

# Construction Newsletter

[Presented by the Law Offices of Ashley A. Baron]

## Legal News for Construction Industry

### Mechanics' Lien Law Changes Effective January 1, 2011

The California Legislature has passed changes in the California Mechanics' Lien law that will affect contractors and material suppliers statewide.

Beginning January 1, 2011, California Civil Code sections 3084 and 3146 will be amended. These sections will require the service of a mechanic's lien on the owner of the property at the time the mechanics' lien is recorded. If for some reason the owner cannot be served with the mechanic's lien then the original contractor or the lender are to be served.

The sections also amend the mechanics' lien itself. The new "Notice of Mechanic's Lien" provides a brief explanation of the nature of the mechanic's lien and what the property owner might do to address the situation. The "Notice of Mechanic's Lien" must be printed in at least 10-point boldface type on the Lien itself. The "Notice of Mechanic's Lien" must be served by registered mail, certified mail or first-class mail with proof via a certificate of mailing.

The "Notice of Mechanic's Lien" must contain the following language:

**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](http://www.cslb.ca.gov).**

The lien claimant will be required

to complete and sign a proof of service affidavit and it would be included as part of the mechanics' lien. The law would invalidate an otherwise enforceable mechanics' lien if the claimant fails to serve the mechanics' lien including the Notice of mechanics' lien.

The amended code sections also provide that when a lawsuit is filed to foreclose on the mechanics' lien, a "Notice of Pending Action" or Lis Pendens (Latin meaning "a suit is pending") must also be recorded within 20 days after the filing of the mechanic's lien foreclosure action. This enables a title company to determine if a timely lis pendens has

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been filed by noting the date of the lien recordation and comparing it with the date of filing of a lis pendens. Section 3084 also adds that reference to the use of the term “mechanic’s lien,” when it previously only referred to “claim of lien.”

Because contractors and material suppliers only have 90 days after the recordation of the mechanics’ lien to file the lawsuit, the timing of proper filing, service and recordation of the Notice of Pending Action are crucial to perfect your rights.

While these changes were enacted in response to homeowners who claimed not to know that a lien had been placed on their home until they were served with a lawsuit to foreclose it, they will apply to all contractors and suppliers.

The California Constitution since 1879 guaranteed contractors and material suppliers the right to lien and if necessary sell the property upon which they performed work on or supplied materials to in order to be paid. The laws have been revised over time but have remained essentially the same.

These changes to the mechanic’s lien law are possibly only the first of many to follow if the sweeping changes of Senate Bill 189 reintroduced by Senator Lowenthal are signed into law by the Governor Schwarzenegger.

The voluminous 175 page bill introduced on February 18, 2009, will repeal and replace the current Civil Code sections dealing with mechanic’s liens and stop notices for both private and public works of improvement. If signed into law a major overhaul of the mechanic’s lien law will take place July 31, 2012. For an up to date status on the bill and a complete copy of the changes go to [www.leginfo.ca.gov](http://www.leginfo.ca.gov) and look up Senate Bill 189.

Some of the changes contained in the Bill include a change in the definition of “completion” of a private

work. Section 8180 provides the new definition of “completion.” The definitional change is important in that “completion” triggers the countdown for the contractor to file its mechanic’s lien, stop notice and/or payment bond remedies.

Also included in the bill, at Section 8488, is an increase in the attorney’s fees awardable by the court on a petition to release the mechanics’ lien. The new law no longer sets a cap on the fees awardable and allows the award of “reasonable attorneys fees.”

The time in which the owner may record a notice of completion is also extended from 10 to 15 days in Section 8152.

The bill also sets forth at Section 8700 et seq additional requirements governing the form of security required for large projects with a contract price of greater than \$1 million for the owner of less than a fee interest in the property or \$5 million for the owner of a fee interest. These bonding benefits accrue only to the direct contractor (formerly “original contractor”). Further, under the statute, if the Owner of the project fails to maintain the bond, the direct contractor may pull off the job.

Pursuant to Section 8424 the amount of the bond the owner would have to post to release the lien would be reduced from 1 ½ times the amount of the lien to 125% (or 1 ¼) times the amount of the lien. This would parallel the requirements under the bond for release of a stop notice pursuant to 8510.

It is interesting to note that there does not appear to be a clarification in the new law as to the overlap of the mechanics’ lien and stop notice requirements for bonding by the owner. Owners under the old and apparently the new law would be required to incur bonding fees for both the mechanics’ lien and the stop notice in order to clear the property of liens and to obtain the construction funds

necessary to complete the project. Arguably, only one bond should be necessary since the amount claimed by a contractor or material supplier under the different remedies can only be awarded once and there is no right of double recovery. However, the legislature seems to have left the current double bonding requirement in place.

It remains to be seen if Governor Schwarzenegger will sign into law the dramatic revamping of the mechanics’ lien and stop notice law. It will certainly behoove owners, contractors and material suppliers to monitor the status of the pending legislation closely so that they can review and be prepared to implement all the required changes under the new law if it is signed into law.

We now have both Orange County and Park City Offices. Ashley Baron, a U.S.C. undergraduate and law school graduate, has been a lawyer for the past 29 years. Ms Baron has tried over 100 cases. The firm performs construction, business and litigation support for developers, prime contractors, material suppliers, subcontractors and other businesses in Orange, Riverside, San Bernardino and Los Angeles Counties. For further information contact us at (714) 974- 1400 You can now also go to our web sites [www.ashleybaron.com](http://www.ashleybaron.com) to see our most recent newsletters.