

Completion and Its Effect on Deadlines

By David J. Barnier

Many experienced contractors are familiar with the rule that a mechanic's lien must be recorded within 90 days of the completion of a work of improvement, or, if a valid notice of completion is recorded, within 30 days of the recording date of the notice of completion (or within 60 days of the recording date if the contractor contracts directly with the property owner). The deadlines for serving stop notices and payment bond claims are similarly affected by the determination of the date of completion.

However, there always exists the factual issue of "What was the date of completion?"

California Civil Code Section 3086 defines completion. In summary, completion has occurred when: 1) a property owner accepts the work after all work is performed, 2) the owner occupies the property in conjunction with a cessation of work, or 3) a period of 60 days has passed after work ceases (or 30 days after the recording of a valid notice of cessation by the property owner).

Completion is defined for each individual contract entered into by a property owner. If a property owner enters into six separate contracts for six separate units within a shopping center, there will be a separate date of completion for each of the six contracts, with each completion date determining the deadlines for mechanic's liens, stop notices, and payment bond claims on that particular unit. Each of those six subcontracts would be deemed complete upon the occurrence of any of the three conditions listed above.

A property owner does not "accept" the work until the owner accepts ALL work to be performed under that contract. If the scope of work is diminished and the owner occupies the property and no additional work is performed (i.e., work ceases), completion is deemed.

On public works of improvement on which work is subject to acceptance by a public entity, the date of acceptance is deemed to be the date of completion. Completion is also deemed to exist thirty days after work ceases on a public job.

The date of completion is important whether or not a notice of completion was recorded.

If no notice of completion is recorded, then the date of actual completion starts the 90-day deadline to record a mechanic's lien claim (and other deadlines for stop notices and payment bond claims).

If a *valid* notice of completion is recorded, the 90-day window for the recording of a mechanic's lien shortens to 30 days for subcontractors and 60 days for contractors that contracted directly with the property owner.

However, *a notice of completion is only valid if it is recorded within ten days after the date of actual completion* (and if the other requirements are met, such as the inclusion of certain information on the face of the notice of completion). Therefore, even if a notice of completion is recorded, the issue of the date of actual completion remains relevant to determine whether the notice of completion is valid, and whether the 90-day window for the recording of a mechanic's lien is shortened.

If a notice of completion is invalid for any reason, then the notice of completion is irrelevant to the determination of the deadline to record a mechanic's lien, to serve a stop notice, to make a payment bond claim, etc. The date of actual completion then determines the 90-day deadline.

Contractors should recognize that a notice of completion might be invalid for one or more reasons. An experienced construction attorney should be retained on any legal dispute on a construction job, but especially if it appears that a property owner may not have recorded a notice of completion within the ten-day window.

David Barnier is an attorney with the law firm of Barker Law Group in San Diego, California. He may be reached at (619) 682-4040 or at djb@barkerlawgroup.com.



David J. Barnier, Attorney

Direct: (619) 682-4842
djb@barkerlawgroup.com

Practice Areas:
Construction Law
Business Litigation

Bar Admissions:
California, 1995
Nevada, 1996

Education:
J.D. from the University of Southern California, 1995
B.S. from the University of California, Berkeley, 1992

Summary:

Mr. Barnier is an attorney practicing general business litigation with an emphasis on construction law and a particular emphasis on litigation involving breach of contract claims, mechanic's liens, stop notices and payment bond claims. He frequently presents seminars to the construction industry by which he explains the complex laws affecting the industry, and how companies can avoid litigation or, as a last resort, be best prepared for litigation.

His articles on construction law topics have been published in numerous trade journals and magazines. In addition to construction law, Mr. Barnier represents businesses of all sizes on both litigation and non-litigation matters. In addition, Mr. Barnier is an active member in construction trade organizations including the Engineering General Contractor's Association (EGCA).