

AMENDED IN SENATE JUNE 21, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

AMENDED IN ASSEMBLY MARCH 17, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 456

Introduced by Assembly Member Wagner

February 15, 2011

~~An act to amend and repeal Section 1281.5 of the Code of Civil Procedure, relating to arbitration.~~ *An act to amend Sections 3084 and 8416 of the Civil Code, relating to mechanics liens.*

LEGISLATIVE COUNSEL'S DIGEST

AB 456, as amended, Wagner. ~~Arbitration: mechanics~~ *Mechanics liens.*

The California Constitution gives workers the right to a mechanics lien for the value of labor and materials provided for the improvement of real property, and authorizes the Legislature to provide for the speedy and efficient enforcement of these liens. Existing law requires a claim of mechanics lien to be served on the owner or reputed owner of the property in order to be valid, and requires a proof of service affidavit to show the name of the person upon whom the mechanics lien was served.

This bill would clarify that the affidavit is required to show the name of the owner or reputed owner of the property.

~~Existing law requires a court in this state, upon motion of a party to an action or proceeding, to stay an action or proceeding if another court has issued an order to arbitrate a controversy that is also an issue pending before the state court until the arbitration is conducted. A state court is~~

also required to stay an action if an application has been made in another court for an order to arbitrate a controversy until the other court determines whether to issue an order to arbitrate and, if the court issues an order to arbitrate, until the arbitration is conducted.

Existing law provides that, in an action to record and enforce a mechanics lien, a person does not waive any right of arbitration if the person takes certain measures, including filing and serving a motion to stay the action pending arbitration within 30 days, as specified.

This bill would authorize the claimant to make a motion to stay the action pending arbitration even if an application for an order to arbitrate has not been filed, unless a party opposes the motion and the court makes certain findings.

Existing law specifies that a defendant's failure to file a petition to arbitrate is a waiver of his or her right to arbitrate.

This bill would specify that the defendant's failure to either file the petition or to demand arbitration pursuant to an agreement constitutes a waiver of his or her right to arbitrate.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3084 of the Civil Code is amended to
2 read:

3 3084. (a) "Claim of lien" or "~~mechanic's~~ "mechanics lien"
4 means a written statement, signed and verified by the claimant or
5 by the claimant's agent, containing all of the following:

6 (1) A statement of the claimant's demand after deducting all
7 just credits and offsets.

8 (2) The name of the owner or reputed owner, if known.

9 (3) A general statement of the kind of labor, services, equipment,
10 or materials furnished by the claimant.

11 (4) The name of the person by whom the claimant was employed
12 or to whom the claimant furnished the labor, services, equipment,
13 or materials.

14 (5) A description of the site sufficient for identification.

15 (6) A proof of service affidavit completed and signed by the
16 person serving the Notice of ~~Mechanic's~~ *Mechanics* Lien pursuant
17 to subdivision (c). A "proof of service affidavit" is an affidavit of
18 the person making the service, showing the date, place, and manner

1 of service and facts showing that the service was made in
 2 accordance with this section. The affidavit shall show the name
 3 and address of the ~~person or persons~~ *owner or reputed owner* upon
 4 whom a copy of the ~~mechanic's mechanics~~ lien and the Notice of
 5 **Mechanic's Mechanics Lien** was served, and, if appropriate, the
 6 title or capacity in which ~~he or she~~ *the owner or reputed owner*
 7 was served.

8 (7) The following statement, printed in at least 10-point boldface
 9 type. The letters of the last sentence shall be printed in uppercase
 10 type, excepting the Internet Web site address of the Contractors'
 11 State License Board, which shall be printed in lowercase type:

12
 13 NOTICE OF ~~MECHANIC'S MECHANICS~~ LIEN
 14 ATTENTION!
 15

16 Upon the recording of the enclosed ~~MECHANIC'S MECHANICS~~
 17 LIEN with the county recorder's office of the county where the
 18 property is located, your property is subject to the filing of a legal
 19 action seeking a court-ordered foreclosure sale of the real property
 20 on which the lien has been recorded. That legal action must be
 21 filed with the court no later than 90 days after the date the
 22 ~~mechanic's mechanics~~ lien is recorded.

23 The party identified in the ~~mechanic's mechanics~~ lien may have
 24 provided labor or materials for improvements to your property and
 25 may not have been paid for these items. You are receiving this
 26 notice because it is a required step in filing a ~~mechanic's mechanics~~
 27 lien foreclosure action against your property. The foreclosure
 28 action will seek a sale of your property in order to pay for unpaid
 29 labor, materials, or improvements provided to your property. This
 30 may affect your ability to borrow against, refinance, or sell the
 31 property until the ~~mechanic's mechanics~~ lien is released.

32 BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU
 33 MAY WISH TO SPEAK WITH YOUR CONTRACTOR
 34 IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR
 35 MORE INFORMATION ON ~~MECHANIC'S MECHANICS~~ LIENS
 36 GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB
 37 SITE AT www.cslb.ca.gov.
 38

39 (b) A ~~mechanic's mechanics~~ lien or claim of lien in otherwise
 40 proper form, verified and containing the information required by

1 this section shall be accepted by the recorder for recording and
2 shall be deemed duly recorded without acknowledgment.

3 (c) (1) ~~The mechanic's mechanics~~ lien and the Notice of
4 ~~Mechanic's Mechanics~~ Lien described in this section shall be
5 served on the owner or reputed owner. Service shall be made as
6 follows:

7 (A) For an owner or reputed owner to be notified who resides
8 in or outside this state, by registered mail, certified mail, or
9 first-class mail, evidenced by a certificate of mailing, postage
10 prepaid, addressed to the owner or reputed owner at the owner's
11 or reputed owner's residence or place of business address or at the
12 address shown by the building permit on file with the authority
13 issuing a building permit for the work, or as otherwise provided
14 in subdivision (j) of Section 3097.

15 (B) If the owner or reputed owner cannot be served by this
16 method, then the notice may be given by registered mail, certified
17 mail, or first-class mail, evidenced by a certificate of mailing,
18 postage prepaid, addressed to the construction lender or to the
19 original contractor.

20 (2) Service by registered mail, certified mail, or first-class mail,
21 evidenced by a certificate of mailing, postage prepaid, is complete
22 at the time of the deposit of that first-class certified or registered
23 mail.

24 (d) Failure to serve the ~~mechanic's mechanics~~ lien, including
25 the Notice of ~~Mechanic's Mechanics~~ Lien, as prescribed by this
26 section, shall cause the ~~mechanic's~~ *mechanics* lien to be
27 unenforceable as a matter of law.

28 *SEC. 2. Section 8416 of the Civil Code is amended to read:*

29 8416. (a) A claim of mechanics lien shall be a written
30 statement, signed and verified by the claimant, containing all of
31 the following:

32 (1) A statement of the claimant's demand after deducting all
33 just credits and offsets.

34 (2) The name of the owner or reputed owner, if known.

35 (3) A general statement of the kind of work furnished by the
36 claimant.

37 (4) The name of the person by whom the claimant was employed
38 or to whom the claimant furnished work.

39 (5) A description of the site sufficient for identification.

40 (6) The claimant's address.

1 (7) A proof of service affidavit completed and signed by the
 2 person serving a copy of the claim of mechanics lien pursuant to
 3 subdivision (c). The affidavit shall show the date, place, and
 4 manner of service, and facts showing that the service was made
 5 in accordance with this section. The affidavit shall show the name
 6 and address of the ~~person or persons~~ *owner or reputed owner* upon
 7 whom the copy of the claim of mechanics lien was served, and, if
 8 appropriate, the title or capacity in which ~~he or she~~ *the owner or*
 9 *reputed owner* was served.

10 (8) The following statement, printed in at least 10-point boldface
 11 type. The letters of the last sentence shall be printed in uppercase
 12 type, excepting the Internet Web site address of the Contractors’
 13 State License Board, which shall be printed in lowercase type:

14
 15 “NOTICE OF MECHANICS LIEN
 16 ATTENTION!
 17

18 Upon the recording of the enclosed MECHANICS LIEN with the county
 19 recorder’s office of the county where the property is located, your property is
 20 subject to the filing of a legal action seeking a court-ordered foreclosure sale
 21 of the real property on which the lien has been recorded. That legal action
 22 must be filed with the court no later than 90 days after the date the mechanics
 23 lien is recorded.

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

32 BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH
 33 TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT
 34 AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS
 35 LIENS GO TO THE CONTRACTORS’ STATE LICENSE BOARD WEB
 36 SITE AT www.cslb.ca.gov.”
 37

38 (b) A claim of mechanics lien in otherwise proper form, verified
 39 and containing the information required in subdivision (a), shall

1 be accepted by the recorder for recording and shall be deemed
2 duly recorded without acknowledgment.

3 (c) A copy of the claim of mechanics lien, which includes the
4 Notice of Mechanics Lien required by paragraph (8) of subdivision
5 (a), shall be served on the owner or reputed owner. Service shall
6 be made as follows:

7 (1) For an owner or reputed owner to be notified who resides
8 in or outside this state, by registered mail, certified mail, or
9 first-class mail, evidenced by a certificate of mailing, postage
10 prepaid, addressed to the owner or reputed owner at the owner's
11 or reputed owner's residence or place of business address or at the
12 address shown by the building permit on file with the authority
13 issuing a building permit for the work, or as otherwise provided
14 in Section 8174.

15 (2) If the owner or reputed owner cannot be served by this
16 method, then the copy of the claim of mechanics lien may be given
17 by registered mail, certified mail, or first-class mail, evidenced by
18 a certificate of mailing, postage prepaid, addressed to the
19 construction lender or to the original contractor.

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

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

28 ~~SECTION 1. Section 1281.5 of the Code of Civil Procedure,~~
29 ~~as amended by Section 1 of Chapter 22 of the Statutes of 2003, is~~
30 ~~amended to read:~~

31 ~~1281.5. (a) Any person who proceeds to record and enforce a~~
32 ~~claim of lien by commencement of an action pursuant to Title 15~~
33 ~~(commencing with Section 3082) of Part 4 of Division 3 of the~~
34 ~~Civil Code, does not thereby waive any right of arbitration the~~
35 ~~person may have pursuant to a written agreement to arbitrate, if,~~
36 ~~in filing an action to enforce the claim of lien, the claimant does~~
37 ~~either of the following:~~

38 ~~(1) Includes an allegation in the complaint that the claimant~~
39 ~~does not intend to waive any right of arbitration, and intends to~~

1 move the court, within 30 days after service of the summons and
2 complaint, for an order to stay further proceedings in the action.

3 ~~(2) At the same time that the complaint is filed, the claimant~~
4 ~~files a motion that the action be stayed pending the arbitration of~~
5 ~~any issue, question, or dispute that is claimed to be arbitrable under~~
6 ~~the agreement and that is relevant to the action to enforce the claim~~
7 ~~of lien.~~

8 ~~(b) Within 30 days after service of the summons and complaint,~~
9 ~~the claimant shall file and serve a motion and notice of motion~~
10 ~~pursuant to Section 1281.4 to stay the action pending the arbitration~~
11 ~~of any issue, question, or dispute that is claimed to be arbitrable~~
12 ~~under the agreement and that is relevant to the action to enforce~~
13 ~~the claim of lien. Notwithstanding Section 1281.4, the claimant~~
14 ~~may make a motion to stay the action pending arbitration even if~~
15 ~~none of the parties to the action has filed an application for an~~
16 ~~order to arbitrate the controversy, provided that, if any party~~
17 ~~opposes the motion to stay the action on the ground that the party~~
18 ~~objects to arbitration of the dispute, the court shall determine~~
19 ~~whether the claim of lien or any relevant issue, question, or dispute~~
20 ~~is subject to arbitration before staying the action. The failure of a~~
21 ~~claimant to comply with this subdivision is a waiver of the~~
22 ~~claimant's right to compel arbitration.~~

23 ~~(c) The failure of a defendant either to file a petition for a court~~
24 ~~order to arbitrate pursuant to Section 1281.2 or to demand~~
25 ~~arbitration pursuant to an agreement to arbitrate at or before the~~
26 ~~time the defendant answers the complaint filed pursuant to~~
27 ~~subdivision (a) is a waiver of the defendant's right to compel~~
28 ~~arbitration.~~

29 ~~(d) This section shall become inoperative on July 1, 2012, and,~~
30 ~~as of January 1, 2013, is repealed, unless a later enacted statute,~~
31 ~~that becomes operative on or before January 1, 2013, deletes or~~
32 ~~extends the dates on which it becomes inoperative and is repealed.~~

33 ~~SEC. 2. Section 1281.5 of the Code of Civil Procedure, as~~
34 ~~amended by Section 25 of Chapter 697 of the Statutes of 2010, is~~
35 ~~amended to read:~~

36 ~~1281.5. (a) Any person who proceeds to record and enforce a~~
37 ~~claim of lien by commencement of an action pursuant to Chapter~~
38 ~~4 (commencing with Section 8400) of Title 2 of Part 6 of Division~~
39 ~~4 of the Civil Code, does not thereby waive any right of arbitration~~
40 ~~the person may have pursuant to a written agreement to arbitrate,~~

1 if, in filing an action to enforce the claim of lien, the claimant does
2 either of the following:

3 ~~(1) Includes an allegation in the complaint that the claimant~~
4 ~~does not intend to waive any right of arbitration, and intends to~~
5 ~~move the court, within 30 days after service of the summons and~~
6 ~~complaint, for an order to stay further proceedings in the action.~~

7 ~~(2) At the same time that the complaint is filed, the claimant~~
8 ~~files a motion that the action be stayed pending the arbitration of~~
9 ~~any issue, question, or dispute that is claimed to be arbitrable under~~
10 ~~the agreement and that is relevant to the action to enforce the claim~~
11 ~~of lien.~~

12 ~~(b) Within 30 days after service of the summons and complaint,~~
13 ~~the claimant shall file and serve a motion and notice of motion~~
14 ~~pursuant to Section 1281.4 to stay the action pending the arbitration~~
15 ~~of any issue, question, or dispute that is claimed to be arbitrable~~
16 ~~under the agreement and that is relevant to the action to enforce~~
17 ~~the claim of lien. Notwithstanding Section 1281.4, the claimant~~
18 ~~may make a motion to stay the action pending arbitration even if~~
19 ~~none of the parties to the action has filed an application for an~~
20 ~~order to arbitrate the controversy, provided that, if any party~~
21 ~~opposes the motion to stay the action on the ground that the party~~
22 ~~objects to arbitration of the dispute, the court shall determine~~
23 ~~whether the claim of lien or any relevant issue, question, or dispute~~
24 ~~is subject to arbitration before staying the action. The failure of a~~
25 ~~claimant to comply with this subdivision is a waiver of the~~
26 ~~claimant's right to compel arbitration.~~

27 ~~(c) The failure of a defendant either to file a petition for a court~~
28 ~~order to arbitrate pursuant to Section 1281.2 or to demand~~
29 ~~arbitration pursuant to an agreement to arbitrate at or before the~~
30 ~~time the defendant answers the complaint filed pursuant to~~
31 ~~subdivision (a) is a waiver of the defendant's right to compel~~
32 ~~arbitration.~~

33 ~~(d) This section shall become operative on July 1, 2012.~~