

# Mechanics Liens: Placing and Releasing Contractors Claims - Step by Step Guide

A Mechanics' Lien is an effective remedy for contractors, subcontractors, and others involved in the construction or improvement of real estate to resolve payment problems. If a service or materials provider records a Mechanics Lien against the real estate being improved, the owner cannot easily sell or refinance the property without first paying off the debt secured by the lien.

## **Templates and Forms**

- Mechanics Lien, Claim of PDF (https://saclaw.org/wp-content/uploads/2023/04/form-mechanics-lien-claim.pdf)
- Preliminary Notice, California Private Works PDF (https://saclaw.org/wp-content/uploads/2023/04/form-california-preliminarynotice-private-works.pdf)
- Release of Mechanics Lien PDF (https://saclaw.org/wp-content/uploads/2023/04/form-release-of-mechanics-lien.pdf)

#### **Related Guide**

Petition to Release Mechanics Lien (https://www.saclaw.org/resource\_library/petition-to-remove-mechanics-lien/)

A Mechanics Lien motivates the owner to make sure the contractors get paid, and is a prerequisite to filing a foreclosure action on the property. A claimant is defined by California Civil Code (C.C.) § 8004

(http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CIV&sectionNum=8004.), § 8024 (http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CIV&sectionNum=8400.) .

## Step by Step Guide

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#### **Determine if A Preliminary Notice is Required**

 $According \ to \ C.C. \ \S \ 8410 \underline{\ \ (http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CIV\&sectionNum=8410.)}\ , \ for \ most$ claimants who furnish labor, service, equipment, or material to a private work of improvement, service of a 20day preliminary notice is a prerequisite to the enforcement of both the Mechanics Lien and stop payment notice rights. Preliminary Notices must be served to the owner, general contractor, and lender. However, some claimants including some laborers, need not give prior notice per C.C. § 8200 (e)

(http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CIV&sectionNum=8200.) . A customizable template may be downloaded from this link:

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• Preliminary Notice (https://www.saclaw.org/resource\_library/preliminary-notice-california-private-works/)

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#### Complete the Claim for Mechanics Lien and Required Notice of Lien

Mechanics Lien forms must be in a format that the Sacramento County Clerk/Recorder's Office will accept. A customizable template may be downloaded from this link:

• Claim of Mechanics Lien including the required Notice of Lien and a Proof of Service Affidavit (https://www.saclaw.org/resource\_library/mechanics-lien-claim-of/)

Sample filled-in forms with instructions are available at the end of this Guide.

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#### Serve the Claim for Mechanics Lien and Complete the Proof of Service Affidavit

Service of the claim of mechanics lien must be completed before the lien claim is recorded. C.C. §8416 (a)(7) <a href="http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?sectionNum=8416.&lawCode=CIV">http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?sectionNum=8416.&lawCode=CIV</a> requires the recorded original claim for mechanics lien to contain a signed affidavit of proof of service.

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Record the Mechanics Lien, Required Notice of Lien, and Proof of Service Affidavit at the Recorder's Office

The Recorder's Office charges a recording fee (currently \$20/first page plus \$3 for additional pages in Sacramento). Current fees are available on the County Clerk/Recorder's website at <a href="Fee Schedule.">Fee Schedule.</a> <a href="http://www.ccr.saccounty.net/Pages/Fees.aspx">(http://www.ccr.saccounty.net/Pages/Fees.aspx)</a>

Sacramento County Recorder's Office 3636 American River Drive, Ste. 110 Sacramento, CA 95864 (916) 874-6334

#### For More Information

On the Web:

**Contractors State License Board** 

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- <u>Understanding Mechanics Lien Laws (https://www.cslb.ca.gov/Consumers/Legal\_Issues\_For\_Consumers/Mechanics\_Lien/)</u>: What is a mechanics lien, how to prevent a mechanics lien, what to do if a mechanics lien has been recorded on your property, lien release forms and instructions.
- Informational pamphlet from the Department of Consumer Affairs' Contractors State License Board: A Homeowner's Guide to Preventing Mechanics Liens

  (http://www.cslb.ca.gov/Resources/GuidesAndPublications/HomeownersGuideToPreventingMechanicsLiens.pdf).

#### At the Law Library:

#### California Mechanics Lien Law and Construction Industry Practice KFC229 .M31

California Mechanics Lien Law provides in-depth treatment of the basic law and procedure relating to works of improvement, from the standpoint of the contractor.

Electronic Access: On the Law Library's computers, using Lexis Advance.

#### California Mechanics Liens and Related Construction Remedies KFC229 .C3

This CEB practice guide discusses Mechanics Liens, stop notices, and bond remedies.

Electronic Access: On the Law Library's computers, using OnLaw.

#### Handling Mechanics Liens and Related Remedies (Private Works) KFC 229 .H86

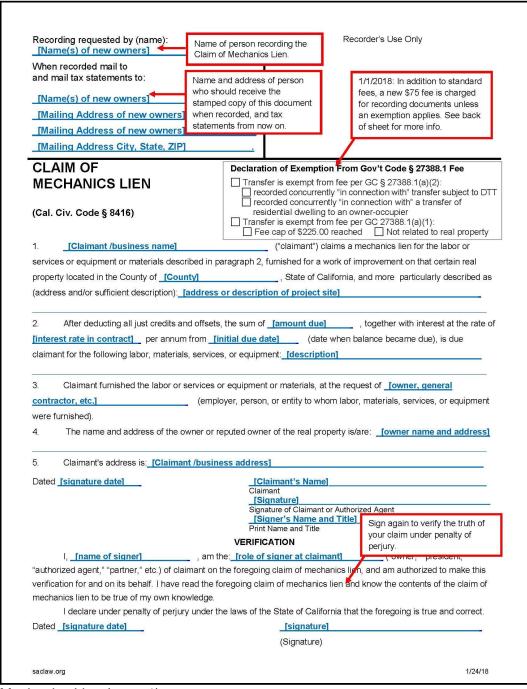
This CEB Action Guide describes the rights and remedies, including Mechanics Liens, stop notices, and bonds of the principal parties involved in a private work of improvement.

Electronic Access: On the Law Library's computers, using OnLaw.



## **Samples**

#### **Mechanics Lien**



Mechanics Lien (page 1)

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## NOTICE OF MECHANICS LIEN CLAIM 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 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 release.

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 <a href="https://www.cslb.ca.gov">www.cslb.ca.gov</a>.

This page must be served on the owner and filed at the recorder's office along with the notice. The office will reject the lien if it is not included.

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Mechanics Lien (page 2)

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Serve the owner of the project if you can. If you can't find the owner, serve the construction lender or (if you're a sub or supplier) the direct contractor.

Serve the mechanics lien yourself, by registered, certified, or first class mail with certificate of mailing—no need to hire a process server or have the lien personally served. Then fill out whichever of these two affidavits fits your situation.

## PROOF OF SERVICE AFFIDAVIT California Civil Code section 8416

Failure to serve the Mechanic's Lien and Notice of Mechanic's Lien on the owner, or alternatively if the owner cannot be served on the lender or direct contractor, shall cause the Mechanic's Lien to be unenforceable as a matter of law (Civil Code Section 8024(d)). Service of the Mechanic's Lien and Notice of Mechanic's Lien must be by (1) registered mail, (2) certified mail, or (3) first-class mail evidenced by a certificate of mailing, postage prepaid, and to a residence or business address for the owner, lender or contractor. Further, a Proof of Service Affidavit (below) must be completed and signed by the person serving the Mechanic's Lien and Notice of Mechanic's Lien. This page should be completed (either one of the sections below) and recorded with the County Recorder along with the Mechanic

PROOF OF SERVICE AFFIDAVIT (ON OWNER)
California Civil Code section 8416(a)(7) and (c)(7)

Serve the owner if you are able to locate a valid address. Then fill out the top proof of service.

California Civil Code section 8416(a)(7) and (c)(	E-I
I, : [Name of person signing] (name), declare that I served a copy of the Notice of Mechanic's Lien by registered mail, certified mail, or first-class mail eving mailing, postage prepaid, addressed as follows to the owner(s) or reputed owner.	denced by a certificate of
Company/Person Served: [Owner's name]	
Title or capacity of person served (if appropriate): [If owner is a business, identife	y person served]
Service address: [Owner's address]	
Said service address is the owner's residence, place of business, or address sh	owed by the building permit
on file with the permitting authority for the work.	
Executed on, 20 (date) at (city), (county), California.	
By:(Signature of	one en median e emises)
	If you cannot locate a valid address for the owner, serve the lender or direct contractor, then
	fill out the bottom proof of
California Civil Code Section 8416(a)(7) and (c) I, : [Name of person signing] (name), declare that the owner or repu	
with a copy of this Mechanic's Lien and Notice of Mechanic's Lien by registered class mail. Pursuant to California civil Code section 8416(c)(2), I served a copy Notice of Mechanic's Lien by registered mail, certified mail, or first-class mail evi mailing, postage prepaid, addressed as follows to the construction lender or dire	mail, certified mail, or first- of this Mechanic's Lien and denced by a certificate of
Company/Person Served: [Lender or Direct Contractor's name]	
Title or capacity of person served (if appropriate): Ilf owner is a business, identif	y person served
Service address: [Lender or Direct Contractor's address]	
Executed on, 20 (date) at (city), (county), California.	
Ву:	erson making service)
(Signature of p	erson making service)
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Mechanics Lien (page 3)

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#### **Release of Mechanics Lien**

Recording requested by (name):  [Name of Person Requesting the Recording]	_
When recorded mail to and mail tax statements to: [Name of Person Receiving Tax Statements]	
[Street Mailing Address]	_
[Street Mailing Address]	_
[City, State, Zip Code]	_
	Recorder's Use Only
RELEASE OF MECHANICS' LIEN (CA Civil Code §§ 8120-8130, 8400 et seq.)	Declaration of Exemption From Gov't Code § 27388.1 Fee  ☐ Transfer is exempt from fee per GC § 27388.1(a)(2): ☐ recorded concurrently "in connection with" transfer subject to ☐ Documentary Transfer Tax ☐ recorded concurrently "in connection with" a transfer of ☐ residential dwelling to an owner-occupier ☐ Transfer is exempt from fee per GC 27388.1(a)(1): ☐ Fee cap of \$225.00 reached ☐ Not related to real propert
[Name of Owner] (owner(s)) affecting the real property in the city of	
[Name of Owner]	of <u>Ilnsert Name of Cityl</u> , County of ocated at (address and/or sufficient description):
[Name of Owner]  (owner(s)) affecting the real property in the city of Insert Name of County], California, Ic [Provide the Address and Full Legal Descriptions is hereby waived and released, and that certain Instrument No. [Leave Blank if None] and/or in	of <u>Ilnsert Name of Cityl</u> , County of ocated at (address and/or sufficient description):
[Name of Owner]  (owner(s)) affecting the real property in the city of Insert Name of County], California, lot [Provide the Address and Full Legal Descriptions]  is hereby waived and released, and that certain Nonetrument No. [Leave Blank if None] and/or in [Insert Page Number], in the official records of the control of the city	of <u>Insert Name of City</u> , County of ocated at (address and/or sufficient description): s of the Property where the Work Occurred]  Wechanics' Lien recorded on <u>Insert Date</u> (date) as Book/Reel <u>Insert Book Number</u> , Page/Image
[Name of Owner]  (owner(s)) affecting the real property in the city of Insert Name of County], California, Ic Provide the Address and Full Legal Descriptions is hereby waived and released, and that certain Instrument No. [Leave Blank if None] and/or in Insert Page Number], in the official records of hereby fully satisfied, released, and discharged.  [Date Release is Being Signed]	of Insert Name of City, County of ocated at (address and/or sufficient description): s of the Property where the Work Occurred]  Wechanics' Lien recorded on Insert Date (date) as a Book/Reel Insert Book Number, Page/Image Insert Name of County County, California, is  [Print Name & Title of Claimant/Authorized Agent]

Release of Mechanics Lien (page 1)

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