

CLIC ADVISORY

California Landscape & Irrigation Council, Inc.

10061 Riverside Drive, Suite 1028 ~ Toluca Lake, CA 91602 ~ Phone: 866.430.2542 ~ Fax: 866.404.2447
e-mail: clic@linkline.com ~ website: www.cliccontractors.com

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MECHANIC'S LIEN FORM TO CHANGE EFFECTIVE JANUARY 2011

By Bruce D. Rudman
Abdulaziz, Grossbart & Rudman

On behalf of various subcontractor associations and groups, the Law Offices of Abdulaziz, Grossbart & Rudman have been participating in the law-making process, both before the Legislature and the California Law Revision Commission, concerning certain overhauls of the mechanic's liens laws. While the California Law Revision Commission had been working on a global change to all of the mechanic's lien, stop notice, and payment bond statutes, there have been some interim changes that have been enacted into law.

In particular, the Governor recently signed AB 457, which makes some changes to the mechanic's lien form itself, including the requirements on the lien, and now requires the recording of a separate document known as a "lis pendens" which simply means "notice of pending litigation" following the filing of a lawsuit. Most importantly, the claimant will also need to serve a copy of the lien on the owner at the same time it is sent to be recorded so that the owner can take action if necessary to free their property from the lien.

As an overview, the mechanic's lien requirements for decades have simply been a signed and verified statement of the claimants demands, after deducting all payments and credits from the amount of work that has been performed, and includes: the name of the owner; a statement of the kind of labor, services, equipment or materials furnished by the claimant; the name of the person who employed the claimant or to whom the labor, services and equipment were provided; and a sufficient description of the property location.

As of January 1, 2011, a mechanic's lien will also be required to include a proof of service affidavit showing that the mechanic's lien has been mailed by certified mail, return receipt requested, to: (1) the owner's residence or place of business, or (2) at the address shown on the building permit on file with the building department, or (3) at any other address allowed under the preliminary notice statute. If the owner cannot be served in that manner, then the notice of lien can be served by certified mail to the construction lender or to the prime contractor. If the lien is not served as required, the lien will be unenforceable as a matter of law.

Another important change is that the lien now also must have a notice of mechanic's lien that reads as follows:

"NOTICE OF MECHANIC'S LIEN ATTENTION!"

Upon the recording of the enclosed MECHANIC'S LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-

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ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic's lien is recorded. The party identified in the mechanic's lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanic's lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic's lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANIC'S LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov."

The other significant change occurs after a lawsuit on the mechanic's lien is filed in the Superior Court. After the filing of the lawsuit to foreclose on the lien, the Plaintiff must record a notice of pendency of the proceedings (known as a lis pendens) on or before 20 days after the filing of the of the mechanic's lien foreclosure action. The statute goes on to provide that only from the time of recording a lien pendens shall a purchaser or encumbrance of the property (typically the lender) be deemed to have notice of the lawsuit. While this Amendment is not as harsh of prior versions of the Legislation (which could deem the entire mechanic's lien action to be void), it does appear that a subsequent title insurer, lender, or bona fide purchaser, would not be subject to the mechanic's lien if the notice of lis pendens is not recorded. That means if the owner does anything with their property (borrow against it or transfers it) while the lien is pending, the failure to record the lis pendens could be fatal to your right to collect.

As always, consult with a lawyer if you have any concerns. Again, these changes do not take place until January 1, 2011.

Abdulaziz, Grossbart & Rudman emphasize all aspects of construction law. Their "California Construction Law" book is published and updated annually. They represent numerous construction trade associations and contractors. Abdulaziz, Grossbart & Rudman appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. The documents are of a general nature and are intended to highlight areas of the subject matter and should not be used as a substitute for specific legal advice. You should seek the aid and advice of a competent attorney and/or accountant instead of relying on the presentation and/or documents. Bruce D. Rudman can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at bdr@agrlaw.net . On the Internet, visit our Website at www.agrlaw.net

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