

## The Preliminary 20-Day Notice

If you receive a Preliminary 20-Day 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 services to improve your property and *could* file a lien claim if they are not paid.

Don't expect a 20-Day Notice from a prime contractor, however. Since they have a direct contract with you, they aren't required to send a 20-Day Notice, and may still file a mechanic's lien against your property if they are not paid the amount owed in the contract you have signed.

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

Watch the timing, however. 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.

**Effective January 1, 2011, the mechanic's lien, including the Notice of Mechanic's 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 mechanic's lien, including the Notice of Mechanic's lien, will result in the mechanic's lien being unenforceable.** Homeowners should retain the Notice of Mechanic's 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 or identifying issues. 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, or material supplier has failed to meet the required

timelines for filing the claim or has not provided the lien copy and Notice of Mechanic's Lien to the property owner. Review the Lien Requirements Checklist in this brochure to determine if the claimant followed the required time lines.

## Why Remove an Invalid Lien?

Even when a contractor, subcontractor or material supplier doesn't act to foreclose on your property, the lien stays on the county records as a cloud on your property title until you take action to remove it. A lien can make it difficult or impossible to refinance or sell your home.

## 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 get an attorney to remove it, the court can award your attorney fees of up to \$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 3154)
- 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 doesn't remove the invalid lien, and the time has expired to record the mechanic's 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 Section 3154 of the Civil Code for more information. Civil Code Section 3154(g) provides that if you use an attorney and you prevail, you are entitled to attorney fees of up to \$2,000.

## ✓ Lien Requirements Checklist

- **Check to see if the Preliminary 20-Day 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 20-Day Lien 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 don't need to give you the 20-Day Notice.

- **Find out from the County Recorder's Office whether the potential lien claimant filed the mechanic's lien within the legal time frame.**

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

- **Check to see whether you received a copy of the lien and a Notice of Mechanic's Lien and that the contractor seeking the lien filed a *proof of service affidavit* with the county Recorder's Office.**

As of January 1, 2011, a proof of service affidavit must be completed and signed by the person serving the Notice of Mechanic's Lien. *The proof of service affidavit must be included as part of the claim that is filed with the county recorder in order for the lien to be enforceable.*



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# A HOMEOWNER'S GUIDE TO Preventing Mechanic's Liens

*Protect Your Home and Financial Stability*



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## Minimize Your Risks and Take Steps to Protect Your Home

When you hire a prime 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 mechanic's lien on your property.

Mechanic's lien law is complicated and confusing, and there are real risks involved for homeowners. Don't risk foreclosure, a cloud on your title, or having to pay twice for the same job.

You can take steps to avoid these problems by preparing for the possibility of a lien and employing the safeguards identified in this brochure to protect your home and your financial stability.

### What is a Mechanic's Lien?

A mechanic's lien is a "hold" or claim against your property that, if unpaid, allows a foreclosure action, forcing the sale of your home to satisfy any project debts. The lien is submitted to the County Recorder's Office by the unpaid contractor, subcontractor, supplier or worker.

The prime contractor has a direct contractual agreement with the homeowner. If the contractor isn't paid, he can sue on the contract and record a mechanic's 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 mechanic's lien on the property.

## When a Lien is Filed Against Your Property

A lien can result in a range of problems:

- Foreclosure—if the homeowner doesn't pay off the lien or cannot afford to do so;
- Double payment for the same job—if the homeowner pays the prime contractor and then has to pay the sub or supplier who wasn't paid by the prime;
- A cloud on the title of the property—that can affect the homeowner's ability to borrow against, refinance, or sell the property.

### How to Protect Yourself

You can 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 and do the following:

- Hire only licensed contractors and check the contractor's license status on CSLB's website at [www.cslb.ca.gov](http://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 and workers about the payment history of the prime contractor.

Get a written contract and make sure it includes the following:

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

## Preventing Liens

Before you pay your prime contractor, consider the possibility of needing to deal with a lien. The first step is to keep track of Preliminary 20-Day Notices and make sure you are aware of who can file a lien against you. 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 20-Day 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.

### 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. Here's how the lien release system works:

- Before you make a payment, you should first get a signed **conditional** release from the possible lien claimant(s).
- You or your contractor can download a copy of the release forms from CSLB's website at [www.cslb.ca.gov](http://www.cslb.ca.gov). If you ask for it, the prime contractor is required to give a signed release to you from the potential lien claimants.
- After you receive the conditional release(s), make the appropriate payment for the work that was done.
- After you pay, the contractor should give you an **unconditional** release signed by each of the claimants paid for the portion of the work being released. **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, or supplier has to record a 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 record a lien while a subcontractor or materials supplier has 30 days to record a lien.

## LIEN FORECLOSURE ACTION

Check with the Superior Court to see if the subcontractor or material supplier filed a timely Lien Foreclosure Action.

A Lien Foreclosure Action is a lawsuit to foreclose the mechanic's lien, and must be filed by the claimant within 90 days of the date that he or she recorded the mechanic's lien. Often a lien claimant with a valid claim will fail to follow through, making the lien invalid. If the contractor, subcontractor, or material supplier fails to follow any of these strict time frames, you can petition the Superior Court to remove the lien.

Failure to serve a copy of the lien and the Notice of Mechanic's Lien on the property owner or construction lender, **and secure a proof of service affidavit**, will also make the lien unenforceable (effective January 1, 2011).

**Be aware that although anyone can record a mechanic's lien, unlicensed contractors cannot foreclose on a mechanic's lien if the work is valued at more than \$500. (B&P Code 7031 – compensation prohibited.)**

