

# IMPORTANT CHANGES IN 2011 TO CALIFORNIA MECHANIC'S LIEN LAW

(2010)

by Gregory R. Shaughnessy

Significant changes to the California Mechanic's Lien Law went into effect on January 1, 2011. The changes apply to any mechanic's lien recorded on or after January 1, 2011. These changes include warning language that needs to be included in the mechanic's lien, service of the lien on the owner before recording the lien and documentation of same, and the recording of a notice of pendency of action (after suit to foreclose on the lien is filed). Failing to adhere to the new provisions, forms and rules could cause lien claimants to lose their mechanic's lien rights.

## Required New Form of Notice

Civil Code Section 3084 now requires a *Notice of Mechanic's Lien* to accompany the standard Mechanic's Lien form. The *Notice of Mechanic's Lien* (a copy of which can be obtained by clicking the link at the end of this article) contains certain text and style requirements that **must** be included in all California mechanic's liens. If the *NOTICE OF MECHANIC'S LIEN* is not included, the County Recorder is not required to accept the mechanic's lien for recording.

The new *Notice of Mechanic's Lien* has an important function: to garner the attention of the property owner [by the use of boldfaced type] and clearly advise the owner about the significant legal implications of the mechanic's lien being filed, including the fact that the owner could lose the property to foreclosure in order to satisfy the lien. It is important to note that the language of the *Notice* is mandatory. Thus, if the language of this new required *Notice of*

*Mechanic's Lien* form is altered, a court could find the lien to be void (assuming that the County Recorder actually accepted and recorded the mechanic's lien). ("Failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as prescribed by this section shall cause the mechanic's lien to be unenforceable as a matter of law.")

## Proof of Service Affidavit

Civil Code Section 3084 also requires that the lien claimant include a *Proof of Service Affidavit* in the mechanic's lien and that the Notice, Mechanic's Lien and *Proof of Service Affidavit* all be served on the Owner by registered, certified or first class mail. The *Proof of Service Affidavit* (a copy of which can be obtained by clicking the link at the end of this article) proves that the lien claimant complied with the legal requirements of serving the mechanic's lien by registered, certified or first-class mail. A lien not served by one of these means is unenforceable.

Since, of the three methods of service, only certified mail, return receipt requested, results in a document signed by the owner, it is recommended that this method of service be used. But since many people do not accept and sign for certified mail, it is also recommended that a copy of the lien be mailed via first class mail.

## Notice of Pendency of Proceedings

Pursuant to California Civil Code Section 3146, a *Notice of Pendency of Proceedings* is now required to be filed **on or within twenty days** of

filing a lawsuit to foreclose on a Mechanic's Lien. This Notice alerts interested parties or potential purchasers of the property that a lien foreclosure action against the property has been filed. The *Notice of Pending Action* should be filed in the Office of the County Recorder where the property is located as soon as possible after the lawsuit is filed, but under no circumstances, later than twenty days after the filing of the lawsuit.

Section 3146 provides that only from the time of the recording of the notice shall a purchaser or encumbencer of the property have constructive notice of the pendency of the action. This means that a court will treat the failure to record the *Notice of Pending Action* the same as failing to file suit to perfect the mechanic's lien within 90 days after recording the lien, as required by Civil Code Section 3144, and the mechanic's lien will become void.

**Click here to download the new form of *Mechanic's Lien, Notice of Mechanic's Lien and Proof of Service Affidavit.***

For more information about the issues discussed in this article, contact Greg Shaughnessy at (415) 435-2409

E-Mail: [grs@grs-law.com](mailto:grs@grs-law.com)

Website: [www.grs-law.com](http://www.grs-law.com)