

CHAPTER 37 - MECHANIC'S LIEN LAW**KNOWLEDGE STATEMENT 68 - Knowledge of California laws related to design professional and contractor liens and their implications for the Architect's and client's responsibilities.****Mechanic's Lien**

A lien is a claim against property. A Mechanic's Lien is a claim on a property for the value of labor and/or materials furnished for the improvement of that property. In essence, a sub-contractor, laborer or material supplier who had performed labor or furnished materials may file a lien on a property if he/she was not paid for his/her services or materials by the general contractor. The contractor may also file a Mechanic's Lien on the property if not paid by the owner. In order to reserve the right to file a Mechanic's Lien, a subcontractor or material supplier must file a letter of intent to record a lien within the first 20 days after services has started, or been supplied, to a building project (because of this, the notice is also called a 20 days' notice). During construction, architects and their consultants also have the right to file Mechanic's Liens if they had not been paid by the owner.

Design Professional's Lien

Design professionals also have the right to record a lien on a property before construction begins if a building permit has been issued for the project.

They are entitled to record a lien if:

- The owner defaults or refuses payment under the terms of a signed written contract.
- A 10-day notice has been given to the Owner.

A design professional must record a notice of lien within 90 days after he/she has reason to believe that the owner is not going to build the project.

The design professional lien expires when:

- The owner commences construction work on the project.
- At least 90 days has passed after the design professional has recorded the notice of lien but has not filed suit to enforce the lien.

Upon expiration of the lien, the design professional must then record a Mechanic's Lien to preserve his/her rights.

Stop Notice

A stop notice is a written notice, which puts a lender, or anyone else holding construction funds, on notice that there is money due and owing to the claimant, and obligates the lender or person holding construction funds to withhold sufficient funds to satisfy the amount in the Stop Notice.

For private work, the notice must be delivered to the owner. For public work for the State, the notice must be filed with the director of the department which let the contract. For any other public work, the notice must be filed in the office of the controller, or any other public disbursing officers or with officers, boards or other bodies by whom the contract was awarded.

For public work, a Mechanic's Lien cannot be filed against government property so the only recourse available is a Stop Notice.

Filing Procedures

Both the Mechanic's Lien and Stop Notice filing procedures involve three basic steps:

1. File a letter of intent to record a Mechanic's Lien within the first 20 days after services has started or materials been supplied to the Project
2. Record the Mechanic's Lien or serve the Stop Notice upon the completion of the project
3. File a lawsuit to foreclose the Mechanic's Lien or to enforce the Stop Notice.

Completion

Completion of a construction project occurs upon the occurrence of any of the following events:

1. Actual completion of the project
2. Occupation or use by the owner accompanied by cessation of labor
3. Cessation of labor for a continuous period of 60 days
4. Recordation of a Notice of Cessation after cessation of labor for a continuous period of 30 days

The above events notwithstanding, if the project is subjected to the acceptance of a public entity, completion occurs at acceptance.

Notice of Completion

A Notice of Completion must be recorded in the office of the county recorder of the county in which the Project Site is located, within 15 days after the completion of the project (generally regarded as Substantial Completion).

If the Notice of Completion is timely recorded, the time within which a Mechanic's Lien may be recorded against the property is 60 days by prime contractors and 30 days by subcontractors. If this notice is not recorded in a timely manner, prime contractors and subcontractors all have 90 days from the completion of the work within which to record their Mechanic's Lien.

Something that is part of a construction contract and closely related to Mechanic's Liens is the requirements for bonding on the contractor.

Surety Bonds

A Surety Bond is a form of assurance to the owner that the contractor will perform the Work in accordance with the Contract Documents, including payment of debt to subcontractors and material suppliers. A Surety Bond is an agreement under which one party, called a surety, agrees to answer to another party, called an obligee, for the debt, default, or failure of a third party, called a principal, to carry out his/her contract obligations. In order to protect the owner from having liens filed on their property, requirements on having the contractor get bonded are typically included in construction contracts. AIA document A201 gives the owner the right to require the contractor to furnish bonds covering faithful performance of the contract and any payment obligations arising from it.

There are different kinds of bonds that the contractor might be required to have for a construction contract, they include:

1. BID BONDS will pay any additional expense the owner may incur in order to hire the next responsible bidder in the event that the bidder who is awarded the contract fails to accept the Project.
2. PERFORMANCE BONDS will enable the surety to assume the contract obligations to complete the work in the event of the contractor's default.
3. PAYMENT BONDS provide for payment if the contractor fails to make proper payment to subcontractors or material suppliers.

The appropriate amounts of Bonds that the owner should request that the contractor obtain varies depending on contract sum and factors such as the complexity of the project, the experience of the contractor, etc. but ultimately the cost of getting bonded will be passed from contractor back to the owner (under general conditions costs), so it is a matter of how much protection the owner wants and can afford.