



CALIFORNIA RELEASE AND WAIVER OF LIENS ON FULL PAYMENT (CONDITIONAL) & GUIDE

Included:

Overview

Dos and Don'ts Checklist

California Release and Waiver of Liens on Full Payment (Conditional) Instructions

Sample California Release and Waiver of Liens on Full Payment (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 a full payment 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 release and waiver of liens outlines the rights and responsibilities of the contractor and the property owner, and affirms what has been accomplished and what has been paid. 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 be assured that the project has been completed, that no further payments are required, and that no liens remain in place.

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 release based on full payment of the contract price. Use this only if the owner has made all necessary payments and the contractor has received all necessary payments. Do not use the following form if the contractor has been paid partially or a progress payment, and intends to retain liens on the work and the property.
- Note too that the form is "conditional." This means that there are restrictions on the release or waiver because the full payment has not been made. If the full payment will have been made when the 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 Release and Waiver of Liens on Full Payment (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 release and waiver of liens on full payment. Write in the date on which the Release will be 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: Release; Waiver.** The Contractor's agreement that when it receives the full payment specified, it will release the hold it has on the Owner's property and the work. Include the bracketed phrase if there are outstanding disagreements between the Parties about extra work that was done. If you include this phrase, insert the estimated cost of the work that is alleged to have been done.
- **Section 2: 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 3: Representations and Warranties.** The Contractor's sworn statements about the state of liens and amounts owing 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 RELEASE AND WAIVER OF LIENS ON FULL PAYMENT (CONDITIONAL)

This Release and Waiver of Liens on Full Payment (the "Release") is made as of _____, 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 the Work and, pursuant to the terms of the Agreement, is willing to provide a full release and waiver of liens that it holds under the Agreement in exchange for the Final Payment (as defined below).

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

1. RELEASE AND WAIVER