

The Preliminary Notice

If you receive a Preliminary Notice, don't panic. The preliminary notice isn't a lien; it is a notice that a subcontractor or supplier has provided or will be providing goods and/or services to improve your property and *could* file a lien claim if he/she is not paid.

Don't expect a Preliminary Notice from a prime contractor. The prime contractor isn't required to send a Preliminary Notice, as the Mechanics Lien Warning is required to be part of the contract. He/she may still record a mechanics lien against your property if not paid the amount owed in the contract you have signed. The prime contractor must provide a Preliminary Notice to the construction lender if the contracted project is being financed by a loan.

Preliminary Notices allow you to track who has a potential claim against your property. Subcontractors and suppliers must provide you with this notice to maintain their right to file a lien. If they don't provide you with the notice, they lose their lien rights.

Watch the timing. A subcontractor or supplier can give you the Preliminary Notice before delivering supplies or starting work and up to 20 days after delivering supplies or starting work. If the notice is later, the subcontractor or supplier is only entitled to foreclose a lien to recover payments owed 20 days before receipt of the notice and anytime thereafter.

Effective January 1, 2011, the mechanics lien, including the Notice of Mechanics Lien, must be served on the owner of the property. If the owner cannot be located, notice must be served on the property's construction lender or the original contractor, along with a **proof of service affidavit. Failure to serve the mechanics lien, including the Notice of Mechanics Lien, will result in the mechanics lien being unenforceable.** Homeowners should retain the Notice of Mechanics Lien along with all other documentation related to their home improvement contract.

There is a lien on your property—now what?

If a lien is placed on your home, you may want to consult an attorney for help in releasing the lien. There are a number of reasons a lien might be invalid; for example, the work was

not completed or the supplies were not incorporated into the structure. Many lien claims are invalid because the contractor, subcontractor, materials supplier, or laborer has failed to meet the required timelines for filing the claim or has not provided the lien copy and Notice of Mechanics Lien to the property owner. Review the Lien Requirements Checklist in this brochure to help determine if the claimant followed the required time lines.

Steps to Remove an Invalid Lien

Follow the steps below to begin the process of removing an invalid lien:

- Send the lien claimant a written request by certified mail. Keep a copy of your letter and the certification as proof of your request. Include:
 - Deviations you've identified from the Lien Requirements Checklist;
 - A request for the claimant to remove the lien. Remind the claimant that if the lien isn't removed and you have to hire an attorney to remove it, the court can award you all reasonable attorney fees. [Prior to a revision of mechanics lien law effective July 1, 2012 (SB 189, Statutes of 2010, Chapter 697), this amount was capped at \$2,000.]
- Keep all of your paperwork. You may need to demonstrate to a court that the lien claimant is unable or unwilling to execute a release of the lien or cannot, with reasonable diligence, be found (Civil Code section 8484(f)).
- Send the request to the claimant's last known address. (Do your homework to verify that you have the correct last known address.) Sometimes, sending the letter is enough to persuade the lien claimant to release the lien.

Petition to Release an Invalid Lien

If the lien claimant does not remove the invalid lien, and the time has expired to record the mechanics lien and take action to foreclose, you may petition the court for a decree to release the property from the lien. This is a complicated process that may require the services of an attorney. Refer to Civil Code sections 8480-8488 for more information. Civil Code section 8488 provides that if you use an attorney and you prevail, you are entitled to reasonable attorney's fees.

✓ Lien Requirements Checklist

- **Confirm that the Preliminary Notice was given to you within the strict time frames.**

A subcontractor or material supplier has 20 days after beginning work or delivering materials to serve you a Preliminary Notice. If the notice is late, the claimant loses lien rights for work done or materials delivered more than 20 days before the notice. Laborers are not required to give you a Preliminary Notice.

- **Find out from your county recorder's office whether the potential lien claimant filed the mechanics lien within the legal time frame.**

The potential lien claimant must record the mechanics lien within 90 days of:

- Completion of work,
- When the owner began using the improvement, or
- When the owner accepted the improvement.

If the potential lien claimant fails to record the mechanics lien within the appropriate time frame, the lien isn't valid. Once a mechanics lien is recorded, it attaches to your title, and must be removed.

A lien on your property can cause difficulties when borrowing, refinancing, or selling your home.

- **Check to see whether you received a copy of the lien and a Notice of Mechanics Lien, and that the contractor seeking the lien filed a *Proof of Service Affidavit* with the county recorder's office.**

A HOMEOWNER'S GUIDE TO Preventing Mechanics Liens

Protect Your Home and Financial Stability



CONTRACTORS STATE LICENSE BOARD

Department of Consumer Affairs



CONTRACTORS STATE LICENSE BOARD

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Sacramento, CA 95826-0026
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DEPARTMENT OF CONSUMER AFFAIRS



Minimize Your Risks and Take Steps to Protect Your Home

When you hire a prime (primary) contractor for a construction project at your home, he or she typically hires laborers and subcontractors to do some of the work, and purchases materials for the job from construction suppliers. If the contractor—or subcontractors, workers or suppliers—who provide goods or services to improve your property aren't paid, they can file what is called a mechanics lien on your property.

Mechanics lien law is complicated and confusing, and there are real risks involved for homeowners. Avoid risking foreclosure of your home, a lien on your property title, or having to pay twice for the same job by preparing for the possibility of a lien, and employing the safeguards identified in this brochure to protect your home and financial stability.

What is a Mechanics Lien?

A mechanics lien is a legal claim against, or security interest in, your property that, if unpaid, allows a foreclosure action, forcing the sale of your home to satisfy any project debts. The lien claim is filed in a county recorder's or clerk-recorder's office by an unpaid contractor, subcontractor, supplier, or worker.

The prime contractor has a direct, contractual agreement with the homeowner. If the contractor isn't paid, he or she can sue on the contract and/or record a mechanics lien. But subcontractors, workers and suppliers don't have a contract with the homeowner. A problem can occur when the homeowner pays the prime contractor for all or some of the work, but the prime contractor fails to pay the laborers, subcontractors, and materials suppliers that were hired to do portions of the job. If they are not paid, often their only recourse is to file a mechanics lien on the property.

When a Lien is Filed Against Your Property

A lien can result in a range of problems:

- Foreclosure of the property to pay the unpaid contractors, material suppliers or laborers;
- Double payment for the same job—if the homeowner pays the prime contractor and then has to pay the subcontractors, suppliers, or workers who weren't paid by the prime; and/or
- An unresolved issue on the property's title, which can affect the homeowner's ability to borrow against, refinance, or sell the property.

How to Protect Yourself

You can help protect yourself from unwarranted liens by carefully selecting your contractor and responsibly managing your construction project. Thoroughly check your prime contractor's business and professional work before you sign a contract:

- Hire only licensed contractors and check the contractor's license status on CSLB's website at www.cslb.ca.gov;
- Make sure your contractor hires only licensed subcontractors, and check their licenses, too;
- Check with your local courthouse to see if the prime contractor has a history of litigation;
- Get a list of all subcontractors, laborers, and material suppliers to be used by your prime contractor; and
- Check with suppliers, subcontractors, and employees about the payment history of the prime contractor.

Get a written contract and make sure it includes:

- A schedule that demonstrates when specific construction activities will begin and end, (such as the framing, sheetrock work, or painting) and the projected payments that are tied to the contract price of these activities;
- Identification of subcontractors and workers who will be performing these construction activities; and
- Identification of suppliers who are providing materials necessary for the project.

Preventing Liens

Before you pay your prime contractor, consider the possibility of a lien being recorded on your property's title. Keep track of Preliminary Notices so that you are aware of who may file a lien claim on your property. There are a few specific methods you can use to make sure potential lien claimants have been paid:

JOINT CHECKS

Joint checks are the simplest way to prevent construction liens. When the contractor presents a bill for materials or labor, compare it to the schedule of payments in your contract and the Preliminary Notice(s) you've received. Make sure that work was provided as described and then make out the check to both the contractor and the supplier, or the contractor and the subcontractor. Both parties will have to endorse the check, which will ensure that the subcontractors and suppliers are paid. Save the cancelled check signed by each of the parties to serve as a receipt.

LIEN RELEASES

The release system is designed to allow property owners to track when potential lien claimants have been paid—whether part of a progress payment or upon completion of the entire project. There are conditional and unconditional releases for progress and final payments. Here's how the lien release system works:

- Before you make a payment, you first should get a signed **conditional** release from the possible lien claimant(s).
- You or your contractor can download and use the release forms from CSLB's website at www.cslb.ca.gov. The prime contractor is required to give you a signed release from potential lien claimants if you request it.
- After you receive the conditional release(s), make the appropriate payment for the work that was done.
- After you pay, request that the contractor give you an **unconditional** release signed by each of the claimants paid for the portion of the job for which they are relinquishing their lien rights. **Make sure that the actual claimant signs the unconditional release.**
- By law, you may withhold the next payment until you get the unconditional releases for the previous payment.

NOTICE OF COMPLETION

You can reduce the amount of time a contractor, subcontractor, material supplier, or laborer has to record a lien claim by filing a Notice of Completion with the county recorder's office after work is completed. If you recorded a Notice of Completion, a prime contractor has 60 days to file a lien claim while a subcontractor or material supplier has 30 days.

The property owner has 15 days from the date of project completion to file the notice.

LIEN FORECLOSURE ACTION

Check with your county superior court to find out whether the subcontractor, material supplier, or laborer filed a timely lien foreclosure action.

A lien foreclosure action is a lawsuit to foreclose the mechanics lien, and must be filed by the claimant within 90 days of the date that he or she recorded the mechanics lien. Often a lien claimant with a valid claim will fail to follow through, making the lien invalid. If the contractor, subcontractor, material supplier, or laborer fails to follow any of these strict time frames, you can petition the court to remove the lien.

Failure to serve a copy of the lien and the Notice of Mechanics Lien on the property owner or construction lender, **and secure a proof of service affidavit**, also will make the lien unenforceable.

Be aware that although anyone can record a mechanics lien, a non-licensed individual cannot foreclose on a mechanics lien if the work is valued at more than \$500. (BPC §7031 – compensation prohibited.)

