

A photograph of construction workers on a site, with one worker in the foreground wearing a high-visibility vest and another in the background. The image is partially obscured by a white diagonal shape on the right side.

CIVIL CODE SECTION 8850: PRIVATE WORKS CHANGE ORDER FAIR PAYMENT ACT

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Agenda

◆ Civil Code § 8850

- Process: Walk through the step-by-step process with timelines.
- Key issues: Failure by Owner to follow process; 2% per month interest; stop-work rights; Owner's ability to cure; and Subcontractor rights.
- Owner Contract Modifications: Potential contract modifications to resolve most issues before a Claim arises.

“The lack of clear of procedures for resolving disputes related to change orders often leads to costly litigation where a predetermined method could avoid such costs.” (§ 8850 (a)(3).)

An aerial photograph of a construction site. Large, dark-colored pipes are laid out on the ground, some with handwritten numbers like '2384', '516', '706', '5122', '3140', '3283', '52 D38', '52 D68F', and '2000'. Scaffolding and other construction materials are visible in the background. The image is split vertically, with the left side showing the pipes and the right side showing a more distant view of the site.

CIVIL CODE SECTION 8850 CLAIM PROCESS

What Is Civil Code Section 8850?

- ⬢ A new private-project claims framework aimed at faster resolution of change order and time disputes.
- ⬢ **Path: Claim → Owner response → payment of undisputed amounts → meet-and-confer → mediation.**
- ⬢ **Targeted enforcement: Contractors may stop work if the owner fails to: (1) respond to a claim; (2) meet requirements of statute; or (3) pay undisputed amounts.**
- ⬢ Owners may add “reasonable” change order procedures but cannot impair § 8850’s timelines or procedures.

What Is the Scope of Civil Code Section 8850?

⬢ Applies to:

- Private works contracts entered on or after Jan. 1, 2026.

⬢ Excludes:

- Public entities/public works.
- **Purely residential projects that are not mixed-use and ≤ 4 stories.**

⬢ Sunset: Repeals Jan. 1, 2030, unless extended.

⬢ Is Section 8850 Mandatory?

- “[T]his section shall apply to any claim by a contractor...” (§ 8850 (b).)
- “A waiver of rights granted by this section is void and contrary to public policy.” (§ 8850 (m)(1).)
- Completion of process may be a condition of litigation. (§ 8850 (f)(4).)

PROCEDURE OVERVIEW

§ 8850 — Claims Process

Applies to private works contracts entered on/after Jan. 1, 2026 ♦ Excludes residential projects ≤ 4 stories ♦ Non-waivable [§ 8850(m)]

1 Contractor / Sub Submits Written Claim

Registered or certified mail · with supporting documentation [§ 8850(a)(1)]

2 Owner Reviews Claim and Issues Written Response

Identifies disputed vs. undisputed portions [§ 8850(d)(1)]

⌚ **Within 30 calendar days of receiving Claim** [§ 8850(d)(1)]

Dispute remains on all or part of claim

3 Contractor Demands Meet-and-Confer

Written demand · registered or certified mail [§ 8850(e)(1)]

⌚ **Within a reasonable time** [statute does not specify a required timeframe]

4 Owner Schedules and Holds Conference

Informal conference on disputed amounts [§ 8850(e)(2)]

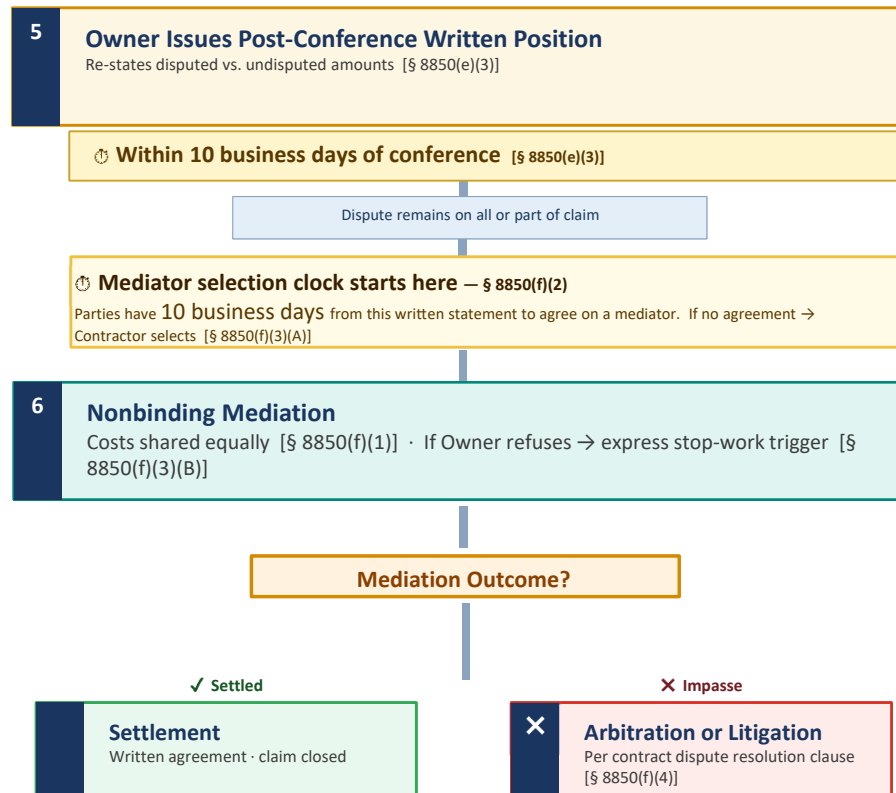
⌚ **Owner must schedule within 30 calendar days of demand** [§ 8850(e)(2)]

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PROCEDURE

§ 8850 — Claims Process (cont'd)

Continued from previous slide — assumes dispute remains after Step 4 conference



What Is a Claim?

- ⬢ A written demand asking for time and/or money related to changed or extra work or disputed amounts.
- ⬢ **Must:**
 - Be sent by registered or certified mail with return receipt.
 - Include reasonable supporting documentation (facts, costs, schedule).

Submission of the Claim

- Send to the owner's designated representative and address in the contract.
- If none designated, send to the Owner at the contract mailing address.
- Keep a claim log (date sent, receipt date, tracking number).
- Documentation is paramount — poorly documented claims are easily disputed. Include detailed cost breakdowns, schedule analysis, and supporting evidence.

Owner's Response

- ⬢ Within 30 days of receipt of Claim.
- ⬢ Owner issues a written statement identifying disputed vs. undisputed portions and explaining why.
- ⬢ Owner may request more information in the written statement.
- ⬢ The 30-day window can be extended by written agreement.
- ⬢ Failure to respond to a claim is a “deemed denial.”
 - **A “deemed denial” triggers Contractor’s right to demand meet-and-confer and potentially stop work. Track the 30-day clock carefully — it starts from the Owner’s receipt date (keep the return receipt).**

Payment of Undisputed Amounts

- ⬢ Owner must pay the undisputed portion within 60 days after its written statement. (§ 8850 (d)(3).)
- ⬢ 2% per month (24% annually) interest accrues on undisputed amounts not timely paid. (§ 8850 (l).)
- ⬢ If amounts the Owner disputes are later found owed, such amounts accrue interest from the original due date — “had they not been disputed.” (§ 8850 (h)(2).)
- ⬢ There is no “good faith dispute” exception to interest liability.
- ⬢ Unknown whether amounts approved may be withheld to satisfy other good faith withholdings — for example, incomplete punch list work.

Meet and Confer

- ⬢ If Owner fails to respond on time, or if Contractor disputes the response, Contractor may demand a meet-and-confer.
 - No specific timing for demand is in the statute.
- ⬢ Demand must be served by registered or certified mail with return receipt.
- ⬢ Owner **must schedule the conference within 30 days** of the demand.
 - **If the Owner fails to schedule within 30 days, this may be a failure to “meet the requirements” of the statute which allows a contractor to pursue its stop-work rights. (§ 8850 (g)(1), (k)(1).)**

Owner Written Response in 10 Business Days

- ⬢ Within 10 business days after the conference, Owner issues another written statement.
 - **If Owner fails to issue follow-up within 10 business days, this is another compliance failure which can trigger stop-work rights. (§ 8850 (g)(1), (k)(1).)**
- ⬢ Owner must clarify what is undisputed vs. disputed.
 - **Any newly undisputed amounts must be paid within 60 days. (§ 8850 (e)(4).)**

Nonbinding Mediation

- ⬢ If a dispute remains, the claim shall be submitted to nonbinding mediation.
- ⬢ Equal cost share for mediation unless agreed otherwise.
- ⬢ Parties have 10 business days to agree on a mediator.
 - **If parties cannot agree on a mediator within 10 business days, the CONTRACTOR selects the mediator. (§ 8850 (f)(3)(A).)**
 - **If Owner refuses mediation, the contractor is expressly allowed to enforce stop-work rights (§ 8850 (f)(3)(B).)**
- ⬢ If mediation is not successful, the parties follow the remaining dispute resolution requirements of their contract. (§ 8850 (f)(4).)

An aerial photograph of a construction site. Large, dark, cylindrical pipes are laid out on the ground, some with handwritten numbers like '2384', '516', '706', '5122', '3140', '3283', '5563', and '2000'. Scaffolding and other construction materials are visible. The image is split vertically, with the left side showing the pipes and the right side showing a more complex structure with scaffolding.

STOP-WORK NOTICES

Stop-Work Rights

- ⬢ Stop-Work is a new and powerful enforcement tool under § 8850.
- ⬢ Both contractors and subcontractors independently qualify as “claimants” with stop-work rights.
- ⬢ We will review:
 - The process for stopping work by a contractor or subcontractor.
 - The triggers for a contractor or subcontractor to start the stop-work process.
 - The potential limitations on whether an Owner can “cure” sufficiently to stop the process.

Stop-Work Notice Process

- ⬢ Payment-due notice:
 - Contractor or Subcontractor serves notice by registered/certified mail that “payment is due pursuant to this section” or that a claim has been “deemed denied,” then allows the Owner 30 days to cure. (§ 8850 (k)(1).)
- ⬢ 10-day intent-to-stop notice:
 - If not cured by Owner after 30 days, Contractor or Subcontractor serves an additional 10-day notice by registered/certified mail.
- ⬢ Suspend until paid:
 - After ~40 days total, the Contractor or Subcontractor may suspend performance “without penalty” and “until payment is received.” Owner potentially bears risk of damages caused by stop-work order properly exercised under the statute.

Stop-Work Notices – “Deemed Denial”

- ⬢ Stop-Work Process may be initiated where:
 - “[P]ayment is due pursuant to this section;” or
 - “Deemed denied pursuant to subdivision (g).”
- ⬢ “Deemed denied” is the “failure by Owner to respond to a claim within the time periods prescribed in this section or to otherwise meet the requirements of this section.” (§ 8850 (g).) This can also be:
 - The failure to meet-and-confer, provide written response to meet-and-confer, mediate, or other failure to comply with the strict terms of the statute is likely a “deemed denial.”

Stop-Work Notices – Owner Cure

- ⬢ It is unclear if Owner can “cure” the stop-work process by any means other than payment.
- ⬢ “The contractor and subcontractors shall have the right to suspend performance of their work, without penalty, until payment is received.” (§ 8850 (k).)
- ⬢ The Stop-Work process, however, may be initiated because of a “deemed denial,” which has to do with compliance with § 8850 procedure, not payment.
- ⬢ If Owner attempts to “cure” a procedural mistake, there is no clear guidance that the stop-work process is resolved “until payment is received.”

An aerial photograph of a construction site. Large, dark-colored pipes are laid out on the ground, some with handwritten numbers like '2384', '3140', '3283', '52 D38', '52 D68F', and '52 D68F SP'. Scaffolding and other construction materials are visible. The image is split vertically, with the left side showing the pipes and the right side showing a more complex structure with scaffolding.

SUBCONTRACTORS' USE OF CIVIL CODE SECTION 8850

Subcontractor Claim Process - § 8850(j)

- ⬢ Subcontractor may request in writing for itself or a lower-tier subcontractor that the contractor present a claim to the Owner. (§ 8850 (j)(2).)
- ⬢ The Subcontractor requesting the claim shall furnish timely and reasonable documentation and shall cooperate with Contractor through the § 8850 process.
- ⬢ Within 30 days of receipt of Subcontractor's written request, the Contractor shall notify as to whether the claim was presented to the Owner. (§ 8850 (j)(4).)
 - If not, Contractor must notify subcontractor with a statement of reasons for not submitting. (§ 8850 (j)(4).)

Subcontractor Claim Process – Contractor Obligations

- ⬢ **Notify the Subcontractor within 30 days whether the claim was presented (and, if not, why). (§ 8850 (j)(4).)**
 - A Contractor's failure to provide this justification could be a statutory violation.
 - If a Contractor refuses to submit Subcontractor claim they may be breaching the implied covenant of good faith and fair dealing under California law.
- ⬢ **Act in good faith and keep the Subcontractor informed. (§ 8850 (j)(3)(B).)**
- ⬢ **No settlement without the Subcontractor's written consent. (§ 8850 (j)(3)(B).)**
 - Cannot unfairly trade away a Subcontractor's pass-through claim to leverage a better global settlement for itself.

Lack of Express Subcontractor Rights

- ❖ No express consequence for failure by the Contractor to submit a Subcontractor's Claim.
- ❖ No express remedy to Subcontractor for Contractor's failure to inform Subcontractor whether claim was submitted.
- ❖ There is no express stop-work right to Subcontractor if the Contractor fails to follow the statute.
- ❖ There is no specific interest penalty recoverable by the Subcontractor for Contractor's failure to submit a claim.

An aerial photograph of a construction site. Large, dark-colored pipes are visible, some with handwritten numbers like '2384' and '706'. Scaffolding and other construction materials are scattered around. The image is split vertically: the left half is in color, and the right half is faded and semi-transparent.

POTENTIAL OWNER CONTRACT MODIFICATIONS TO ACCOUNT FOR CIVIL CODE SECTION 8850

Example: Potential AIA Contract Modifications

- ❖ Owners and Contractors may attempt to modify AIA documents to handle § 8850:
 - Adding a robust Change Order Request process to the AIA A201 general conditions.
 - Permitting time for owner to evaluate change order or time extension requests to potentially avoid the § 8850 process.
 - Seeking to require “Notice” before the submission of claims to allow Owner to address potential claims before receiving the § 8850 Claim.
 - Removing or clarifying early claims process triggers (e.g., 21 days) to prevent triggering § 8850 obligations.

The Standard AIA A201 (2017) May Lead to Numerous Claims

- ❖ The standard AIA A201 does not contain an explicit Contractor Change Order Request (COR) process. There are no definite timelines for the Owner to reject CORs, making it ambiguous as to when a § 8850 Claim might accrue. (AIA A201 2017 – Art. 7.)
 - AIA A201 includes:
 - (1) “Change Order” – “a written instrument ... signed by the Owner, Contractor, and Architect”;
 - (2) “Construction Change Directive” – “a written order ... directing a change in the Work prior to agreement on adjustment”; and
 - (3) “Claim” – “a demand or assertion by one of the parties seeking ... payment of money, a change in the Contract Time, or other relief”
- ❖ The standard AIA A201 does not expressly provide for a contractor-initiated change order request process in advance of proceeding directly to a “Claim,” which may invite unwanted § 8850 Claims.

The Standard AIA A201 (2017) May Lead to Lots of Claims

- ❖ AIA A201 contains a potential "§ 8850 Trap," because the timelines for claims may be inconsistent:
 - "Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later." (AIA A201 2017 – Art. 15.1.3.1.)
 - AIA A201 provides the right to demand mediation if a decision is not provided "within 30 days after the claim has been referred to the Initial Decision Maker."
 - As to payment, § 8850 states: A "Claim" may be for "payment by the owner of money or damages arising from **work done** by, or on behalf of, the contractor." (§ 8850 (c)(2)(b).)
- ❖ A "Claim" under the AIA A201 may not yet be a "Claim" under § 8850, creating confusion and overlapping/duplicative timelines.
 - Once a § 8850 Claim is served, a non-waivable statutory stopwatch is triggered.
 - Parties should consider changes to clarify the § 8850 claim trigger with their contractual claim triggers.

How to Respond to Owner Modifications

- ⬢ Any contractual modification that delays or dilutes § 8850 protections is likely unenforceable — the statute is a floor, not a ceiling.
- ⬢ However, “owners, contractors, and subcontractors, may agree to reasonable change order, claim and dispute resolution requirements.”
 - May not “conflict with or otherwise impair the timeframes and procedures” of § 8850.
- ⬢ **Items that are NOT waivable by contract:**
 - **Stop-work rights, 2% per month interest, mandatory mediation, statutory deadlines.**

Exception: Does Not Apply to Non-Mixed Use, Residential Only Projects of Four Stories or Less

- ⬢ Updates to Prime Contract should clarify that § 8850 provisions only apply when applicable to the Project **AND** claim.
- ⬢ **Verify project classification carefully — owners may attempt to misclassify mixed-use projects as “residential” (≤ 4 stories) to avoid § 8850.**

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