



GENERAL PAVEMENT MANAGEMENT

Mechanic's Liens



What is a Mechanic's Lien?

A "hold" against a property that, if unpaid, allows a foreclosure action, forcing the sale of your property.

Mechanic's Liens

- Mechanics liens are recorded with the County Recorder's office by the unpaid contractor, subcontractor or supplier.
- Sometimes liens occur when the prime contractor has not paid subcontractors or suppliers. Legally, the homeowner is ultimately responsible for payment - even if they have already paid the prime contractor.

What happens when a lien is filed against a community?

A lien can result in a range of problems which include:

- **Foreclosure, if the association doesn't pay off the lien or cannot afford to do so;**
- **Double payment for the same job - if the association pays the prime contractor - and then has to pay the sub or supplier who wasn't paid by the prime;**
- **A cloud on the title of the property, which can affect every owner in the association's ability to borrow against, refinance, or sell their property;**
- **Angry homeowner's who have had their escrow stalled.**

How to Prevent Mechanic's Liens

How to prevent a mechanic's liens:

Carefully choose your contractor.

- Hire only licensed contractors and check the contractor's license status on CSLB's website;
- Make sure your contractor hires only licensed subcontractors, and check their licenses, too;
- Check up on your prime contractors reputation for payment and lawsuits at the local courthouse, suppliers, subcontractors, and other property managers;
- **Get a list of all subcontractors, laborers, and materials suppliers to be used by your prime contractor.**

How to prevent mechanic's liens:

Make sure your written contract includes the following in detail:

- A payment schedule that states when specific aspects of the work start and end and the price for each segment;
- Identification of subcontractors for each segment;
- Identification of suppliers who are providing materials.

Keeping Track of Paperwork:

Preliminary 20-Day Notice

A Preliminary 20-Day Notice is required from the subcontractor or supplier if there is a chance that they may need to file a lien. The Notice states that the subcontractor or supplier has provided or will be providing goods and services to improve your property and could file a lien claim if they are not paid.

If subcontractors and suppliers don't provide you with the notice, they lose the right to file a lien.

(NOTE: This Notice is not required from laborers or your prime contractor.)

Joint Checks

The simplest way to prevent liens is to pay with joint checks.

- Compare the contractor's bill for materials or labor, compare it to the schedule of payments in your contract and the Preliminary 20-Day Notices.
- Make sure that work was done as described
- Make out the check to both the contractor and the supplier, or subcontractor.
- Both parties will have to endorse the check, which will ensure that the subcontractors and suppliers get paid.

Lien Releases

The release system is designed to allow property owners and managers to track when potential lien claimants have been paid.

- Before making a payment, get a signed conditional release from the possible lien claimants.
- Get information on lien releases from the “Conditional and Unconditional waiver and release forms” section of the CSLB website. Either you or your contractor can download a copy of the release. The prime contractor is required to get this release for you from the potential lien claimants, if you ask for it.
- After you pay, the contractor should get you an unconditional release signed by each of the claimants paid for the portion of the work being released. Make sure that the actual claimant signs the unconditional release.
- By law, you may withhold the next payment until you get the unconditional releases for the previous payment.

Notice of Completion

- By filing a Notice of Completion with the County Recorder's office after work is completed, you can reduce the amount of time a contractor, subcontractor or supplier has to record a claim.
- This Notice reduces the amount of time a contractor has to record a mechanic's lien from 90 to 60 days, and reduces the time a subcontractor or materials supplier has to record a mechanic's lien from 90 days to 30 days.
- The Notice of Completion form may be obtained through your County Recorder's office or a stationary or office supply store that stock legal forms.

**What to Do if a
Mechanic's Lien Has
Been Filed Against You**

What to do if a mechanic's lien has been filed against you:

Determine if it is a valid lien.

- It may not be valid if the work was not completed or supplies were not included in the plans or contracts. An attorney can help you find out if the lien is valid.
- Often lien claims are invalid because the contractor, subcontractor or materials supplier has failed to meet the required timelines for filing the claim. Review the Lien Requirements Checklist below to determine if the claimant followed the required timelines.

Lien Requirements Checklist

✓ Check to see if the Preliminary 20-Day Notice was given to you within the strict time frames.

(Remember: Prime contractors and laborers do not have to file Preliminary 20-Day Notices)

- A subcontractor or materials supplier has 20 days after beginning work or delivering materials to serve you a Preliminary 20-Day Lien Notice.
- If the notice is late, the claimant loses lien rights for work done or materials delivered more than 20 days before the notice.
- The claim against your property isn't valid if this time frame is not followed.

Lien Requirements Checklist

- ✓ **Check to see if the potential lien claimant filed the mechanic's lien within the legal time frame.**
- If the potential lien claimant fails to record the mechanic's lien within the appropriate timeframe, the lien isn't valid.

Lien Requirements Checklist

- ✓ Check to see if the potential lien claimant filed the mechanic's lien within the legal time frame.
- If the potential lien claimant fails to record the mechanic's lien within the appropriate timeframe, the lien isn't valid.
- The potential lien claimant must record the mechanic's lien within 90 days of:
 - Completion of work,
 - When owner began using the improvement,* or
 - When owner accepted the improvement.

**This point is sometimes hard to verify because the homeowners are often occupying the residences during construction. You might want to contact an attorney for assistance on this point.*

Lien Requirements Checklist

- ✓ **Check with the Superior Court to see if the subcontractor or materials supplier filed a timely Lien Foreclosure Action.**
- A lien foreclosure action is a lawsuit to foreclose the mechanic's lien.
- The lien claimant must file a lien foreclosure action within 90 days of the date that he or she recorded the mechanic's lien.
- Often a lien claimant with a valid claim will fail to follow through, making the lien invalid.

Invalid Liens

Invalid Liens

- A lien stays on the county records as a "cloud" on a property title until action is taken to remove it. An invalid lien can make it difficult or impossible to refinance or sell a home.
- If the contractor, subcontractor or materials supplier fails to follow any of the strict time frames, you can petition the Superior Court to remove the lien.
- Be aware that, although anyone can record a mechanic's lien, unlicensed contractors cannot foreclose on a mechanic's lien if the work is valued at more than \$500.

Steps in removing an invalid lien:

Send the lien claimant a written request by certified mail. Keep a copy of your letter and the certification as proof of your request.

Include:

- Deviations you've identified from the above Lien Requirements Checklist.
- A request for the claimant to remove the lien.
- Remind the claimant that, if the lien is not removed and you have to get an attorney to remove it, the court can award you attorney fees of up to \$2,000.

Steps in removing an invalid lien:

- Send the request to the claimant's last known verified address. *(Sometimes, sending the letter is enough to persuade the lien claimant to release the lien.)*
- Keep all your documents and paperwork. You may need to demonstrate to a court that the lien claimant is unable or unwilling to execute a release of the lien or cannot, with reasonable diligence, be found.

Court petition to release the property from the lien

- If the lien claimant doesn't remove the invalid lien, and the time has expired to record the mechanic's lien and take action to foreclose, you may petition the court for a decree to release the property from the lien.
- This is a complicated process that may require the services of an attorney.

***Conditional and
Unconditional Waiver and
Release Forms***

Conditional and Unconditional Waiver and Release Forms:

General Principles: No lien release is binding unless the claimant executes (signs) and delivers a waiver and release. If signed by the claimant or his or her authorized agent, the signed form is effective to release:

- The owner;
- The construction lender; and
- The surety (in the case of a payment bond).

Be careful: paying your contractor (and/or getting a release from your contractor) does not guarantee that other claimants, like subcontractors and suppliers, are paid. A claimant is a person who, if not paid, can file a lien on your home.

Conditional and Unconditional Waiver and Release Forms:

To be effective, the waiver and release forms must follow substantially one of the forms set forth in Civil Code Section 3267. The four forms are:

- Conditional Waiver and Release Upon Progress Payment
- Unconditional Waiver and Release Upon Progress Payment
- Conditional Waiver and Release Upon Final Payment
- Unconditional Waiver and Release Upon Final Payment

CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Civil Code Section 3262(d)(1)

Upon receipt by the undersigned of a check from _____
MAKER OF CHECK

in the sum of \$ _____ payable to _____
AMOUNT OF CHECK PAYEE OR PAYEES OF CHECK

and when the check has been properly endorsed and has been paid by the bank upon which it
is drawn, this document shall become effective to release any mechanic's lien, stop notice, or
bond right the undersigned has on the job of _____
OWNER

located at _____ to the following extent.
JOB DESCRIPTION

This release covers a progress payment for labor, services, equipment, or material furnished to
_____ through _____
YOUR CUSTOMER DATE

only and does not cover any retentions retained before or after the release date; extras furnished before the
release date for which payment has not been received; extras or items furnished after the release date. Rights
based upon work performed or items furnished under a written change order which has been fully executed by
the parties prior to the release date are covered by this release unless specifically reserved by the claimant in
this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the
contract rights, including rights between parties to the contract based upon a rescission, abandonment, or
breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services,
equipment, or material covered by this release if that furnished labor, services, equipment, or material was not
compensated by the progress payment.

Before any recipient of this document relies on it, said party should verify evidence of payment to the
undersigned.

Dated: _____
COMPANY NAME

By: _____
TITLE

NOTE: This form complies with the requirements of Civil Code Section 3262(d)(1). It is to be used by a party who applies for a progress payment when the progress check has not yet cleared
the bank. This release only becomes effective when the check, properly endorsed, has cleared the bank.

Conditional Waiver and Release Upon Progress Payment

- Use this form when the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a progress payment and the claimant has not been paid.
- This form is useful when the claimant has not been paid yet, but will be paid out of a progress payment that is not the final payment.
- This conditional waiver and release is only effective if the claimant is actually paid.

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Civil Code Section 3262(d)(2)

The undersigned has been paid and has received a progress payment in the sum of

\$ _____ for labor, services, equipment or material furnished to _____
YOUR CUSTOMER

on the job of _____ located at _____
OWNER JOB DESCRIPTION

and does hereby release any mechanic's lien, stop notice or bond right that the undersigned has on the above referenced job to the following extent.

This release covers a progress payment for labor, services, equipment, or material furnished to _____ through _____
YOUR CUSTOMER DATE

only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

Dated: _____
COMPANY NAME

By: _____
TITLE

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

NOTE: This form complies with the requirements of Civil Code Section 3262(d)(2). It is to be used to release claims to the extent that a progress payment has actually been received by the releasing party.

Unconditional Waiver and Release Upon Progress Payment

Use this form when the claimant is required to execute a waiver and release in exchange for or in order to induce payment of a progress payment and the claimant asserts in the waiver that he or she has in fact been paid the progress payment.

CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Civil Code Section 3262(d)(3)

Upon receipt by the undersigned of a check from _____

MAKER OF CHECK

in the sum of \$ _____ payable to _____

AMOUNT OF CHECK

PAYEE OR PAYEES OF CHECK

and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____

OWNER

located at _____

JOB DESCRIPTION

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$ _____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: _____

COMPANY NAME

By: _____

TITLE

NOTE: This form of release complies with the requirements of Civil Code Section 3262(d)(3). It is not effective until the check that constitutes final payment has been properly endorsed and has cleared the bank.

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Conditional Waiver and Release Upon Final Payment

Use this form when the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a final payment and the claimant has not been paid.

This release is only binding if there is evidence of payment to the claimant. Evidence of payment may be demonstrated by:

- the claimant's endorsement on a single check or a joint payee check which has been paid by the bank upon which it was drawn; or
- written acknowledgment of payment given by the claimant.

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Civil Code Section 3262(d)(4)

The undersigned has been paid in full for all labor, services, equipment or material furnished

to _____ on the job of _____

YOUR CUSTOMER

OWNER

located at _____ and does hereby waive and release any right to a

JOB DESCRIPTION

mechanic's lien, stop notice, or any right against a labor and material bond on the job, except

for disputed claims for extra work in the amount of \$ _____.

Dated: _____

COMPANY NAME

By: _____

TITLE

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

NOTE: This form complies with the requirements of Civil Code Section 3262(d)(4). It is to be used to release claims to the extent that a progress payment has actually been received by the releasing party.

Unconditional Waiver and Release Upon Final Payment

Use this form when the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver he or she has in fact been paid the final payment.



Thanks For Your Time