



CONSTRUCTION ALERT

A NEWSLETTER TO THE CONSTRUCTION INDUSTRY

COLEMAN & HOROWITT, LLP ♦ WEB: WWW.CH-LAW.COM ♦ TOLL FREE (800) 891-8362
499 W. SHAW AVE., STE. 116, FRESNO, CA 93704 ♦ (559) 248-4820 ♦ FAX: (559) 248-4830
1880 CENTURY PARK EAST, STE. 1511, LOS ANGELES, CA ♦ (310) 203-3888 ♦ (310) 203-3877

WHEN TO RECORD MECHANIC'S LIENS

By Darryl J. Horowitz

Most contractors know that the mechanic's lien is one of the best remedies available to the contractor, laborer, and supplier because it allows for the foreclosure of real property if payment is not made for construction work and/or materials supplied to the project. What many contractors may be unsure of is on which projects a lien should be recorded.

Our answer is simple. A lien should be recorded on every project on which payment is not made within the statutory time frame. That means, first and foremost, that unless your contract is directly with the owner, you should serve a 20-day preliminary notice as required under Civil Code § 3114 ***within 20 days of the date you first provide goods or services.*** Then, assuming you served a 20-day preliminary notice, you should record a mechanic's lien within 30 days after notice of completion or notice of cessation is recorded, or within 90 days after work has stopped on the project and there is no notice of completion or notice of cessation recorded. This time is extended by 30 days if you are the prime contractor or your contract is directly with the owner.

The service of the 20-day preliminary notice is also a prerequisite for most contractors and material suppliers to preserve their right to serve a stop notice. It is also helpful in bond claims.

You may ask, what if the owner or contractor (if you are a subcontractor or material

supplier) promises payment and your time is running out on recording a mechanic's lien? The answer is still the same. Unfortunately, many owners and contractors know that hope springs eternal in the mind of the subcontractor or material supplier and thus they may hold off on recording a mechanic's lien if promises are given that payment will be timely made. They know that, even if the promises are false, the time limit for recording a mechanic's lien is statutory and the failure to file within that time, even if you are fraudulently induced to withhold recording a mechanic's lien, will preclude the mechanic's lien from being enforceable because it was not timely recorded. Contractors face the same problems from owners and/or owner builders who make false promises to pay.

You may ask, is the answer the same if the person promising to pay is a close friend or family member? Yes. You should record a mechanic's lien on every project if you want to assure that you will be paid. If, however, you are willing to write off the debt, you need not worry about timely recording a mechanic's lien, in which case you would be left with suing the owner and/or general contractor (depending on the circumstances) instead of having the additional remedy of forcing the sale of the real property by a foreclosure of mechanic's lien action.

Remember also: Once you record the lien, you have only 90 days to file a lawsuit to foreclose on the lien. If you do not receive timely payment after the lien is recorded (i.e., within 75 days or so), you should consider filing a lawsuit to

foreclose on the lien. ***If you fail to file your lawsuit within 90 days after the lien is recorded, your right to do so will be barred.*** Time is therefore of the essence.

The moral of this story is simple: Even when promises are made, take a belt-and-suspenders approach. If the owner wants to avoid having a foreclosure action, they will have 90 days to pay, in which case the mechanic's lien will be released. Similarly, if they do not intend to pay, you will preserve your right to foreclose on the lien, provided, of course, that you file suit to enforce the mechanic's lien within 90 days after it is recorded.

This article was prepared by Darryl J.

Horowitz, a litigation partner at Coleman & Horowitz, LLP, emphasizing business, construction, real estate and banking litigation, commercial collections, casualty insurance defense, insurance coverage, and alternative dispute resolution. He is a member of the Fresno County Bar Association (Chair: Construction Law Section), the American Bar Association, Association of Business Trial Lawyers (President; Board Member), Federal Bar Association, Commercial Law League of America, and California Creditor's Bar Association (Founder, Treasurer). If you have any questions regarding the subject of this article, please contact Mr. Horowitz at (559) 248-4820 or by e-mail at "dhorowitz@ch-law.com."

CONSTRUCTION LITIGATION PRACTICE GROUP

THE CONSTRUCTION LITIGATION PRACTICE GROUP ASSISTS CLIENTS IN A WIDE VARIETY OF CONSTRUCTION DISPUTES, FROM SIMPLE BREACH OF CONTRACT MATTERS, MECHANIC'S LIEN, STOP NOTICE AND BOND CLAIMS, BID DISPUTES, AND CONSTRUCTION DEFECT MATTERS, INCLUDING MOLD CLAIMS. OUR EXPERIENCE ALSO EXTENDS TO THE PREPARATION OF DOCUMENTATION RELATING TO CONSTRUCTION PROJECTS. MEMBERS OF THE GROUP ARE:

DARRYL J. HOROWITT - LITIGATION
E-MAIL: DHOROWITT@CH-LAW.COM EXT. 111

WILLIAM H. COLEMAN - TRANSACTIONS
E-MAIL: WCOLEMAN@CH-LAW.COM EXT. 110

SHERYL D. NOEL - LITIGATION AND TRANSACTIONS
E-MAIL: SNOEL@CH-LAW.COM EXT. 140

ELIOT S. NAHIGIAN - TRANSACTIONS
E-MAIL: ENAHIGIAN@CH-LAW.COM EXT. 129

LAURENCE Y. WONG - LITIGATION
E-MAIL: LWONG@CH-LAW.COM (310) 203-3882

JENNIFER T. POOCHIGIAN - LITIGATION
E-MAIL: JPOOCHIGIAN@CH-LAW.COM EXT. 115

PHILIP J. NORGAARD - LITIGATION
E-MAIL: PNORGAARD@CH-LAW.COM EXT. 114

REMA M. AL-JUNDI - LITIGATION
E-MAIL: RALJUNDI@CH-LAW.COM EXT. 117

COLEMAN & HOROWITT, LLP PROVIDES LEGAL COUNSEL TO THE BUSINESS COMMUNITY IN THE AREAS OF BUSINESS, COMMERCIAL, AND REAL ESTATE LITIGATION AND TRANSACTIONS, CONSTRUCTION LITIGATION, APPEALS, PROFESSIONAL LIABILITY DEFENSE, CASUALTY INSURANCE DEFENSE, INSURANCE COVERAGE, TAX, PROBATE, AND ESTATE PLANNING. THIS NEWSLETTER IS INTENDED TO PROVIDE THE READER WITH GENERAL INFORMATION REGARDING CURRENT LEGAL ISSUES. IT IS NOT TO BE CONSTRUED AS SPECIFIC LEGAL ADVICE OR AS A SUBSTITUTE FOR THE NEED TO SEEK COMPETENT LEGAL ADVICE ON SPECIFIC LEGAL MATTERS. THIS PUBLICATION IS NOT MEANT TO SERVE AS A SOLICITATION OF BUSINESS. TO THE EXTENT THAT THIS MAY BE CONSIDERED AS ADVERTISING, THEN IT IS HEREWITH IDENTIFIED AS SUCH.