

OWNER BEWARE: CALIFORNIA MECHANICS' LIEN LAW IS CONSTITUTIONALLY BIASED

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I. INTRODUCTION

In California, the contractors' lobby and the California legislature has enacted a statutory scheme that greatly benefits contractors. In fact, private property owners are at a great disadvantage¹ and may end up paying twice for work performed on their property.² “[L]ien laws demonstrate . . . the effect of sheer political muscle. They generally favor those who are organized, such as contractors and designers, but how about the poor landowner?”³ This article will explain the constitutional basis and statutory scheme of California mechanics' lien law.⁴ Further, the article will provide critical analysis of the law and specific legal analysis and suggestions for property owners' protection in California.

A mechanics' lien is a statutory lien on real property given to certain designated classes of “mechanics,” subcontractors, contractors and laborers that have contributed labor or skill or furnished materials or equipment to the improvement of real property.⁵ The owner must have ordered the work done and the work must have benefited the real property.

If this occurs and if an owner pays the general contractor the full amount of an invoice or even the entire contract, the owner may still be fully responsible to the subcontractor. California law may require the owner to pay twice for the value of labor or materials provided to the real property. If the owner does not pay, her property may be subject to a mechanics' lien and ultimately a foreclosure proceeding. This is a very real risk for property owners in California.⁶ The legislature, since 1850, has decided that contractors need to be protected, even at the expense of property owners.⁷ It is essential that private land owners, small or large, understand

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1. *Connolly Dev., Inc. v. Super. Ct. of Merced County*, 553 P.2d 637, 661 (Cal. 1976) (Richardson, J., dissenting) (“[A] mechanics' lien most certainly intrudes, and in a *major* way, upon his incidents of ownership. Following imposition of the mechanics' lien, the debtor may enjoy his fireplace but he may not sell his home. He may tend his garden, but he may not borrow on his property.”); Justin Sweet, *A View from the Tower*, 18 Constr. Law, 47, 47 (Jan. 1998) (“[F]iling of dubious liens . . . can act as a clog on any attempt the owner may make to sell his land and force him to ‘pay up.’”).

2. See Matthew E. Marsh & Harry M. Marsh, *California Mechanics' Lien Law and Construction Industry Practice* ch. 1, § 1.3 (6th ed., LexisNexis 1996); *Contractors' Liens Costly for Owners*, L.A. Times K5 (Aug. 26, 2001) (“In the worst-case scenario, a homeowner can be ordered to pay for the same work twice—once to the general contractor and, if the general contractor fails to pay the subcontractor, again to the subcontractor.”); Sweet, *supra* n. 1, at 47 (“Mechanics' Lien laws can create injustice. The unwitting owner may be made to pay twice, once to his prime and again to an unpaid sub.”).

3. Sweet, *supra* n. 1, at 47.

4. Cal. Civ. Code Ann. §§ 3082-3267 (West 1993).

5. *Id.* § 3110.

6. See *Connolly Dev.*, 553 P.2d at 661 (Richardson, J., dissenting) (“Exercise by the creditor of the mechanics' lien remedy poses a threat pointed directly at the vitals of the debtor's economic independence.”); Jeffrey S. Klein, *Legal View: Home Remodelers Advised to do Homework on Liens*, L.A. Times V7 (July 23, 1987) (advising homeowners of risks surrounding mechanics' liens).

7. See *Connolly Dev.*, 553 P.2d at 653 (“Indeed this state, from the earliest days, and consistently thereafter has asserted its interest in protecting the claims of laborers and materialmen.”); *Id.* at 827 (Holding a mechanics' lien “inflicts upon the owner only a minimal deprivation of property; that the laborer and materialman have an interest in the specific property subject to the lien since their work and materials have enhanced the value of that property; and that state policy strongly supports the preservation of laws which give the laborer and materialman security for their claims.”).

the statutory scheme and protect themselves by numerous legal principles. This article will address those principals.