

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable To: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): \$ _____

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.
-

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Overview

This guide explains how to fill out a California lien waiver. California is one of **12 states that has regulated and statutorily provided lien waiver forms**. This means that you should use the *specific lien waiver forms* on all California projects. If you're tempted to add language - don't! Even something as simple as notarizing a form can affect its validity. This guide covers fields included in all 4 types of California lien waiver, so some fields may not be applicable depending on your waiver.

Choosing the Right Lien Waiver Form

There are 4 types of lien waiver, and the first step to exchanging a lien waiver is selecting the right form.

- Conditional Waiver and Release on Progress Payment
- Conditional Waiver and Release on Final Payment
- Unconditional Waiver and Release on Progress Payment
- Unconditional Waiver and Release on Final Payment

A **conditional waiver** waives the signor's lien rights conditioned upon the occurrence of some other event (generally actual receipt of payment). There are two types of conditional waiver: waivers for **progress/partial payment** (which apply to a portion of the contract value) and waivers for **final payment** (which apply to the entire contract value).

An **unconditional waiver** goes into effect as soon as it is signed - even if payment has not yet been made. Just like conditional waivers, there are two types of unconditional waiver: waivers for **progress/partial payment** and waivers for **final payment**.

The Fields in a California Lien Waiver

NAME OF CLAIMANT

This is the name the party receiving the payment, and the party who will ultimately sign the lien waiver document. Remember to identify the name of this party correctly. This sounds simple and straightforward, but it's very common to write the name of companies incorrectly, to miss designations like Inc., LLC, etc., or to refer to DBAs incorrectly. See: **3 Mistakes When Claimants Make When Identifying Themselves**.

NAME OF CUSTOMER

This is the name of the party who hired the "Name of the Claimant," and *usually*, the name of the party who will be actually making the payment. It's possible that the party making the payment is not the "name of customer," for example, if a property owner (paying party) is making payment directly to a subcontractor (name of claimant). In this instance, the "name of the customer" would be the general contractor. This scenario is typical when the parties are paying with **joint checks**.

Ready to get started?

Click the button to the right or visit waiverexchange.com to send a waiver online for free.

SEND A WAIVER

JOB LOCATION

Do your best when identifying the job location – which is the physical place where the work was performed or where the materials were incorporated into the project (i.e. not where the materials were shipped!). There are a lot of **very strict requirements when identifying the job location in a mechanics lien claim**, but the requirements here are much more relaxed. A physical address will do just fine here.

OWNER

This field should identify the property owner(s). Again, while this is pretty straight-forward, nuances about ownership could cause confusion. Here are some suggestions in common complex ownership scenarios:

- **Multiple owners:** List of all the owners
- **Work done for a tenant:** List the tenant and the property owner(s)
- **Work managed by a construction manager:** List the owners, not the managers
- **On Public Projects:** List the government office that commissioned the work
- **P3 Projects:** Identify developers

THROUGH DATE

This field is **very specific to “progress claim” lien waiver forms** (not relevant for final waiver forms), and is very important. In fact, it’s worthy of having an entire guide to itself. What you put into this field is the most consequential field you’ll complete, and that’s because it determines what is waived and what is not waived by the document. The party signing this lien waiver document is agreeing to waive their claims for *all work* completed on or before the date entered into this field. Accordingly, the “progress payment” should completely compensate the waiving party for all work before on or before the date entered. Be careful that you identify the correct date (related to the work performed and paid for), and not just the date of the related payment application (which is irrelevant).

MAKER OF THE CHECK

This field is straight-forward if the payment is being made by check, but admittedly, it’s a little confusing if payment is being made by ACH, credit card, or something other than check. You’ll want to use common sense. In every case, there is a “paying party,” and that is the party who should be identified here.

AMOUNT OF THE CHECK OR \$

This is the dollar amount of the payment. If payment is being made by ACH, credit card, or something other than a check, use common sense, and just enter the amount of the payment in this field.

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SEND A WAIVER

CHECK PAYABLE TO

This field can be a little more confusing than the “maker of the check” and “amount of the check” fields, especially for payments made electronically or through some other payment method (i.e. cash!). Ultimately this field should list the party receiving payment. It’s possible that more than one party can receive the same payment, as is the case with **joint checks**, and in that instance you’ll want to put all parties here who are listed on the check.

EXCEPTIONS

Lien waiver exceptions can be tricky. The trouble with many lien waivers is the language frequently waives “everything” up to a certain date, irrespective of what may be excluded by the pay application (i.e. retainage, pending change orders, etc.). Subcontractors must be very careful with this.

California’s statutory lien waiver forms handle this issue fairly well. The Progress Payment lien waivers in California have certain things exempted from the waiver by default, which is great for the parties signing the waiver, as they don’t have to argue about these things. Retention and retainage is excepted by default, as are “extras for which the claimant has not yet been paid,” and “contract rights.” If you have *anything else* that should not be waived, include it in the exceptions area. The following fields may be applicable for progress payment waivers:

- **Date(s) of Waiver and Release:** This field should list the dates of any waivers previously signed for on this project, if payment has not been already received on those waivers. If nothing applies here, you can write-in N/A, or leave it empty.
- **Amount(s) of Unpaid Progress Payment(s):** In this field, you’ll list the amount(s) of the earlier unpaid progress payment(s), if any.

CLAIMANT’S SIGNATURE

This is the signature of the individual signing the document on behalf of the claimant.

CLAIMANT’S TITLE

This field should list the job title or role of the individual signing the document.

DATE OF SIGNATURE

This is simply the calendar date that the document is signed.

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