

Design Professionals' Guide to Mechanic's Liens (California)



Step 1: BEFORE performing services for your client, you must:

- Be sure that you have the proper names and addresses of the following:
 - Customer/client; the owner/public entity, including the disbursing officer; the project location, including the physical/legal descriptions; if there is a lender and/or payment bond surety.
- Determine the estimated completion date of the project.
- Send the current CALIFORNIA PRELIMINARY 20-DAY NOTICE by certified mail, to the owner, general contractor, surety bonding company and construction lender, no later than 20 days after first providing services to the project. IF YOU DON'T DO THIS, YOU MAY LOSE SOME OR ALL OF YOUR MECHANIC'S LIEN (Civil Code section 3097).
- Set up a separate billing account for each project.
- Make sure each invoice references the specific project for which the services are provided.

Step 2: Be Vigilant with Receivables:

- DO NOT LET THE ACCOUNT BECOME PAST DUE.
- You may be asked to sign CONDITIONAL/UNCONDITIONAL lien releases before your invoice(s) for services paid. Note that when you sign a lien release, it releases all your rights through the date specified on the release, even if you haven't billed or received payment for services prior to that date (Civil Code section 3262). *Practice Point – use exact forms and exact statutory language.*

Step 3: Serve Notice of Mechanic's Lien:

- Prior to recording a Mechanic's Lien a design professional is required to serve a "Notice of Mechanic's Lien" on the owner of the property (Civil Code section 3084).
- When recording a mechanic's lien (see below) the mechanic's lien 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.
- A "Notice of Mechanic's Lien" is an absolute prerequisite requirement to recording a mechanic's lien.

Step 4: Record Mechanic’s Lien:

- If a design professional has not been paid timely, prepare to enforce your rights. First ascertain all of the following:
 - o Determine the date services were last performed on the project. *(Civil Code section 3116 requires that a design professional must have completed his services/work on the project prior to recording a lien);*
 - o Establish the completion date of the project (Civil Code section 3086 defines completion). *(Civil Code section 3116 requires that a mechanic’s lien be recorded within 90 days of completion of the Project);*
 - o If the owner has recorded and served a Notice of Completion or Notice of Cessation *(Civil Code section 3116 requires that a mechanic’s lien must be recorded within **30 days** when the owner records and serves a valid Notice of Completion or Notice of Cessation related to the Project);*
 - o Continuous cessation of work for 60 days. A mechanic’s lien must be recorded within **90 days** if there has been a continuous cessation of all labor and services to the Project for a continuous period of 60 days (Civil Code section 3086, 3116).

- Prepare the required documents to enforce your rights. Record mechanic’s lien along with proof of service indicating that a Notice of mechanic’s lien was previous served.
 - o Recording must be in the County where the property/project is located.

Step 5: File Lawsuit for Foreclosure of Mechanic’s Lien:

- File lawsuit to foreclosure mechanic’s lien within 90 calendar days the date the mechanic’s lien was recorded.
- Must Record Lis Pendens within 20 days of filing a lawsuit (Civil Code section 3146).

	Private Project	Public Project
Mechanic’s Lien	Record in Recorder’s Office in county where project is located. Record within 30 days after Notice of Completion/Cessation is recorded. If no Notice is recorded, record lien within 90 days of actual completion. Must file lawsuit to foreclosure lien within 90 calendar days of recording mechanic’s lien.	Mechanic’s Lien cannot be recorded on a Public Works Project.

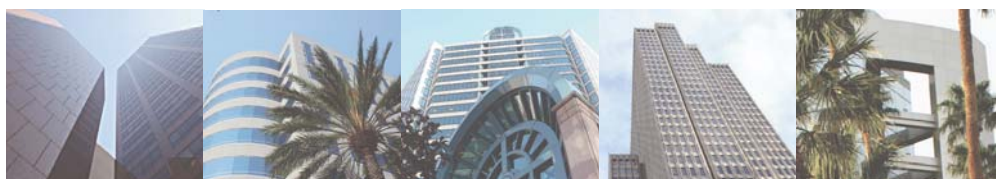
If you record a mechanic’s lien, contact legal counsel if final payment is not received immediately after recording the mechanic’s lien. A lawsuit must be filed to enforce these rights, often within 90 days after recording the mechanic’s lien.

Remember: While these are the general rules for projects in California, these rules are not exhaustive. You should contact Morris Polich & Purdy regarding specific projects and/or questions. A consultation with counsel early in a project may save you time and money later on.

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www.mpplaw.com



Los Angeles
213.891.9100

Irvine
949.769.6900

San Diego
619.557.0404

San Francisco
415.984.8500

Las Vegas
702.862.8300