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DIVISION 4. GENERAL PROVISIONS [3274 - 9566] (Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.)

PART 6. WORKS OF IMPROVEMENT [8000 - 9566] (Part 6 added by Stats. 2010, Ch. 697, Sec. 20.)

TITLE 3. PUBLIC WORK OF IMPROVEMENT [9000 - 9566] (Title 3 added by Stats. 2010, Ch. 697, Sec. 20.)

CHAPTER 4. Stop Payment Notice [9350 - 9510] (Chapter 4 added by Stats. 2010, Ch. 697, Sec. 20.)

ARTICLE 2. Summary Proceeding for Release of Funds [9400 - 9414] (Article 2 added by Stats. 2010, Ch. 697, Sec. 20.)

9400. A direct contractor may obtain release of funds withheld pursuant to a stop payment notice under the summary proceeding provided in this article on any of the following grounds:

- (a) The claim on which the notice is based is not a type for which a stop payment notice is authorized under this chapter.
- (b) The claimant is not a person authorized under Section 9100 to give a stop payment notice.
- (c) The amount of the claim stated in the stop payment notice is excessive.
- (d) There is no basis for the claim stated in the stop payment notice.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

9402. The direct contractor shall serve on the public entity an affidavit, together with a copy of the affidavit, in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1, that includes all of the following information:

- (a) An allegation of the grounds for release of the funds and a statement of the facts supporting the allegation.
- (b) A demand for the release of all or the portion of the funds that are alleged to be withheld improperly or in an excessive amount.
- (c) A statement of the address of the contractor within the state for the purpose of permitting service by mail on the contractor of any notice or document.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

9404. The public entity shall serve on the claimant a copy of the direct contractor's affidavit, together with a notice stating that the public entity will release the funds withheld, or the portion of the funds demanded, unless the claimant serves on the public entity a counteraffidavit on or before the time stated in the notice. The time stated in the notice shall be not less than 10 days nor more than 20 days after service on the claimant of the copy of the affidavit. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

9406. (a) A claimant that contests the direct contractor's affidavit shall serve on the public entity a counteraffidavit alleging the details of the claim and describing the specific basis on which the claimant contests or rebuts the allegations of the contractor's affidavit. The counteraffidavit shall be served within the time stated in the public entity's notice, together with proof of service of a copy of the counteraffidavit on the direct contractor. The service of the counteraffidavit on the public entity and the copy of the affidavit on the direct contractor shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(b) If no counteraffidavit with proof of service is served on the public entity within the time stated in the public entity's notice, the public entity shall immediately release the funds, or the portion of the funds demanded by the affidavit, without further notice to the claimant, and the public entity is not liable in any manner for their release.

(c) The public entity is not responsible for the validity of an affidavit or counteraffidavit under this article.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

9408. (a) If a counteraffidavit, together with proof of service, is served under Section 9406, either the direct contractor or the claimant may commence an action for a declaration of the rights of the parties.

(b) After commencement of the action, either the direct contractor or the claimant may move the court for a determination of rights under the affidavit and counteraffidavit. The party making the motion shall give not less than five days' notice of the hearing to the public entity and to the other party.

(c) The notice of hearing shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1. Notwithstanding Section 8116, when notice of the hearing is made by mail, the notice is complete on the fifth day following deposit of the notice in the mail.

(d) The court shall hear the motion within 15 days after the date of the motion, unless the court continues the hearing for good cause.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

9410. (a) The affidavit and counteraffidavit shall be filed with the court by the public entity and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interest of justice. The affidavit of the direct contractor shall be deemed controverted by the counteraffidavit of the claimant, and both shall be received in evidence.

(b) At the hearing, the direct contractor has the burden of proof.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

9412. (a) No findings are required in a summary proceeding under this article.

(b) If at the hearing no evidence other than the affidavit and counteraffidavit is offered, the court may, if satisfied that sufficient facts are shown, make a determination on the basis of the affidavit and counteraffidavit. If the court is not satisfied that sufficient facts are shown, the court shall order the hearing continued for production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits.

(c) At the conclusion of the hearing, the court shall make an order determining whether the demand for release is allowed. The court's order is determinative of the right of the claimant to have funds further withheld by the public entity.

(d) The direct contractor shall serve a copy of the court's order on the public entity in compliance with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)

9414. A determination in a summary proceeding under this article is not res judicata with respect to a right of action by the claimant against either the principal or surety on a payment bond or with respect to a right of action against a party personally liable to the claimant.

(Added by Stats. 2010, Ch. 697, Sec. 20. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697 and by Section 8052.)