

MECHANIC'S LIENS

The What, Who, Where, When, Why, and How

JESSICA MORAN, ESQ. AND DREW WAGNER-WEIR, ESQ.

HUGUENIN KAHN LLP

3001 LAVA RIDGE COURT, STE. 300

ROSEVILLE, CA 95661

(916) 367-7098

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This power point does not constitute the rendering of legal services or the provision of legal advice. Matters governed by California's Mechanics Lien Law tend to be fact specific such that consultation with a knowledgeable attorney is strongly recommended.

Sources:

- ▶ California Civil Code sections 8400 et seq.
 - ▶ <https://leginfo.legislature.ca.gov/faces/codes.xhtml>
- ▶ 4 Witkin, Summary 11th, sec. 26 et seq.
- ▶ Miller Starr, 9 Cal. Real Est. (4th Ed.), sec. 32:1 et seq.
- ▶ Contractors State License Board
 - ▶ <http://www.cslb.ca.gov>

Questions or Concerns?

- ▶ Mechanic's Liens are complicated. This presentation is a basic overview of the law and procedures. If you have any questions or concerns regarding the specifics of a certain lien, your rights, or your liability, contact an attorney.

What is a Mechanic's Lien?

- ▶ A mechanic's lien is a lien recorded against real property to secure payment for labor and materials provided for a work of improvement on that real property.
 - ▶ Provided for by the California Constitution, Article XIV, Section 3.
 - ▶ Carried out by California Civil Code Sections 8400 through 8494.

Who is entitled to a Mechanic's Lien?

- ▶ A person that provides **work authorized** for a **work of improvement**, including, but not limited to, the following: direct contractors, subcontractors, material suppliers, equipment lessors, laborers, and design professionals. CC § 8400.
 - ▶ **Work Authorized** is work: (1) provided at the request of or agreed to by the owner; or (2) provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person in charge of all or part of the project. CC §§ 8404(a)-(b).
 - ▶ **Work of Improvement** is broad, and includes construction, repair, demolition, landscaping, filling, leveling, grading a building or real property. CC § 8050.
- ▶ A person that provides **work authorized for a site improvement**. CC § 8402.

Who may enforce a Mechanic's Lien?

Definitions

- ▶ Direct Contractor (or Prime Contractor): contractor that has a direct contractual relationship with an owner. CC § 8018.
- ▶ Subcontractor: contractor that does NOT have a direct contractual relationship with an owner. This term includes a contractor that has a contractual relationship with a direct contractor or other subcontractor. CC § 8046.

Who may enforce a Mechanic's Lien? Preliminary Notice

- ▶ A claimant may enforce a mechanic's lien only if the claimant has given **preliminary notice** and made proof of service. CC § 8410.
- ▶ **Preliminary Notice** is required by statute. CC §§ 8200-8216.
- ▶ Preliminary Notice **is a necessary prerequisite to the validity of a mechanic's lien claim or a claim against payment bond.** CC §§ 8200(c), (b).
- ▶ Preliminary Notice **must** be given to: the owner, the direct contractor or person who you provided work for, and the construction lender, if any. CC § 8200(a).
 - ▶ Make sure you take note of who the real property owner is – it may not be obvious and it may not be the builder! Failing to give the property owner notice will invalidate the lien!
 - ▶ Note that there is an exception for the preliminary notice requirements where you are contracting directly with the owner, who may also be the builder.

Who may enforce a Mechanic's Lien?

Preliminary Notice

- ▶ The **Preliminary Notice** must be in writing. CC § 8100.
- ▶ The **Preliminary Notice** shall be given not later than 20 days after the claimant first furnished work on the work of improvement. CC § 8204(1).
 - ▶ The mechanic's lien only extends to work performed within 20 days prior to service of the preliminary notice, and any time thereafter.
- ▶ An agreement by the owner to waive preliminary notice is void. CC § 8212.

Who may enforce a Mechanic's Lien?

Preliminary Notice

- ▶ Single or Multiple Preliminary Notice?
 - ▶ A claimant need give only one preliminary notice to each person to which notice must be given with respect to all work provided by the claimant for a work of improvement. CC § 8206(a).
 - ▶ If a claimant provides work pursuant to contracts with more than one subcontractor, the claimant shall give a separate preliminary notice with respect to work provided pursuant to each contract. CC § 8206(b).
 - ▶ A preliminary notice that contains a general description of work provided by the claimant through the date of the notice also covers work provided by the claimant after the date of the notice whether or not they are within the scope of the general description contained in the notice. CC § 8206(c).
 - ▶ Take caution – remember that the preliminary notice requirement is a prerequisite to enforcing the mechanics lien. CC § 8200(c).

Who may enforce a Mechanic's Lien?

Preliminary Notice

- ▶ Pursuant to CC § 8102, a **Preliminary Notice shall include:**
 - ▶ A general description of the work;
 - ▶ An estimate of the total price of the work (you must be able to explain why and how you generated the estimate, and it must be a derived figure, arrived at by rational analysis);
 - ▶ The name of the person for whom the work is provided;
 - ▶ The name and address of the owner or reputed owner, the direct contractor, and the construction lender (if any);
 - ▶ A description of the job site sufficient for identification, including street address; and
 - ▶ A statutory statement contained within CC 8202(a)(3) (on the following slide).

NOTICE TO PROPERTY OWNER

EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances.

This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or the person employed by you on the construction project.

If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.

Who may enforce a Mechanic's Lien?

- ▶ A direct contractor may not enforce a lien unless it records a notice of claim of lien after the contract is completed, and before:
 - ▶ 90 days after completion of the work of improvement; and
 - ▶ 60 days after the owner records a notice of completion or cessation. CC § 8412.
- ▶ A claimant, other than a direct contractor, may not enforce a lien unless a claim of lien is recorded within the following times:
 - ▶ After the claimant ceases work; and
 - ▶ Before 90 days after completion of the work of improvement, and 30 days after the owner records notice of completion or cessation, whichever is earlier. CC § 8414.
- ▶ Note – it can take a long time to reach these time limits.

What are the form requirements?

- ▶ Under CC § 8416, the mechanic's lien must:
 - ▶ Be written and **signed and verified by the claimant**;
 - ▶ contain a statement of demand after deducting credits and offsets;
 - ▶ Name the owner;
 - ▶ Provide a general statement of work furnished;
 - ▶ Name the person who employed the claimant;
 - ▶ Describe the site;
 - ▶ Contain the claimant's address;
 - ▶ Contain a proof of service;
 - ▶ Contain a statutory statement on the following slide; and
 - ▶ Be served on the owner after recording.

"NOTICE OF MECHANICS LIEN

ATTENTION!

Upon the recording of the enclosed MECHANICS 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 mechanics lien is recorded.

The party identified in the enclosed mechanics 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 mechanics 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 mechanics 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 MECHANICS LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

How much can be claimed?

- ▶ Generally, the lien is for the lesser of the following amounts:
 - ▶ The reasonable value of the work provided or materials furnished by the claimant; or
 - ▶ The price agreed to by the claimant and the person that contracted for the work. CC § 8430.
- ▶ An error in amount does not invalidate the mechanic's lien, unless it was made with intent to defraud or willfully includes claims that are false. CC § 8422.
 - ▶ Note that if an innocent third-party becomes a bona fide owner without notice of the claim, the claim may be invalidated.

What property is subject to the lien?

- ▶ A lien attaches to the work of improvement and to the real property on which the work of improvement is situated, including as much space about the work of improvement as is required for the convenient use and occupation of the work of improvement. CC § 8440.
- ▶ NOTE: this means that a mechanic's lien can attach to far more real property than may be apparent.
 - ▶ For example: A mechanic's lien attached to **all of the buildings** in a winery because the work on one building was for the benefit of all.

How is the Mechanic's Lien enforced?

- ▶ The Claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien – if not, the claim expires and is unenforceable. CC § 8460.
- ▶ The claimant must also record a lis pendens within 20 days of the commencement of the action. CC § 8461.

How is the Mechanic's Lien released?

- ▶ Bond – the bond replaces the real property. CC 8424(c).
- ▶ Petition For Release – the claimant fails to initiate a timely action. CC 8480(a).
- ▶ Pre-Trial motion – due process requires that the property owner be able to seek release by noticed motion.

Lambert v. Superior Court (1991) 228 Cal.App.3d 383.

- ▶ Payment or Settlement – the amount claimed can be paid and the mechanics lien can be released.
- ▶ Note, however, that notice demanding release must be given to claimant at least 10 days before filing the petition for release. CC § 8482.

Recent Updates In The Law

- ▶ Note: In dealing with mechanic's lien issues, many practice guides and resources still refer to California Civil Code sections 3082 and 3110 et seq. The substance of the mechanic's lien laws are now part of California Civil Code section 8400 et seq.
- ▶ Note: In July 2012 revisions to the mechanic's lien laws made changes to the wording and format of the preliminary notice of mechanic's lien – make sure you are using up-to-date forms.