

To Be Effective, a Mechanic's Lien Requires Followup

By Robert B. Jacobs

I've had more than one contractor client say "If he doesn't pay, we'll just lien his property." These clients have been under the impression that once a mechanic's lien is recorded, it just stays there until the owner pays.

Such a belief is partly right, and mostly wrong. True, California law does provide contractors and suppliers with a right to record a mechanic's lien on private projects. However, once the lien is recorded, it doesn't just stay there forever. Many contractors are surprised to learn that a mechanic's lien automatically expires after 90 days unless the contractor files a lawsuit to foreclose the lien. What's more, the suit must be filed in the proper court.

There's been more than one contractor who recorded a mechanic's lien in the wrong county. Remember – the lien must be recorded in the county where the project is located. A lien recorded in any other county is entirely invalid, and is good for nothing. But recording the lien in the proper county is only the first step. If suit is not filed in the county where the lien was recorded, then under California Civil Code section 3144, the lien will automatically become void 90 days after it is recorded. This means that effectively using a lien includes two essential steps: recording the lien in the correct county, and then filing a lawsuit to foreclose on the lien.

But if the contractor doesn't record a release of lien, what happens to the lien that was actually recorded? It remains in the records of the County Recorder's office, and such a lien can effectively cloud title to real property even though by law it's no longer valid. As a result, owners have the right to have the lien "expunged" if no suit is filed within 90 days. After 90 days, an owner is entitled to file a petition with the Superior Court to have a mechanic's lien "expunged," which is the equivalent of having it erased. Some contractors may be tempted to leave a lien in place and not release it after 90 days. But if the owner's petition to expunge is granted, then the contractor can be ordered to pay the owner's attorneys fees of up to \$2,000.00! This can be a frustrating result. If a contractor isn't paid on a job and records a mechanic's lien, then the contractor has already been damaged by the owner's non-payment. But if the contractor has to pay the owner's attorneys fees on top of that, then that contractor is going to find out what real frustration is like.

What's the answer? Contractors should use the lien process wisely. They need to recognize that a lien only secures payment in the event of a foreclosure sale of real property following a lawsuit. If the contractor isn't prepared to file a lawsuit to foreclose the lien, then recording a mechanic's lien only adds to his or her paperwork burden. Liens are tricky, and if contractors are going to use one, then they should be prepared to do it right.

The Law Office of Robert B. Jacobs provides legal services in the areas of Construction, Business, and Real Estate Law. The office is located in Pleasanton, California and can be reached at (925) 847-8680. The foregoing article concerns only California law and the law of other States may be different. The article is not a complete discussion of the applicable law, and competent counsel should be consulted concerning any specific situation or issue.

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