

Real Estate & Land Use

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Changes to California Mechanics' Lien Laws Effective July 1 – Are You Ready?

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On July 1, 2012, pursuant to Senate Bill No. 189 (“SB 189”), all of California’s laws regarding mechanics’ liens, stop notices and payment bonds were revised, renumbered, supplemented and/or replaced. Although some provisions of SB 189 went into effect previously, the majority of the changes and the most significant changes went into effect on July 1.

First, as of July 1, all of the mechanics’ lien laws and related laws were moved from Civil Code Sections 3081.1 through 3267 and replaced with new laws set forth at Civil Code Sections 8000 through 8848 and 9000 to 9566. However, the bulk of the changes are not substantive. Further, there is no need to refile notices that were filed under the old laws since the effectiveness of a notice given or other actions taken on a work of improvement before July 1, 2012, is governed by the applicable law in effect before July 1, 2012, and not SB 189.

After July 1, SB 189 applies and a few of its changes are noteworthy. These are discussed below.

SB 189 provides a stronger tool to encourage parties to remove liens on which they did not timely foreclose. Previously, the prevailing party in an action to release a property from a mechanic’s lien could only recover a maximum of \$2,000 in attorneys’ fees. SB 189 removes that cap and a prevailing party is now entitled to recover its reasonable attorneys’ fees. But, the property owner is required to demand that the lien claimant remove the lien at least 10 days before filing a petition to have it expunged.

By recording a notice of completion of a work of improvement, an owner shortens the period in which contractors may file mechanic’s liens from 90 days to 60 days and shortens the period in which a subcontractor or a materials supplier may file a mechanic’s lien from 90 to 30 days. However, such shortened periods only apply if the owner provides the direct contractor or claimant with notice of such filing.

The deadline for an owner to record a notice of completion is now 15 days instead of 10 days after the date of completion of a work of improvement. Under the old law, “completion” of a private work of improvement could occur upon “acceptance” of the work of improvement. However, due to concerns about the meaning of “acceptance” as used in the section, the new law removes it as one of the triggers for completion of a work of improvement. Now under Section 8180, the situations that trigger “completion” are limited to actual completion of all work on the project, occupation or use coupled with cessation of labor, and a cessation of labor for 60 continuous days (or for 30 days after recording of a notice of cessation).

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The procedural changes introduced by SB 189 have an effect on the parties inside and outside the courtroom.

For example, courts will now be subject to new requirements with respect to releasing liens. Courts must rule and make any necessary orders on a petition for a release order not later than 60 days after the filing of the petition. Under the old law, a court could continue the hearing indefinitely upon a showing of good cause. This could significantly quicken the lien release process, especially in those circumstances where liens must be removed prior to a transaction closing. Also, under the laws of SB 189, an owner may now request an expedited proceeding to determine its liability for payment under a stop work notice. These revised statutes will make legal proceedings more effective and efficient and provide greater clarity for the owner regarding its legal rights.

Outside the courtroom, the parties will be affected as follows:

The bond requirement to release a property from a mechanic's lien has been reduced from 150% to 125% of the amount of the claim as to that property, which should ease the bonding burden on a property owner.

A co-owner of a property can now give notice or execute or file a document on behalf of a co-owner.

There are uniform notice requirements that must be complied with in order for stop work notices and notices of completion to be effective.

The statutory form of Conditional Waiver and Release Upon Progress Payment has been revised. Practitioners must be careful to update the forms they are using.

A claimant may now record a notice of extension of credit, which is a notice of agreement between lien claimant and owner to extend the time claimant has to file to foreclose a lien, more than 90 days after the recordation of the mechanic's lien. However, this is only permissible if the recording occurs prior to a purchaser or encumbrancer for value and in good faith acquiring rights in the property affected by the lien. Prior to this, a notice of extension of credit could only be filed within 90 days of the recording of the mechanic's lien.

An owner must comply with new requirements prior to a release of a lien on its property. For example, an owner needs to give notice to the claimant demanding that claimant release the claim at least 10 days prior to filing the petition to release the property. Under the current law, the owner only needs to allege that claimant was unwilling or unable to execute a release of the lien or could not be found with reasonable diligence.

All payment bonds must be issued by an admitted surety insurer instead of a good and sufficient surety. An "admitted surety insurer" is a corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in the state of California. The change from "good and sufficient surety" to "admitted surety" is an example of the Legislature's attempt to make uniform the requirements of the mechanics' lien laws and also to provide more regulation over the

issuance of payment bonds.

In actions involving the collection of wrongfully withheld progress payments, the prevailing party may only collect "reasonable" attorney's fees.

For a complete overview of the new laws, you may find a copy of SB 189 [here](#).

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