



CONSTRUCTION ALERT

A NEWSLETTER TO THE CONSTRUCTION INDUSTRY

FALL 2009

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BIG CHANGES IN MECHANIC'S LIENS

By Construction Practice Group

In October, Governor Schwarzenegger signed AB 457 which, starting January 1, 2011, will change the format of the mechanic's liens and will add an additional requirement that they be served as a condition to their enforcement. This article will discuss these changes.

AB 457 clarifies the term "Claim of Lien" to incorporate the term "mechanic's lien." They will thus be considered synonymous.

Under existing law, a mechanic's lien is to include: (1) the amount of the claim after deducting appropriate credits and offsets; (2) the name of the owner or reputed owner, if known; (3) the general statement of the kind of labor, services, equipment or materials furnished by the lien claimant; (4) the name of the person that employed the lien claimant or to whom the lien claimant provided the labor, services, equipment or materials; and (5) a description of the site sufficient for identification (e.g., street address, APN, or legal description).

AB 457 includes two new requirements. The first significant change is that the lien form must include a proof of service affidavit confirming that the lien was served on the owner or reputed owner, or on the construction lender or original contractor if the owner or reputed owner cannot be served. The affidavit would need to include the name and address of the person or persons on whom a copy of the mechanic's lien was served and, where appropriate, the title or capacity in which the individual was served.

AB 457 revises Civil Code § 3084 to designate the manner of service. The owner/reputed owner is to receive notice by registered mail, certified mail, or first class mail, postage prepaid, addressed to the owner/reputed owner's residence or place of business, or the address shown on the building permit or a deed

of trust recorded to secure a construction loan, as evidenced by a certificate of mailing. If, however, the owner or reputed owner cannot be served by these methods, then the construction lender or original contractor can be served by registered mail or certified mail, postage prepaid, as evidenced by a certificate of mailing. Mailing shall be deemed complete as of the time the mail is deposited if served by mail.

The second significant addition is that all mechanic's liens must contain a warning to the homeowner in at least 10-point boldface type. Moreover, with the exception of the web site for the Contractors' State License Board, the last sentence must be in capital letters. The notice reads:

"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 fore-closure 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."

AB 457 adds teeth to the notice requirements. Unlike prior liens that did not need to be served on the owner, contractor, or construction lender, the failure to serve the mechanic's lien in the manner discussed above will cause the mechanic's lien to be unenforceable as a matter of law.

AB 457 also modifies Civil Code § 3146. Currently, Civil Code § 3146 permits a party to record a Notice of Pendency of Action, otherwise known as a

Lis Pendens, after a complaint is filed to enforce a mechanic's lien. The revised Civil Code § 3146 makes the recording of a Lis Pendens mandatory. With the change, a party must record a Notice of Lis Pendens within 20 days after filing a mechanic's lien foreclosure action. Thus, in addition to serving the mechanic's lien once it is recorded, a Lis Pendens must now also be recorded once a complaint has been filed to enforce the mechanic's lien.

The above changes were made to protect the owners who in the past complained that they were not given notice when a mechanic's lien had been recorded or that a lawsuit had been filed against them to enforce the mechanic's lien. The penalties are severe for failing to give these notices. It is therefore important for any lien claimants to revise their mechanic's lien forms in order to assure that they are in compliance with AB 457.

Coleman & Horowitz, LLP has extensive experience in representing those in the construction industry including general contractors, design professionals, material suppliers, subcontractors, and owners. Our Construction Practice Group represents clients throughout the State. If you would like assistance in revising your mechanic's lien form, please feel free to contact Darryl J. Horowitz or any of the other attorneys in the Construction Practice Group.

CONSTRUCTION LITIGATION PRACTICE GROUP

THE CONSTRUCTION LITIGATION PRACTICE GROUP ASSISTS CLIENTS IN A WIDE VARIETY OF CONSTRUCTION DISPUTES, FROM SIMPLE BREACH OF CONTRACT MATTERS, MECHANIC'S LIEN, STOP NOTICE AND BOND CLAIMS, BID DISPUTES, AND CONSTRUCTION DEFECT MATTERS, INCLUDING MOLD CLAIMS. OUR EXPERIENCE ALSO EXTENDS TO THE PREPARATION OF DOCUMENTATION RELATING TO CONSTRUCTION PROJECTS. MEMBERS OF THE GROUP ARE:

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