

REAL ESTATE

Mechanics' Liens – Attention to Detail Important for Property Owners and Claimants

By Paul C. Bauducco

Downturned economy or not, some property owners are still proceeding with construction and home improvement projects.

If you are an individual or a company working in the construction industry, mechanics' liens provide you with a powerful remedy if a property owner neglects to settle your invoices. Mechanics' liens are a great collection tool for contractors, subcontractors and suppliers, because they provide real property security for labor and materials provided on a construction project.

Conversely, property owners need to understand how mechanics' liens work and how to guard against them. Subcontractors may be able to file mechanics' liens against your property even if you made all the required payments to the general contractor if you don't obtain the proper releases. A valid mechanics' lien can result in a foreclosure action against you.

No matter what side of the project you are on, you should know that preserving the right to file and foreclose a mechanics' lien requires diligence on the part of contractors, particularly subcontractors and suppliers, who must comply with strict notice and filing requirements to preserve mechanics' lien rights.

Contractors, subcontractors and suppliers need to do the following:

1. Serve a Preliminary 20-Day Notice (Civil Code Sections 3097, 3097.1 and

3114) – No later than 20 days after making improvements or delivering supplies to a property, a subcontractor or supplier must give written notice to the property owner, general contractor, lender or financier of a property, to alert those parties to services being rendered or supplies being delivered.

However, contractors and suppliers who work directly with the owner of the property are not required to give a Preliminary 20-Day Notice, since the purpose of the Notice is to inform the property owner that someone not under a direct contract with the owner (usually a subcontractor) is delivering services or supplies to the property and must be paid.

2. Record the Mechanics' Lien (Civil Code Sections 3115 and 3116) – A claimant must file a mechanics' lien in the county where the property is located (or all counties if the property straddles more than one) within:

A. 90 days of the actual completion of work;

B. 90 days of excusal from work due to a breach of contract by the owner or general contractor;

C. 90 days of one of the following "equivalents" of completion (i) occupation and use of the work of improvement by owner or its agent, accompanied by a cessation of labor; (ii) acceptance of the work of improvement by the owner or its agent which is communicated to the lien claimant; or (iii) a cessation of labor for a continuous period of 60 days; and

D. 30 days of the filing of a valid notice of completion or notice of cessation of labor by the property owner (a general contractor has 60 days).

3. Enforce the Mechanics' Lien (Civil Code Section 3144) – A mechanics' lien is voided unless a foreclosure suit is filed in the county where the real property is located within 90 days of the recordation of the lien.

If a general contractor, as agent for the property owner or developer, defaults on payment to a subcontractor, that subcontractor has the right to record a mechanics' lien on the property even if the homeowner made all the required payments to the contractor.

That's why real property owners need to be aware of potential mechanics' liens against their properties, which can result in foreclosure actions if payments for labor and materials provided were not made. Owners could even wind up paying twice for the same goods or services – once to the contractor, and then again to the subcontractor (who didn't get paid by the contractor) in an effort to remove the lien.

In order to avoid mechanics' liens, property owners should:

1. Hire qualified and licensed contractors;

2. Keep track of 20 Day Preliminary Notices they receive from subcontractors or material suppliers; and

3. Establish a payment procedure which insures they receive appropriate lien releases

for payments made during the course of the project and at its conclusion. Civil Code Section 3262 sets forth the requirements and provides specific language for conditional and unconditional waivers and releases.

If you are a real property owner with mechanics' liens on your property, you should double check the filings for discrepancies and missed deadlines. Oftentimes a subcontractor or supplier will make mistakes, giving you an opportunity to have the mechanics' lien overturned.

Understanding the law with respect to mechanics' liens is important to contractors, suppliers and property owners alike. No matter what side of a construction project you are on, you must be cognizant of how mechanics' liens work so that you may preserve your rights to file and foreclose a lien, or prevent the filing of a lien on your real property by scrutinizing payment procedures and lien releases.

If you don't address these issues during a construction project, small mistakes can lead to serious financial losses for owners and contractors, vendors or suppliers.



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