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“One who works on a real property project, or provides materials incorporated into the project, has a right to put a lien against title to the property to ensure payment.”

Mechanic’s Lien Law Revisited**THIS ISSUE**

The California Mechanic’s Lien Laws have changed yet again in material ways. One of those changes is the new requirement that mechanic’s liens must be served upon the owner, with a statutory notice regarding the impact of mechanic’s liens.

BACKGROUND

California has a well-developed body of law regarding mechanic’s liens, going back to the very early days of California – indeed back to the very first California Legislature in 1850. And the California Constitution of 1879 required the Legislature to create the Mechanic’s Lien Laws. The California constitution today, Article XIV, § 3, provides:

“Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.”

The basic principle is that one who works on a real property project, or provides materials incorporated into the project, has a right to put a lien against title to the property to ensure payment. Lien claimants may be contractors, whether in direct contract with the owner or by sub-contract to a general contractor, construction employees, design professionals, and material suppliers.

The California Legislature has recently given the mechanic’s lien law an all-over update in SB 189. There are some substantive changes to the law, and also some simple changes in language, with all new code numbers.

IN BRIEF***Mechanic's lien background***

The mechanics' lien laws seek to provide a balance between protecting those who put labor or materials into a project on the one hand – ensuring they are promptly paid – and those on the other hand who own the property.

The argument goes that if a contractor did not have the power of a lien to force payment for his work, the improvement could be completed, the loan funds disbursed, and the land sold before the contractor could ever get to court to secure a judgment against the owner. Contractors would forever be chasing after owners for payment, while the owners would have profited from the contractors' work. The mechanic's lien law is a powerful tool to protect them.

Homeowners frequently lament the power of the mechanic's lien, however, saying it gives contractors an unfair and significant advantage that no other service provider enjoys. But the California Supreme Court found the mechanics' lien law to be constitutional, and provided a reasonable rationale for it.

The Supreme Court explained that an owner whose property is liened “suffers only a minor deprivation by reason of the lien since he retains possession and use of the land...” And as to those subject to a stop notice (effectively attaching money in a lending account that was earmarked for construction), the Court held that he “suffers only the encumbrance of the very funds he has previously allocated for the exclusive purpose of paying construction costs. Moreover, the owner enjoys a variety of measures by which he can protect himself against the impact of such a lien, most notably the requirement that the mechanic must file a preliminary notice before filing or recording his lien, thus affording the owner opportunity to take legal steps against any imposition of an improper lien.”¹

The Supreme Court found that “the recordation of a mechanic's lien... inflicts upon the owner only a minimal deprivation of property; that the laborer and materialman have an interest in the specific property subject to the lien since their work and materials have enhanced” its value. (*id.*)

RECENT CHANGES IN MECHANIC'S LIEN LAW***Old law is repealed, replaced by newly created section of Civil Code***

The old mechanic's lien law will be renumbered, so that laws that used to be in Civil Code sections 3081 - 3267, will now be found in the newly created Civil Code sections 8000, et seq., which is labeled “Works of Improvement.” Appended to the end of this month's REACH is a table showing the old Civil Code sections with the corresponding newly created Works of Improvement Civil Code sections.

There are a number of changes noted here. But by far the biggest change is in the required form for mechanic's lien, and the notice requirements to the owner before the lien may be recorded.

New form of mechanic's lien, and service requirements

Civil Code section 8416 requires a lien claimant to serve a “Notice of Mechanic's Lien” on the owner of the property to be liened *before* recording the lien. It also specifies the language and form of the notice, as well as how it is to be served on the owner. The mechanic's lien must be served as set forth in section 8416(b) and (c).

The mechanic's lien form now requires a signed “proof of service affidavit,” affirming the service of the Notice on the property owner in compliance with the code. Without the verified notice, the lien is unenforceable. This law became effective January 1, 2011, but was recodified at section 8416.

¹ *Connolly Dev. Inc. v. Superior Court* (1976) 17 Cal.3d 803

New mandatory lis pendens upon filing action to foreclose mechanic's lien

Along with the new form for mechanic's liens, there is a new requirement that within 20 days of filing any action foreclose a mechanic's lien, the claimant must also record a lis pendens against title to the affected property (CC §8461). Only after the lis pendens is recorded will subsequent purchasers be deemed to have notice of the mechanic's lien affecting title.

Changes in terminology and effect of laws

Some terms will change. For example, the term "stop notice" (prev. CC § 3103) will become "stop payment notice," (now CC § 8044) the term "original contractor" (CC § 3095) will become "direct contractor" (CC § 8018) and the term "materialman" (CC § 3090) will become "material supplier" (CC §8028) For the most part, they will retain the same function as before, with new names.

Some substantive changes

One notable exception is that a licensed landscape architect has now been added to those who may record a design professional's lien. And the new law will allow a design professional to record a design professional mechanic's lien, which, effective July 1, 2012, may be converted to a mechanics' lien if certain requirements are met.

Under CC §8200(e)(2), any claimant who has a direct contractual relationship with the project owner must give a preliminary notice to the construction lender. This claimant class includes the prime or general contractor.

Preliminary-notice changes

The preliminary notice laws are set forth in two new sections, one for private works, and the other for public works. The substantive requirements for preliminary notice on a private work are relocated

to Section 8200 et seq. The substantive requirements for preliminary notice on a public work are relocated to Section 9300 et seq.

Bond-requirement changes

The law has recently changed, allowing limited liability companies as an authorized entity form for contractors. But as a condition to obtaining, reinstating, or renewing a license, or continued use of an existing license, a limited liability company must post a contractor's surety bond in the amount of \$100,000 (this new requirement is found in Bus. & Prof. Code §7071.6.5).

Waiver- and release-of-lien-form changes

Civil Code sections 8132, 8134, 8136, and 8138 restate earlier sections regarding releases of lien rights – releases upon partial payment, progress payment, final payment, and the like. But the statutory forms associated with these releases have been changed to make them easier to follow, and to conform to the new terminology of the revised mechanic's lien code system.

CONCLUSION

The California mechanic's lien law is constantly evolving, and contains many trips, traps and pitfalls for those unskilled or uneducated about the statutes and requirements. There are many interrelated timelines for actions to be taken under these statutes – including limitations on when a mechanic's lien can be recorded, (time limits that change depending upon who is recording the notice and whether there were certain steps taken by the owner to limit those timeframes) and when an action to foreclose a mechanic's lien may be filed with the court. We strongly recommend that anyone unfamiliar with the requirements for successfully bringing such an action should contact an attorney familiar with the process.

NEXT ISSUE

Yet to be determined.

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DISPOSITION OF EXISTING LAW

The table below shows the disposition of former sections of existing law that were repealed by Chapter 697 of the Statutes of 2010 (Senate Bill 189 (Lowenthal)). All sections listed in the table are from the Civil Code. For further detail, see the Comment to the new provision in the enacted legislation.

Former Provision	New Provision(s)
3081.1.....	8014, 8300
3081.2.....	8302
3081.3.....	8304
3081.4.....	8306
3081.5.....	8308
3081.6.....	8310
3081.7.....	8312
3081.8.....	8314
3081.9.....	8316
3081.10.....	8318
3082.....	8000
3083.....	8506, 8532
3084.....	8416
3085.....	8004
3086.....	8180, 9200
3087.....	8006
3088.....	8008, 8016
3089.....	8024
3090.....	8028
3092.....	8188, 9202
3093.....	8182, 8184, 9204, 9208
3094.....	8444
3095.....	8018
3096.....	8606, 9554
3097.....	8034, 8200
3097(a).....	8200
3097(b).....	8200
3097(c).....	8102, 8202
3097(d).....	8204
3097(e).....	8212
3097(f).....	8116
3097(g).....	8206
3097(h).....	8216
3097(i).....	8172
3097(j).....	8174
3097(k).....	8104

Former Provision	New Provision(s)
3097(l).....	8170, 8208
3097(m).....	8170, 8208
3097(n).....	8210
3097(o).....	8214
3097(p).....	not continued
3097.1.....	8118
3098.....	8034, 9300
3098(a).....	9300, 9302, 9303, 9304
3098(b).....	9316
3098(c).....	9300
3098(d).....	9304
3098(e).....	not continued
3099.....	8036
3100.....	9000
3101.....	8040
3102.....	8042
3103.....	8044, 8502, 8506, 9352, 9354
3104.....	8046
3105.....	not continued
3106.....	8050
3109.....	not continued
3110.....	8400, 8404, 8430, 9100
3110.5(a)(1).....	8700
3110.5(a)(2).....	8700
3110.5(b).....	8710, 8720
3110.5(b)(1).....	8722
3110.5(b)(2).....	8724
3110.5(b)(3).....	8726, 8728
3110.5(c).....	8712, 8730
3110.5(d).....	8716
3110.5(e).....	8702
3110.5(f).....	8704
3110.5(g).....	8714
3111.....	8024, 9100
3112.....	8402, 8404, 8440, 9100
3114.....	8410
3115.....	8412
3116.....	8414
3117.....	8186
3118.....	8422
3123(a).....	8430
3123(b).....	8430
3123(c).....	not continued
3124.....	8432
3128.....	8440, 8442

Former Provision	New Provision(s)
3129.....	8442
3130.....	8446
3131 (first paragraph).....	8448

3131 (second paragraph).....	not continued
3134.....	8450
3135.....	8454
3136.....	8456
3137.....	8458
3138.....	8452
3139.....	8458
3140.....	8434
3143.....	8424
3144.....	8460
3144.5.....	8424
3145.....	8460
3146.....	8461
3147.....	8462
3148.....	8490
3149.....	8056
3150.....	8464
3151.....	8466
3152.....	8468
3153.....	8470
3154(a).....	8480
3154(b).....	8484, 8488
3154(c).....	8486
3154(d).....	8486
3154(e).....	8486, 8488
3154(f).....	8488, 8490
3154(g).....	8488
3154(h).....	8480
3154(i).....	8480
3156.....	8152
3158.....	8520
3159.....	8508, 8530
3159(a).....	8502, 8536, 8538
3159(b).....	8542
3159(c).....	8542
3160.....	8508
3161.....	8522
3162(a).....	8536, 8538
3162(b).....	8542
3162(c).....	8542
3163.....	8534
3166.....	8544

Former Provision

New Provision(s)

3167.....	8540
3168.....	8504
3171.....	8510
3172.....	8550
3173.....	8554
3174.....	8556
3175.....	8552
3176.....	8558

3176.5.....	8560
3179.....	9000
3181.....	9100
3183.....	9500
3184.....	9356
3185.....	9362
3186.....	9358
3187.....	9360
3190.....	9450
3191.....	9452
3192.....	9454
3193.....	9456
3196.....	9364
3197.....	9400
3198.....	9402
3199.....	9404
3200.....	9406
3201.....	9408
3202.....	9410
3203.....	9412
3204.....	not continued
3205.....	9414
3210.....	9502
3211.....	9504
3212.....	9508
3213.....	9510
3214.....	9506
3225.....	8152
3226.....	8154
3227.....	8614, 9562
3235.....	8600
3236.....	8600, 8602
3237.....	8604
3239.....	8609
3240.....	8610
3242.....	8612
3247.....	9550

Former Provision

New Provision(s)

3248.....	9554
3249.....	9558
3250.....	9564
3251.....	9552
3252.....	9560
3258.....	8060
3259.....	8056
3259.5.....	8190
3260(a).....	not continued
3260(b).....	8810
3260(c).....	8812
3260(d).....	8814
3260(e).....	8814

3260(f).....	8816
3260(g).....	8818
3260.1.....	8800
3260.2(a).....	8830, 8832, 8834, 8836, 8840
3260.2(b).....	8842
3260.2(c).....	8838
3260.2(d).....	8844
3261.....	8422
3262(a).....	8122, 8124
3262(b)(1).....	8126
3262(b)(2).....	8128
3262(c).....	8130
3262(d)(1).....	8132
3262(d)(2).....	8134
3262(d)(3).....	8136
3262(d)(4).....	8138
3262.5.....	8802
3263.....	8062
3264.....	8500, 9350
3265.....	9500
3266.....	8054
3267.....	8608, 9566
