

A Mechanics' Lien: What's in it for You?

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We hear people in the construction industry discuss “mechanics’ liens” every day. They also talk about “preliminary notices” or “20 day notices” and whether to send them or not. To a lesser extent we hear about “stop notices”, “stop notice bonds” and “bonding around” a mechanics’ lien.

There are many questions that these “legal terms” raise. But the big question is: *What's in it for you?* Because of limited space the answer will be a general discussion of salient points and not an attempt to cover the whole subject. If you have specific problem, a call to your attorney would be in order.

Now let's talk about some elements of the mechanics' lien law. First, the mechanics' lien law is recognized in the California Constitution as a method to secure the compensation of those who have been directly instrumental in the improvement of real property. Some of the people who qualify are mechanics, material suppliers, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and laborers of every class. The foregoing list is not all-inclusive, but it should be clear that almost any person who is instrumental in producing a work of improvement should stand to qualify as coming within the mechanics' lien law. The true test seems to be whether you have contributed to the work of improvement; and if you have, you probably have rights under the law.

Second, the claimant's efforts must constitute a permanent improvement to the specific project on a particular parcel of land.

The third major requirement is that the claimant's labor or materials have been bestowed at the request of the owner or his agent.

The purpose of the law is to protect people who perform works of improvement or supply materials to a specific parcel of real property. This is one of the great strengths of the mechanics' lien law – it attaches to the land. Even if the party owing the money leaves town, he can't take the real estate with him. In a rising real estate market, you have as strong a security to ensure payment for your work or materials as is possible.

A perfected claim of lien binds the real property for the value of the labor performed and the materials furnished similar to the way in which a mortgage or deed of trust secures the payment of a promissory note or a loan. This illustrates the type of security that is afforded a lien claimant. A perfected claim also establishes a priority claim on the land. This alone should be an incentive for every contractor, subcontractor, material supplier, and other potential claimant to do all he can to perfect his mechanics' lien rights. However, from the standpoint of an owner, lender, and others who may be adversely affected by a mechanics' lien, this should encourage them to take all necessary steps to prevent liens from recording. Prevention includes getting the appropriate releases when paying potential lien claimants and filing timely notices of completion to shorten the available time to record liens.

Next, let's discuss the Preliminary 20 Day Notice (private work). This is the proper name for the notice, although you may see them referred to as "20 Day Notices" or "Preliminary Notices," or by a variety of other names. In this article, I will use the term "preliminary 20 day notice (private work)" or simply "notice".

The law states that a lien claimant shall be entitled to enforce a lien *only* if he has given the notice in accordance with the provisions of the California Civil Code, Sections 3097 and 3098. Generally speaking, all claimants except the original or general contractor are required to give the notice. At this point, let me remind you that this article relates only to private projects. If your claim is on a public project, the rules are somewhat different, but you must still give a preliminary 20 day notice. The rules differ between federal and other public projects as well.

The notice must be given to the owner, the original or general contractor, and the construction lender, if any. The term "original contractor" may include any "general" or "specialty" contractor who has a direct contract with the owner. If an owner contracts directly with another party, be it a general or a subcontractor, the owner has actual notice that they are working on the project because he has dealt directly with them. However, if a specialty or subcontractor has a direct contract with the owner or owner-builder, he should give notice to the lender.

Always determine if there is a construction lender. The lender should always be given notice because he has a duty to see that project funds are properly disbursed. This will also alert the lender that you are a potential lien claimant if the bills are not paid. Further, by doing this you will preserve your rights under the "stop notice" law. Although stop notice laws are not discussed in this article, you should be familiar with them or seek the counsel of someone who is. Potential lien claimants other than contractors, who contract directly with the owner may have mechanics' lien rights even though they did not give the preliminary 20 day notice (private work) to the property owner. Such a claimant, a supplier for example, is required to give the notice to the construction lender even though *not* required to give it to the owner or owner-builder.

If the notice is required and *not* given, you *will not* be successful in a mechanics' lien foreclosure action. Clearly then, notice is very important in exerting your legal rights.

What happens if you do not give a preliminary 20 day notice (private work) within 20 days after starting work? You can always give the notice, but as the name implies it will only cover the work performed or materials supplied up to 20 days prior to giving notice. The point is, if you didn't send a notice at the beginning of the job, do it now!

Under the preliminary notice law, if a licensed contractor fails to give notice, he may also be subject to disciplinary action under the contractor's license law. The result could be suspension or revocation of the contractor's license. Knowing this can help you in another way. If an owner or general contractor asks why you sent the notice, you can point out to him the law *requires* that you send notice and refer to California Civil Code Section 3097(h).

The notice must contain several items of information and be properly served in order for it to be

effective. Forms are available from various sources that may be used to give the notice; however, be certain that the form you use will meet current legal requirements because this area of the law has been changing rapidly in recent years. The notice can be served either by hand or by first class certified mail, return receipt requested. In either case, keep your proof of service post card and certified mail receipt.

If you have not been paid for your work or material and you qualify as stated above and have given proper notice, you have the right to record a claim of lien. You will most often hear this called a “mechanics’ lien,” but the correct term is a “claim of lien.”

What may an owner or original contractor do to protect his interests under the Mechanics’ Lien law? There are two important things to do. First, get the proper releases from the subcontractor or material supplier when they are paid. This is the simplest and least costly in most cases and will protect your interests. Second, record a timely notice of completion.

Usually, any party who may record a claim of lien has 90 days following the completion of the work of improvement in which to do so. However, if the owner or original contractor records a notice of completion, then the time period within which a claim of lien can be recorded is shortened from 90 days to 30 days for subcontractors, mechanics, material suppliers, and all others except the original contractor, who must record his claim of lien within 60 days. Therefore, in order for the owner or original contractor to take advantage of shortening the time period and cutting off the potential claims of lien that may be made, he must record his notice of completion in a timely manner.

If you have taken the preceding applicable steps and recorded a valid claim of lien, you must file a lawsuit within 90 days immediately after the recording in order to foreclose on the lien.

If you have followed all the steps above but have not been paid for your work or materials, you will have a chance to find out first hand what a Mechanics’ Lien can do for you! Although California lien law is a highly technical procedure with strict rules and time limits, it is an extremely valuable tool to all people in the construction industry.