

Significant Changes to California's Mechanics Lien Law Coming July 1, 2012

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Effective July 1, all of the existing statutes governing mechanics liens, stop notices and payment bonds in California will be repealed and replaced by updated statutes.

In September 2010, Governor Edmund G. Brown, Jr. signed into law SB 189, which makes a number of significant changes to the laws governing the creation and enforcement of mechanics liens in California (the "Mechanics Lien Law"). The law will also result in new statutes governing stop notices (on both public and private works), payment bonds and related claims.

While SB 189 relocates and renumbers the Mechanics Lien Law, many of the provisions are substantively the same. Among these are two provisions that were modified as part of 2009's A.B. 457 and went into effect in January 2011: a change in the required form of mechanics lien claim and method of service (Civ. Code § 3084) and the new requirement that claimants record a lis pendens within 20 days after filing an action to foreclose on mechanics liens (Civ. Code § 3146). Pillsbury alerted clients [here](#) in April 2009 to earlier proposed versions of these changes.

The remaining changes take effect on July 1, 2012. The most sweeping change is that all of the statutes making up the Mechanics Lien Law (currently Civil Code sections 3082 through 3267), including the law governing stop notices and payment bonds, will be repealed and replaced with new statutes (Civil Code sections 8000 through 8848 and 9000 to 9566). Lawyers and clients familiar with the old statutory scheme will need to retool for the new layout. A chart showing key provisions under the current law, and the locations of the corresponding provisions after July 1, 2012, is attached to this Alert.

Despite the statutory upheaval, many of the provisions of the Mechanics Lien Law will remain substantively unchanged. The substantive changes taking effect on July 1, 2012 include the following:

Definition of Completion. The deadline for recording a mechanics lien is generally triggered by the "completion" of a work of improvement. Under current law, acceptance by the owner is one of the things deemed to constitute "completion." Under new [section 8180](#), that is no longer the case. The remainder of circumstances that constitute "completion"—i.e., actual completion of all work on the project, occupation or use coupled with cessation of labor, a cessation of labor for 60 continuous days (or for 30 days after recording of a notice of cessation), acceptance by a public entity—remain unchanged. The former provision for acceptance by a private owner was recommended for deletion by the California Law Revision

Commission because it was ambiguous, in that it did not identify a particular manner of acceptance or how that acceptance should be communicated to interested parties.

Time for Recording Notice of Completion. Under current law, owners must record notices of completion within a window of 10 days after actual completion of the project. Under the new law ([section 8182](#)), that time period is extended to 15 days.

Preliminary Notice. Under existing law, a "Preliminary 20-Day Notice" must be served by most types of lien claimants at the outset of their work, to preserve their lien claim, payment bond, and stop notice rights. Under the new law, this notice is referred to simply as a "Preliminary Notice." The required language for the Preliminary Notice has been changed. Also, [section 8200](#) eliminates ambiguity in the current law and makes clear that contractors in direct contract with the project owner need only provide a Preliminary Notice to construction lenders and reputed construction lenders, if any.

Waiver and Release of Lien Rights. In order to ensure that a "downstream" subcontractor has validly released its right to assert lien, stop notice, or payment bond rights, the law requires that specific waiver and release language be used. Under the new law ([sections 8132](#), et seq.), the required language has been changed slightly; one should be careful to utilize the form current as of the day the release is executed. The form utilized for progress payments (as opposed to final payment) does not cover certain disputed or extra work items, or claims based on breach of contract, so "upstream" parties may want to supplement the statutory form with additional releases.

Release Bond. Under the new law ([section 8424](#)), the amount of the bond required to release property from a lien has been reduced from 150 percent to 125 percent of the lien amount.

Attorney's Fees on Petition to Expunge Lien. The new law removes the current \$2,000 limit on the amount of attorney's fees that are recoverable on petitions to expunge stale liens; under the new law, all "reasonable" fees will be recoverable to the prevailing party. This will create a stronger incentive for lien claimants that did not foreclose upon their liens to make sure that their liens are formally released. The new law also adds a requirement that an owner must first make a demand that the lien claimant withdraw the lien at least 10 days before initiating a petition to expunge.

The statute governing the transition to the changed features of the Mechanics Lien Law, Civil Code [section 8052](#), provides that the validity of an "action taken" for purposes of the lien law is governed by the laws in place at the time of that action. This provision is not entirely clear, but best practice for contractors will be to use the forms required under current law through June 30, 2012 and then switch over to the new forms on July 1, 2012.

Pillsbury will be conducting seminars on the new laws and lien forms. If you would like to attend a seminar, please contact the authors of this Client Alert.

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California's Revised Mechanics Lien Law

Summary Of Selected Provisions As Of July 1, 2012*



Question	Civil Code Section(s)	Summary Of New Provision
1. Who may be a claimant?	Old: 3110. New: 8400.	Contractors, subcontractors, material suppliers, equipment lessors, laborers and design professionals that provide work authorized for a work of improvement may claim liens in that work of improvement and the real property on which it is situated.
2. What is a work of improvement?	Old: 3106. New: 8050.	Construction, alteration, repair, demolition or removal, seeding, sodding, planting, filling, leveling, or grading.
3. What must a claimant do at the outset of work to preserve lien and stop notice rights?	Old: 3097, 3114. New: 8200, et seq.	A claimant other than a general contractor must provide a Preliminary Notice to the owner, direct contractor and construction lender within 20 days of first furnishing work or materials. A general contractor must provide the notice to the lender.
4. How may an owner that did not contract for the work (e.g., a landlord whose tenant elected to construct improvements) disclaim responsibility for claims arising from the work?	Old: 3094, 3129. New: 8442, 8444.	An owner that did not contract for or direct the improvement may post and record a signed, verified Notice of Non-Responsibility disclaiming responsibility for claims arising therefrom.
5. What must an owner do when a construction loan is taken during construction?	Old: 3097(n). New: 8210.	The owner must give any person that served a preliminary notice the name and address of any post-commencement construction lenders.
6. What lien releases may an owner require during the course of work and at the end of a claimant's services?	Old: 3262(d). New: 8132-8138.	Required forms for obtaining conditional or unconditional waiver and release for progress and final payments.
7. How much time does a claimant have to record a lien?	Old: 3115, 3116. New: 8412, 8414.	A claim of lien must be recorded (and a copy mailed to the owner) after the claimant completes its contract and on or before 90 days after completion of the work of improvement. If the owner files a valid notice of completion, a direct contractor must record its lien (and mail a copy to the owner) within 60 days after recording of the notice of completion, and any other claimant must record its lien (and mail a copy to the owner) within 30 days after the recording of the notice of completion.
8. What is completion, and how does an owner's recording a notice of completion affect the period for recording liens?	Old: 3086, 3093, 3117. New: 8180, 8182, 8184, 8186, 8190.	"Completion" occurs upon (a) actual completion of all work on the project, (b) occupation or use coupled with cessation of labor, (c) a cessation of labor for 60 continuous days (or 30 days after recordation of a notice of cessation), or (d) acceptance by a public entity in some cases. Owners can shorten the period for recording of liens by recording a Notice of Completion within a window of 15 days after actual "completion."
9. How is a claim of lien perfected?	Old: 3084. New: 8416.	A claim of lien must be signed, verified and recorded in the proper county and mailed to the owner. It must include (a) a statement of the amount owed, (b) the name of the owner, (c) a description of the work furnished, (d) the name of the person who contracted with claimant for the work, (e) a description of the property (i.e., address or assessor's parcel number), (f) the claimant's address, (g) a proof of service of the claim, and (h) a statement containing language specified in the statute.
10. Who has priority, the lienors or the lender?	Old: 3134, 3138, 3139. New: 8450-8458.	A mechanics lien has priority over any encumbrance that was not perfected at the commencement of the work of improvement and of which the claimant had no notice. An otherwise subordinate deed of trust retains priority over liens recorded after a payment bond is recorded referring to that deed of trust in at least 75% of the principal amount of the deed of trust.
11. How does an owner or contractor bond around a lien?	Old: 3143-3145. New: 8424.	An owner or contractor may release the property from a claim of lien by recording a release bond in an amount equal to at least 125% of the lien claim. The statute of limitations for an action on the bond is tolled until notice is given to the claimant.
12. How long does a claimant you have to sue on the lien?	Old: 3144-3145. New: 8460.	The claimant generally must sue to enforce its lien within 90 days after recording the lien.
13. How does an owner expunge a lien?	Old: 3154. New: 8480, et seq.	The owner may petition a court for an order releasing a lien. The owner must first demand that the lien claimant withdraw the lien.

*This chart is only for convenience of reference, and omits important exceptions and additional provisions. Reference should be made to the complete statutes and other legal authorities. If you have questions, please contact the Pillsbury attorney with whom you work regularly or email Chris Rodriguez at chris.rodriguez@pillsburylaw.com.

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14. Who may give a stop payment notice?	Old: 3158, 3159, 3181. New: 8520, 8530, 9100.	Any person who can record a lien can give a stop payment notice, as long as a preliminary notice has been given.
15. What is the deadline for giving a stop payment notice on a private work?	Old: 3160. New: 8508.	The time for giving a stop notice is the same as the time for recording a mechanics lien.
16. Must a stop payment notice on a private work be bonded?	Old: 3159, 3161. New: 8522, 8532.	A lender is not required to withhold funds in response to a stop payment notice unless the stop payment notice is accompanied by a bond equal to 125% of the amount of the claim. An unbonded stop notice is sufficient to require a self-financing owner to withhold funds, unless it has recorded a payment bond.
17. How long does a claimant have to sue to enforce a stop notice on a private work?	Old: 3172. New: 8550.	A claimant generally must sue to enforce the stop payment notice no earlier than 10 days after the notice was given and no later than 90 days after expiration of the time within which stop payment notices must be given. The claimant must notify the persons to whom the stop notice was given of the commencement of the action within 5 days of commencing it.
18. What is the deadline for giving a stop payment notice on a public work?	Old: 3184. New: 9356.	The claimant must give the stop payment notice by the earlier of 30 days after the public entity records a notice of completion, acceptance or cessation, or 90 days after cessation or completion if notice was not recorded.
19. Must a stop payment notice on a public work be bonded?	Old: 3196. New: 9364.	A stop payment notice on a public works project does not need to be bonded.
20. How long does a claimant have to sue to enforce a stop payment notice on a public work?	Old: 3210. New: 9502.	A stop payment notice action must be filed no earlier than 10 days after the notice was given and no later than 90 days after the period during which stop payment notices must be given. The claimant must notify the public entity to whom the stop notice was given of the commencement of the action within 5 days of commencing it.
21. Must a direct contractor furnish a payment bond on a public works contract?	Old: 3247. New: 9550.	A direct contractor awarded a contract on any public project over \$25,000 must provide a payment bond.
22. Who may make a claim on a payment bond on a public work?	Old: 3267. New: 9566.	Payment bonds inure to the benefit of anyone who provided work to the direct contractor, either directly or through one or more subcontracts.
23. What is the deadline for making a claim on a payment bond on a public work?	Old: 3249. New: 9558.	A suit to collect on a payment bond claim must be filed within six months after the period in which stop payment notices must be given.
24. Must an owner furnish security for its payment obligations to the direct contractor on a private work?	Old: 3110.5. New: 8700, et seq.	On private works, payment security is not mandatory unless the contract value is greater than \$5 million (or \$1 million if the owner owns less than a fee interest in the property). This requirement does not apply to certain owners and certain residential construction, including single family residences.
25. Who may make a claim on a payment bond on a private work?	Old: 3267. New: 8608.	Payment bonds inure to the benefit of anyone who provided work to the direct contractor, either directly or through one or more subcontracts.
26. Can a private owner protect itself from double liability by recording a payment bond?	Old: 3235-3236. New: 8600.	If, before the commencement of a private work of improvement, the owner files (not records) its contract with the contractor with the recorder's office and also records a payment bond equal to at least 50% of the contract price, a court can restrict lien enforcement to the total due from the owner to the direct contractor, and enter judgment against the contractor and payment bond surety for a deficiency.
27. What is the deadline for making a claim on a payment bond on a private work?	Old: 3239. New: 8609, 8610.	The limitations period for private work payment bonds is generally four years; however, if the bond itself provides for a shorter limitations period, that shorter period is enforceable only if the owner, contractor or surety records the bond before the work commences. Any attempt to shorten the limitations period to less than six months after completion is unenforceable. If the surety that issues the bond records a copy of it with the recorder's office before the work is <i>completed</i> (not commenced), a claimant must commence action against the surety within six months after completion.

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