

### What Happened to Our Antiquated Mechanics Lien Law?!

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Within the past year, two separate, important changes have affected California's Mechanics Lien Law. The first, Assembly Bill 457, will go into effect January 1, 2011. The second, more comprehensive overhaul of existing law, Senate Bill 189, is set to take effect on July 1, 2012.

#### Changes Effective January 1, 2011

Assembly Bill 457 modifies Civil Code Sections 3084 and 3146. The new law brings two key changes to the construction industry:

- Revised Section 3084 will require each lien claimant to serve the property owner with the mechanics lien – which must now include within its text a “notice of mechanic’s lien” – prior to recording and attempting to perfect the lien. The lien claimant must sign a proof of service as part of its mechanics lien. A lien claimant’s failure to serve the owner will render the mechanics lien unenforceable as a matter of law.
- Revised Section 3146 requires a lien claimant to record a lis pendens with the office of the county recorder where the property is situated within 20 days of filing suit to enforce its lien. The prior Section 3146 merely permitted such recording. Until the lis pendens is recorded, a purchaser or encumbrancer of the property is not deemed to have constructive notice of the pendency of the action.

#### Changes Effective July 1, 2012

Senate Bill 189 recodifies the entire Mechanics Lien Law based on recommendations of the California Law Revision Commission. According to the Commission’s report, the intent of the revision is “to modernize, simplify, and clarify the law, so as to make it more user friendly, efficient, and effective for all stakeholders.” However, there are a few noteworthy substantive changes to existing law.

With minor exceptions, the new statutes do not become operative until July 1, 2012. On that date, the existing Mechanics Lien Law (commencing with Section 3082 of the California Civil Code) will be repealed and replaced with new provisions relating to works of improvement generally, private works of improvement and public works of improvement. Senate Bill 189 also amends other statutes related to the Mechanics Lien Law.

#### Noteworthy changes include:

- Changes to key terminology (e.g., “direct contractor” has replaced “original contractor”), added definitions of standard industry terminology (e.g., contract price, contractor, funds, admitted surety insurer), non-substantive changes to certain definitions (e.g. construction lender, claimant, laborer), and several substantive changes to definitions, including:

- “completion” will not include acceptance by the owner for a private work of improvement;
- “contract” will not be limited to the agreement between the owner and direct contractor;
- “work of improvement” expands the types of demolition and removal that constitute a work of improvement;
- “site improvement” will include a catch-all phrase to include any other work or improvements in preparation of the site for a work of improvement.
- Revised requirements for notices given under the Mechanics Lien Law, including:
  - standardized content requirements for notices;
  - standardized general procedure for giving notice;
  - electronic notification is permissible if the parties agree;
  - notices will not be invalid if sufficient to substantially inform the party to whom notice is sent.
- Extended the period for an owner to file a notice of completion from 10 to 15 days after completion.
- Revised statutory waiver and release provisions and forms. Such provisions will also apply to subcontractors.
- A modified form of preliminary notice (previously called a preliminary 20-day notice) and clarification that the direct contractor must give a preliminary notice to a construction lender.
- Clarifies that the owner must agree to any extension of time to enforce a mechanics lien.
- Eliminates any restrictions on who may obtain a release bond.
- Adds requirement that to obtain protection afforded by payment bond, both the direct contract and the payment bond must be recorded prior to the commencement of work.
- Expands existing law to allow an owner an expedited court process to resolve a stop work notice dispute.

## Attorneys

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