

Study H-820

December 14, 2000

Fifth Supplement to Memorandum 2000-78**Mechanic's Liens (More Comment Letters)**

Attached to this supplement are more letters on mechanic's lien law reform, including a letter from Stanley M. Wieg, Legislative Advocate, California Association of Realtors, which was distributed at the December meeting. (Exhibit pp. 1-2.)

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



CALIFORNIA ASSOCIATION OF REALTORS®

December 12, 2000

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Stan Ulrich, Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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Re: Memo 2000-78 Homeowners Recovery Account Proposal

Dear Mr. Ulrich:

Thank you for forwarding the updated proposal from Mr. Kelso and the McGeorge School of Law. We anticipate submitting additional input to the Commission on mechanics liens, but believe that this proposal cannot be allowed to go unanswered.

With all due respect to the Institute for Legislative Practice and the Professor, the policy foundation of the proposal is fatally flawed, and we respectfully urge to Commission to reject it.

Unfortunately, the McGeorge proposal does not adequately deal with the injustice of the existing law in which homeowners, acting in good faith, are forced to pay twice for the same improvements to their property. Even worse, the McGeorge proposal ignores market motivations and will institutionalize and perpetuate the injustice by imposing it upon all homeowners. We believe that proposal loses sight of the policy issue underlying ACA 5 (Honda) and its associated legislation.

The whole notion of creating a recovery account to cover the orphaned claims of subcontractors and material suppliers grew out of a desire to replace homeowner as the target of those same claims. In proposing to leave the unjust claims against the homeowner in place, and then surcharge all homeowners to fund an account to defray their losses imposed by the system, the proposal stands the original policy analysis on its head. A recovery fund only makes sense if it first replaces the victimization of homeowners, and second, if it is paid for by the wrongdoers (irresponsible contractors) that make it necessary.



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December 12, 2000
Mr. Stan Ulrich
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We respectfully suggest that a fund is not necessary. If good faith full payment by the homeowner is considered as proof of payment that will be allowed as defense to a lien then market forces will solve most of the problems that have grown up around the current system.

Material suppliers and subcontractors, especially suppliers, are currently allowed and encouraged to extend credit to the general contractor without underwriting, relying instead upon the equity of the homeowner. If instead they were required to bear the risk of their decision, and pursue the contractor as a remedy, they would have a real incentive to rein in the fly-by-night operators that currently cause increased costs and regulatory frustration throughout the system. Conversely, if a new system is imposed upon homeowners without increasing their ability to protect themselves, it will surely increase transaction costs and erode even the limited existing incentives to police the contractor ranks.

We continue to believe that the best solution to the problem of unfair imposition of liens against unsophisticated homeowners is to allow those homeowners to assert their good faith payments as satisfaction of the lien claim.

Thank you for your consideration.

Sincerely,

Stanley M. Wieg
Legislative Advocate

cc Clark Kelso, McGeorge Institute for Legislative Practice

SANTA CRUZ MILLWORK

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December 11, 2000

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Mr. Stan Ulrich
California Law Review Commission
4000 Middlefield Rd. Room D-1
Palo Alto, CA 94303-4739

Dear Mr. Ulrich:

Please do not weaken the lien rights of material suppliers and contractors. Under current law, the homeowner has a strong incentive to pay in full any legitimate claims by a material supplier or contractor. Any reduction in this incentive will result in an increase in unpaid invoices issued by the material supplier or contractor.

This will unfairly hurt smaller businesses. If a homeowner were to say, "So sue me," a small business owner would likely give up, for lack of the recourses required to bring a suit.

It is very hard for small material suppliers and contractors to succeed. If you make it harder, you will weaken an important part of California's economy. In the end, this will not serve the homeowner.

Please do not disturb the balance that exists now.

Sincerely,



Thomas Nedelsky
Owner



3895 Main Street - PO Box 370 - Kelseyville, Lake County - CA 95451

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California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

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Dear California Law Review Commission,

I would like to state for the record that I strongly oppose any changes or curtailment to the mechanics lien process and my rights to record a mechanics lien.

We have been in business since 1956. It has been my experience, that given a choice, the homeowner will usually choose the contractor with the lowest bid, not necessarily the most qualified, responsible, and solvent.

As a material supplier, we have absolutely no control on how the contractor spends his money. If the contractor runs short of funds, he is only out his labor, but, as a retail yard working on a small margin of profit, we will lose all the materials we supplied to the job. Putting the entire burden on the retail yards and eliminating the homeowners responsibility seems unbalanced and unjust.

Respectfully,

Robert L. Borghesani
Owner, Manager
Kelseyville Lumber

ahb





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December 12, 2000

Stan Ulrich
California Law Review Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739



Reference: Mechanics' Lien Process "Comprehensive Study"

Gentlemen:

We understand you are conducting a study of the "Mechanics' Lien Process".

We urge you not to alter this well working tool. We are a general engineering contractor who works for developers in the Sacramento region.

Some times we do not receive our final payment (and many of those times the last several monthly payments) from developers until we send them a letter indicating we will have to file a lien to preserve our rights and that we do not ever waive our lien rights.

Invariably, we receive payment prior to having to file a lien. In fact, we have only had to file a lien approximately once (1) a year over our forty-five (45) year history.

The biggest benefit, however, is that we have never had a significant bad debt on projects with lien rights. In addition, we have never had to file suit in court to collect unpaid balances.

Please preserve our lien rights as we now know them. This is a powerful tool not only for Subcontractors and material suppliers but Prime contractors as well.

Sincerely,

Syblon Reid

Donald W. Reid
General Manager

DWR/er

Cc: JH, LES, JW, DWR

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