

---

## Contractors and Material Suppliers Gear Up for Possible Changes to California's Mechanics Lien Laws

by Robert A. James and Amy L. Pierce

---

*Contractors and material suppliers gear up for possible changes to Mechanics Lien Laws which, if unheeded, could result in the forfeiture of contractors' and material suppliers' mechanics lien rights.*

---

Assembly Bill 457 (2008-2009 session) proposes amendments to Civil Code § 3084 that will require contractors and material suppliers to include as part of their mechanics liens a proof of service affidavit evidencing service of the mechanics lien on the owner or reputed owner of the property and a notice of the mechanics lien. It further proposes to amend Civil Code § 3146 to require contractors and material suppliers to file and record a notice of the pendency of the mechanics lien foreclosure action within 110 days after recordation of the mechanics lien. Attached hereto is a copy of the Contractors State License Board's Legislative Analysis of Assembly Bill 457.

If it passes, Assembly Bill 457 is set to become effective January 1, 2011.

### What This Will Mean for California Contractors and Material Suppliers

Under new subsection (d) of Civil Code § 3084, a mechanics lien holder's failure to serve the mechanics lien, including the proof of service affidavit and the notice of the mechanics lien, will result in the mechanics lien being *unenforceable*.

As currently drafted, under new subsection (d) to Civil Code § 3146, a mechanics lien holder's failure to file and record a notice of the pendency of the mechanics lien foreclosure action *within* 110 days of recordation of the mechanics lien will result in a purchaser or encumbrancer thereby being deemed to have constructive notice of the pendency of the action *only* from the time of the recording of the notice of the pendency of the mechanics lien foreclosure action, and *only* of the pendency of the action against those parties designated by their real names. (This is contrast to an earlier proposal that if the mechanics lien holder failed to commence an action *and* record a notice of pendency of action within the statutory time frame, the claim of lien would expire and be unenforceable.)

Experienced legal counsel can enhance your understanding of the implications of Assembly Bill 457 and assist you in achieving and maintaining compliance with other aspects of contractor regulations.

---

For further information, please contact:

Robert A. James **(bio)**  
San Francisco  
+1.415.983.7215  
rob.james@pillsburylaw.com

Amy L. Pierce **(bio)**  
Sacramento  
+1.916.329.4765  
amy.pierce@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2009 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.

**CONTRACTORS STATE LICENSE BOARD  
LEGISLATIVE ANALYSIS**

---

**Bill Number:** AB 457

**Author:** Monning

**Status/Location:** Assembly Judiciary Committee Hearing Set for 4/01/09

**Sponsor:** CSLB

**Subject:** Mechanic's Lien Law

**Relevant Provisions:** Changes the Provisions of Section 3144 of the Civil Code, and Amends Section 3084 of that Code.

---

**Summary:** Under existing law, a mechanic's lien for a private work of improvement does not bind any property for more than 90 days after the claim of lien is recorded with the county, unless an action to foreclose the lien is commenced within that time in a proper court. Also under existing law, there is no **requirement** to file a notice specifying that an action to foreclose on a property has been filed with the court.

AB 457 would add a provision to the Mechanic's Lien Law that **requires** the lien claimant to record a notice of the pendency of an action to foreclose within 110 days after recording the claim of lien. If the claimant fails to commence the foreclose action within 90 days (existing law), and fails to record the notice of pendency within 110 days as specified, the bill would provide that the claim of lien expires and is unenforceable.

**Staff Comments:** Staff and industry representatives are working on language that would require a lien claimant to: (1) provide property owners with a notice (Mechanic's Lien Notice) identifying the fact that a lien is going to be filed against the owner's property, and (2) enclose a copy of the lien with the Mechanic's Lien Notice. If the Mechanic's Lien Notice is not served on the property owner, the lien will not be valid. These requirements would be in addition to the requirements specified under the current bill language.

**Fiscal Impact for CSLB:** None

**Recommendation:** Support

**Date:** March 23, 2009

---