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"Change starts with you.  
But it doesn't start until you do."

-Tom Ziglar

## STAND Up for Suicide Prevention

According to the Centers for Disease Control and Prevention, [construction occupations have the highest rate of suicide](#) and the highest number of suicides across all occupational groups.

Contractors, unions, and industry service providers must work together to create a zero-suicide industry.

This can feel like a big undertaking, but here are several small yet impactful ways to support this industry-wide effort.

### 1. Get Informed |

- Check out CFMA's Content Hub Resources
- Visit CIASP's Resource Center

### 2. Take the CIASP Pledge

- Your company can make a powerful statement by signing the pledge to assist in making construction a zero-suicide industry.

### 3. Share Hotline Information

- National Suicide Prevention Lifeline: **1-800-273-TALK (8255)**
- Crisis Text Line: **Text HELLO to 741741**

### 4. Learn the Warning Signs

# CFMA

Construction Financial Management Association



## **REFRESHER ON CALIFORNIA MECHANIC'S LIENS**

February 16, 2022

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# WHAT IS A MECHANIC'S LIEN?



A Mechanic's Lien is a recorded document securing payment for work, materials and equipment provided to a privately owned construction project in the State of California. When recorded, the Mechanic's Lien attaches to the real property the same way that a mortgage or deed of trust would.

In other words, if a Mechanic's Lien is properly recorded and the underlying debt is determined by a court to be valid, the holder of the Mechanic's Lien is entitled to foreclose on the property to secure payment.

# WHO IS ENTITLED TO A MECHANIC'S LIEN?



Generally, any person providing labor, services, materials or equipment to a privately owned construction project has the right to a Mechanic's Lien, provided they have followed all requirements for perfecting, recording and enforcing the Mechanic's Lien. (See Civil Code §8400). The list expressly includes:

- Direct Contractors
- Subcontractors
- Material Suppliers
- Equipment Lessors
- Laborers
- Design Professionals
- Labor unions for amounts owed on labor performed under a CBA

# WHY ENFORCE MECHANIC'S LIEN RIGHTS?



## **Direct Contractors:**

Contractors that have a direct contract with an Owner of real property don't need a Mechanic's Lien to sue a property Owner for non-payment, they can rely on the contract. However, if the Owner is a "single-purpose-entity" (as most Owners are), the property is likely the Owner's only asset, and the property can become overextended by loans and market changes after construction starts. Mechanic's Liens and Stop Payment Notices (discussed later) protect Direct Contractors from these risk.

## **Subcontractors and Suppliers:**

Subcontractors and suppliers typically don't have valid claims against Owners, as they are not in "privity" with the Owner. Subcontractors and Suppliers have to seek payment through the contractor they have contracted with. A Mechanic's Lien gives subcontractors and suppliers a direct right of action against Owner through the real property being improved.

# HOW TO ENFORCE MECHANIC'S LIEN RIGHTS?



Mechanic's Liens rights are based in statutes enacted by the California legislature and are governed (and limited) by those statutes. The statutes include 4 main requirements that must be strictly followed to preserve one's Mechanic's Lien rights:

- A claimant must give the property Owner and its Construction Lender (if any) advanced legal notice (called a "20-Day Preliminary Notice") that the claimant is performing work that could result in a Mechanic's Lien. (Civil Code §8200).
- A claimant must record a Mechanic's Lien (and serve a copy on the Owner and its Construction Lender (if any)) within strict deadlines after completing its work. (See Civil Code §§8412, 8414).
- A claimant must file a civil complaint to prove its right to payment within 90 days of the Mechanic's Lien is recorded. (See Civil Code §8460).
- A claimant must file and record a Notice of Pending Action within 20 days of the filing of the complaint.

Failure to meet any one of these requirements can invalid the Mechanic's Lien.

# PROVIDING ADVANCED LEGAL NOTICE



All Claimants that do not have a direct contract with the Owner of the property being improved must serve a “20-Day Preliminary Notice”, in the form required by Civil Code §8202, on the Owner, its Construction Lender (if any), and the Direct Contractor in order to preserve Mechanic’s Lien rights against the property.

Claimants that have a direct contract with the Owner, need not serve the Owner with a 20-Day Preliminary Notice (the contract is sufficient notice to the Owner). However, a Direct Contractor still must serve a Construction Lender (if any) with a California 20-Day Preliminary Notice. (See Civil Code §8200)

**Special Note:** Union Trust Funds are not required to serve a Preliminary Notice.



# SERVING A PRELIMINARY NOTICE



## Method of Service of a Preliminary Notice (See Civil Code §§ 8106, 8110)

- Personal Delivery
- Certified Mail, Return Receipt Requested
- Registered Mail
- Express Mail
- Overnight Delivery by Express Service Carrier

## Parties to be Served with a Preliminary Notice (See Civil Code §8200)

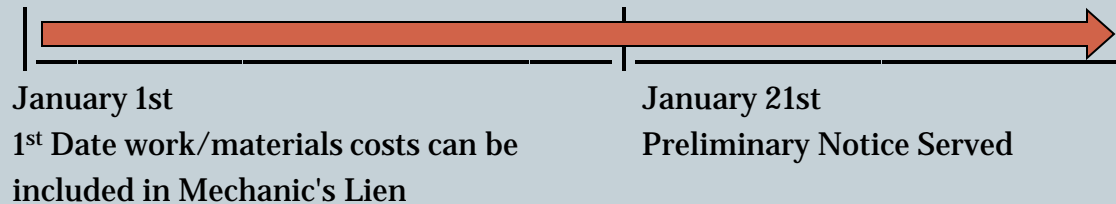
- Owner
- Lender (if one exists)
- General Contractor (if a subcontractor or supplier)

# HOW PRELIMINARY NOTICES WORK



## A Preliminary Notice “reaches back” 20 Days

A Preliminary Notice served on January 21<sup>st</sup> will trigger a Mechanic’s Lien right as to all work performed from January 1<sup>st</sup> forward.



In this example, any work, materials or equipment performed or supplied prior to January 1<sup>st</sup> cannot be included in the Mechanic’s Lien.

# DEADLINES FOR RECORDING A MECHANIC'S LIEN: EARLIEST DATE AVAILABLE



A Mechanic's Lien cannot be recorded before a Claimant's work is complete. (See Civil Code §8412, 8414).

- For Prime Contractor's this generally means that a Mechanic's Lien cannot be recorded before "completion".
- For subcontractors, it generally means that a Mechanic's Lien cannot be recorded before the claimant has completed all of its scope(s) of work, or ceased providing work for the project.

# DEADLINES FOR RECORDING A MECHANIC'S LIEN: LATEST DATE AVAILABLE



The latest date that a Mechanic's Lien can be recorded always runs from the date of “completion”, but the deadline varies based on whether the Owner has recorded a Notice of Completion or Notice of Cessation with the applicable county recorder’s office (See Civil Code §§8412, 8414):

- If the Owner has recorded a Notice of Completion or Notice of Cessation, the deadline is as follows:
  - 60 days from the recording date for Direct Contractors
  - 30 days from the recording date for Subcontractors/Suppliers
  
- If the Owner has not recorded a Notice of Completion or Notice of Cessation, the deadline is as follows:
  - 90 days from “completion” for all Mechanic's Lien claimants

# WHEN DOES “COMPLETION” OCCUR



The Mechanic's Lien Statutes defined “Completion” to be the earliest of the following (See Civil Code §8180):

- Actual completion of the work of improvement (broadly interpreted to mean full and final completion of the project).
- Occupation or use by the Owner accompanied by a cessation of labor.
- Cessation of labor for a continuous period of 60 days.
- Recordation of a Notice of Cessation after cessation of labor for a continuous period of 30 days.

**Special Note:** In theory, any work stoppage for 60 days or more constitutes a “completion event” under the statute, triggering the 90-day deadline to record a Mechanic's Lien if no Notice of Cessation has been recorded (i.e. the absolute deadline to record is 150 days from when work stopped).

# NOTICES OF COMPLETION & CESSATION



**Like Mechanic's Liens, there are strict timing and notice requirements for an Owner to validly record a Notice of Completion (See Civil Code § 8182):**

- **A Notice of Completion must be recorded within 15 days after the date of completion of a work of improvement.**
- **The Notice must be signed and verified by the Owner.**
- **The Owner must serve a copy of the Notice on the Direct Contractor and any subcontractor or supplier that has previously served the Owner with a 20-Day Preliminary Notice within 10 days after recordation of the Notice of Completion.**

**If a Notice of Completion does not comply with these requirements, the Notice is invalid. Result: Default to deadline as if no notice was recorded.**

# LIMITS ON MECHANIC'S LIEN AMOUNTS



A Mechanic's Lien may only be recorded for ***the lesser of the following*** amounts:

- The ***reasonable value of the work*** provided by the claimant.
- The ***price agreed to by the claimant*** and the person that contracted for the work, but only for the work actually performed (not the whole contract price). This “price agreed to” includes performed change order work.

# FORECLOSING ON A MECHANIC'S LIEN



Once a Mechanic's Lien has been recorded, the claimant has 90 days to file a civil complaint to foreclose on the lien with the superior court in the county that the lien is recorded. If a complaint is not filed within 90 days of recording, then the Mechanic's Lien is "stale" and cannot be enforced. (See Civil Code §8460)

If a Contractor refuses to release a stale lien from title within 10 days of a written demand, the Owner may petition the court to expunge the lien. If the petition prevails, the Contractor will be ordered to pay the Owner's attorneys fees. (See Civil Code §§ 8482, 8488)



# RECORDING A “NOTICE OF PENDING ACTION”



In order to protect a Mechanic's Lien's priority, a claimant must record a “Notice of Pending Action” within 20 days of the filing of the complaint to foreclose on the lien, putting future lenders/purchasers on notice that the lien is still valid. (See Civil Code §8461)

# HOW PRIORITY IS DETERMINED BETWEEN CONTRACTORS AND LENDERS



## **Lenders:**

Have priority if their mortgage/deed of trust is recorded **before** work visibly commences on the jobsite. Lenders can protect themselves by going to the site and looking for recent construction work.

## **Contractors:**

Mechanics' Liens have priority if work visibly commences on the jobsite **before** a lender records a mortgage/deed of trust against the property. Contractors can protect themselves by searching the public records in the County Recorder's Office.

# OWNER RELEASE OF MECHANICS' LIENS



**The only ways for an Owner to Release a Mechanic's Lien are:**

- **Pay the Lien Claimant**
- **Bond around the Lien (Civil Code §8424, 125% of Mechanic's Lien)**
- **Win a Motion to Expunge the Lien, if not timely recorded or enforced (Civil Code §8480)**
- **Prevail in a civil action invalidating either the Mechanic's Lien itself (for failing to have been properly perfected), or the underlying payment claim.**

# PARTIAL AND FINAL LIEN RELEASES FOR PAYMENT



- There are 4 forms of statutory lien releases (see Civil Code 8132, 8134, 8136 & 8138).
- When negotiating your contract, make sure you are only required to submit an Unconditional lien release after you have received payment.
- Review the lien release closely to make sure you are not inadvertently releasing any lien rights. Reserve your rights to change orders that have been signed prior to the date the lien release is signed unless paid or the value of the change order work is included in the conditional lien release.
- Secure lien releases from all subcontractors/suppliers who served a preliminary notice
- Prior to release of retention, verify you have Conditional or Unconditional Finals from all lower tier subcontractors/suppliers

# TENANT IMPROVEMENT WORK



When the Owner is a Tenant, rather than the fee owner of the property, the Fee Owner may try to insulate the property from mechanic's Lien by Posting a Notice of Non-Responsibility at the Project. Such Notices are permitted, by governed by the following rules:

- Notice must be in writing.
- Notice must be signed and verified.
- Notice must be given only by noncontracting/ nonparticipating party.
- Notice must contain statutory information (see Civil Code §8444).
- Notice must be posted in a conspicuous place at the jobsite within 10 days after the person giving the notice obtained knowledge of the work of improvement.
- Within the 10 day period, notice must also be recorded.

# NON-PARTICIPATING OWNER'S ONLY



**Notices of Non-Responsibility are invalid if the Owner is a “Participating Owner.”**

**The Owner is a “participating Owner” and cannot insulate the property from a Mechanic’s Lien if the Owner provides the tenant with a Tenant Improvement Allowance, rent abatement or other financial contribution toward the work of improvement.**

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