



Construction Law Update

California's Mechanic's Lien Laws

The New Requirements Effective January 1, 2011 That Must Be Followed For A Lien To Be Enforceable

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On January 1, 2011, critical changes to California's mechanic's lien laws took effect. These changes impact how mechanic's liens must be recorded and provide that failure to follow the new rules makes a lien unenforceable. It is therefore critical that all contractors, subcontractors and suppliers be familiar with the new requirements.

New Requirements

The new mechanic's lien laws require that the lien claimant mail the project owner a Notice of Mechanic's Lien, along with a copy of the proposed mechanic's lien, before the mechanic's lien is recorded. Failure to so notify the owner makes the lien unenforceable. The specific content of the notice that must be given is contained in Civil Code section 3084(a)(7) which also provides the specific format of the notice (i.e., it must be in at least 10-point boldface type, and the letters of the last sentence must be printed in all caps, except for the Contractors' State License Board website address).

Civil Code sections 3084(c)(1)(A) and (B) dictate how the proposed mechanic's lien and Notice of Mechanic's Lien must be sent to the project owner. Specifically, the notice and lien must be sent to the owner by registered, certified or first-class mail, with a certificate of mailing, to the owner's residence or place of business, or at the address shown on the building permit. If the owner or reputed owner of the property cannot be notified in this manner, then both the proposed lien and notice must be sent to the construction lender and the original contractor (also via registered, certified or first-class mail, with a certificate of mailing) prior to recordation of the lien.

Proof of Service

The lien claimant must provide the county recorder with a proof of service affidavit at the time the lien is submitted for recording. A "proof of service affidavit" is an affidavit of the person mailing the Notice of Mechanic's Lien and mechanic's lien, showing the date, place, and manner of

service (i.e., by registered, certified or first class mail, with a certificate of mailing) and facts showing that the notice and lien were sent in accordance with the code. See Civil Code section 3084(a)(6). The affidavit must include the name and address of the person or persons to whom a copy of the lien and notice was mailed, and, if appropriate, the title or capacity (i.e., president, secretary, etc.) of that person. Inclusion of the proof of service affidavit is mandatory. If it is not provided, the county recorder will not accept the mechanic's lien for recording.

Given the harsh results if a contractor fails to strictly adhere to the new requirements, we strongly recommend you retain competent construction law counsel to be available to answer questions as they arise. An ounce of prevention is worth a pound of cure.



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