



# CALIFORNIA PARTIAL RELEASE AND WAIVER OF LIENS (CONDITIONAL) & GUIDE

## **Included:**

Overview

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California Partial Release and Waiver of Liens (Conditional) Instructions

Sample California Partial Release and Waiver of Liens (Conditional)

## 1. Overview

Hiring a general contractor is a nerve-wracking experience for any home or property owner. This company or individual will be in charge of your entire project. Whether it be completely new construction or a major remodeling, you are putting one of your most valuable assets in someone else's hands. Making partial payments while the work has not been completed can also be stressful. If you're an owner, how can you be sure your payment will be acknowledged? If you're a contractor, how can you make sure you will get paid for the work that has been done?

A good partial release and waiver of liens outlines the rights and responsibilities of the contractor and the property owner, and explains what has been accomplished and what has yet to be done. Vague, verbal agreements can lead to disputes and ill will. It's best for all parties to agree on the completed tasks and the payments that have been made. The owner will then be indemnified against future claims about that work and the contractor will be fairly compensated according to the agreement.

The enclosed document can provide assurance to both parties about the state of the construction and their contracting arrangement. Once the owner has made the payment and contractor has signed the release, each party can focus on its area of expertise: the owner on his or her vision for the property and the contractor on the work still to be performed.

## 2. Dos & Don'ts Checklist

- Many construction agreements contain clauses indicating that the contractor or suppliers may not put a lien on the property or on the work. In most states, this will be accepted as written. However, in some states, including California, lien rights can't be waived in the construction contract. In California, therefore, that waiver must be in a separate document.
- The enclosed document is a partial release only. It is meant to be used if the owner has paid and the contractor has received a progress payment. Do not use the following form if the contractor has been paid in full and all liens are going to be released.
- Note too that the form is "conditional." This means that there are restrictions on the release or waiver because the full partial payment has not been made. If partial payment will have been made when the partial release is signed, do not use the enclosed form. The contractor should sign an unconditional release.
- Allow each party to spend time reviewing the release and the original agreement. This will reduce the likelihood, or at least the efficacy, of a claim that a party did not understand any new terms or how those might affect the arrangement as a whole.
- Sign two copies of the release, one for you and one for the other party. Keep your copy of the signed release with the original agreement.
- The terms of your original agreement are still in effect, so make sure both parties continue to perform their obligations under that agreement until the release is completed and signed.

- It may be a good idea to have the Contractor's signature on the release witnessed or notarized. Because this is an important document for both parties' purposes, notarization can limit later challenges to the validity of the signature.
- If your agreement is complicated, do not use the enclosed release. Contact an attorney to help you draft a document that will meet your specific needs.

### 3. California Partial Release and Waiver of Liens (Conditional) Instructions

The following provision-by-provision instructions will help you understand the terms of your release.

The numbers below (e.g., Section 1, Section 2, etc.) correspond to the provisions in the agreement. Please review the entire document before starting your step-by-step process.

- **Introduction.** Identifies the document as a partial release and waiver of liens. Write in the date on which the release is signed. Identify the name of the Contractor and, if applicable, what type of organization it is. Only the Contractor needs to sign the Release, since it is the only one that has the power to release the claims that it holds.
- **Recitals.** The "whereas" clauses, referred to as recitals, define the world of the agreement and offer key background information. In this agreement, the recitals include a description of the original contracting agreement, the Owner, and the property on which the work is taking place.
- **Section 1: Partial Release; Waiver.** The Contractor's agreement that when it receives the partial payment specified, it will release the hold it has on the Owner's property and the work. Note that this is what makes the release "conditional." The waiver of claims is contingent on the receipt of the promised funds. The bracketed part of this paragraph should be used if the Partial Payment is being made by check. In such cases, the release is contingent not only on the receipt of the check, but also on the check clearing the bank from which it was issued. If cash is being exchanged, do not include the bracketed phrases.

Enter in the amount that corresponds to the amount of work done under the original Agreement and the date through which this release covers. Depending on the terms of your arrangement, this amount may be a specific pre-established percentage, a straight reimbursement of costs, or some other arrangement. Review your Agreement and talk to the other party to make sure that you are on the same page about the work completed and the Partial Payment expected. Enter the date through which this Agreement covers.

Note that the document releases any claims and waives any liens that existed before the Release Date you entered. Make sure that this date corresponds to your understanding of what has been done and what is being waived and released.

The inclusion of the listed exceptions at the end of this section prevents an inadvertent waiver of future lien rights. Although this may seem to overlap with Section 3 below – and, to a certain extent, it does – there is an important difference. The phrase keeps the Contractor's right to a lien on extras and retentions. Extras are items that may not be considered within labor or materials, and may therefore slip under the radar. The retention (or retained amount) is the holdback amount that owners often keep in construction contracts to ensure final completion of the project. At the end of the project,

this amount will be released to the contractor. Even though this amount is withheld, the retention is technically for labor and materials provided before the Release Date. Without these listed exceptions, the Contractor would waive liens on all extras and retentions, and limit its ability to recover from the Owner if payment wasn't made.

- **Section 2: Remaining Payments Under Agreement.** In the first blank, enter the total amount contemplated under the original Agreement. In other words, the entire amount the Owner will pay over the course of the Agreement. In the second blank, enter the amount that the Contractor has received so far. Do not include the Partial Payment in your calculations. In the last blank, enter the amount that remains unpaid under the Agreement. This is the equivalent of the first blank, minus the Partial Payment and the second blank.
- **Section 3: Future Rights Retained.** Specifically retains the Contractor's lien rights for future labor, materials, and supplies.
- **Section 4: Indemnification.** This is the other side of the release and waiver. If any third party brings suit against the Owner for anything that was specifically released by this Release, the Contractor agrees to defend the Owner (both legally and financially) against these claims.
- **Section 5: Representations and Warranties.** The Contractor's sworn statements about the current state of liens and amounts owed to third parties.
  - (a) Include this subsection only if the Contractor is not an individual. It indicates that the Contractor (as a company) has approved the contract and granted the individual signing on its behalf the power to do so.
  - (b) Indicates that the Contractor doesn't believe that any claims currently exist against the Work or the Property.
  - (c) States that all third parties (including subcontractors and companies supplying materials) have been fully paid.
  - (d) Promises that no financing statements have been filed against the Property or the materials.

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## Form Sample

### CALIFORNIA PARTIAL RELEASE AND WAIVER OF LIENS (CONDITIONAL)

This Partial Release and Waiver of Liens (the "Release") is made \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_, [an individual] [corporation] [etc.] (the "Contractor").

#### RECITALS

**WHEREAS**, the Contractor and \_\_\_\_\_, a  
[corporation][limited liability company] [etc.] (the "Owner," and together with the  
Contractor, the "Parties") are parties to that certain contracting agreement dated as of  
\_\_\_\_\_ (the "Agreement"), pursuant to which the Contractor has agreed to  
perform work (the "Work") on the following-described property (the  
"Property"); \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
and

**WHEREAS**, the Contractor has completed a portion of the Work and, pursuant to  
the terms of the Agreement, is willing to provide a partial release and waiver of liens that  
it holds under the Agreement in exchange for the Partial Payment (defined below).

**NOW THEREFORE**, in consideration of the above recitals and good  
valuable consideration, the Contractor hereby agrees as follows:

#### 1. PARTIAL RELEASE; WAIVER

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