Are There Any Exceptions to California's Preliminary Notice Requirements?

Short answer: Yes, there is a limited exception recognized by California Courts...but you should be very careful when relying upon it.

Long answer: As a general rule, if you did not contract directly with the property owner on a California construction project, you must deliver a "20 Day Preliminary Notice" within 20 days of first furnishing labor and/or materials to the construction project.

Unfortunately, life happens, and sometimes your stuck unpaid on a construction project when you failed to send your preliminary notice. And you may find yourself wondering...are there any exceptions to the rule?

If you know anything about law, you know that there are exceptions to every rule, and it's no different with the California preliminary notice rule. However, it's a very, very limited exception, and you should be very careful when relying on it because whether you're entitled to the exception or not will depend on a judge's decision. The judge's decision could go either way, because if you ever get to a judge on the question, it's certain that your position will be opposed by the property owner, and the judge will be required to decide who is lying and who is telling the truth. Whenever a dispute comes down to this - a swearing contest - it's bad news, and there's a large risk of loss.

Nevertheless, an exception has been recognized in *Truestone, Inc. v. SIMI West Industrial Park II*, 163 Cal.App. 3d 715 (Cal. App. 2d 1984). There, the courts held that an owner with actual knowledge of a particular party's involvement with a construction project cannot challenge a mechanic lien based on not having notice that the particular party was on the project. Here are the court's words exactly:

> In some cases, even where there is no contractual relationship between the parties, actual knowledge may estop the property owner from asserting the notice requirements of section 3097. The extent of the property owner's knowledge and the time it was acquired may be a significant variable. Section 3129 establishes a presumption that all construction work performed on property with the owner's knowledge "shall be held to have been constructed, performed, or furnished at the instance of such owner . . . ." Therefore, where a work of improvement is completed on leased land under contract with a lessee of the property, a statutory exception to the notice requirement of section 3097 applies.
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> "The noncontracting owner is placed in the position of a party to the contract by the conclusive presumption that the work was done at his instance and request." (Halspar, Inc. v. La Barthe (1965) 238 Cal.App.2d 897, 899 [48 Cal.Rptr. 293].) The lessor-owner with actual knowledge may be

> estopped to deny the validity of the lien because the lessee is viewed as his agent. (M. Arthur Gensler, Jr. & Associates, Inc. v. Larry Barrett, Inc. (1972) 7 Cal.3d 695, 707 [103 Cal.Rptr. 247, 499 P.2d 503].) Similarly, the lien of a firm which supplied architectural and engineering services to real property under a contract with the original owner-developer is enforceable against the subsequent transferees of the property on an estoppel theory. (Scott, Blake & Wynne v. Summit Ridge Estates, Inc. (1967) 251 Cal.App.2d 347 [59 Cal.Rptr. 587].)

Notice that the court says "the extent of the property owner's knowledge and the time it was acquired may be a significant variable." This translates to mean the courts will have very wide dissection in determining whether the knowledge was or was not sufficient enough to forgive a lien claimant for not sending its preliminary notice. This is a very thin exception to the preliminary notice rule...but nevertheless, an exception.

So, if you didn't send preliminary notice, but the property owner knew you were on the project and knew you were performing work, and had that knowledge within 20 days of you first starting to furnish the labor and/or materials, you may have a chance at proceeding with your lien claim despite the defect in notice.

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