

Client Alert

New Changes to the Mechanic's Lien Law Effective January 1, 2011

Beginning January 1, 2011 everyone who records a mechanics' lien is required to send a "Notice of Mechanic's Lien" and a copy of the Mechanic's Lien to the property owner. Failure to serve these documents shall cause the mechanic's lien to be unenforceable as a matter of law. Civil Code § 3084. The following is a summary of the Form and Content of the Notice of Mechanics' Lien and The Method of Service of the Notice of Mechanics' Lien and Mechanics' Lien. Also summarized below, is another new law requiring that a Lis Pendens (Notice of Pending Action) be recorded when suit is filed to foreclose a mechanics lien.

(1) Form and Content of Notice of Mechanics' Lien. The first requirement is that a "Notice of Mechanic's Lien" must be sent to the property owner.

You must now serve the property owner with both a copy of the Mechanic's Lien and a Notice of Mechanic's Lien. The Notice of Mechanic's Lien is a written notice that notifies the property owner of the consequences of a recorded mechanic's lien. The form of the Mechanic's Lien has also changed, as it must now include a "Proof of Service Affidavit." The Notice of Mechanics' Lien must be in at least 10-point boldface type. The letters of the last sentence are printed in uppercase type, excepting the Internet Web site address of the Contractors' State License Board, which is printed in lowercase type:

**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 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 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.

(2) Service of “Notice of Mechanics’ Lien.” The next step is the manner in which you must serve the Notice of Mechanic’s Lien *and* a copy of the Mechanic’s Lien on the property owner. Service shall be made as follows:

(A) For an owner or reputed owner to be notified who resides in or outside this state, by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or as otherwise provided in subdivision (j) of Section 3097.

(B) If the owner or reputed owner cannot be served by this method, then the notice may be given by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the construction lender or to the original contractor. Service by registered mail, certified mail, or first-class mail, *evidenced by a certificate of mailing*, postage prepaid, is complete at the time of the deposit of that first-class certified or registered mail.

(C) A Proof of Service Affidavit must be filled out and signed by the person sending the Notice of Mechanic’s Lien and the Mechanic’s Lien.

The properly filled out Notice of Mechanics’ Lien *and* the Mechanics’ Lien are to be served together on the property owner. The Proof of Service Affidavit is a document signed under penalty of perjury by the person mailing the Notice of Mechanics’ Lien *and* the Mechanics’ Lien to the owner and/or lender and/or original GC that in fact the notice of lien has been properly mailed as indicated in the statute. Although it is not clear whether the Proof of Service Affidavit is required to be recorded, it is good practice to mail a copy of it as well to the property owner. It is our opinion that when the time comes to actually record the Mechanics’ Lien that you record it along with the Notice of Mechanic’s Lien and the Affidavit of Proof of Mailing.

The statute mandating that this notice be served does not state how far in advance of the recording of the Mechanic’s Lien the notice has to be sent. Some believe that it is sufficient simply to send it before the lien is recorded. It is possible this could be interpreted to mean that the notice can be sent in the morning and the mechanic’s lien recorded in the afternoon.

Lis Pendens (Notice of Pending Action) Recording Now Required

The second new change in the is the requirement that a lis pendens be recorded after filing suit to enforce the Mechanic’s Lien. Civil Code§3146

Once you file suit to enforce the lien, you must record in the office of the county recorder of the county in which the property is situated, a notice of the pendency of the proceedings on or before 20 days after the filing of the mechanic's lien foreclosure action. Only from the time of recording that notice shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and in that event only of its pendency against parties designated by their real names.

Lanak & Hanna has always made it a practice to record a lis pendens every time a suit is filed to enforce a mechanics’ lien. Should you have any questions concerning these two new changes to the mechanics’ lien law please feel free to contact Joseph M. Hanna. jhanna@lanak-hanna.com

The information contained herein is written by Lanak & Hanna and is designed to provide general information regarding new legislation. What is being provided is our interpretation of the law and its requirements. As with all new legislation there are questions and concerns about its meaning and intent and §3084 has already been found by many in the construction industry as difficult to interpret and apply. We believe that further legal clarification is needed. This may or may not come in the near future by way of legislative amendment or other action by the legislature. Also, the courts re-interpret laws on a daily basis. For that reason, the reader should be attentive to any new legislation that is passed or court decisions concerning this new law. All readers should consult professional legal counsel to obtain advice on specific questions and especially how this statute affects them.