

JANUARY 5, 2011

MECHANIC'S LIEN LAW REVISIONS

Effective January 1, 2011, the Legislature added new requirements for perfecting a mechanic's lien. These new requirements place additional burdens upon a mechanic's lien claimant and offer property owners additional defenses against claims of liens, since the lien claimant's failure to properly serve the owner with a Notice of Mechanic's Lien and the mechanic's lien will render the mechanic's lien unenforceable as a matter of law. Prior law did not require the lien claimant to serve the owner with the mechanic's lien prior to recording the mechanic's lien.

California Civil Code Section 3084 is amended to provide that *before* a lien claimant may record a mechanic's lien, the lien claimant or his or her agent must serve upon the property owner or reputed owner at the owner's or reputed owner's residence or place of business, or at the address shown on the building permit, by registered mail, certified mail or first-class mail evidenced by a certificate of mailing, a copy of the lien claimant's mechanic's lien containing the newly required "Notice of Mechanic's Lien." A proof of service affidavit evidencing such service, is also required. The Notice of Mechanic's Lien must appear in the body of the mechanic's lien. If the owner or reputed owner cannot be served as described above, the lien claimant may serve the construction lender or original contractor with the mechanic's lien and the Notice of Mechanic's Lien. The Notice of Mechanic's Lien must be printed in at least 10-point boldface type, and contain 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.

California Civil Code Section 3146 is also amended to provide that within 20 days after filing a complaint to foreclose a mechanic's lien, a lien claimant must record with the County Recorder in which the property is situated, a Lis Pendens.

Please note that effective July 1, 2012, the Legislature revised the Mechanic's Lien Laws in their entirety. This will be the subject of a future Client Alert, prior to the July 1, 2012 effective date.

For more information regarding this alert, please contact:

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