

New Defenses to Mechanic's Liens in 2011

This Construction Legal Alert is relevant to all California property owners and lien claimants.

January 13, 2011

Two changes in California's mechanic's lien law took effect January 1, 2011. These changes provide property owners with new defenses to liens since failure to comply renders liens unenforceable as a matter of law:

1. Claimants must serve property owners with a new statutory notice before recording a lien.
2. Claimants must record a notice of pending action (commonly called a *lis pendens*) with the county recorder where the property is situated within 20 days of filing a lien foreclosure action. A *lis pendens* helps notify owners, lenders and third-parties of an action affecting title.

Under prior law, giving notices of liens and recording *lis pendens* were voluntary. Further, under prior law, owners had to conduct ongoing title searches of their real property or rely on the county clerk to mail them copies of recorded liens or *lis pendens*.

Specifically, California Civil Code Section 3084 requires claimants to serve a "Notice of Mechanic's Lien" on the property owner or reputed owner. The statute has several requirements:

- The specific wording shown below must appear in the body of the mechanic's lien and must be printed in at least 10-point boldface 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.

- The notice must be served to the owner's or reputed owner's residence, place of business, or address listed on the building permit, by registered, certified, or first-class mail evidenced by a certificate of mailing.
- An affidavit confirming service of the notice must be attached to the lien for recording or the county recorder may reject the lien. If the owner or reputed owner cannot be served, the lien claimant may serve the construction lender or original contractor with the mechanic's lien and the Notice of Mechanic's Lien.