

MPP Construction & Design Practical Update



CHANGES TO MECHANIC'S LIEN LAW IN 2011

The California Legislature has recently amended the mechanic's lien law. These new provisions modify the procedure to maintain a valid mechanic's lien. The failure to comply with these new provisions will result in the lien being declared invalid.

Commencing on January 1, 2011, a claimant will be required to serve a "Notice of Mechanic's Lien" on the owner of the property prior to filing a mechanic's lien. The mechanic's lien itself must contain a proof of service attesting that the "Notice of Mechanic's Lien" was served by registered mail prior to the recording of the lien. Finally, the claimant must record a "Notice of Lis Pendens" within twenty (20) days of the filing of a complaint seeking to enforce the mechanic's lien.

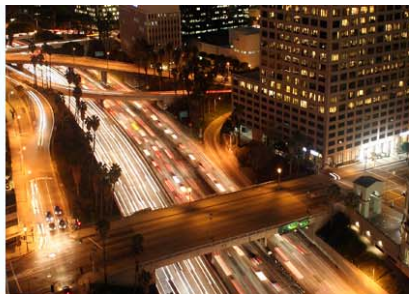
Notice of Mechanic's Lien

Current California law requires contractors and design professionals not in direct contractual privity with the owner to serve a twenty-day Preliminary Notice as a prerequisite to recording a mechanic's lien. Presumably, this gives the owner notice that the contractor or design professional has performed work, supplied materials, or provided services to property. Beginning in 2011, Civil Code section 3084 will require a lien claimant to take additional steps in order to assert a valid mechanic's lien.

The new law requires that prior to recording a mechanic's lien with the County Recorder's Office, the lien claimant must serve the property owner with a "Notice of Mechanic's Lien" and a copy of the mechanic's lien. The "Notice of Mechanic's Lien" must contain certain precise statutory language specified in the new law and must follow statutory guidelines regarding print size and typeface.

The new law also requires that prior to recording a mechanic's lien, a proof of service must be signed and attached to the mechanic's lien. The person signing the proof of service must attest under oath that the mechanic's lien and the "Notice of Mechanic's Lien" were served on the property owner in accordance with the requirements of Civil Code section 3084. Service of these documents must be by registered mail, certified mail, or first class mail evidenced by a certificate of mailing with postage prepaid.

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Notice of Lis Pendens

A properly recorded "Lis Pendens" provides record notice of pending litigation related to property to any prospective purchasers, mortgage lenders or title search company. Under current California law, a mechanic's lien claimant may, but is not required to, record a Notice of Lis Pendens once a lawsuit to foreclose on the lien is filed with the court. Under the new version of Civil Code section 3146, as of January 1, 2011, a claimant **must** record a Notice of Lis Pendens within 20 days after filing the foreclosure complaint. (Most attorneys will advise a lien claimant to file and record a Lis Pendens immediately upon filing of the complaint, despite the 20 day grace period in the new law.)

Failure to adhere to these new requirements will render a mechanic's lien unenforceable. Please note, however, that these changes do not apply to design professionals' liens, stop notices, or payment and performance bond claims.

For more information regarding the mechanic's lien law changes, please do not hesitate to contact us.

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