

# MANAGING A BUSINESS

## **California Mechanics' Liens and Stop Notices**

***Mechanics' Liens.*** In the State of California, mechanics' liens are provided in the California Constitution. Article XIV, Section 3 of the California Constitution provides:

“Mechanics, materialmen, artisans, and laborers of every class shall have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of such materials, for the value of such labor done and materials furnished; and the Legislature shall provide by law, for speedy and efficient enforcement of such liens.”

The manner in which mechanics' lien rights are perfected is based on statutes. The California Supreme Court has held that mechanics' lien rights are constitutional.

The list of people who may claim liens as provided by the Constitution as well as the California Civil Code is as follows: mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and draymen and all persons and laborers performing labor or bestowing skill or other necessary services, or furnishing material or leasing equipment to be used or consumed in/or furnishing appliances, teams, or power contributing to a work of improvement. This does not mean that these people must have a contract directly with the owner. However, they must have a contract with the agent of the owner and every contractor, subcontractor, architect, builder, or other person having charge of a work of improvement is held to be the agent of the owner.

Due to the fact that a material supplier is not the agent of the owner, a material supplier's supplier is not entitled to a statutory lien. Further, in order to have your lien, the work, and/or materials, etc., must be incorporated into the structure. That is to say that it has to be installed.

***Stop Notices.*** A mechanics' lien is a lien on property. A stop notice is a lien on construction funds. You may use one, or the other, or both. However, it should be noted that in public works, you cannot file a mechanics' lien and therefore, your only remedy may be a Stop Notice. Since the Stop Notice is a lien on funds, it may be preferable to a mechanics' lien in some instances.

***Other Remedies.*** You should remember that even though you may be one of the people protected by the mechanics' lien laws of the State of California, you are not precluded from other remedies. You can still sue on a contract theory just as any other businessperson or on any other legal theory available. So, if you have for some reason not availed yourself of the mechanics' lien rights, then utilize the rights of any other businessperson.

***Procedure.*** The mechanics' lien laws and Stop Notice requirements are relatively complicated and must be adhered to very strictly. We have listed below a procedural checklist that you may wish to utilize to formulate an office procedure to aid you in doing

the things that are necessary in a timely manner. We would suggest that prior to setting up your office procedure, you become thoroughly familiar with the process and discuss it with your attorney so that you can instruct your office staff to handle it in an efficient manner.

## **Mechanics' Lien and Stop Notice Checklist**

### **I. Prior to Serving the Notices**

Before serving the notices, it is important to do all of the following:

- A. Obtain the legal description of the property. (Map book and page number, etc.)
- B. Determine the name of the owner and the extent of the owner's interest in the property.
- C. Determine whether the owner is the one who is requesting the improvement. If not, what is the interest of the person requesting it, and, are there any others who claim an interest in the property (lenders, etc.)?
- D. Determine whether you are a prime contractor, subcontractor, laborer or material supplier.
- E. Determine the name of the construction lender (if any).
- F. Consider the effect of a bond or joint control.

### **II. Subcontractors and Material Suppliers**

- A. Within twenty days from first furnishing labor or materials, serve a "Preliminary 20-day Notice" on the owner, the original contractor, and construction lender. No matter how many deliveries you make, or the time span over which you furnish labor or materials, only one Preliminary Notice is required.

**NOTE:** You may also file the preliminary 20-day notice with the county recorder in the county in which the property is located. The county recorder will then notify you when a Notice of Completion or Notice of Cessation is recorded on the property.

The most common method for serving a notice is to use first class certified or registered mail, return receipt requested, postage prepaid, addressed to the residence or place of business of the person being served, or at the address shown by the building permit, or at an address contained on a recorded mortgage or trust deed. Be sure to keep post office receipts for later use if you need to file a claim and prove it in court. A Preliminary Notice also may be served by personal delivery or by leaving it with "some person in charge" at the residence or place of business of the person you wish to serve (must be an adult).

- B. After the work is completed or ceases the following apply:
  - 1. If the owner records a Notice of Completion after completion of work of improvement, (this requires signature of owner or owner's agent), you should not do additional work under the contract. (While this Notice provision is designed to primarily protect the owner, it might serve to increase the funds accessible to satisfy your claim, and indicate that you have performed your contractual obligations.)

2. If the owner files a Notice of Cessation of labor or a Notice of Completion, then:  
**NOTE:** Labor must have ceased for at least thirty days before the owner is entitled to record the Notice of Cessation.
  - (a) Within thirty days of recording of either of these, the subcontractor must record a Claim of Lien in the Office of the County Recorder. Also at this time, serve Stop Notices (see below).
  - (b) File Lien Foreclosure Action, within ninety days of recording Claim of Lien, and record a Lis Pendens at the same time. You must also file an action on the Stop Notice at this time if applicable. If you want more than ninety days in which to foreclose, then after recording lien, but before ninety days elapses, give credit to the owner and record a notice of the fact and terms of credit. Within ninety days after your offer expires, you must foreclose. You can keep granting extensions by the above procedure, but you must foreclose within one year after work is completed. The action should be brought to trial within two years after commencement.
3. If no Notice of Completion or Notice of Cessation is recorded and either
  - (a) Labor ceases and the owner or agent uses work of improvement, or
  - (b) The owner or agent accepts improvement, then
    - (1) Within ninety days of any of the above acts, record a Claim of Lien. Also at this time, serve Stop Notices (see below).
    - (2) Within ninety days of recording the lien, file a Lien Foreclosure Action and record a Lis Pendens at the same time. If you want to extend the time in which to file a foreclosure action, after you record the Claim of Lien, but before ninety days elapse, give credit to the owner and record a notice of the fact and terms of credit. The extension will be for ninety days after the credit expires, but even with extensions you must foreclose within one year after the work is completed. The action should be brought to trial within two years after commencement.
4. Stop Notices:
  - (a) Serve Stop Notices on the owner, bonded Stop Notice on the construction lender, or anyone holding funds.
  - (b) If no mechanics' lien has been recorded, and a surety on a payment bond has been recorded, then the notice must be served on the surety.
  - (c) File suit on the notice at the same time that you file a Lien Foreclosure Action.

### **III. Prime Contractors**

- A. Within ten days after completion, you may record a Notice of Completion. (While this notice provision is designed to primarily protect the owner, it might serve to increase the funds accessible to satisfy your claim, and indicate that you have performed your contractual obligations.) Do not do additional work under the contract. This notice requires the signature of the owner or the owner's agent.
- B. Within sixty days of recording the above, record the Claim of Lien.
- C. Within ninety days of recording the lien, file a Lien Foreclosure Action and record a Lis Pendens at the same time. If you want to extend the time in which to file a foreclosure action, after you record the Claim of Lien, but before ninety days elapse,

give credit to the owner and record a notice of the fact and terms of credit. The extension will be for ninety days after the credit expires, but even with extensions you must foreclose within one year after the work is completed. The action should be brought to trial within two years after commencement.

- D. If the owner records a Notice of Cessation of Labor or a Notice of Completion, do the following:

**NOTE:** Labor must have ceased for at least thirty days before the owner is entitled to record the Notice of Cessation.

1. Within sixty days of recording of a Notice of Cessation or a Notice of Completion, the contractor must record a Claim of Lien.
2. Within ninety days of recording the Claim of Lien, file a Lien Foreclosure Action, and record a Lis Pendens. If you want more than ninety days in which to foreclose, then after recording the lien, but before the first ninety days elapse, give credit to the owner and record a notice of fact and terms of credit. Within ninety days after your "offer" expires, you must foreclose. You can keep granting extensions by the above procedure, but you must foreclose within one year after work is completed. The action should be brought to trial two years after commencement.

- E. If no Notice of Completion or Cessation is recorded, and either:

1. Labor ceases and owner or agent uses the work of improvement or
2. Owner or agent accepts improvement, then:
  - (a) Within ninety days of any of the above acts, record Claim of Lien.
  - (b) File Lien Foreclosure Action, within ninety days of recording Claim of Lien and record a Lis Pendens at the same time. If you want more than ninety days in which to foreclose, then after recording lien, but before the first ninety days elapse, give credit to the owner and record a notice of the fact and terms of credit. Within ninety days after your offer expires, you must foreclose. You can keep granting extensions by the above procedure, but you must foreclose within one year after work is completed. The action should be brought to trial within two years after commencement.

# MECHANICS' LIEN AND STOP NOTICE FLOW CHART

ALL CONTRACTORS (See also the Mechanics' Lien Checklist)

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|--|---|
| 1. Obtain the legal description of the property. (Map book and page number, etc.)  | 4. Determine whether you are a prime contractor, subcontractor, laborer or material supplier. |
| 2. Determine the name of the owner and the extent of the owner's interest in the property.   | 5. Determine the name of the construction lender, if any.                                     |
| 3. Determine whether the owner is the one who is requesting the improvement. If not, what is the interest of the person requesting it and, are there any others who claim an interest in the property (lenders, etc.)? | 6. Consider the effect of a bond or joint control.  |

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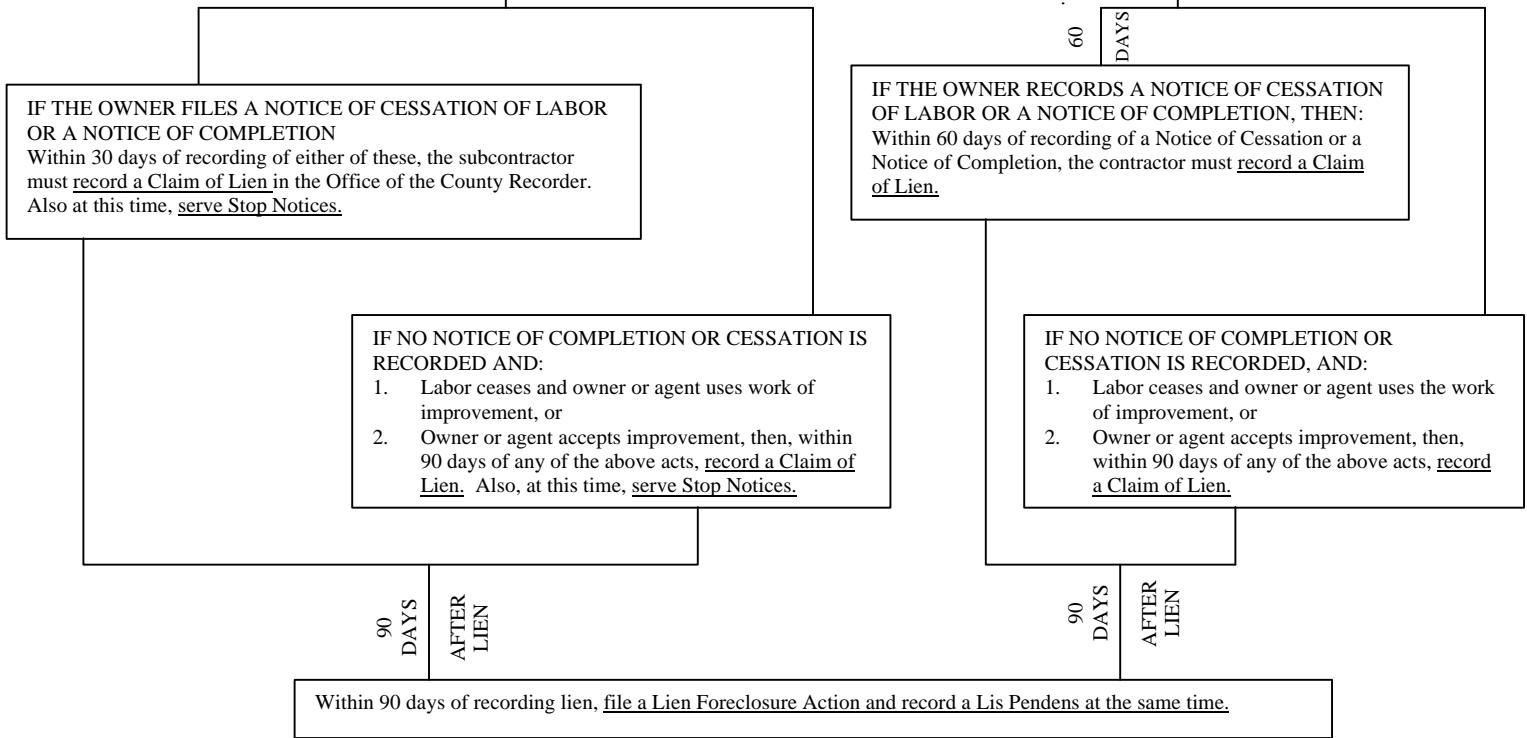
PROJECT INVOLVEMENT

SUBCONTRACTORS AND MATERIAL SUPPLIERS

PRIME CONTRACTORS

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| <ol style="list-style-type: none"> <li>Send out a Preliminary 20-day Notice to the owner, the original contractor, and construction lender.<br/>Effective July 1, 1988, you can file the preliminary 20-day notice with the county recorder in the county in which the property is located. The county recorder will then notify you when a Notice of Completion or Notice of Cessation is recorded on the property.</li> <li><b>SERVICE:</b> The most common method is by first class certified or registered mail, return receipt requested, postage prepaid. A Preliminary Notice also may be served by personal delivery.</li> </ol> |
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WORK COMPLETED



Within 90 days of recording lien, file a Lien Foreclosure Action and record a Lis Pendens at the same time.

## **GLOSSARY OF TERMS ASSOCIATED WITH MECHANICS' LIENS**

***Awarding Authority*** is the owner or the agent of the owner who awards an original building or construction contract, also known as the prime contract. This term is usually used with public works.

***Bonded Stop Notice.*** This is a bond which accompanies a Stop Notice to a construction lender and must be in a sum equal to 1¼ times the amount of the claim. The bond, along with the Stop Notice, must be delivered by certified or registered mail or in person, to the persons responsible for administering or holding construction funds. Should the claimant lose his/her action (lawsuit on the bond), then the claimant must pay all costs that may be awarded against the owner or contractor or construction lenders. This is the reason for the bond on the Stop Notice.

***Claimant*** is the person who is claiming or asserting the right or demand (the person who is claiming Mechanics' Lien or Stop Notice rights).

***Claim of Lien*** (Mechanics' Lien) is a written statement signed and verified by the claimant or by the claimant's agent which must state the following:

- (a) the amount of claimant's demand (after deducting credits and offsets),
- (b) the name of the owner or reputed owner, if known,
- (c) the kind of labor, services, equipment or materials furnished by the claimant,
- (d) the name of the person by whom the claimant was employed or to whom the claimant furnished the labor, services, equipment or materials (the contractor who hired you if you are a subcontractor or the owner who hired you if you are the prime contractor), and,
- (e) a description of the site sufficient for identification. (See Civil Code Section 3084.)

***Defendant*** is the person who defends him/herself or who denies a claim. A defendant is the person against whom relief or recovery is sought in an action or suit.

***Express Trust*** is a trust that is expressly created, usually in writing, as distinguished from a trust that is inferred by law from the conduct of the parties. It usually has definite terms. According to Civil Code Section 3111, an express trust fund, created through a collective bargaining agreement wherein payments are to be made on account of fringe benefits or other supplemental wage agreement, has a lien on the real property that is being improved in the amount of the fringe benefit payments owing to it based upon the workers working on the particular piece of property.

***Lien Foreclosure Action*** is a lawsuit to foreclose the Mechanics' Lien.

***Lis Pendens*** is a notice that a lawsuit is pending and that the lawsuit affects the real property. It warns everyone who might acquire the property that he or she may be bound by an adverse judgement. (See Civil Code Section 3146.)

***Notice of Cessation*** is a written notice, signed and verified by the owner or his/her agent, stating:

- (a) the approximate date when labor on the job stopped,
- (b) that no further labor has been performed since the recording of this notice,
- (c) the name and address of the owner,
- (d) the nature of the interest or estate of the owner,
- (e) the street address of the site, if any, or a description of the site sufficient for identification, and,
- (f) the name of the original contractor, if any, for the work of improvement.

The Notice of Cessation must be recorded in the Office of the County Recorder of the county in which the site is located and will be effective only if labor has ceased continuously for at least 30 days prior to the recording. (See Civil Code Section 3092.)

***Notice of Completion*** is a written notice, signed and verified by the owner or his/her agent stating:

- (a) the date that the job is finished,
- (b) the name and address of the owner,
- (c) the nature of the interest or estate of the owner,
- (d) the street address of the site, if any, or a description of the site sufficient for identification, and,
- (e) the name of the original contractor, if any, for the contract covering the portion of the work of improvement completed.

The Notice of Completion must be recorded in the Office of the County Recorder of the county in which the site is located within ten days after completion of the project. (See Civil Code Section 3093.) If the Notice of Completion is recorded, then the time within which you have to record your Mechanics' Lien is sixty days if you are a prime contractor and thirty days if you are subcontractor. If this notice is not filed in a timely manner, you have a ninety-day period within which to record the claim.

***Notice of Nonresponsibility*** is a written notice, signed and verified by a person or that person's agent who owns or claims to have an interest in the property that is being improved and who has not caused the work of improvement. For example, the owner completes this notice when his/her tenant is requiring the work of improvement without the owner's direction. This notice must contain:

- (a) a description of the site sufficient for identification,
- (b) the name and nature of the title or interest of the person giving the notice,
- (c) the name of the purchaser or person holding the lease (lessee), if known, and,
- (d) a statement by the person giving the notice that he/she will NOT be responsible for any claims arising from the work of improvement.

Within ten days of discovering the work of improvement, the person asserting nonresponsibility must POST this notice in a conspicuous place on the site AND must RECORD the notice in the Office of the County Recorder of the county in which the site is located. (See Civil Code Section 3094.)

**Original Contractor.** Original contractor, also known as prime contractor, is usually a general contractor.

**Owner** includes any person(s) having some title or interest in a parcel of real property.

**Payment Bond** is a bond that is usually procured by the owner or contractor which is in an amount sufficient to pay all claims of claimants. The bond gives the claimant the right to recover in any suit brought on the bond. Usually the bond is used to protect against Mechanics' Liens and substitutes the bond as security instead of the real property.

**Prime Contractor.** See Original Contractor above.

**Stop Notice** is a written notice signed and verified by the claimant or the claimant's agent which puts a lender or anyone else holding construction funds on notice that there is money due and owing to the claimant. It must state the following:

- (a) the kind of labor, services, equipment, or materials furnished or agreed to be furnished by the claimant,
- (b) the name of the person to or for whom the labor, services, etc. were furnished,
- (c) the amount based on value as near as possible, of the work or equipment already completed or furnished and the amount of the whole work agreed to be done or furnished.

If involving a private work of improvement, the notice must be delivered to the owner personally or left at his/her residence or place of business with some person in charge, or delivered to his/her architect, if any, and, if the notice is served upon a construction lender holding construction funds and maintaining branch offices, it must be delivered to the manager or other responsible person at the office or branch administering or holding the construction funds.

If involving any public work for the state, the notice must be filed with the director of the department which let the contract.

If involving any other public work, the notice must be filed in the office of the controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract, or with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom the contract was awarded.

Any Stop Notice may be served by registered or certified mail with the same effect as personal service. (See Civil Code Section 3103.)

The Stop Notice obligates the person holding construction funds to withhold sufficient funds to satisfy the amount in the Stop Notice. If the person holding the funds does not withhold sufficient funds to satisfy the Stop Notice, then the lender or whoever else is holding the funds may be responsible to the claimant directly.



In order to bind a construction lender, the Stop Notice must be bonded. The bond which accompanies a Stop Notice to any construction lender must be in the sum equal to one and one-quarter times the amount of the claim. The bond must be delivered along with the Stop Notice in person or by certified or registered mail to the persons responsible for administering or holding the construction funds.

Should the claimant lose in his/her action (lawsuit on the bond), then the claimant must pay all costs that may be awarded against the owner or contractor or construction lender. That is the reason for the bond on the Stop Notice. (See Civil Code Section 3083.)

***Subcontractor*** is any person who does not have a contract directly with an owner. The subcontractor has a contract with and from the prime contractor or another subcontractor. A subcontractor is usually a specialty contractor, but can also be a general contractor.

## **Design Professional Liens**

Design professionals have a right to record a lien before construction begins. A design professional lien is a separate remedy available only to architects, professional engineers and land surveyors who provide services during the planning phase of a private work project under a written agreement with the owner. The lien is on the property for which the project is planned and may not be recorded until a building permit or other governmental approval associated with the project has been obtained in connection with the services rendered by the design professional.

A design professional lien is not available for a single-family, owner-occupied residence with construction costs of less than \$100,000 in value.

A design professional is entitled to a lien if all of the following occur:

1. The landowner has defaulted on any payment or refused to pay a demand for payment required under the terms of the contract,
2. At least 10 days prior to recording the lien, the landowner has been given a written demand for payment informing the landowner that he is in default and the amount owed, and
3. The design professional records with the county recorder in the county where the property is located a notice of lien which specifies that a lien is created in favor of the design professional, the amount of the lien, the identity of the current owner of record of the property, a legal description of the property to be improved, and that the building permit or other governmental approval for the project has been obtained.

The lien is effective only if the landowner who contracted for the design professional services is also the owner of the property at the time the lien is recorded. The amount of the lien will be either the design professional's fee for any services rendered prior to the start of work on the project or the reasonable value of those services, whichever is less.

A design professional must record a notice of lien within 90 days after he or she knows or has reason to know that the landowner is not going to build the project.

A design professional lien automatically expires if either of the following occur:

1. At the request of the landowner, work commences on the project for which the design professional furnished work, or
2. At least 90 days has passed since the recording of the notice of lien and the design professional has not filed suit to enforce the lien within that 90 day period.

Upon expiration of the lien, the design professional must record mechanics' liens to preserve his rights.