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Legal Survival Tip for Today's Construction Industry: Serve a Stop Notice on Private Projects

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Most contractors and material suppliers are familiar with the protections afforded by California's mechanic's lien law on private works of improvement, however, many are not as familiar with the stop notice remedy. Any claimant who has mechanic's lien rights also has stop notice rights. In today's real estate and economic rollercoaster, it is vital that contractors and material suppliers pursue all available avenues of recovery, especially the stop notice, which can be a more effective weapon than a mechanic's lien.

What is a "stop notice"?

A stop notice on a private work of improvement is a notice to the owner or construction lender to withhold construction funds to satisfy a claim for unpaid labor or materials. Rather than attaching to real property like a mechanic's lien, the **stop notice creates a lien on the construction loan fund, or on money in the hands of the owner.** Therefore, while a mechanic's lien is generally beneficial only if the owner has sufficient equity in a project, **the stop notice is effective whenever the lender or owner is holding undisbursed construction funds.**

Legal Survival Tip:

In the current market, lien claims are more likely to be worthless when prior encumbrances, such as a timely recorded construction loan deed of trust, exceed the market value of the property. This is especially true when a job is abandoned before completion. In this situation, however, the lender is likely still holding a substantial construction loan fund. For this reason, claimants should consider the stop notice and mechanic's lien as complementary, rather than alternative, remedies and should pursue both rights vigorously.

There are strict procedural and timing requirements that must be followed for a claimant to properly enforce a stop notice claim. For that reason, it is essential that claimants expeditiously contact their legal counsel to assist them with serving and enforcing stop notice claims. Effectively pursuing all avenues of recovery could mean the difference between survival and failure in today's financial uncertainty.