

First Supplement to Memorandum 2005-19

Mechanics Lien Law: Cancellation of Invalid Lien

Memorandum 2005-19 addresses, among other issues, the problem of expeditiously clearing the record of an invalid and unenforceable mechanics lien. The staff proposal is that a lis pendens or extension of credit must be recorded within 90 days after recordation of a claim of lien, and if not, the claim of lien expires and is unenforceable. A bona fide purchaser or encumbrancer may thereafter take clear title or obtain priority notwithstanding the recorded claim of lien.

We have received recent email correspondence from John Scannell that speaks to the need for legislation of this type:

Has the commission addressed the problem of mechanics liens, where the contractor files a mechanics lien on property, is paid in full, no sub-contractors are involved and the mechanics lien is never released and the contractor is also no longer in business? This causes hardship for homeowners for equity loans with no clear, easy way to have the contractor release the lien if he is either not available or has no interest to clear if he can recover the same amount a second time because he filed the mechanics lien. It always appears on the title search when recorded.

Can the commission address those issues in the future?

We responded to him that we are currently looking into the matter. To which he further elaborates:

These code sections need to be changed as 15 year old mechanics liens should not cloud titles. This law has so many problems. Contractors file liens when they have already been paid with no incentive to remove the liens. They are allowed to file liens where no debt exists and they do not notify property owners even though they are required to. All they do is make a simple statement saying they notified the owners. I think they should post a bond as when they disappear or go out of business the property owner has great expense and annoyance trying to remove liens. County Recorders should automatically remove mechanics liens after they expire. This lien has cost me plenty and I am still not out of the woods.

The staff believes that Mr. Scannell's analysis is correct:

- (1) The law is liberal in allowing recordation of a claim of mechanics lien.
- (2) The law does not require a lien claimant to notify the property owner when a claim of lien is recorded.
- (3) An unenforceable claim of lien effectively clouds title until a court order expunging it is obtained. (Theoretically the claim of lien expires if an enforcement action is not brought within a year, but as a practical matter a title insurer may be unwilling to insure clear title absent a court release order.)

Due process of law generally requires notice and an opportunity to be heard before a prejudgment remedy may be imposed. But the California Supreme Court has held that a mechanics lien is not subject to this prerequisite.

The Commission has tentatively concluded that a lien claimant should statutorily be required to notify the property owner on recordation of a claim of lien. See proposed Section 3083.355 (notice of recordation of claim of lien). We have not yet determined an appropriate remedy for failure to give the notice. It probably doesn't make sense to invalidate the lien, if an enforcement action is brought promptly despite the failure to notify. Perhaps a licensee who fails to give the required notice could be subject to disciplinary action. (This wouldn't help if the lien claimant is a material supplier, or is otherwise unlicensed.)

The law does not require that a mechanics lien claimant give security for potential damage caused by a false claim of lien. Moreover, it has been held that a claim of mechanics lien is privileged; slander of title is not a remedy for a false claim of lien.

The staff is continuing to investigate approaches that could help deter a false claim of lien. Meanwhile, it may well be that the most efficacious remedy is that proposed in Memorandum 2005-19 — simply provide an expeditious means of declaring an unenforceable claim of lien void, thereby facilitating a title insurer's determination of clear title.

Respectfully submitted,

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