

AMENDED IN SENATE MAY 11, 2009
AMENDED IN ASSEMBLY MARCH 25, 2009
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 457

**Introduced by Assembly Member Monning
(Coauthor: Assembly Member Emmerson)**

February 24, 2009

An act to amend Sections 3084 and 3146 of the Civil Code, relating to liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 457, as amended, Monning. Liens.

The California Constitution gives workers the right to a mechanic's 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 defines claim of lien in this regard, requiring it to contain specified information. Existing law provides that a lien claimant, after filing of the complaint to enforce the lien in the proper court, may record in the office of the county recorder where the property is located a notice of pending proceedings, and from the time of the recording a purchaser or encumbrancer of the property is deemed to have constructive notice of the pendency of the action.

This bill would provide that the definition of "claim of lien" is also the definition of "mechanic's lien" and would include within this definition a Notice of Mechanic's Lien, which would contain specified information regarding the legal effect of the lien. The bill would require the mechanic's lien and the Notice of Mechanic's Lien to be served, as

specified, on the owner or reputed owner of the property, or on the construction lender or the original contractor if those parties cannot be served. The bill would require a proof of service affidavit to be completed in a specified form and signed by the person serving the Notice of Mechanic's Lien, and this form would be included as part of the mechanic's lien or claim of lien. *The form would be signed under penalty of perjury. By applying the crime of perjury to this form, the bill would create a state-mandated local program.* The bill would provide that a failure to serve the mechanic's lien, including the Notice of Mechanic's Lien, as required, would cause the mechanic's lien to be unenforceable as a matter of law.

The bill would also revise the permissive provisions regarding the recording of the complaint to enforce the lien, as described above, to make them mandatory. The bill would ~~make~~ also make correctional, style, and conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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 lien" means a written
- 4 statement, signed and verified by the claimant or by the claimant's
- 5 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.

(6) An affidavit completed and signed by the person serving the Notice of Mechanic's Lien pursuant to paragraph (7) in the following form:

PROOF OF SERVICE AFFIDAVIT

I, (insert name of person making service), declare that I served a copy of the mechanic's lien by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the following owner or reputed owner of the property (insert name and title of person served) at the following address _____,

on this date: _____.

Signed at _____, on this date _____.

(Signature of person making service)

PROOF OF SERVICE AFFIDAVIT

I, (insert name of person making service), declare that I served a copy of the mechanic's lien by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the following owner or reputed owner of the property (insert name and title of person served) at the following address _____, on this date: _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signed at _____, on this date _____.

(Signature of person making service)

(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 MECHANIC'S LIEN
ATTENTION!**

1 *NOTICE OF MECHANIC'S LIEN*
2 *ATTENTION!*

3
4 Upon the recording of the enclosed MECHANIC'S LIEN with
5 the county recorder's office of the county where the property is
6 located, your property is subject to the filing of a legal action
7 seeking a court-ordered foreclosure sale of the real property on
8 which the lien has been recorded. That legal action must be filed
9 with the court no later than 90 days after the date the mechanic's
10 lien is recorded.

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

20 BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU
21 MAY WISH TO *SPEAK WITH YOUR CONTRACTOR*
22 *IMMEDIATELY*, OR CONTACT AN ATTORNEY
23 ~~IMMEDIATELY~~, OR FOR MORE INFORMATION ON
24 MECHANIC'S LIENS GO TO THE CONTRACTORS' STATE
25 LICENSE BOARD WEB SITE AT www.cslb.ca.gov.
26

27 (b) A mechanic's lien or claim of lien in otherwise proper form,
28 verified and containing the information required by this section
29 shall be accepted by the recorder for recording and shall be deemed
30 duly recorded without acknowledgment.

31 (c) (1) The mechanic's lien and the Notice of Mechanic's Lien
32 described in this section shall be served as follows:

33 (A) For an owner or reputed owner to be notified who resides
34 in or outside this state, by registered mail, certified mail, or
35 first-class mail, evidenced by a certificate of mailing, postage
36 prepaid, addressed to the owner or reputed owner at the owner's
37 or reputed owner's residence or place of business address or at the
38 address shown by the building permit on file with the authority

1 issuing a building permit for the work, or as otherwise provided
2 in subdivision (j) of Section 3097.

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

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

12 (d) Failure to serve the mechanic's lien, including the Notice
13 of Mechanic's Lien, as prescribed by this section, shall cause the
14 mechanic's lien to be unenforceable as a matter of law.

15 SEC. 2. Section 3146 of the Civil Code is amended to read:

16 3146. After the filing of the complaint in the proper court to
17 foreclose on the mechanic's lien, the plaintiff shall record in the
18 office of the county recorder of the county, or of the several
19 counties in which the property is situated, a notice of the pendency
20 of the proceedings, as provided in Title 4.5 (commencing with
21 Section 405) of Part 2 of the Code of Civil Procedure on or before
22 20 days after the filing of the mechanic's lien foreclosure action.
23 Only from the time of recording that notice shall a purchaser or
24 encumbrancer of the property affected thereby be deemed to have
25 constructive notice of the pendency of the action, and in that event
26 only of its pendency against parties designated by their real names.

27 SEC. 3. The amendments proposed by this act shall be operative
28 on January 1, 2011.

29 SEC. 4. *No reimbursement is required by this act pursuant to*
30 *Section 6 of Article XIII B of the California Constitution because*
31 *the only costs that may be incurred by a local agency or school*
32 *district will be incurred because this act creates a new crime or*
33 *infraction, eliminates a crime or infraction, or changes the penalty*
34 *for a crime or infraction, within the meaning of Section 17556 of*
35 *the Government Code, or changes the definition of a crime within*
36 *the meaning of Section 6 of Article XIII B of the California*
37 *Constitution.*