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Mechanic's Liens: Changes on the Horizon for 2011

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Perhaps one of the most significant changes in the area of mechanic's lien law is scheduled to take effect January 1, 2011. The current procedures for preparing, recording, and enforcing mechanic's liens will be dramatically altered in the coming months and will require significant modifications in order to remain in compliance for 2011.

The right to a mechanic's lien derives from Article XIV of the California Constitution, which provides that mechanic's material men, artisans, and laborers of every class shall have a lien upon property upon which they have bestowed labor or furnished materials, for the value of such labor and materials. However, the California Constitution from which this right derives is not self-executing, and the procedures in place to properly enforce this constitutional right is governed by the California Civil Code.

Presently, under the California Civil Code, a properly prepared mechanic's lien need only be timely recorded in the county where the real property or project is situated in order to be enforceable. No additional steps are presently required to enforce the lien, except to file a lawsuit within ninety (90) days of the lien's recording. However, beginning in 2011, a mechanic's lien claimant must also *serve* the mechanic's lien on the owner or reputed owner of the real property, the original contractor or reputed original contractor on the project, and the lender or reputed lender on the project. This service requirement is new for 2011.

In addition to the new service requirement, a claimant must also contemporaneously serve a separate document entitled "Notice of Mechanic's Lien." California law is very specific with respect to what language must be included in the notice of mechanic's lien in order to be effective. In addition, the law is very specific as to the font size/type that must be used in the notice. Accordingly, there is no room for creativity when preparing this document.

California Civil Code section 3084, subsection (d), provides that “failure to serve the mechanic’s lien, including the Notice of Mechanic’s Lien, as prescribed by this section, shall cause the mechanic’s lien to be unenforceable as a matter of law.” Due to the stringent new requirements, it is important that anyone preparing and recording mechanic’s liens in the upcoming year have their procedures and paperwork revised to reflect these changes to the law. The construction law department at Klein, DeNatale, Goldner is prepared to assist with the new compliance issues for you and your business.