

Assembly Bill No. 456

Passed the Assembly September 9, 2011

Chief Clerk of the Assembly

Passed the Senate September 7, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 3084 and 8416 of the Civil Code, relating to mechanics liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 456, Wagner. 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, and the title or capacity in which the person or entity was served.

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

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

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

- (1) A statement of the claimant's demand after deducting all just credits and offsets.
- (2) The name of the owner or reputed owner, if known.
- (3) A general statement of the kind of labor, services, equipment, or materials furnished by the claimant.
- (4) The name of the person by whom the claimant was employed or to whom the claimant furnished the labor, services, equipment, or materials.
- (5) A description of the site sufficient for identification.
- (6) A proof of service affidavit completed and signed by the person serving the Notice of Mechanics Lien pursuant to subdivision (c). A "proof of service affidavit" is an affidavit of the

person making the service, showing the date, place, and manner of service and facts showing that the service was made in accordance with this section. The affidavit shall show the name and address of the owner or reputed owner upon whom a copy of the mechanics lien and the Notice of Mechanics Lien was served pursuant to paragraphs (1) or (2) of subdivision (c), and the title or capacity in which the person or entity was served.

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

"NOTICE OF MECHANICS LIEN
ATTENTION!

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

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

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

(b) A mechanics lien or claim of lien in otherwise proper form, verified and containing the information required by this section,

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

(c) (1) The mechanics lien and the Notice of Mechanics Lien described in this section shall be served on the owner or reputed owner. Service shall be made as follows:

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

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

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

(d) Failure to serve the mechanics lien, including the Notice of Mechanics Lien, as prescribed by this section, shall cause the mechanics lien to be unenforceable as a matter of law.

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

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

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

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

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

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

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

(6) The claimant's address.

(7) A proof of service affidavit completed and signed by the person serving a copy of the claim of mechanics lien pursuant to

subdivision (c). The affidavit shall show the date, place, and manner of service, and facts showing that the service was made in accordance with this section. The affidavit shall show the name and address of the owner or reputed owner upon whom the copy of the claim of mechanics lien was served pursuant to paragraphs (1) or (2) of subdivision (c), and the title or capacity in which the person or entity was served.

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

"NOTICE OF MECHANICS LIEN
ATTENTION!

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

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

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

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

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

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

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

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

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

Approved _____, 2011

Governor