

CHANGES IN CALIFORNIA'S MECHANIC'S LIEN LAWS

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Substantial changes in California's mechanic's lien law will take effect on **January 1, 2011**. These changes will require lien claimants to give notice of both their intention to record a lien and the recorded lien itself. Under the express language of the new law, failure to strictly comply with the new requirements will render a mechanic's lien invalid and unenforceable. This article focuses on the changes in the law and provides guidance intended to help ensure that a claimant's lien rights are protected.

Under current law, a lien claimant is required to (i) provide a preliminary 20-Day Notice (persons furnishing labor for wages and claimants who have contracted directly with the owner are exempted from this requirement), (ii) timely record a mechanic's lien, and (iii) file a lawsuit to foreclose the lien within 90 days of the recording. While the new law will not change these requirements, it will require claimants to provide additional notices of the lien and foreclosure action. These changes are contained in revised sections 3084 and 3146 of the California Civil Code.

Form of Mechanic's Lien

The required form of the Mechanic's Lien itself remains unchanged. This is the document that must be filled out, verified and recorded in the Recorder's Office of the County in which the affected parcel of land is located. The following information is required to be stated in the lien:

- A statement of the claimant's demand after deducting all just credits and offsets;



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- The name of the owner or reputed owner;
- A general statement of the kind of labor, services, equipment, or materials furnished by the claimant;
- The name of the person by whom the claimant was employed or to whom the claimant furnished the labor, services, equipment, or materials;
- A description of the site sufficient for identification.

The lien must be signed by the claimant and must further be verified attesting to the accuracy of the document. Under the new requirements, this lien may not be recorded until the requisite notice is given to the property owner as set forth below.

Notice of Mechanic's Lien

This "Notice" is a document not previously required under the law. It must contain specific language, be printed in at least 10-point boldface type, and be capitalized in part. The Notice must state the following:

NOTICE OF MECHANIC'S LIEN
 ATTENTION!

Upon the recording of the enclosed MECHANIC'S LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic's lien is recorded.

The party identified in the mechanic's lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanic's lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic's lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANIC'S LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

The Notice should be printed on a page separate from the lien and served along with the lien in the manner proscribed below.

Proof of Service Affidavit

Before the enactment of the new legislation, there was no requirement that a mechanic's lien be served by the claimant upon the owner or anyone else. Recording of the lien was considered "constructive notice" and a property owner may not have

known of a recorded lien unless it was notified by the recorder's office, performed a title search or was sued in a lien foreclosure action. The change in the law ensures that the owner will receive actual notice of the lien, particularly since failure to give the notice may invalidate the lien entirely.

The new law now requires use of an "affidavit of the person making the service, showing the date, place, and manner of service and facts showing that the service was made in accordance with this section." The Code further states that "[t]he affidavit shall show the name and address of the person or persons upon whom a copy of the mechanic's lien and the Notice of Mechanic's Lien was served and, if appropriate, the title or capacity in which he or she was served."

There are three ways in which the Lien and Notice of Lien may be served (see below). The Proof of Service Affidavit must indicate the date and manner in which service was accomplished and should be both recorded along with the lien and filed with the court in the subsequent lien foreclosure action.

Service and Recording of Lien

The unrecorded Lien and Notice of Lien must be served upon the

reputed owner by first class mail, certified mail, or registered mail. If first class mail is used, the claimant must obtain a certificate of mailing from the post office. If certified or registered mail is utilized, a return receipt must be obtained. The manner chosen shall be stated in the Proof of Service Affidavit.

After the Notice of Lien and Lien are served upon the owner, both of these documents, along with the Proof of Service Affidavit, should be recorded in the County Recorder's Office.

Foreclosure of Lien and Recording of Lis Pendens

The initial foreclosure procedures concerning a claimant's lien remain largely unchanged. An action foreclosing the lien must be filed with the proper court within 90 days of the day the lien was recorded. The party foreclosing the lien, however, must now undertake an additional step that was previously discretionary. Specifically, the claimant must now record a notice of pending action (also known as a "lis pendens") in the county recorder's office "on or before the 20th day following the filing of the lien foreclosure action." The purpose of the *lis pendens* is to give constructive notice of the foreclosure lawsuit, since it may potentially affect title to the subject property.

Conclusion

The new mechanic's lien law increases the number and type of notices a lien claimant must give in order to enforce a lien. According to the new statute, "[f]ailure to serve the mechanic's lien, including the Notice of mechanic's Lien, as prescribed by this section, shall cause the mechanic's lien to be unenforceable as a matter of law." A contractor, subcontractor or material supplier who does not strictly comply with every aspect of the new law will likely forfeit its right to enforce a mechanic's lien and thereby lose what is most often its most effective remedy to obtain payment for the labor, materials and equipment furnished to the property. Consultation with experienced construction counsel is highly advised to help ensure compliance with the new requirements and avoid forfeiture of such vitally important rights.

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