

CONSTRUCTION BLOG

Warning to Equipment Rental Companies - You May Not Be Secured

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State mechanics lien statutes can be tricky. If you are an equipment rental company renting generator (or similar) construction equipment in California, you may not have mechanics lien rights.

In California, the Mechanic's Lien statute provides, "A person that provides work authorized for a work of improvement, including, but not limited to the following persons, has a lien right under this chapter..." Cal. Civ. Code § 8400. The words underlined in these two sections are all defined terms and have very specific meanings that lessors need to understand.

First, for the work must be "authorized" for a work of improvement or a site improvement under Cal. Civ. Code § 8404, there has to be the following: 1) the work is provided at the request of or agreed to by the owner; and 2) the work is provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the work of improvement or site improvement.

Next, the lessor has to meet the definitions of "work" and "work of improvement." Under Cal. Civ. Code § 8048, "work" means labor, service, equipment provided to a work of improvement, while Cal. Civ. Code § 8050 defines "work of improvement" as "construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad or road." Additionally, seeding, sodding, or planting property for landscaping purposes and grading real property is also considered a "work of improvement."

Taking all of this into account, and specifically with respect to the renting of construction generators for use at marijuana dispensaries in California, there are several hurdles to asserting lien rights over these projects. At the outset, the property owner has to be working directly with an equipment lessor to rent equipment for a work of improvement or have contracted with a contractor for a work of improvement, who is then utilizing leased equipment, to complete the work. What we often see are landlords leasing warehouse space to tenants who then rent generators but there is no “work of improvement” authorized by the owner or contract for improvement with anyone else (only a landlord-tenant Lease) and there is no actual improvement to the property (only tenant operations). As a result, there are no mechanics lien rights in California.

As an equipment lessor, if it is important to preserve lien rights and renting multiple generators to one customer should raise red flags. An equipment lessor would be wise to get additional information, like the owner’s authorization or a copy of the contract entered into with an owner, before leasing the equipment to ensure the generator will be used in a work of improvement and not solely to power the tenant’s operations. Personal guarantees are a security mechanism that are also valuable.

To gain a better understanding of your rights, risks, and responsibilities, contact our Construction or Receivable Recovery team today.