

## **Mechanic's Liens Law and how it Applies to an Owner of Real Property**

**By Donald A. Odell, Attorney at Law**

### **What is a Mechanic's Lien?**

A Mechanic's Lien is a legal claim recorded against privately owned real property by a "mechanic" or other contractor who furnished labor, materials, equipment, or other services used in the improvement of that property.

- 1) The law is intended to provide the mechanic with the ability to obtain payment for his or her work and provide a means by which the improved real property can be sold to satisfy any unpaid fees for services or materials used in the improvement work.
- 2) These laws apply only to improvements to real property such as land and buildings, and do not apply to improvements to public property or to improvements to personal property such as cars, boats or televisions.
- 3) A Mechanic's Lien impacts the title to real property by placing a stain on the title to the property.
- 4) The laws favor the mechanic and unless an owner carefully manages his or her home improvement project, the owner may end up facing a mechanic's lien which could well end-up costing the owner as much or more than the improvement project itself.

### **Who can file a lien?**

Any contractor who contracts with a property owner to improve the owner's property has a right to lien the property to enforce payment of the contract. Few people know that these lien rights extend well beyond the contractor and apply to essentially anyone who provided work or materials used in the improvement work.

- 1) For purposes of the lien laws, a "mechanic" includes: Mechanics, material persons, contractors, subcontractors, lessors of equipment, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials or leasing equipment to be used or consumed in or furnishing appliances, teams, or power, contributing to a work of improvement.

- 2) There is no need for the person claiming the lien rights to be in direct contract with the owner; all that is necessary is for that person to have contributed to the improvements on the property. It is not uncommon for an owner to pay the contractor for the full value of the work only later to find out that the contractor did not pay the subcontractors or material suppliers. This leaves the owner liable to the subcontractors or material suppliers and may well result in the owner paying for the same work twice.

### **What steps can a person take to defend against a lien?**

The best approach to the mechanic's lien laws is for a property owner to be proactive. By carefully planning the project and taking a few simple steps during the course of construction to ensure that the work is being properly managed, a property owner will greatly limit his or her exposure to the potential of a mechanic's lien. Before you start a home improvement project, consider the following:

- 1) Carefully plan and document your project before you contact a contractor. Develop precise plans for the work you want performed. Have a detailed list of the specifications for that work, the timeline that you are working under, and your budget for the project. The more detail you have in these documents, the less opportunity you leave for future disagreements with your contractor.
- 2) Get at least three bids for the project. Each bid should be based on your plans, specifications, timelines and budget. Remember a bid that is too high or too low should be a red flag.
- 3) Ensure that each contractor is licensed, bonded and insured. You can check the contractor's license and bonding status on-line through the California State Contractor's License Board at [www.cslb.ca.gov/](http://www.cslb.ca.gov/). You will need to confirm the contractor's insurance through the contractor directly by requesting a "Certificate of Insurance". At minimum, the contractor should have general liability and Worker's Compensation coverage.
- 4) Interview each of the contractors. Find out how many projects of a similar type each contractor has done in the past 1, 5 or 10 years. Ask for references, particularly ones that will let you look at the contractor's work. Follow-up with the references by asking, "Was the contractor timely and was his or her work good"? "Did the contractor hire competent workers, stay in budget and responsive to your questions or concerns"?
- 5) Find out what subcontractors will be working on the project and get their license, bond and insurance information. Find out if the contractor or any of the subcontractors have ever been sued as a result of their work. Find out if the contractor or any of the subcontractors have ever done business under a different name or under a different license. This could potentially be a red flag. You may even consider asking for credit information from the contractor and the subcontractors. A good contractor should be happy to provide this information.

- 6) Once you have selected your contractor, commit your agreement to a written contract. A good written contract will be your strongest defense against a contractor filing a lien. The contract should be fair to both parties, accurately reflect the terms and agreements of the job, a start and finish date, a contract price, and stated remedies in the event provisions of the contract are not fulfilled. Given the importance of the contract, you may want to retain an attorney. Paying a few hundred dollars to an attorney to review the terms of your project, and draft a strong contract, may well save you thousands of dollars in the long run.
  
- 7) Finally, stay involved in the project. Periodically inspect the work and promptly communicate any concerns that you have to the contractor. Inspections should be done before each payment is made to ensure that the work you are paying for has actually been completed. If you find a problem with the work, promptly report it to the contractor. If the project is complex or you do not feel capable of inspecting the contractor's work, hire a professional inspector to act on your behalf. Outside professional help will more than pay for itself if problems can be avoided. Finally, keep the channels of communications with your contractor open. Most problems can easily be resolved if both parties can talk to one another.

### **What steps should you take if a lien is placed on your property?**

Even with the best planning, sometimes a mechanic's lien cannot be avoided. If a lien notice is received, carefully determine whether or not the lien is appropriate. Remember, your contractor is not the only one who can lien your property. Anyone who has supplied labor, services or material to the project can lien the property, even if you never directly contracted with that person.

- 1) Look at the claim made in the lien, the identity of the person filing the lien, and the amount of the lien.
  
- 2) Ask yourself; "Did the lien claimant actually supply the labor or materials claimed? Did you pay the contractor for the work or materials? If so, did the contractor pay the lien claimant?"
  
- 3) If the lien is valid (either you didn't pay the contractor or the contractor didn't pay the subcontractor or supplier), pay the lien claimant. As unappealing as this may sound, you are better off paying the lien than having to fight a losing battle in court. If payment is being made to a subcontractor or material supplier that your contractor did not pay, you can also seek to recover your payment from the contractor.

If you determine that the lien is not appropriate, you should review and evaluate the facts supporting your position in order to respond to the lien. A lien is only enforceable if the contractor complied with the procedural requirements of the lien laws, and the lien is factually valid.

## **How do you determine if a lien is factually valid?**

To determine if the lien is factually valid, ask yourself the following questions:

- 1) Was the lien filed against my property? If not, it is not enforceable against you.
- 2) Was the lien filed on the property on which the contractor was actually working?  
Only property actually improved can be liened.
- 3) Was the lien timely filed? If not, it is invalid.

## **What actions must a contractor perform for a lien to be considered valid?**

- 1) A contractor in direct contract with a property owner must have language in his contract with the property owner notifying the owner of the contractor's ability to lien the property if they are not paid.
- 2) A lien filed by a contractor in direct contract with a property owner must be filed within 90 days of completion of the work of improvement subject to the lien or within 60 days after the owner's recordation of a notice of completion or notice of cessation.
- 3) A lien filed by a subcontractor or material supplier not in direct contract with the property owner is invalid unless the owner is first served with a Preliminary 20-Day Notice. A written "Preliminary 20-Day Notice" must be given by a given to the property owner by a subcontractor, laborer or material supplier who is providing labor or material for use on the owners improvement project.

The intent of this notice is to alert the owner that the subcontractor, laborer or material supplier has or will be improving the owner's property and is entitled to be paid the value of the labor provided or the materials supplied. *Note: This notice requirement does not apply to any person in direct contract with the property owner or who is an employee of the property owner*

## **A Preliminary 20-day Notice must be in writing and include the following:**

- i. A general description of the labor, service, equipment, or materials furnished or to be furnished, and an estimate of the total price thereof.
- ii. The name and address of the persons furnishing that labor, service, equipment or materials.
- iii. The name of the person who contracted for purchase of said labor, service, equipment, or materials.

- i. A description of the job site sufficient for identifications.
- ii. The following statement in boldface type:

### **NOTICE TO PROPERTY OWNER**

*If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by (1) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor, or (2) any other method or device that is appropriate under the circumstances.*

Note: The 20-Day Notice should be given to you within 20 days after the labor or materials underlying the lien were first furnished. While a claimant is not precluded from serving a 20-Day Notice anytime thereafter, if the Notice is not given within the 20-day period, any subsequent lien will be limited to the value of the labor or materials provided within 20 days of the later served 20-Day Notice.

### **Procedural requirements for a lien to be enforceable**

- 1) *Was the enforcement action timely filed? An action to enforce a lien must be filed within 90-days of the date of recordation of the lien. If it was not, the lien is unenforceable.*
- 2) *Was the lien claimant licensed for the type of work claimed under the lien? Only a licensed contractor can perform works of improvement to real property for pay. An unlicensed contractor is not entitled to receive payment for his or her work and any lien based on that work is invalid.*
- 3) *Was the enforcement action filed in the proper court and the county in which the property subject to the lien is situated? A lien filed in one county is not enforceable in another county.*
- 4) *Finally, was notice of the enforcement action properly served on you? An enforcement action is a civil action and notice of it must be properly served on you before you can be subjected to the jurisdiction of the court. If it was not, the court does not have jurisdiction over you.*

If the lien is not procedurally valid, you should demand that the lien claimant voluntarily remove the lien from your chain of title, if the claimant refuses, you should take steps to expunge the lien to insure clear title to your property. A motion to expunge a lien is a relatively simple civil motion, and if successful will not only clear your title of the lien, it will entitle you to recover the costs of the motion from the lien claimant.

Alternatively, if you determine that the lien is procedurally valid, and/or the lien claimant has filed an action to enforce the lien, immediately contact an attorney to ensure that your interests are protected.

*If you would like more information on the Mechanic's Lien Law, or if you have a specific legal question or concern regarding construction law, please feel free to contact Don Odell. He can be reached at (925) 460-3700, or through electronic mail at : [legalquestion@allabouthomes.com](mailto:legalquestion@allabouthomes.com)*