

The Top 10 Misconceptions about Mechanic's Liens

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1. A Preliminary Notice must be served within 20 days of the claimant first providing labor/materials/equipment/etc. (benefit) to the project; otherwise, the claimant loses his entire mechanic's lien rights.

Not true!

A mechanic's lien claimant (this would be the subcontractor or supplier) should serve his Preliminary Notice on the **reputed** property owner, reputed lender, etc. within 20 days of his start date. His start date is the date that he first provides benefit to the project.

But if he misses this deadline, all is not necessarily lost.

If he serves his Preliminary Notice more than 20 days after his start date, the claimant does not lose his entire mechanic's lien rights. He still has mechanic's lien rights for all the labor/materials/equipment/etc. that he's provided from the date 20 days prior to the date that he served the Preliminary Notice, forward.

The date of service is determined by the date that the Preliminary Notice is mailed by certified mail. The Preliminary Notice must be served by certified mail, and the green card receipts must be retained to show proof of delivery (or proof that delivery was attempted but refused by the recipient).

There's no such thing as a Preliminary Notice being served too early.

The preliminary notice can be served as soon as the contract has been signed, it does not have to wait until the job has been started.

The estimate and the identity of the owner must be reasonably investigated by the claimant prior to serving the Preliminary Notice, but once the Preliminary Notice is served, the claimant need not revise his estimate nor serve a new owner that he learns about after serving his Preliminary Notice, even if the notice was served prior to starting the job.

2. If a claimant identifies and serves a Preliminary Notice on a party that is not the actual owner of the property, the claimant's Preliminary Notice is defective and the claimant necessarily loses his mechanic's lien rights.

This is probably not true, assuming that the claimant reasonably researched the ownership of the property and served his Preliminary Notice on the party whom he believed to own the property.

California Civil Code section 3097 says "Owner or Reputed Owner". Use of the word "reputed" in California Civil Code section 3097 means that the claimant need only make a reasonable inquiry into who the owner is.

The key question is whether the claimant did actually make a reasonable inquiry into the owner's identity. If the claimant did, then he has served the "reputed" owner of the property, and has thereby satisfied California Civil Code section 3097.

One major reason for this rule is that GC's and subs were intentionally giving out inaccurate owner information to suppliers. The suppliers lost lien rights because they didn't know the correct owner.

Requesting a job information sheet from the General Contractor and serving the folks listed on that sheet likely qualifies as a "reasonable inquiry".

In addition, the claimant would be smart to make a record of any conversations it has that form the basis of his understanding as to the identity of the owner.

However, even though the law doesn't require it, the claimant SHOULD aggressively investigate

If the correct owner is named, there's never a need to hire an attorney to make the argument that the prelim is still valid despite not being served on the actual owner.

The law protects you if you prelim the wrong person based upon a reasonable inquiry, but in case of a conflict you'll have to pay an attorney to prove that you're in the right, whereas if you name the owner correctly, there's never any issue.

Revising the Preliminary Notice

Once the Preliminary Notice has been served, the claimant need not serve a new Owner that he may learn about after having served his Preliminary Notice.

If the claimant names the wrong owner then learns the true owner, in most situations it will not be smart to serve a new preliminary notice because the actual owner will argue that the date of the new prelim controls.

A letter to the true owner with a copy of the original prelim might be a good idea, plus a citation to the law that only requires the reputed owner to be named, plus an explanation of the inquiry that was done.

But even without the letter, the prelim is valid despite the actual owner never receiving a prelim.

In a case in which new ownership information is learned, it is probably necessary to consult with a construction attorney about the best strategy.

3. A claimant's estimate within his Preliminary Notice must reasonably resemble the value that the claimant ultimately provides to the project.

Actually, the similarity between a claimant's estimate within his Preliminary Notice and the value actually bestowed to a project is irrelevant in determining whether the Preliminary Notice is valid.

Similar to a claimant's obligation to reasonably investigate the ownership of the property before stating the owner's name within his Preliminary Notice, the claimant must only make a reasonable effort to estimate the value of labor and/or materials and/or equipment etc. that he expects to provide to the project.

For a subcontractor, this amount will usually be the subcontract price. For a supplier, the supplier should ask his customer what quantity of materials the contractor expects to purchase from the supplier for the project and use that information to determine the appropriate amount of the estimate.

Even if the claimant ultimately is owed an amount much larger than the amount stated on his Preliminary Notice

Even if the claimant ultimately is owed an amount much larger than the amount stated on his Preliminary Notice, the claimant may still recover on a mechanic's lien for this much-increased amount if the claimant's estimate on his Preliminary Notice was made reasonably using some form of information available to the claimant.

The claimant will lose his mechanic's lien rights if the estimate in his Preliminary Notice is completely random.

The claimant would be smart to make a record of any conversations it has that form the basis of his understanding as to his estimate within his Preliminary Notice.

Revising the Preliminary Notice

Once the Preliminary Notice has been served, the claimant need not revise his estimate on the document even if change orders come into play that increase or decrease the value of the job. Similar to the situation involving the claimant learning new owner information, it may be smart to send an update letter to the owner, but again it is important to consult with a construction attorney before taking any specific steps.

4. The value of a mechanic's lien is equal to the contract balance owed to the claimant at the end of the project.

Very often yes, however...

The value of a mechanic's lien is limited to the labor and/or materials and/or equipment etc. that are actually incorporated into the property. A lumber supplier who supplies \$10,000 of lumber to a framing subcontractor for use on a particular property will only have mechanic's lien rights for the quantity of lumber that is incorporated into the property.

Further, a mechanic's lien value is equal to the lesser of:

- 1) the value of labor and/or materials and/or equipment etc. provided to the project or
- 2) the contracted price of the labor and/or materials and/or equipment etc. provided to the project

A lawsuit on a mechanic's lien will require the claimant to prove more than a lawsuit on a contract claim.

The claimant must show:

- 1) that either a valid Preliminary Notice was served or that no Preliminary Notice was required;
- 2) that the mechanic's lien was timely recorded;
- 3) that the lawsuit was filed within 90 days of the date that the mechanic's lien was recorded; and
- 4) the value of labor and/or materials and/or equipment etc. provided to the project or the contract price owed to the claimant, the portion of this value that remains unpaid, and that the labor and/or materials and/or equipment etc. were actually "incorporated" into the project.

Inclusion of the labor and/or materials and/or equipment etc. on the project

<http://www.download-construction-forms.com/top-10-mechanics-liens.html>

It is important to note that the entirety of labor and/or materials and/or equipment etc. does not need to actually be "included" in the building.

For example, a framer will cut pieces of lumber but not all of those pieces will actually become part of the building. Cutting off end pieces of lumber is a necessary part of the process and the value of the whole stick is included in the mechanic's lien amount even though the end pieces are scrap and as such are discarded.

Likewise, equipment used on the project will not be included or "incorporated" in the building; the claimant need only show that the equipment was used to improve the project.

5. Attorneys' fees and interest may be added to both A) The amount stated on a mechanic's lien and/or B) The amount of the judgment entered on the mechanic's lien.

Wrong and right.

The amount stated on the mechanic's lien cannot include either attorneys' fees nor interest. However, a mechanic's lien may note that 10% interest is also owed on top of the principal amount of the mechanic's lien.

Interest can be recovered as part of a judgment on a lawsuit foreclosing on the mechanic's lien. At trial, the amount of the mechanic's lien is determined, and interest on this amount will be added to the judgment amount at the statutory rate of 10% per year. The date from which interest starts is unclear, but is likely the date that the claimant became owed by his customer.

Attorney's fees not included in judgment

Attorneys' fees will not be included in the amount of the judgment related to the mechanic's lien, even if the claimant has an attorneys' fees provision in his contract. However, attorneys' fees are still recoverable from the claimant's customer via a separate cause of action for breach of contract.

Legal right to collect interest

Interest may be recovered via the judgment on the mechanic's lien, but no legal right to interest exists until a judgment is entered, so a claimant may have a hard time negotiating interest with an owner who stands ready to pay the principal amount of a mechanic's lien before a lawsuit is filed or even if a lawsuit is filed but the trial has not yet been held.

6. A mechanic's lien must be recorded within 30 days after a notice of completion is recorded.

A mechanic's lien must be recorded no later than 30 days after the recording date of a valid notice of completion (60 days for a general contractor), or 90 days after the date of actual completion if no valid notice of completion is recorded.

If an invalid notice of completion is recorded, the 90-day rule applies.

A valid notice of completion

To be valid, a notice of completion must be recorded within 10 days after the actual date of completion. The notice must state the date of completion. If the date stated is inaccurate, the notice of completion is still valid if the actual date of completion is within 10 days prior to the date on which the notice of completion is recorded.

For private projects, actual completion has occurred upon any one of the following:

1. Completion of the entire work of improvement (each residential unit is considered to be a separate work of improvement);
2. The occupation or use of a work of improvement by the owner or his agent, accompanied by cessation of labor thereon;
3. Acceptance of the work of improvement by the owner; or
4. After work has begun, a cessation of labor for 60 days, or a cessation of labor for 30 days accompanied by the recording of a valid notice of cessation

For public projects, actual completion has occurred when the public entity accepts the work of improvement.

7. It's good practice to record a mechanic's lien as soon as equipment, materials or services are first provided for the project.

Not true.

The mechanic's lien must not be recorded until the entirety of labor/materials/equipment/etc. called for under a contract have actually been provided.

A subcontractor that records a mechanic's lien before completing his work under a contract has recorded the lien prematurely and will likely lose all mechanic's lien rights however, for a supplier providing materials pursuant to a credit application, there is not one contract with a set quantity of materials.

For a supplier, each order/invoice may represent an individual contract. The supplier may record one mechanic's lien combining the invoices, or the supplier might be able to record multiple mechanic's liens each related to one or more invoices (assuming that each mechanic's lien meets all timing requirements and other requirements). It will depend on the individual contract circumstances, and a construction attorney should be consulted.

Retention and mechanic's liens

Retention is not legally owed until full completion of the work, and logically that non-owed retention amount might not yet be lienable under the "lien is for the amount owed under the contract" rule, but because the entirety of work will have been provided at the time the lien is recorded, the amount owed as retention may be included in the lien amount even if it is not yet due under the contract. The important concern is that the lien not be recorded until the entirety of work is performed.

8. If at trial the court determines that a claimant's mechanic's lien is greater than the amount that the claimant is actually owed, the claimant loses his entire mechanic's lien rights and is denied a judgment on his mechanic's lien.

This is true only if the claimant willfully overstated the amount of his mechanic's lien.

If the amount of the mechanic's lien was overstated due to an error or on the basis of a good faith belief that the amount was accurate, the mechanic's lien amount will be adjusted at trial with the ultimate judgment amount being entered for the appropriate amount, and the claimant will not lose his mechanic's lien rights as to the valid amount of the mechanic's lien.

9. After recording a mechanic's lien, a claimant has 90 days to file suit on the mechanic's lien, otherwise the claimant loses his entire mechanic's lien rights.

The deadline to file suit on a recorded mechanic's lien is 90 days after the date that the mechanic's lien was recorded. The status of the project is not directly relevant to the deadline for filing suit on a particular mechanic's lien. What is important is the date on which the mechanic's lien is recorded.

If the claimant fails to file a lawsuit within 91 days after the mechanic's lien is recorded, the claimant must provide or record a mechanic's lien release, or risk that the owner will file an action in court seeking the release of the mechanic's lien, on which the law allows the owner to recover his attorneys' fees.

If 91 days pass after a mechanic's lien is recorded but the deadline to record a mechanic's lien has not yet passed (based upon the rules affecting the deadline to record a mechanic's lien), the claimant still has the legal right to record a new mechanic's lien if the previous mechanic's lien has been released.

Mechanic's Lien Release vs. statutory mechanic's lien "waiver and release"

There is a distinction between a mechanic's lien release and a statutory mechanic's lien "Waiver and Release" pursuant to California Civil Code section 3262.

A mechanic's lien release relates only to the particular mechanic's lien that is referenced by the release; a section 3262 Waiver and Release forever releases the claimant's mechanic's lien rights related to the project, whether through a specific date (via a "progress" Waiver and Release) or entirely (via a "final" Waiver and Release).

10. A mechanic's lien judgment is identical to any other judgment obtained after a court trial.

Not true although the procedure followed during a mechanic's lien lawsuit is similar to that of the "typical" lawsuit.

To prevail at trial, a mechanic's lien claimant must show:

- 1) that all notice and timing requirements have been met,
- 2) the value of the entire labor and/or materials and/or equipment etc. provided to the project, and
- 3) the balance owed to the claimant.

If successful at trial, the court will enter a judgment on the claimant's mechanic's lien.

A mechanic's lien judgment is different from the more well-known money judgment

A "money judgment" can be based upon a contract, a tort (such as a personal injury claim), or various other types of claims. A money judgment can be enforced by levying almost all types of property owned by the judgment debtor.

By contrast, a judgment on a mechanic's lien merely entitles the mechanic's lien claimant to implement a foreclosure sale as to the property, with the proceeds of the foreclosure sale going to the parties with claims on title in the order of their priority.

Unlike a "money judgment", a mechanic's lien judgment does not allow the claimant to levy any bank accounts or any other personal property of the owner.

A mechanic's lien by itself does not entitle the claimant to an equitable claim in the property until a lawsuit has been filed on the mechanic's lien and a judgment is entered on the mechanic's lien.

How the mechanic's lien affects the property owner

A mechanic's lien is recorded with the county recorder and is seen by any person that researches the title to the property at the county recorder's office.

The mechanic's lien provides notice to any interested person that the claimant may pursue his equitable claim against the property via a lawsuit (or at least that the claimant has reserved his right to pursue his equitable claim via a lawsuit).

If a judgment is ultimately entered after a lawsuit on the mechanic's lien is filed, the claimant has the right to foreclose on the property and to recover the proceeds of a foreclosure sale according to the claimant's position on title.

Lenders will be concerned about lending money to a property owner if a mechanic's lien has already been recorded, as the mechanic's lien would provide the mechanic's lien claimant with "priority" over the lender if the claimant obtains a judgment on his mechanic's lien.

Likewise, potential purchasers of the property typically will require that the title to the property be "free and clear" at the time the property is purchased, as mechanic's liens are still valid against the property even if the owner sells the property.

Disclaimer -

This article presents a discussion of general laws, rules, and strategies related to mechanic's liens and other construction issues and is intended to provide background information that will assist the reader in understanding the general laws and rules that apply. Examples and hypotheticals are described in this article for the purpose of illustrating these general rules, however no information within this article should be relied upon when analyzing a specific real-life situation.

For each real-life situation that the reader experiences, it is necessary that the reader consult with an experienced construction law attorney to ensure that the reader's specific situation is evaluated. The laws and rules affecting mechanic's liens and construction are extremely complex and no attorney can provide in a writing an explanation that will empower the reader to use only the information in an article to evaluate how the law will apply to a specific real-life situation. In other words, the reader should not rely on the information in this article when addressing a particular real-life situation.

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