

## **Reputed Owners and Notices of Completion: 30 Days or 90 Days to Record a Lien?**

**By David J. Barnier, Attorney with Barker Law Group, APLC**

Two recent revisions to the California Civil Code went into effect on January 1, 2004, and altered the laws related to preliminary 20-day notices (“prelims”). Companies and contractors who are required to serve prelims should already be aware of the first revision to the law, which altered the language that must appear within a prelim.

The second revision created a new law (Civil Code section 3259.5) that now requires an owner of a private project to mail written notice of any notice of completion or notice of cessation to the general contractor and to “*any claimant ... who has provided a preliminary 20-day notice who has provided a preliminary 20-day notice in accordance with (California Civil Code section 3097).*” If a claimant “has provided a (prelim) in accordance with section 3097,” the owner must mail a copy of any notice of completion to the claimant within ten days after it is recorded. Otherwise, the claimant’s deadline for recording a mechanic’s lien is the same (90 days after actual completion of the project) for that claimant as if no notice of completion had been recorded by the owner at all. If the notice of completion is valid and the owner properly meets the new requirements related to mailing the notice, the recording deadline is shortened to thirty days after the date of completion.

The italicized language above creates some uncertainties due to what may constitute providing a prelim “in accordance with section 3097.”

Under both the old and new versions of section 3097, a subcontractor or supplier need only serve the *reputed* owner of a property with his prelim in order to maintain his ability to pursue mechanic’s lien and stop notice rights. One of the purposes of this relaxed standard is to prevent owners from giving inaccurate ownership information that would cause a claimant to serve the wrong party with his prelim. If a claimant were required to serve the actual owner with his prelim, there would be an incentive for owners to hide their identity. Under section 3097, however, so long as the claimant performs a reasonable amount of research into the identity of the owner and serves the prelim on the party that the claimant believes to be the owner, the claimant’s prelim is legally effective and preserves the claimant’s ability to pursue mechanic’s lien despite the actual owner never receiving the prelim.

## Consider this hypothetical:

- ABC Electrical Supply supplies an electrical subcontractor with materials to be used on a project and serves its prelim on a party who it reasonably believes to be the owner of a project, but the actual owner is actually someone else, so the true owner does not receive ABC's prelim;
- The owner records a notice of completion on February 5, noting a completion date of February 1, and mails a copy the notice of completion to the group of claimants from whom he has received a prelim, but does not mail the notice to ABC because he has not received ABC's prelim;
- ABC records a Mechanic's Lien on March 15, or 43 days after the date of completion.

## Was ABC's mechanic's lien timely recorded? What was its time limit to record a mechanic's lien? 30 days after completion or 90 days after completion?

ABC will argue that its time limit was 90 days after completion because it "provided a (prelim) in accordance with section 3097" by serving the reputed owner (i.e., a party whom ABC reasonably believed to be the owner), and that for this reason the true owner was obligated to mail the notice of completion to ABC.

The owner will argue that because ABC did not "provide" the actual owner with a prelim, the owner was not obligated to mail a copy of the notice of completion to ABC. The owner will point to the fact that he did not know that the electrical subcontractor was purchasing materials from ABC and that, without receiving a prelim from ABC, the owner had no way of knowing that ABC was a claimant on the project. The owner will further argue that the 30-day rule should apply on the basis of the owner's having recorded a notice of completion and having mailed a copy of this notice to all parties who had served the owner with a prelim.

Again, the language of the new law is that an owner must mail a copy of any notice of completion to all claimants who have "provided a (prelim) in accordance with section 3097." Does ABC fall into this class of claimants in the hypothetical above?

It will be interesting to see how the court deals with such a situation. If the court were to rule that ABC had 90 days, then an owner's power to shorten the mechanic's lien deadline for all claimants to 30 days is taken away due to the possibility that one claimant has served a reputed owner. If the court were to

rule that ABC had only 30 days, then there would be a huge incentive for an owner to have claimants receive inaccurate owner information that would lead claimants to serve the inaccurately perceived owner with their prelims. The claimant's prelims would still be valid based upon the "reputed" standard, but the claimant is very likely to miss the deadline to record a mechanic's lien based upon the claimant's expectation that he would receive a copy of any notice of completion in the mail.

If you have any questions on this article and/or on construction law issues, please contact David J. Barnier. Mr. Barnier is an attorney with Barker Law Group, APLC. He practices in general business litigation with an emphasis on construction law and a particular emphasis on litigation involving breach of contract claims, mechanic's liens, stop notices and payment bond claims. He frequently presents seminars to the construction industry in which he explains the complex laws affecting the industry, how companies can avoid litigation or, as a last resort, be best prepared for litigation. His articles on construction law topics have been published in numerous trade journals and magazines. In addition to construction law, Mr. Barnier represents businesses of all sizes on both litigation and non-litigation matters. Mr. Barnier received a J.D. from the University of Southern California and a B.S. from the University of California, Berkeley. He is licensed in the State and Federal Courts of California and Nevada. He can be reached directly at (619) 682-4842 or via email, [djb@barkerlawgroup.com](mailto:djb@barkerlawgroup.com).

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