



DON'T PAY TWICE

PREVENTING MECHANIC'S LIENS

One of the biggest concerns for an association undertaking a major construction project is making sure that the association's payments reach the people supplying the labor and materials. Big projects often involve expensive materials that are purchased long before they are installed. If those suppliers are not paid, they may have the right to pursue a mechanic's lien, even if the association has already paid the general contractor. Subcontractors and laborers may also have mechanic's lien rights.

Fortunately, California law provides a straightforward process to help protect property owners through the use of conditional and unconditional lien releases. Understanding how these documents work can significantly reduce the association's risk.

A conditional release is essentially a promise. The contractor, subcontractor, or supplier agrees that once the payment is received, it will waive its right to record a mechanic's lien for the amount paid. Because the release is conditioned on receipt of the funds, it is appropriate for the association to obtain the conditional release before issuing payment. It basically means that the entity providing the conditional release will give up its lien rights for the amount identified in the release when the association pays the amount shown in the conditional release.

An unconditional release is different. It confirms that the payment has been received and that the contractor, subcontractor, or supplier has waived any mechanic's lien rights relating to that payment. Because an unconditional release acknowledges that payment has already been made, an unconditional release should not be signed before the funds have cleared.

Large projects are done in phases and involve progress payments. For each progress payment, the association (or its construction manager) should follow a consistent process. Before issuing payment, the general contractor should submit its invoice along with conditional releases from the contractor and every subcontractor and material supplier that will be paid from that progress payment. There may be other documents contractually required when an invoice is submitted, like a warranty for that phase of the project or a finalized permit. Once those documents have been reviewed, the association may issue the payment (holding back any retention amounts allowed by the contract terms).

After the payment has cleared the bank, the contractor should provide unconditional releases from itself and each subcontractor and supplier who received payment. Before approving the next progress payment, the association should confirm that it has received all unconditional releases associated with the previous progress payment.

On a large project, it is common for the contractor to request a substantial payment to purchase materials before construction begins. While this is often a legitimate request, the association should verify that supplier invoices support the requested amount and correspond to materials that have been furnished for the association's project. The supplier should provide a conditional release before payment, and an unconditional release after payment has been received.

Whenever practical, the association should also consider issuing joint checks payable to both the general contractor and the material supplier. A joint check helps ensure that the supplier receives the funds and applies them to the association's account, which substantially reduces the likelihood of a mechanic's lien arising from unpaid materials.

At the conclusion of the project, the association should not release the final retention payment until it has received unconditional final releases from the general contractor and from every subcontractor and supplier that served a "preliminary notice" on the association. A preliminary notice is a notice from a contractor, subcontractor, or material supplier informing the landowner that it has provided or may provide labor or materials to the property and may have lien rights if it is not paid. The final releases provide assurance that all labor and materials associated with the project have been paid.

By following these steps throughout the project, an association can significantly reduce the risk of mechanic's liens, avoid paying twice for the same labor or materials, and help ensure that construction funds are being used as intended.