

RESOLUTION 04-02-2014

DIGEST

Real Property: Service and Recording of Mechanic's Liens

Amends Civil Code section 8416 to add a requirement that lenders, reputed lenders and property owners of record be named in and served with a recorded mechanic's lien.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Civil Code section 8416 to add a requirement that lenders, reputed lenders and property owners of record be named in and served with a recorded mechanic's lien. This resolution should be approved in principle because the service on additional parties will ensure that all interested parties will have an opportunity to be heard in any proceeding resulting from the original filing.

Under current law, a mechanic's lien need only be served on the owner, or reputed owner, if known. This creates a situation where other lenders and owners are denied notice. This can create serious problems where portions of the properties may be sold to new owners who would not receive service of the lien.

The public is better served in any proceeding when all interested persons, whether or not persons of record, are notified of the proceeding in time to protect their individual interests.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Civil Code section 8416 to read as follows:

§ 8416

- 1 (a) A claim of mechanics lien shall be a written statement, signed and verified by the
- 2 claimant, containing all of the following:
- 3 (1) A statement of the claimant's demand after deducting all just credits and offsets.
- 4 (2) The name of the owner or reputed owner, if known, the name of the lender or reputed
- 5 lender, if known, and any owner of the property as reflected in records of the County Recorder or
- 6 County Assessor for the county in which the property is located. The claimant may conduct an
- 7 in person search of the County Recorder or County Assessor's records, may rely on the County
- 8 Recorder or County Assessor's internet accessible records if owner identity or owner address
- 9 information is provided, or may rely upon a third party data provider with access to such data
- 10 from the County Recorder or County Assessor's office.
- 11 (3) A general statement of the kind of work furnished by the claimant.
- 12 (4) The name of the person by whom the claimant was employed or to whom the
- 13 claimant furnished work.

- 14 (5) A description of the site sufficient for identification.
15 (6) The claimant's address.
16 (7) A proof of service affidavit completed and signed by the person serving a copy of the
17 claim of mechanics lien pursuant to subdivision (c). The affidavit shall show the date, place, and
18 manner of service, and facts showing that the service was made in accordance with this section.
19 The affidavit shall show the name and address of the owner or reputed owner upon whom the
20 copy of the claim of mechanics lien was served pursuant to paragraphs (1) or (2) of subdivision
21 (c), and the title or capacity in which the person or entity was served.
22 (8) The following statement, printed in at least 10-point boldface type. The letters of the
23 last sentence shall be printed in uppercase type, excepting the Internet Web site address of the
24 Contractors' State License Board, which shall be printed in lowercase type:
25

26 "NOTICE OF MECHANICS LIEN
27 ATTENTION!

28 Upon the recording of the enclosed MECHANICS LIEN with the county recorder's office of the
29 county where the property is located, your property is subject to the filing of a legal action
30 seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded.
31 That legal action must be filed with the court no later than 90 days after the date the mechanics
32 lien is recorded.

33 The party identified in the enclosed mechanics lien may have provided labor or materials for
34 improvements to your property and may not have been paid for these items. You are receiving
35 this notice because it is a required step in filing a mechanics lien foreclosure action against your
36 property. The foreclosure action will seek a sale of your property in order to pay for unpaid
37 labor, materials, or improvements provided to your property. This may affect your ability to
38 borrow against, refinance, or sell the property until the mechanics lien is released.

39 BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH
40 YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE
41 INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS' STATE
42 LICENSE BOARD WEB SITE AT www.cslb.ca.gov."

43 (b) A claim of mechanics lien in otherwise proper form, verified and containing the
44 information required in subdivision (a), shall be accepted by the recorder for recording and shall
45 be deemed duly recorded without acknowledgment.

46 (c) A copy of the claim of mechanics lien, which includes the Notice of Mechanics Lien
47 required by paragraph (8) of subdivision (a), shall be served on the owner or reputed owner, the
48 lender or reputed lender, and any owner of the property as reflected in records of the County
49 Recorder or County Assessor for the county in which the property is located. Service shall be
50 made as follows:

51 (1) For an owner or reputed owner to be notified who resides in or outside this state, by
52 registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage
53 prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or
54 place of business address or at the address shown by the building permit on file with the
55 authority issuing a building permit for the work, or as otherwise provided in Section 8174. For
56 the lender or reputed lender, by registered mail, certified mail, or first-class mail, evidenced by a
57 certificate of mailing, postage prepaid, addressed to the lender or reputed lender at the address
58 identified in the Preliminary Notice or as may be reflected in the records of the County Recorder
59 in which the property is located. For any owner of the property as reflected in records of the
60 County Recorder or County Assessor for the county in which the property is located, by
61 registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage
62 prepaid, addressed to the address reflected in the records of the County Recorder or County
63 Assessor.

64 (2) If the owner or reputed owner cannot be served by this method, then the copy of the
65 claim of mechanics lien may be given by registered mail, certified mail, or first-class mail,

66 evidenced by a certificate of mailing, postage prepaid, addressed to the construction lender or to
67 the original contractor.

68 (d) Service of the copy of the claim of mechanics lien by registered mail, certified mail,
69 or first-class mail, evidenced by a certificate of mailing, postage prepaid, is complete at the time
70 of the deposit of that first-class, certified, or registered mail.

71 (e) Failure to serve the copy of the claim of mechanics lien as prescribed by this section,
72 including the Notice of Mechanics Lien required by paragraph (8) of subdivision (a), shall cause
73 the claim of mechanics lien to be unenforceable as a matter of law.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Under current law, mechanics, materialmen and laborers filing a mechanic's lien against property for services, materials and labor provided need only serve the mechanic's lien on the "owner or reputed owner, if known" despite the fact that the prerequisite 20-Day Preliminary Notice needs to be served on the owner or reputed owner and lender or reputed lender. The problem is that the current system does not adequately ensure that owners, whose property is subjected to the lien, and lenders, who may have a secured interest in the property, receive notice of the lien. The problem is amplified by the fact that subcontractors are allowed rely on information provided by the general contractor in serving the preliminary notice and have no obligation, under current law, to perform a follow up inquiry in preparing the mechanic's lien. The problem is ripe for occurrence in construction of commercial properties where portions of a project may be sold during construction to new owners who were never served with the preliminary notices and would not receive service of the mechanic's lien.

The Solution: This resolution amends Civil Code section 8416 governing the content of the mechanic's lien and requirements for service of the lien to add a requirement that the lender or reputed lender and any owners as reflected in the records of the County Recorder or County Assessor be named in the lien and served with the lien. It requires the claimant filing the lien to conduct an inquiry of County Recorder or County Assessor records for the identity of owners. To lessen the potential burden associated with such an inquiry, it allows for a search of the Recorder and Assessor's records through the internet, where such records are made available via the internet, or via a third party data provider such as title companies or services like Lexis or WestLaw.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Darin Wessel, Manning & Kass, Ellrod, Ramirez, Trester, LLP, 550 West C Street, Suite 1900, San Diego, CA 92101; (619) 515-0269; dlw@manningllp.com

RESPONSIBLE FLOOR DELEGATE: Darin Wessel