien, stop payment notice, or bond claim, take action as soon as possible to avoid unintentionally losing your rights.



## **The Green Law Group, LLP**

Construction and Business Attorneys

1777 E. Los Angeles Ave.

Simi Valley, CA 93065

### **When should I take legal action?**

If you record a mechanics lien to secure your claim, keep in mind that a lien is only good for 90 days from the date of recording. Unless you file a suit to enforce and foreclose the lien before the expiration of the 90 period, you may lose your lien rights. If time allows, before filing a suit, consider sending a collection demand letter from an attorney. In the last several years California has enacted some very effective prompt pay statutes to help contractors collect past due accounts. These statutes provide for the recovery of interest, penalties, and attorneys' fees for successful claimants. A well written demand letter citing the statutory penalties for late payments and your strong paper trail may prompt your customer to pay your invoice to avoid a losing in court.

If you have any questions or comments regarding this article, please do not hesitate to contact Scott Green at The Green Law Group, LLP.

*Please note that this article is only intended to provide some general educational information. For your particular legal questions, be sure and consult with an attorney.*

Scott Green

(805) 306-1100, ext. 114

Email: [Scott@thegreenlawgroup.com](mailto:Scott@thegreenlawgroup.com)

