

An Overview of the Changes to California Lien Laws
That Will Be Effective on July 1, 2012
By William C. Last Jr.

	Prior Law	New Law	Comments
General			
General comments			Over the past three years, the Legislature has enacted two sets of changes to the lien laws and one new legislative bill that made cleaned up various issues in the first two changes. (1) Starting on January 1, 2011 there have been some changes statutes that impact the lien laws. On January 1, 2011 a notice was required to be sent by the lien claimant before a lien could be recorded. (2) The major changes will go into effect on July 1, 2012; pursuant to Senate Bill 189. These statutory changes were the result of years of study of the lien laws by California Law Review Commission. While the Law Revision Committee recommended some significant substantive changes the legislature failed to enact those recommendations. As a result, the majority of the change are not substantive. The new statutory scheme basically re-codifies the statutes, changes terminology and adds definitions. Nonetheless, there are some substantive changes that lien claimants must comply with in order to have an enforceable lien. (3) Senate Bill 190 made a number of technical corrections and clarifications to the prior two changes.
SB 189			
Substantive			
Existing court decisions		Appellate court decisions relative to the pre-existing statutory mechanic lien laws will continue to apply to the new lien laws, with the obvious exception of substantive changes to the new lien laws that substantially change the former laws.	
Overall	The old statutes were organized---	The lien laws are now broken into three sections: (1) Works of Improvement Generally, (2) Private Works of Improvement, and (3) Public Works of Improvement.	
SB 190			Makes various technical, conforming changes related to SB 189. Operative July 1, 2012. Essentially, this statute cleans up SB 189.
Miscellaneous		A limited liability company can now obtain a contractors license. A source of recovery on construction projects for unpaid employee and union trust fund claimants is the mandatory contractor's bond for limited liability companies. As a condition to obtaining, reinstating, or renewing a license, or continued use of an existing license, a limited liability company must post a contractor's surety bond in the amount of \$100,000.	
Works of Improvement Generally			
General			
Re-codification	The previous lien laws were in section 3082 of the Civil Code.	The new lien laws have been re-codified and start at Civil Code section 8000. Those sections are broken into three categories: (1) works of improvement generally; (2) private works of improvement; and (3) public works of improvement.	

Terminology Changes		(1) An “original contractor” is now a “direct contractor;” (2) A “materialman” is now a “material supplier;” (3) The “20-day preliminary notice” is now a “preliminary notice;” (4) “Site Improvement” now has a broadened scope in its application; (5) “Work Improvement” has a broadened scope; and (6) the “stop notice” is now a “stop payment notice.”	
Notice		The new law standardizes the notice periods.	
Minimum content of notice		<p>(a) Notice under this part shall, in addition to any other information required by statute for that type of notice, include all of the following information to the extent known to the person giving the notice: (1) The name and address of the owner or reputed owner. (2) The name and address of the direct contractor. (3) The name and address of the construction lender, if any. (4) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted. (5) The name, address, and relationship to the parties of the person giving the notice. (6) If the person giving the notice is a claimant: (A) A general statement of the work provided. (B) The name of the person to or for whom the work is provided. (C) A statement or estimate of the claimant's demand, if any, after deducting all just credits and offsets.</p> <p>(b) Notice is not invalid by reason of any variance from the requirements of this section if the notice is sufficient to substantially inform the person given notice of the information required by this section and other information required in the notice. (Civil Code</p>	
Where notice is to be given		Notice is to be given at the persons residence or place of business or any other address set forth in Civil Code section 8108.	
When notice is completed		Notice is complete and deemed to have been given at the following times: (a) If given by personal delivery, when delivered. (b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure. The mailing must be by certified or registered return receipt requested. (c) If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after mailing. (d) If given by posting, when displayed. (e) If given by recording, when recorded in the office of the county recorder.	

Proof of notice		(a) Proof that notice was given to a person in the manner required by this part shall be made by a proof of notice declaration that states all of the following: (1) The type or description of the notice given. (2) The date, place, and manner of notice, and facts showing that notice was given in the manner required by statute. (3) The name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice. (b) If the notice is given by mail, the declaration shall be accompanied by one of the following: (1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail.(2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service.(3) A return receipt, delivery confirmation, signature confirmation, tracking record, or other proof of delivery or attempted delivery provided by the United States Postal Service, or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of	
Change orders over 5%	Notice by owner to contractor had be given	Requirement eliminated	
<u>Private Works of Improvement</u>			
Waiver of lien rights		The new lien provisions cannot be waived by the owner of the land.	
Contracts		The written direct contract must include the name and address of the lender. The same is true for a subcontract, but it must include the name and address of the owner.	
Construction loans		Contracts with direct contractors and subcontractors must identify any construction lenders. If the construction loan is procured after the work has started, the landowner must provide the name and address of the lender to anyone who has served a preliminary lien notice.	
Preliminary Notice	The twenty day notice period is unchanged.	The form of the preliminary notice is now specific to private works projects (there is a different one for public works projects). Accompanying this chart is a form that contains the required items for a private works notice. Under CC §8200(e)(2) any claimant who has a direct contractual relationship with an owner must give preliminary notice to the lender. This claimant class includes the prime or general contractor.	

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Waivers and releases		The statutory Conditional and Unconditional Waivers and Release forms have changed. Use of the new forms is mandatory. Copies of the new forms accompany this chart.	
Notice Periods		The time periods are now standardized.	
Completion		There is a change in the definition of completion. In essence, acceptance by the owner has been removed. The definition is now: a) For the purpose of this title, completion of a work of improvement occurs upon the occurrence of any of the following events: (1) Actual completion of the work of improvement. (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. (b) Notwithstanding subdivision (a), if a work of improvement is subject to acceptance by a public entity, completion occurs on acceptance.	
Notice of completion	The time for recording a notice of completion was within 10 days of completion. That has been changed.	The time period for a notice of completion is now 15 days. Completion for the purpose of the Notice is per the previous section of this chart. A separate Notice of Completion may now be given if the work is being done under multiple direct contracts.	
Recordation of lien	The time period for recordation of the lien remains unchanged.		
Notice of mechanic lien	None was required.	Accompanying this chart is mechanic and notice of lien that is compliant with the change. The notice must include the statutory language. The notice must be mailed prior pursuant to the aforementioned notice requirements. If the notice is not given the lien is unenforceable. The lien must include the statutory language.	
Legal action on the lien, stop payment notice and/or payment bond	The deadline for filing a legal action has not changed.		
Notice of Pendency of action		A Notice of Pendency of Action must be recorded within 20 days of the lawsuit being filed.	
Pendency notice	Record notice within 20 days of recording lien	Record notice within 20 days of recording lien	The requirement was not changed. The question that remain is whether or not the requirement is truly mandatory
Stop notices for private works	The law remains basically the same.	Except, the release bond must be by an admitted surety. If the lender elects to release the funds despite receiving a stop notice, it must serve a 30 ay notice.	

Payment Bond		a) In order to enforce a claim against a payment bond under this title, a claimant shall give the preliminary notice. (b) If preliminary notice was not given, a claimant may enforce a claim by giving written notice to the surety and the bond principal within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement. (c) Commencing July 1, 2012, and except as provided in subdivision (b), if the preliminary notice was required to be given by a person who has no direct contractual relationship with the contractor, and who has not given notice as provided that person may enforce a claim by giving written notice to the surety and the bond principal, within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement. (d) Subdivision (c) shall not apply in either of the following	
Removal of lien			
Release bond		The amount of the release bond has been decreased from 150% to 125%	
Action on lien not timely filed	If a lawsuit is not commenced within 90 days of recordation of the lien the owner can file a petition to have the lien removed.	The petition can now be filed after a lawsuit has been commenced.	
Petition to expunge lien		The amount of the attorney's fees that can be sought no longer has a cap.	
Removal of lien that is a cloud on the owners title		The removal of the lien and/or failure to file an action within 90 days is no longer a cloud on the title.	

Miscellaneous		The burden of proof for establishing the validity of the lien is now on the lien claimant. Also: Except as provided in subdivisions (b) and (c), erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, the work provided, or the description of the site, does not invalidate the claim of lien. (b) Erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, or the work provided, invalidates the claim of lien if the court determines either of the following: (1) The claim of lien was made with intent to defraud. (2) An innocent third party, without notice, actual or constructive, became the bona fide owner of the property after recordation of the claim of lien, and the claim of lien was so deficient that it did not put the party on further inquiry in any manner. (c) Any person who shall willfully include in a claim of lien labor, services, equipment, or materials not furnished for the property described in the claim, shall thereby forfeit the person's lien.	
Security for Large Projects	This section has been in effect, but the amount is changed. It does not apply to single family homes.	The new law sets forth additional requirements for the security for bonds and sets forth the security required for projects over \$1,000,000. An owner shall provide security by any of the following means: (a) A bond that satisfies Section 8722. (b) An irrevocable letter of credit that satisfies Section 8724. (c) An escrow account that satisfies Section 8726.	
<u>Public Works of Improvement</u>			
Miscellaneous		This section is now found at Civil Code section 9000 et seq.	
Terminology		The term stop notice is now a stop work notice is now changed	
Preliminary Notice		There is now a separate form to be used for public works preliminary lien notices. A copy of the new form accompanies this chart. Basically, the prelien notice does not have the statutory notice language that is required for a private works project.	
Notice of cessation			
Time Periods		Completion of a work of improvement occurs at the earliest of the following times: (a) Acceptance of the work of improvement by the public entity. (b) Cessation of labor on the work of improvement for a continuous period of 60 days. The cessation period was formerly 30 days.	
Stop payment notices			
Payment Bonds			

Removal of stop payment notices		The statutory procedure for seeking the removal of a stop notice has changed. There is now a new process for a court hearing on the affidavits. A person who willfully gives a false stop notice or that includes work that was not performed forfeits his rights to a stop notice.	
Notice		The new statutes require public entities to provide notice of all specified events that trigger the commencement of the time period for enforcement. Prior to completion or recordation of a notice of completion, every public entity shall provide written notice of pending completion to each subcontractor that has provided a 20-day preliminary bond notice in accordance with the statute.	
Legal action on the lien, stop payment notice and/or payment bond			
<u>Design Professional Liens</u>			
Terminology definitions	Limited to certificated architects, registered engineers and licensed surveyors	Landscape architects are added to the list of those who can record a design professional lien.	
Miscellaneous		A design professional may record a mechanics' lien for providing work authorized for a work of improvement, subject to specified conditions. Specifically, A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied: (a) The work of improvement for which the design professional provided services has not commenced. (b) The landowner defaults in a payment required under the contract or refuses to pay the demand of the design professional made under the contract. (c) Not less than 10 days before recording a claim of lien, the design professional gives the landowner notice making a demand for payment, and stating that a default has occurred under the contract and the amount of the default. (d) The design professional records a claim of lien. The claim of lien shall include all of the following information: (1) The name of the design professional. (2) The amount of the claim. (3) The current owner of record of the site. (4) A legal description of the site. (5) Identification of the building permit or other governmental approval for the work of improvement.	
<u>Prompt Payment Penalties</u>			
	The prompt payment penalties remain unchanged.	However, they are now located at Civil Code section 8800 et. Seq.	