

Memorandum 2005-4

Mechanics Lien Law: Discussion of Issues

Attached to this memorandum is a revised staff draft of the lien provisions (as opposed to stop notice, payment bond, and prompt payment provisions) of the mechanics lien law. The draft incorporates decisions made at the Commission's November 2004 meeting.

Additional issues are raised in the memorandum. **Staff Notes throughout the attached draft raise technical questions that need to be answered.**

The next step, after nailing down the details of the lien procedure, is to integrate the stop notice, payment bond, and prompt payment provisions. We don't have a fixed schedule for this, but would like to complete that work over the course of the next few Commission meetings (assuming we can free up staff resources for the task).

Direct Contractor

The draft substitutes the term "direct contractor" for the term "original contractor" pursuant to the Commission's decision at the last meeting. A direct or original contractor is one that has a direct contractual relationship with the owner. See draft Section 3082.025 ("direct contractor" defined).

It seemed like a good idea at the time. But the term looks a little odd in use. Shall we revert to "original contractor" or, pursuant to an earlier decision of the Commission, "prime contractor"?

The staff has an alternate suggestion. We could simply define "contractor" to mean a person having a direct contractual relationship with the owner, and use that term in the statute. That corresponds generally with usage under the existing statute, which typically uses the terms "contractor" and "original contractor" interchangeably. The phrase "contractor or subcontractor" appears commonly in the statute to mean a person that has either a direct or indirect contractual relationship with the owner. We would preserve that approach.

Notice and Other Papers

The mechanics lien law is replete with notices, forms, and other papers. The documents differ in various ways in the information required, often apparently unnecessarily so. We had planned to standardize some of these requirements in this draft, but have decided to hold off until we have reviewed documents under the payment bond and stop notice provisions.

For example, the building permit form is required to include the branch office of the construction lender, if any. But the lien provisions do not otherwise deal with a lender's branch office. Some aspects of the stop notice procedure do involve a branch office, however.

Other discrepancies we plan to address include:

- Most documents require the "name and address" of a person, but some call for the "residence" address or "place of business" of the person, and some simply for the person's name.
- Most documents call for a description of the site "sufficient for identification," but some require a legal description plus street address, and some just a legal description.

Change Orders

The Commission requested research on the origin and function of the provision of existing law that requires an owner to notify the original contractor and construction lender of a change in the original contract if the change increases the contract amount by 5% or more. See Civ. Code § 3123(c).

The existing statute provides:

3123. (a) The liens provided for in this chapter shall be direct liens, and shall be for the reasonable value of the labor, services, equipment, or materials furnished or for the price agreed upon by the claimant and the person with whom he or she contracted, whichever is less. **The lien shall not be limited in amount by the price stated in the contract as defined in Section 3088, except as provided in Sections 3235 and 3236 and in subdivision (c) of this section.**

(b) This section does not preclude the claimant from including in the lien any amount due for labor, services, equipment, or materials furnished based on a written modification of the contract or as a result of the rescission, abandonment, or breach of the contract. However, in the event of rescission, abandonment, or breach of the contract, the amount of the lien may not exceed the

reasonable value of the labor, services, equipment, and materials furnished by the claimant.

(c) The owner shall notify the prime contractor and construction lenders of any changes in the contract if the change has the effect of increasing the price stated in the contract by 5 percent or more.

The provision of subdivision (a) allowing the lien to cover change orders, and the provision of subdivision (c) requiring notice of change orders, were enacted together in 1990.

The interrelation of these provisions is far from clear. There is no case interpreting it, and contemporaneous analyses of the new law (including articles in the CEB Real Property Law Reporter and in the Los Angeles Lawyer) are not illuminating.

Subdivision (a) suggests that a lien's coverage of change orders is somehow limited by subdivision (c). But subdivision (c) merely requires the owner to notify the prime contractor and construction lender of major change orders.

The staff would eliminate subdivision (c), and the cross-reference to it in subdivision (a). Neither appears to serve a useful purpose.

Preliminary Notice

Subdivision (b) of Section 3097 requires that all claimants "who have a direct contract with the owner" must give preliminary notice to the construction lender, if any:

(b) Except the contractor, or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's compensation is paid as described in subdivision (b) of Section 3089, all persons who have a direct contract with the owner and who furnish labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, claim on a payment bond, and of a notice to withhold, cause to be given to the construction lender, if any, or to the reputed construction lender, if any, a written preliminary notice as prescribed by this section.

This provision is internally contradictory since it excepts "the contractor" from the requirement of giving preliminary notice. The Commission asked for further research on this provision.

The internal contradiction has not gone unnoticed. The court in *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 82 n. 3, 229 Cal. Rptr. 418 (1986), observes:

The exception of the “contractor” is puzzling here. Presumably it refers to someone other than “all persons who have a direct contract with the owner.” But section 3088 defines a “contract” as an “agreement between an owner and any original contractor providing for the work of improvement or any part thereof.” And section 3095 in turn defines “original contractor” as “any contractor who has a direct contractual relationship with the owner.” As has been noted, “[t]he Mechanic’s Lien Law often is inartfully drawn and leaves much room for doubt, as in this instance.” (Killeen, *The 20-Day Preliminary Notice in Private Construction Work* (1977) 53 L.A. Bar J. 113, 120, fn. 42.) Despite this apparent contradiction because the single word “contractor” is not defined, it has sensibly been construed to mean the general or prime contractor for the entire project. (See *Korherr v. Bumb* (9th Cir. 1958) 262 F.2d 157, 161- 162, construing the phrase “except the contractor” in former Code Civ. Proc., 1190.1, subd. (h) [Stats. 1951, ch. 1382, 1, p. 3305], the predecessor of 3097, as referring to the general or prime contractor; see also 1 Miller & Starr, *Current Law of Cal. Real Estate* (rev. pt. 2, 1975) Pre-lien Notice, 10:20, pp. 550-552, noting that if the term “contractor” referred to the original contractor, 3097, subd. (b) “would read that ‘all persons having a direct contract with the owner, except any contractor who has a direct contractual relationship with the owner’ must give the notice to the lender.”) (*Ibid.*)

See also Burden, *Counter-Revolutionary Changes in Construction Work Remedies*, 2 U.S.F. L. Rev. 216, 217 n.4 (1968) (“It is apparent from the scheme of the legislation that the person commonly referred to as the general contractor is the one referred to in [Section 3097(b)] as the ‘contractor.’”)

The staff is not sure how sensible it is to construe “the contractor” to mean the general or prime contractor for the entire project. This is likely to be the only person having a direct contractual relationship with the owner on the project, other than perhaps a design professional or an occasional specialty craft. The internal contradiction remains unresolved.

The provision was added to the law in 1967 as Code of Civil Procedure Section 1193(b). See 1967 Cal. Stat. ch. 789, § 2. That statute made two major changes to the mechanics lien law: (1) it eliminated use of an equitable lien

against construction loan funds, and (2) it provided a new notice procedure for persons wishing to file a lien or stop notice.

As enacted, new Code of Civil Procedure Section 1193(b) required “All persons having a direct contract with the owner, except the contractor or one performing actual labor for wages, who furnishes labor, service, equipment, or material” to give preliminary notice to the construction lender, if any. This supplemented existing Code of Civil Procedure Section 1193(a), which required all claimants *except* “one under direct contract with the owner” to give preliminary notice to the owner, original contractor, and construction lender, if any.

A contemporaneous summary of the new law interpreted all this to mean that, notwithstanding the general notice requirement imposed on a material supplier or subcontractor by subdivision (a), under new subdivision (b), “Those materialmen and subcontractors under direct contract with the owner are only required to give notice to the reputed or actual construction lender, if there is one.” *Review of Selected 1967 Code Legislation* 72 (Cal. Cont. Ed. Bar 1967).

It seems to the staff that the statute is incoherent, and these attempts to interpret it are feeble. The concept behind the provision presumably is that, while a direct contractor is properly exempted from the general preliminary notice requirement because known to the owner, a direct contractor should not be exempt from preliminary notice to the lender because, although a direct contractor may be known to the lender, that is not necessarily the case.

In the staff draft, **we have maintained the requirement that a direct contractor notify the construction lender**, but we have not excepted “the contractor” from this requirement. See Sections 3089.110 (preliminary notice prerequisite to remedies), 3089.120 (preliminary notice requirement).

Completion Issues

Acceptance by Public Entity

Under existing law, if a work of improvement “is subject to acceptance by any public entity,” completion is deemed to be the date of acceptance by the public entity. Civ. Code § 3086. The Commission inquired whether this provision is limited to a public work or whether it has been construed to apply to a private work that includes elements of public dedication.

The cases have construed the provision to apply to private work that includes elements of public dedication. See, e.g., *A.J. Raisch Paving Co. v. Mountain View Sav. & Loan Ass'n*, 28 Cal. App. 3d 832, 105 Cal. Rptr. 96 (1972) (private developer's contract for installation of streets, sewers, landscaping, etc., in subdivision subject to acceptance by city); *Howard A. Deason & Co. v. Costa Tierra Ltd.*, 2 Cal. App. 3d 742, 83 Cal. Rptr. 105 (1969) (street work contracted for by owner-builder of apartment complex subject to acceptance by city).

The staff draft at Section 3089.410(b) (completion) is consistent with this interpretation of the statute.

James Acret argues that the definition of "completion" for a work subject to acceptance by a public entity differs unnecessarily from the definition of "completion" for all other works, thus adding to the complexity of the statute. He would omit this provision. Gordon Hunt agrees with this suggestion.

The cases where the provision comes into play typically involve a lien claim filed more than 90 days after completion of the work. The owner argues that the claim of lien is invalid; the lien claimant argues that the project is not "complete" so as to trigger the 90 day period because the project is subject to acceptance by a public entity and acceptance has not yet occurred.

The staff is unsure of the policies involved here. Presumably the purpose of holding the lien claim period open is so that the owner can require the contractor to make whatever changes are demanded by the city as a condition to acceptance. Absent a compelling case for eliminating this provision, the staff would preserve it in the draft.

Consolidation of Notice of Completion and Notice of Cessation

We have simplified the current draft by combining the Notice of Completion and Notice of Cessation.

We have added a provision dealing with recommencement of labor after a Notice of Completion has been recorded:

If the notice is based on cessation of labor, [and] labor recommences before expiration of time for recording a claim of lien, the notice is ineffective.

See draft Section 3089.430(b)(6) (notice of completion).

While the provision seems straightforward, it may raise more questions than it answers. For example, what is the status of a claim of lien recorded after the Notice of Completion but before labor recommences?

Also, the provision muddies the water on unrelated issues. For example, even where there is no Notice of Completion, a project is deemed complete by operation of law on cessation of labor for 60 days. What happens if labor recommences thereafter? The existence of a rule with respect to recommencement of labor after a Notice of Completion, and the lack of such a rule with respect to recommencement of labor after cessation for 60 days, may lead to an undesired conclusion.

The staff does not have in mind all the policy considerations that may affect the resolution of this issue, but it is clear to us that **adding a provision along these lines does not make the mechanics lien law simpler**. It adds another layer or two of complexity to the law, which the staff thinks we can do without.

Notification of Recording Notice of Completion

If the owner records a Notice of Completion, the owner must notify potential lien claimants of the recordation. We have heard concern from potential lien claimants that it is sometimes difficult for them to identify the claim to which the Notice of Completion relates, due to fragmentary information in the notification. We have attempted to cure this problem in the draft by replacing the notification requirement with a requirement that the owner provide potential lien claimants with a copy of the Notice of Completion. See draft Section 3089.450 (notice of recordation by owner).

Waiver and Release

We have fixed several of the identified defects in the waiver and release forms, but have not addressed the underlying problem that the forms are abominable. They could use a good overhaul by someone who knows how to design a form.

Our staff does not have design expertise, but some things are obvious even to us. For example, information about the job, the claimant, the claim, the payment, the date, etc., could all be placed at the top of the form for easy identification, followed by a brief description of the effect of the particular waiver and release, followed by the claimant's signature. The detailed boilerplate with all its caveats, etc., could be reprinted at the bottom or on the back of the form (or even incorporated by reference from the statute).

Given the other demands on our time, and the fact that the current forms are familiar in the industry, **we haven't tried to tinker with them.** We could, though, if there is sufficient interest in it.

Expungement of False Claim of Lien

The Commission directed the staff to develop remedies for efficient expungement of a false claim of lien.

Court Order for Release of Property from Lien

The **staff proposes the changes indicated below** to the statutory lien release procedure.

Article 8. Release Order

§ 3082.805. Court proceedings

3082.805. Proceedings under this article may be maintained in the small claims division of the superior court if the claimant's demand after deducting all just credits and offsets does not exceed \$5,000.

Comment. Section 3082.805 clarifies the rule that a mechanics lien release order may be made in small claims court. See Code Civ. Proc. §§ 86(a)(6) (petition to release mechanics lien of \$25,000 or less is limited civil case), 87 (limited civil case may be brought in small claims court). See also Section 3082.220 (jurisdiction and venue).

§ 3083.810. Petition for release order

~~3083.810. (a) If the claimant does not commence an action to enforce a lien within the time provided in Section 3083.710, the~~ The owner of property subject to ~~the~~ a claim of lien may petition the court for an order to release the property from the claim of lien: for any of the following causes:

(1) The claimant has not commenced an action to enforce the lien within the time provided in Section 3083.710.

(2) The owner has given notice of nonresponsibility under Section 3083.530.

(3) The claim of lien is invalid under Section 3083.360 or is for any other reason invalid or unenforceable.

(b) This article does not bar any other cause of action or claim for relief by the owner of the property, nor does a release order bar any other cause of action or claim for relief by the claimant, other than an action to enforce the lien. However, another action or claim for relief may not be joined with a petition under this article.

(c) Notwithstanding Section 3082.230 (rules of practice), Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a proceeding under this article.

Comment. Subdivision (a)(1) of Section 3083.810 continues former Section 3154(a) without substantive change. Subdivisions (a)(2)-(3) are new. The owner need not wait until expiration of the time to commence an enforcement action before bringing a petition to release an invalid claim of lien. Cf. Section 3083.360 (forfeiture of lien for false claim).

Subdivision (b) continues former Section 3154(h) without substantive change. Subdivision (c) continues former Section 3154(i) without substantive change. As used in this section, the owner of property includes the owner of an interest in the property. See Section 3082.100 (“owner” defined).

See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

§ 3083.820. Contents of petition

3083.820. A petition for a release order shall be verified and shall allege all of the following:

(a) The date of recordation of the claim of lien. A certified copy of the claim of lien shall be attached to the petition.

(b) The county in which the claim of lien is recorded.

(c) The book and page of the place in the official records where the claim of lien is recorded.

(d) The legal description of the property subject to the claim of lien.

~~(e) That no action to enforce the lien is pending, no extension of credit has been recorded within the time required by Section 3083.710, and the time for commencement of an action to enforce the lien has expired. The facts on which the petition is based.~~

(f) That the claimant is unable or unwilling to execute a release of the claim of lien or cannot with reasonable diligence be found.

~~(g) That the owner of the property has not filed for relief under any law governing bankruptcy, and there exists no other restraint to prevent the claimant from commencing an action to enforce the lien.~~

Comment. ~~Subdivisions (a) and (d)-(g) of Section 3083.820 continues supersedes subdivision (b) of former Section 3154 without substantive change.~~ As used in this section, the owner of property includes the owner of an interest in the property. See Section 3082.100 (“owner” defined).

~~Subdivisions (b) and (c) are new. They are~~ The information included in the petition is intended to facilitate the court's order under Section 3083.840 (hearing and order).

See also Sections 3082.010 ("claimant" defined), 3082.060 ("lien" defined).

§ 3083.830. Notice of hearing (no change)

3083.830. (a) On the filing of a petition for a release order, the clerk shall set a hearing date. The date shall be not more than 30 days after the filing of the petition. The court may continue the hearing beyond the 30-day period on a showing of good cause.

(b) The petitioner shall serve a copy of the petition and notice of hearing on the claimant at least 10 days before the hearing. Service shall be made in the same manner as service of summons, or by mail addressed to the claimant at the claimant's address as shown in any of the following:

- (1) The preliminary notice (private work) given by the claimant.
- (2) The records of the Contractors' State License Board.
- (3) The contract on which the claim of lien is based.
- (4) The claim of lien.

(c) Notwithstanding Section 3082.240, when service is made by mail, service is complete on the fifth day following deposit of the petition and notice in the mail.

Comment. Section 3083.830 continues subdivisions (c), (d), and the first sentence of (e) of former Section 3154 without substantive change. The reference to "if there is no clerk, the judge" has been deleted. All courts now have a clerk. See also Section 3082.220 (proper court).

For service and proof of service by mail, see. Section 3082.240 (mailed notice). This expands the permissible methods of mailing. However, the time when service by mail is complete under this section is governed by subdivision (c) and not by Section 3082.240.

See also Sections 3082.010 ("claimant" defined), 3082.060 ("lien" defined), 3082.120 ("preliminary notice (private work)" defined).

§ 3083.840. Hearing and order

3083.840. (a) At the hearing both the petition and the issue of compliance with the service requirements of this article are deemed controverted by the claimant. The petitioner has the burden of proof that service was made in compliance with this article.

(b) If judgment is in favor of the petitioner, the court shall order release of the property from the claim of lien. The release order shall state:

- (1) The date of recordation of the claim of lien.
- (2) The county in which the claim of lien is recorded.

(3) The book and page of the place in the official records where the claim of lien is recorded.

(4) The legal description of the property.

(c) The prevailing party is entitled to reasonable attorneys fees ~~not to exceed two thousand dollars (\$2,000).~~

Comment. Subdivision (a) of Section 3083.840 continues the last sentence of former Section 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change. Subdivision (b) continues former Section 3154(f) without substantive change. The reference to the city where the claim of lien is recorded is omitted as superfluous. Subdivision (c) continues former Section 3154(g) without substantive change with the exception of the \$2,000 limitation.

See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

§ 3083.850. Release of property from claim of lien

3083.850. (a) A release order is a recordable instrument.

(b) On recordation of a certified copy of a release order, the property described in the order is released from the claim of lien.

Comment. Subdivision (a) of Section 3083.850 is intended to help effectuate the purpose of the lien release procedure.

Subdivision (b) continues the second sentence of former Section 3154(f)(4) without substantive change.

See also Section 3082.060 (“lien” defined).

Expungement Without Court Order

The staff has previously suggested that there might be circumstances where it would be unnecessary for a property owner go to court to expunge a false claim of lien. For example, it should be straightforward to determine whether the lien claimant has commenced an action to enforce a lien within the statutorily prescribed 90 days after recordation. Section 3083.710(a).

It turns out that things are not so simple. For example, the lien claimant may have recorded an extension of credit that preserves the lien beyond the initial 90 day period. Draft Section 3083.710(b).

Regardless of an extension of credit, the fact of the lien claimant’s failure to commence an enforcement action within 90 days after recording will not be evident from an examination of recorded documents (unless of course a lis pendens is mandated). It will be necessary to obtain a court clerk’s certificate on the matter, which itself may require further documentation.

The staff's conclusion is that a simple expungement procedure for a false claim of lien is not realistic. **A better approach would be to deter a lien claimant from recording a false claim of lien to begin with, through use of appropriate sanctions.** In any event, the court release procedure set out above appears to be sufficiently expeditious that any benefits realized from a nonjudicial expungement process would be marginal.

Penalty for Fraudulent Claim of Lien

A claim of lien is invalid if made with intent to defraud. The statute says nothing about liability of a fraudulent claimant, but presumably there would be potential tort liability on a fraud cause of action.

Existing law makes clear that release of property from a claim of lien does not release the owner from any personal liability to the claimant on the contract, nor does it relieve the claimant of any liability to the owner:

§ 3083.810. Petition for release order

3083.810. (a) If the claimant does not commence an action to enforce a lien within the time provided in Section 3083.710, the owner of property subject to the claim of lien may petition the court for an order to release the property from the claim of lien.

(b) This article does not bar any other cause of action or claim for relief by the owner of the property, nor does a release order bar any other cause of action or claim for relief by the claimant, other than an action to enforce the lien. However, another action or claim for relief may not be joined with a petition under this article.

(c) Notwithstanding Section 3082.230 (rules of practice), Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a proceeding under this article.

Comment. Subdivision (a) of Section 3083.810 continues former Section 3154(a) without substantive change. Subdivision (b) continues former Section 3154(h) without substantive change. Subdivision (c) continues former Section 3154(i) without substantive change. As used in this section, the owner of property includes the owner of an interest in the property. See Section 3082.100 ("owner" defined).

See also Sections 3082.010 ("claimant" defined), 3082.060 ("lien" defined).

This provision appears to the staff to be adequate; we would not further amend the statute to prescribe details of a cause of action for a fraudulent claim of lien.

Contractor's License Bond

One problem with remedies for expungement of a false claim of lien is that the claimant may be insolvent or unavailable to cover the owner's costs and expenses. No bond is required as a condition to recording a claim of lien.

Would the contractor's license bond be available for this purpose? There are a number of drawbacks to providing the owner access to the contractor's license bond, including:

- The bond may have expired, or the claimant may be unlicensed.
- The bond is relatively small (increasing to \$12,500 by 2007), and the claims against it may be substantial.

An unlicensed contractor may not use the mechanics lien law at all. Bus. & Prof. Code § 7031. But there is nothing in the recording statutes to preclude an unlicensed claimant from filing a claim of lien and complicating the property owner's life.

It would be easy enough require that proof of licensure be presented to the county recorder at the time of filing a claim of lien for recording. Whether there is enough of a problem to warrant inconveniencing every lien claimant is questionable.

Despite the inadequacy of the contractor's license bond as a fund to compensate for abuse of the mechanics lien law, **the bond might be made available** for what it's worth:

Bus. & Prof. Code § 7071.5 (amended). Contractor's license bond

7071.5. The contractor's bond required by this article shall be executed by an admitted surety in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the licensee or applicant. The contractor's bond shall be for the benefit of the following:

(a) Any homeowner contracting for home improvement upon the homeowner's personal family residence damaged as a result of a violation of this chapter by the licensee.

(b) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in (1) the execution or performance of a construction contract or (2) use of the remedies provided in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code.

(c) Any employee of the licensee damaged by the licensee's failure to pay wages.

(d) Any person or entity, including an express trust fund described in Section 3111 of the Civil Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of the licensee's failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage to an express trust fund is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

Comment. Section 7071.5 is amended to allow access to the contractor's license bond by a person damaged by the contractor's fraud under the mechanics lien law. Cf. Civ. Code § 3083.360. (forfeiture of lien for false claim).

Whether admitted surety insurers would welcome this expansion of liability is another question.

Notice of Recordation of Claim of Lien

In developing the remedies proposed above, the staff detected an anomaly in the mechanics lien law — there is no requirement that a lien claimant notify the owner when a lien has been recorded. If the claim is paid, and no enforcement action is ever taken, the owner may be surprised sometime down the road to find the property is encumbered. This is likely to occur at an inconvenient time — when the owner is about to refinance or take some other action affecting title.

The law greatly favors a lien claimant. The claimant may record a claim of lien that ties up property on a simple allegation that money is owed, without the need to bond against potential damage caused by a false claim. The claim of lien is required to be verified, which may help deter a false claim.

The claim of lien procedure has been upheld by a divided California Supreme Court against a due process challenge. The theory is that the property owner has preliminary notice of a potential claim and, on recordation of a claim of lien, can bring an immediate court action to discharge a false claim. The right to seek immediate judicial relief is not expressed in the mechanics lien law, but we can fix that. See draft Section 3083.810 (petition for release order) above.

The staff thinks that **the constitutionality of the mechanics lien law, as well as its fairness, would be enhanced** if the lien claimant were required to notify the owner on recording a claim of lien against the property:

§ 3083.310. Preliminary notice Notice required

3083.310. A claimant may enforce a lien only if the claimant has given a ~~preliminary notice (private work)~~ and made proof of service of the following notices:

(a) Preliminary notice (private work) as provided in Article 1 (commencing with Section 3089.110) of Chapter 8.

(b) Notice of recordation of claim of lien as provided in Section 3083.355.

Comment. Subdivision (a) of Section 3083.310 continues former Section 3114 without substantive change. A claimant must give preliminary notice to the extent provided in the preliminary notice provisions of this title. See Section 3089.110 et seq. A preliminary notice is not required of a direct contractor or a laborer or laborer’s compensation fund. Section 3089.110.(b) (preliminary notice prerequisite to remedies).

Subdivision (b) is new.

See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.120 (“preliminary notice (private work)” defined).

§ 3083.355. Notice of recordation of claim of lien

3083.355. (a) On recordation of a claim of lien the claimant shall promptly give notice of recordation to the owner of property subject to the claim of lien.

(b) Notice of recordation shall include all of the following information:

(1) The date of recordation of the claim of lien. A certified copy of the claim of lien shall be attached to the notice.

(2) The county in which the claim of lien is recorded.

(3) The book and page of the place in the official records where the claim of lien is recorded.

(4) The legal description of the property subject to the claim of lien.

(c) The lien claimant shall mail notice of recordation to the owner of the property at an address reasonably calculated to give actual notice to the owner.

(d) A lien claimant that fails to give notice as provided in this section is liable to the owner of the property for costs and expenses reasonably incurred to release the property from the claim of lien and for consequential damages to the owner caused by recordation of the claim of lien.

Comment. Section 3083.355 is new. For proof of notice, see Section 3082.240 (mailed notice).

☞ **Staff Note.** The information required in the notice of recordation is the same information the owner must provide in a petition to discharge the claim of lien.

Conforming Revisions

Revamping the mechanics lien law will require conforming revisions in other statutes that make reference to it. By keeping the same starting number in the staff draft — Civil Code Section 3082 — we can save some 50 existing statutory cross references to Title 15 of the Civil Code on “Works of Improvement”.

However, **there are other cross references to the mechanics lien law that will need to be corrected.** Set out below are proposed conforming revisions to statutes referring to Section 3109 — the opening section on “Mechanics’ Liens”.

Bus. & Prof. Code § 7159.1 (amended). Home improvement contract

SEC. _____. Section 7159.1 of the Business and Professions Code is amended to read:

7159.1. (a) In any contract for the sale of home improvement goods or services offered by door-to-door sale that contains or is secured by a lien on real property, the contract shall be accompanied by the following notice in 18-point boldfaced type:

“WARNING TO BUYER: IF YOU SIGN THE CONTRACT WHICH ACCOMPANIES THIS NOTICE, YOU WILL BE PUTTING UP YOUR HOME AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF YOU MISS ANY PAYMENT REQUIRED BY THIS CONTRACT.”

(b) This notice shall be written in the same language as the rest of the contract. It shall be on a separate piece of paper from the rest of the contract and shall be signed and dated by the buyer. The home improvement contractor or home improvement salesperson shall deliver to the buyer at the time of the buyer’s signing and dating of the notice a legible copy of the signed and dated notice. A security interest created in any contract described in this section that does not provide the notice as required by this section shall be void and unenforceable.

(c) This section shall not apply to any of the following:

(a) (1) Any contract that is subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

(b) (2) A mechanic’s lien established pursuant to Chapter 2 (commencing with Section 3109 ~~3083.110~~) of Title 15 of Part 4 of Division 3 of the Civil Code.

Comment. Section 7159.1 is amended to correct a cross-reference. The other changes are technical.

Bus. & Prof. Code § 17577.5 (amended). Contract for home water treatment device

SEC. _____. Section 17577.5 of the Business and Professions Code is amended to read:

17577.5. (a) No contract or offer for the sale, lease, or rental of a home water treatment device and no purchase money loan, as defined in subdivision (b), shall provide for a lien on real property. Any lien taken in violation of this section is void and unenforceable.

(b) For the purpose of this section, “purchase money loan” means a loan or an advance under an open-end credit account if both of the following occur:

(1) The primary purpose of the loan or the primary purpose of establishing the open-end credit account is to finance all or a portion of the purchase price or any of the lease or rental payments for a water treatment device.

(2) The creditor knows the primary purpose of the loan or the primary purpose of establishing the open-end credit account when the loan is initially made or the open-end credit account is established.

(c) The creditor shall be deemed to know that the primary purpose of the loan or the primary purpose of establishing the open-end credit account is the primary purpose described in paragraph (1) of subdivision (b) if any of the following occur:

(1) The consumer’s application for credit or any other document in the creditor’s possession before the loan is made or the open-end account is established indicates the primary purpose of the loan or the open-end credit account.

(2) The seller, lessor, or renter arranges or guarantees the loan or open-end account, or participates in the preparation of the consumer’s application for credit or other loan documents, or receives from the creditor a loan commission, brokerage, or referral fee.

(d) For the purpose of this section, “open-end credit” has the same meaning as used in Section 226.2 of Title 12 of the Code of Federal Regulations.

(e) This section does not apply to mechanics’ liens established pursuant to Chapter 2 (commencing with Section 3109 ~~3083.110~~) of Title 15 of Part 4 of Division 3 of the Civil Code.

Comment. Section 17577.5 is amended to correct a cross-reference.

Code Civ. Proc. § 86 (amended). Limited civil cases

SEC. _____. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

....

(6) Actions to enforce and foreclose, or petitions to release, ~~liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given under the provisions of a~~ mechanics lien under Chapter 2 (commencing with Section ~~3109~~ 3083.110) of Title 15 of Part 4 of Division 3 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars (\$25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil case.

....

Comment. Section 86 is amended to correct a cross-reference.

Code Civ. Proc. § 410.42 (amended). Jurisdiction in construction contract disputes

SEC. _____. Section 410.42 of the Code of Civil Procedure is amended to read:

410.42. (a) The following provisions of a contract between the contractor and a subcontractor with principal offices in this state, for the construction of a public or private work of improvement in this state, shall be void and unenforceable:

(a) (1) A provision which purports to require any dispute between the parties to be litigated, arbitrated, or otherwise determined outside this state.

(b) (2) A provision which purports to preclude a party from commencing such a proceeding or obtaining a judgment or other resolution in this state or the courts of this state.

(b) For purposes of this section, "construction" means any work or services performed on, or materials provided for, a work of improvement, as defined in Section ~~3106~~ 3082.190 of the Civil Code, and for which a lien may be claimed pursuant to Section ~~3110~~ 3083.210 of the Civil Code (whether or not a lien is in fact claimed) or for which such a lien could be claimed but for Section ~~3109~~ 3083.110.

Comment. Section 410.42 is amended to correct cross-references. The other changes are technical. See Civ. Code §§ 3082.190 ("work of improvement" defined), 3083.110 (scope of chapter), 3083.210 (persons entitled to lien).

Lab. Code § 218.5 (amended). Attorneys fees and costs in action for nonpayment

SEC. _____. Section 218.5 of the Labor Code is amended to read:

218.5. (a) In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action. ~~This section shall not apply to an~~

(b) ~~This section does not apply to any of the following:~~

(1) ~~An~~ action brought by the Labor Commissioner. ~~This section shall not apply to a~~

(2) ~~A~~ surety issuing a bond pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code ~~or to an~~.

(3) ~~An~~ action to enforce a mechanics lien brought under Chapter 2 (commencing with Section 3109 3083.110) of Title 15 of Part 4 of Division 3 of the Civil Code.

~~This section does not apply to any~~

(4) ~~An~~ action for which attorney's fees are recoverable under Section 1194.

Comment. Section 218.5 is amended to correct a cross-reference. The other changes are technical.

We plan to search for more focused cross-references to individual provisions of the mechanics lien law when we get some additional resources.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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1

CONSTRUCTION REMEDIES

2 **Cal. Const. Art 14, § 3 (unchanged). Lien on property for labor and material**

3 SEC. 3. Mechanics, persons furnishing materials, artisans, and laborers of every
4 class, shall have a lien upon the property upon which they have bestowed labor or
5 furnished material for the value of such labor done and material furnished; and the
6 Legislature shall provide, by law, for the speedy and efficient enforcement of such
7 liens.

8 **Civ. Code §§ 3082-3267 (repealed). Works of improvement**

9 SEC. _____. Title 15 (commencing with Section 3082) of Part 4 of Division 3 of
10 the Civil Code is repealed.

11 **Comment.** Former Title 15 (former Sections 3082-3267) is replaced by new Title 15 (new
12 Sections 3082-3089.680). For the disposition of the provisions of former Title 15, see [Table, to
13 be provided.] The source of each section in the new law is indicated in its Comment.

14 **Civ. Code §§ 3082-3089.680 (added). Works of improvement**

15 SEC. _____. Title 15 (commencing with Section 3082) is added to Part 4 of
16 Division 3 of the Civil Code, to read:

17 TITLE 15. WORKS OF IMPROVEMENT

18 CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

19 Article 1. Definitions

20 § 3082. Application of definitions

21 3082. Unless the provision or context otherwise requires, the definitions in this
22 article govern the construction of this title.

23 **Comment.** Section 3082 continues former Section 3082 without substantive change.

24 § 3082.010. Claimant

25 3082.010. “Claimant” means a person that has the right under this title to record
26 a claim of lien, file a notice to withhold funds, or assert a claim against a payment
27 bond.

28 **Comment.** Section 3082.010 restates former Section 3085 without substantive change.
29 See also Sections 3082.060 (“lien” defined), 3082.110 (“person” defined).

30 § 3082.020. Construction lender

31 3082.020. “Construction lender” means either of the following:

1 (a) A mortgagee or beneficiary under a deed of trust lending funds for payment
2 of construction costs for all or part of a work of improvement, or the assignee or
3 successor in interest of the mortgagee or beneficiary.

4 (b) An escrow holder or other person holding funds provided by an owner,
5 lender, or another person as a fund for payment of construction costs for all or part
6 of a work of improvement.

7 **Comment.** Section 3082.020 continues former Section 3087 without substantive change.

8 See also Sections 14 (present includes future), 3082.100 (“owner” defined), 3082.110 (“person”
9 defined), 3082.190 (“work of improvement” defined).

10 § 3082.022. Contract

11 3082.022. “Contract” means an agreement between an owner and a direct
12 contractor that provides for all or part of a work of improvement.

13 **Comment.** Section 3082.022 continues former Section 3088 without substantive change. This
14 definition does not apply if the provision or context requires otherwise. Section 3082 (application
15 of definitions). See, e.g., Sections 3082.100 (contract of purchase), 3082.310 (subcontract).

16 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
17 3082.190 (“work of improvement” defined).

18 ☞ **Staff Note.** Existing law defines “contract” as an agreement between an owner and direct or
19 original contractor. That definition is problematic since the defined term is often used in the
20 statute in an undefined sense (e.g., agreement between contractor and subcontractor). It is also
21 unclear whether the term includes change orders. Cf. Section 3083.420. We have in this draft
22 preserved the definition, relying on context to determine whether the definition applies or not.

23 **Does the definition serve a useful purpose?**

24 § 3082.025. Direct contractor

25 3082.025. “Direct contractor” means a contractor that has a direct contractual
26 relationship with an owner.

27 **Comment.** Section 3082.025 supersedes former Section 3095 “original contractor”.

28 See also Section 3082.100 (“owner” defined).

29 § 3082.030. Labor, service, equipment, or material

30 3082.030. “Labor, service, equipment, or material” includes but is not limited to
31 labor, skills, services, material, supplies, equipment, appliances, transportation,
32 power, surveying, construction plans, and construction management provided to a
33 work of improvement.

34 **Comment.** Section 3082.030 is a new definition. It is included for drafting convenience. The
35 phrase is intended to encompass all things of value provided for a work of improvement, and
36 replaces various phrases used throughout the former law, including “labor or material,” “labor,
37 services, equipment, or materials,” “appliances, teams, or power,” and the like. The definition
38 applies to variant grammatical forms of the phrase used in this title, such as “labor, service,
39 equipment, *and* material.”

40 See also Section 3082.190 (“work of improvement” defined).

41 ☞ **Staff Note.** We have not yet integrated the Design Professionals’ Lien (Civ. Code §§ 3081.1-
42 3081.10) with this material.

1 **§ 3082.040. Laborer**

2 3082.040. “Laborer” means a person who, acting as an employee, provides
3 labor, skill, or other necessary services for a work of improvement.

4 **Comment.** Section 3082.040 continues former Section 3089(a) without substantive change.
5 “Laborer” is no longer defined to include a compensation fund, which is treated separately in this
6 title. Cf. Section 3082.050 (“laborer’s compensation fund” defined).

7 See also Section 3082.190 (“work of improvement” defined).

8 ☞ **Staff Note.** In this draft we have not defined “laborer” to include a compensation fund. The
9 rights of a laborer’s compensation fund are dealt with directly in the statute, rather than by
10 definition. See Sections 3082.050 (“laborer’s compensation fund” defined), 3082.410 (standing to
11 enforce laborer’s rights), 3083.220 (lien right of express trust fund), 3089.120 (preliminary notice
12 prerequisite to remedies).

13 **§ 3082.050. Laborer’s compensation fund**

14 3082.050. “Laborer’s compensation fund” means a person, including an express
15 trust fund described in Section 3083.220, to which a portion of the compensation
16 of a laborer is paid by agreement with the laborer or the collective bargaining
17 agent of the laborer.

18 **Comment.** Section 3082.050 continues the first sentence of former Section 3089(b) without
19 substantive change. See also Section 3082.410 (standing to enforce laborer’s rights).

20 See also Sections 3082.040 (“laborer” defined), 3082.110 (“person” defined).

21 **§ 3082.060. Lien**

22 3082.060. “Lien” means a lien under Chapter 2 (commencing with Section
23 3083.110) (mechanics lien for private work), and includes both a lien for a work of
24 improvement under Section 3083.210 and a lien for a site improvement under
25 Section 3083.230.

26 **Comment.** Section 3082.060 is a new definition. It is included for drafting convenience. There
27 are instances in this title where the term is not used in its defined sense. See, e.g., Sections
28 3083.540 (d) (multiple works of improvement), 3083.610 (a) (priority of lien).

29 See also Sections 3082.170 (“site improvement” defined), 3082.190 (“work of improvement”
30 defined).

31 **§ 3082.070. Material supplier**

32 3082.070. (a) “Material supplier” means a person that provides material or
33 supplies to be used or consumed in a work of improvement.

34 (b) Materials or supplies delivered to a site are presumed to have been used or
35 consumed in the work of improvement. The presumption established by this
36 subdivision is a presumption affecting the burden of proof.

37 **Comment.** Section 3082.070 replaces the term “materialman” with the term “material supplier”
38 to conform to contemporary usage under this title. It continues former Section 3082.070 without
39 substantive change.

40 See also Sections 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

41 ☞ **Staff Note.** At this point, the defined term is used in only one section — 3083.210 (persons
42 entitled to lien). We have preserved the definition for the time being, since it may be used in the

1 notice to withhold funds and payment bond provisions, when we get there. Otherwise, this
2 provision should be relocated to Section 3083.210.

3 Addition of subdivision (b), creating a presumption in favor of a material supplier, is contingent
4 on development of a balanced package that provides offsetting benefits to other persons affected.

5 **§ 3082.090. Notice to withhold funds**

6 ☞ **Staff Note.** The Commission has tentatively decided to replace the term “stop notice” with the
7 term “notice to withhold funds.” Notice to withhold was the term used in the statute prior to the
8 current stop notice terminology. This section will be fleshed out later.

9 **§ 3082.100. Owner**

10 3082.100. “Owner” means:

11 (a) With respect to a work of improvement, a person that contracts for the work
12 of improvement.

13 (b) With respect to property on which a work of improvement is situated, a
14 person that owns the fee or a lesser interest in the property, including but not
15 limited to an interest as lessee or as vendee under a contract of purchase.

16 (c) A successor in interest of a person described in subdivision (a) or (b), or an
17 agent or person acting pursuant to authority of a person described in subdivision
18 (a) or (b).

19 **Comment.** Section 3082.100 is a new definition. It is included for drafting convenience. For
20 the authority of an owner to act on behalf of co-owners, and for the effect of notice to a co-owner
21 or the owner of a lesser interest, see Section 3082.260 (co-owners). For general provisions on the
22 authority of an agent, see Section 3082.270 (agency).

23 See also Sections 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

24 **§ 3082.110. Person**

25 3082.110. “Person” means an individual, corporation, public entity, business
26 trust, estate, trust, partnership, limited liability company, association, or other
27 entity.

28 **Comment.** Section 3082.110 is a new definition. It is included for drafting convenience. It
29 supplements Section 14 (“person” includes corporation as well as natural person).

30 See also Section 3082.140 (“public entity” defined).

31 **§ 3082.120. Preliminary notice (private work)**

32 3082.120. “Preliminary notice (private work)” means the notice provided for in
33 Article 1 (commencing with 3089.110) of Chapter 8, relating to preliminary notice
34 of private work.

35 **Comment.** Section 3082.120 supersedes former Section 3097. The substantive requirements
36 for a preliminary notice (private work) have been relocated to Section 3089.110 *et seq.*

37 See also Section 3082.130 (“private work” defined).

38 ☞ **Staff Note.** The current draft does not make reference to the preliminary notice for public
39 work, since the mechanics lien remedy is available only for private work. When we incorporate
40 the notice to withhold funds and payment bond remedies into the draft, we will review
41 terminology relating to both private work and public work preliminary notices.

1 **§ 3082.130. Private work**

2 3082.130. “Private work” means a work of improvement other than a public
3 work.

4 **Comment.** Section 3082.130 is a new definition. It is included for drafting convenience. This
5 title does not apply to a work of improvement governed by federal law. See Section 3082.210
6 (application of title).

7 See also Sections 3082.150 (“public work” defined), 3082.190 (“work of improvement”
8 defined).

9 **§ 3082.140. Public entity**

10 3082.140. “Public entity” means the state, Regents of the University of
11 California, a county, city, district, public authority, public agency, and any other
12 political subdivision or public corporation in the state.

13 **Comment.** Section 3082.140 continues former Section 3099 without substantive change. This
14 title does not apply to a work of improvement governed by federal law. See Section 3082.210
15 (application of title).

16 See also Section 14 (“county” includes city and county).

17 **§ 3082.150. Public work**

18 3082.150. “Public work” means a work of improvement contracted for by a
19 public entity.

20 **Comment.** Section 3082.150 continues former Section 3100 without substantive change. This
21 title does not apply to a work of improvement governed by federal law. See Section 3082.210
22 (application of title).

23 See also Sections 3082.140 (“public entity” defined), 3082.190 (“work of improvement”
24 defined).

25 **§ 3082.160. Site**

26 3082.160. “Site” means the property on which a work of improvement is
27 situated.

28 **Comment.** Section 3082.160 continues former Section 3101 without substantive change.

29 See also Section 3082.190 (“work of improvement” defined).

30 **§ 3082.170. Site improvement**

31 3082.170. “Site improvement” means any of the following work on property:

32 (a) Demolition or removal of improvements, trees, or other vegetation.

33 (b) Drilling test holes.

34 (c) Grading, filling, or otherwise improving the property or a street, highway, or
35 sidewalk in front of or adjoining the property.

36 (d) Construction or installation of sewers or other public utilities.

37 (e) Construction of areas, vaults, cellars, or rooms under sidewalks.

38 (f) Any other work or improvements to infrastructure or in preparation of the site
39 for a work of improvement.

40 **Comment.** Section 3082.170 continues former Section 3102 without substantive change.
41 Subdivision (f) makes clear that the reference in former law to “making any improvements”
42 means preparatory work and does not include construction of a structure.

1 See also Sections 3082.160 (“site” defined), 3082.190 (“work of improvement” defined).

2 **§ 3082.180. Subcontractor**

3 3082.180. “Subcontractor” means a contractor that does not have a direct
4 contractual relationship with an owner.

5 **Comment.** Section 3082.180 continues former Section 3104 without substantive change.
6 See also Section 3082.100 (“owner” defined).

7 **§ 3082.190. Work of improvement**

8 3082.190. (a) “Work of improvement” includes but is not limited to:

9 (1) Construction, alteration, repair, demolition, or removal, in whole or in part,
10 of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel,
11 fence, machinery, railroad, or road.

12 (2) Seeding, sodding, or planting of property for landscaping purposes.

13 (3) Filling, leveling, or grading of property.

14 (b) Except as otherwise provided in this title, “work of improvement” means the
15 entire structure or scheme of improvement as a whole, and includes site
16 improvement.

17 **Comment.** Section 3082.190 restates former Section 3106. The section is revised to reorganize
18 and tabulate the different types of works falling within the definition, to expand the coverage of
19 the definition, and to make various technical, nonsubstantive revisions. The term “property” has
20 replaced “lot or tract of land.”

21 A site improvement is treated under this title in the same manner as a work of improvement
22 generally, except as specifically provided in this title. See Sections 3083.550 (claim against
23 separate residential units), 3083.610 (priority of lien), 3083.640 (priority of site improvement
24 lien). See also Section 3082.170 (“site improvement” defined).

25 **Article 2. General Provisions**

26 **§ 3082.210. Application of title**

27 3082.210. Except as otherwise provided in this title, this title applies to both a
28 private work and a public work. This title does not apply to a work of
29 improvement governed by federal law.

30 **Comment.** Section 3082.210 is new. Chapter 2 (commencing with Section 3083.110) relating
31 to mechanics’ liens applies only to a private work and does not apply to a public work. See
32 Section 3083.110 (scope of chapter).

33 See also Sections 3082.130 (“private work” defined), 3082.150 (“public work” defined).

34 **§ 3082.220. Jurisdiction and venue**

35 3082.220. The proper court for proceedings under this title is the superior court
36 in the county in which a work of improvement, or part of it, is situated.

37 **Comment.** Section 3082.220 is a new provision included for drafting convenience. It
38 generalizes a number of provisions of former law.

39 See also Section 3082.190 (“work of improvement” defined).

1 **§ 3082.230. Rules of practice**

2 3082.230. Except as otherwise provided in this title, Part 2 (commencing with
3 Section 307) of the Code of Civil Procedure provides the rules of practice in
4 proceedings under this title.

5 **Comment.** Section 3082.230 continues the first sentence of former Section 3259 without
6 substantive change. The second sentence of former Section 3259 is not continued; this title does
7 not include special provisions relating to new trials or appeals.

8 Section 3082.230 makes former Section 3149, relating to consolidation of actions, unnecessary.
9 Part 2 of the Code of Civil Procedure enables persons claiming liens on the same property to join
10 in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive joinder). If
11 separate actions are commenced the court may consolidate them. See Code Civ. Proc. § 1048
12 (consolidation of actions).

13 **§ 3082.240. Mailed notice**

14 3082.240. The following provisions apply to notice given by mail under this
15 title:

16 (a) Notice shall be given by registered or certified mail.

17 (b) Notice is complete when deposited in the mail.

18 (c) Proof that the notice was given in the manner provided in this section shall be
19 made by a return receipt or a photocopy of the record of delivery and receipt
20 maintained by the post office, showing the date of delivery and to whom delivered,
21 or in the event of nondelivery, by the returned envelope itself.

22 **Comment.** Section 3082.240 is a new provision included for drafting convenience. It
23 generalizes a number of provisions of former law.

24 **§ 3082.250. Filing and recording of papers**

25 3082.250. (a) If this title provides for filing a contract, plan, or other paper with
26 the county recorder the provision is satisfied by filing the paper in the office of the
27 county recorder of the county in which the work of improvement or part of it is
28 situated.

29 (b) If this title provides for recording a notice, claim of lien, payment bond, or
30 other paper, the provision is satisfied by filing the paper for record in the office of
31 the county recorder of the county in which the work of improvement or part of it is
32 situated. A paper in otherwise proper form, verified and containing the information
33 required by this title, shall be accepted by the recorder for recording and is deemed
34 duly recorded without acknowledgment.

35 (c) The county recorder shall number, index, and preserve a contract, plan, or
36 other paper presented for filing under this title, and shall number, index, and
37 transcribe into the official records, in the same manner as a conveyance of real
38 property, a notice, claim of lien, payment bond, or other paper recorded under this
39 title.

40 (d) The county recorder shall charge and collect the fees provided in Article 5
41 (commencing with Section 27360) of Chapter 6 of Part 3 of Division 2 of Title 3
42 of the Government Code for performing duties under this section.

1 **Comment.** Subdivisions (a) and (b) of Section 3082.250 are new. They generalize a number of
2 provisions of former law.

3 Subdivisions (c) and (d) continue former Section 3258 without substantive change.

4 See also Sections 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined).

5 **§ 3082.260. Co-owners**

6 3082.260. (a) An owner may give a notice or execute or file a document under
7 this title on behalf of a co-owner if the owner acts on the co-owner’s behalf and
8 includes in the notice or document the name and address of the co-owner on whose
9 behalf the owner acts.

10 (b) Notice to the owner of an interest in property binds a co-owner of that
11 interest. Notice to the owner of a lesser interest in property does not bind the
12 owner of the fee.

13 **Comment.** Section 3082.260 is new. It generalizes provisions found in former Sections 3092
14 (notice of cessation) and 3093 (notice of completion), and clarifies the effect of giving or
15 receiving notice by co-owners.

16 See also Sections 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

17 **§ 3082.270. Agency**

18 3082.270. An act that may be done by or to a person under this title may be done
19 by or to the person’s authorized agent to the extent the act is within the scope of
20 the agent’s authority.

21 **Comment.** Section 3082.270 is a specific application of Section 2305 (agent may perform acts
22 required of principal by code). This section makes clear that an agent’s authority is limited to the
23 scope of the agency. Thus to the extent a direct contractor is deemed to be the agent of the
24 principal for the purpose of engaging a subcontractor, the scope of the agency does not include
25 other acts, such as compromise of litigation.

26 For provisions relating to the agent of an owner and to the agency authority of co-owners, see
27 Sections 3082.100 (“owner” defined) and 380.260 (co-owners).

28 See also Section 3082.110 (“person” defined).

29 **§ 3082.280. Relation to other statutes**

30 3082.280. (a) This title does not apply to a transaction governed by the Oil and
31 Gas Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3
32 of the Code of Civil Procedure.

33 (b) This title does not apply to a transaction governed by Sections 20457 to
34 20464, inclusive, of the Public Contract Code (street work bond).

35 **Comment.** Subdivision (a) of Section 3082.280 restates former Section 3266(a) without
36 substantive change.

37 Subdivision (b) restates former Section 3266(b) without substantive change. This provision
38 updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which
39 were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, §
40 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See
41 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under
42 Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code.
43 See Pub. Cont. Code § 20457.

1 ☞ **Staff Note.** We have not yet integrated the Design Professionals' Lien (Civ. Code §§ 3081.1-
2 3081.10) with this material.

3 Article 3. Construction Documents

4 § 3082.310. Contract forms

5 3082.310. (a) A written contract entered into between an owner and a direct
6 contractor shall provide a space for the owner to enter the following information:

7 (1) The owner's name and residence address, and place of business if any.

8 (2) The name and address of the construction lender if any. This paragraph does
9 not apply to a home improvement contract or swimming pool contract subject to
10 Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the
11 Business and Professions Code.

12 (b) A written contract entered into between a direct contractor and subcontractor,
13 or between subcontractors, shall provide a space for the name and address of the
14 owner, direct contractor, and construction lender if any.

15 **Comment.** Section 3082.310 continues without substantive change the parts of former Section
16 3097(l)-(m) relating to the content of contracts. The reference to "written" contract has been
17 added to subdivision (b) for consistency with subdivision (a). The reference to "lender or lenders"
18 in subdivision (a) has been shortened to "lender" for consistency with subdivision (b). See
19 Section 14 (singular includes plural, and plural includes singular). These and other minor wording
20 changes are technical, nonsubstantive revisions. For the direct contractor's duty to provide
21 information to persons seeking to serve a preliminary notice, see Section 397.070.

22 See also Sections 3082.020 ("construction lender" defined), 3082.025 ("direct contractor"
23 defined), 3082.100 ("owner" defined), 3082.180 ("subcontractor" defined).

24 § 3082.320. Designation of construction lender on building permit

25 3082.320. (a) A public entity that issues building permits shall, in its application
26 form for a building permit, provide space and a designation for the applicant to
27 enter the name, branch designation, if any, and address of the construction lender
28 and shall keep the information on file open for public inspection during the regular
29 business hours of the public entity.

30 (b) If there is no known construction lender, the applicant shall note that fact in
31 the designated space.

32 (c) Failure of the applicant to indicate the name and address of the construction
33 lender on the application does not relieve a person required to give the
34 construction lender a preliminary notice (private work) from that duty.

35 **Comment.** Section 3082.320 continues former Section 3097(i) without substantive change.

36 See also Sections 3082.020 ("construction lender" defined), 3082.110 ("person" defined),
37 3082.120 ("preliminary notice (private work)" defined), 3082.140 ("public entity" defined).

38 ☞ **Staff Note.** The staff in this draft has corrected a typographical error in the existing statute,
39 which includes a stray comma between the words "branch" and "designation" in subdivision (a).

40 In any event, a random sampling of building permit application forms indicates that half the
41 cities don't provide any space for construction lender information at all, and those that do provide
42 space don't inquire about branches. There may be provisions of the stop notice procedure that
43 involve branch offices. We will deal with this provision in that context.

1 See also Sections 3082.040 (“laborer” defined), 3082.050 (“laborer’s compensation fund”
2 defined), 3082.190 (“work of improvement” defined).

3 **§ 3082.420. Notice of overdue laborer compensation**

4 3082.420. (a) A contractor or subcontractor that employs a laborer and fails to
5 pay the full compensation due the laborer or laborer’s compensation fund shall,
6 not later than the date the compensation became delinquent, give the laborer, the
7 laborer’s bargaining representative, if any, and the construction lender or reputed
8 construction lender, if any, written notice containing all of the following
9 information:

10 (1) The name of the owner and the contractor.

11 (2) A description of the site sufficient for identification.

12 (3) The name and address of any express trust fund described in Section
13 3083.220 to which employer payments are due.

14 (4) The total number of straight time and overtime hours on each job.

15 (5) The amount then past due and owing.

16 (b) Failure to give the notice required by subdivision (a) constitutes grounds for
17 disciplinary action under the Contractors’ State License Law, Chapter 9
18 (commencing with Section 7000) of Division 3 of the Business and Professions
19 Code.

20 **Comment.** Section 3082.420 restates former Section 3097(k) without substantive change. The
21 reference to the Registrar of Contracts in the final sentence of former Section 3097(k) has been
22 revised to refer to the Contractors’ State License Law. This is a technical, nonsubstantive change.

23 See also Sections 3082.020 (“construction lender” defined), 3082.040 (“laborer” defined),
24 3082.050 (“laborer’s compensation fund” defined), 3082.100 (“owner” defined), 3082.160 (“site”
25 defined), 3082.180 (“subcontractor” defined), 3082.210 (application of title).

26  **Staff Note. Should this section be relocated to the Labor Code, or is it so closely tied to**
27 **mechanics liens it should remain here?**

28 **CHAPTER 2. MECHANICS LIEN FOR PRIVATE WORK**

29 **Article 1. Application of Chapter**

30 **§ 3083.110. Scope of chapter**

31 3083.110. This chapter applies only to a private work and does not apply to a
32 public work.

33 **Comment.** Section 3083.110 continues former Section 3109 without substantive change.

34 See also Sections 3082.130 (“private work” defined), 3082.150 (“public work” defined).

Article 2. Who Is Entitled to Lien

§ 3083.210. Persons entitled to lien

3083.210. A person that provides labor, service, equipment, or material under a contract for a work of improvement, including but not limited to the following persons, has a lien right under this chapter:

- (a) Direct contractor.
- (b) Subcontractor.
- (c) Material supplier.
- (d) Equipment lessor.
- (e) Laborer.
- (f) Architect.
- (g) Registered engineer.
- (h) Licensed land surveyor.
- [(i) Builder.]

Comment. Section 3083.210 supersedes the part of former Section 3110 providing a lien for contributions to a work of improvement. It implements the directive of Article XIV, Section 3, of the California Constitution that, “Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.”

The reference in the introductory portion of Section 3083.210 to labor, service, equipment or material provided “under a contract” replaces the references in former Section 3110 to the “instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise).” See Section 3083.240 (who may authorize work).

The type of contribution to the work of improvement that qualifies for a lien right is described in the introductory portion of Section 3083.210 as provision of “labor, service, equipment, or material.” Elimination of the former references to “bestowing skill or other necessary services” or “furnishing appliances, teams, or power” or “work done or materials furnished” is not a substantive change. See Section 3082.030 (“labor, service, equipment, or material” defined).

The listing of classes of persons with lien rights in subdivisions (a)-(h) restates without substantive change the comparable part of former Section 3110. This provision does not continue the former listing of types of contractors, subcontractors, and laborers, such as mechanics, artisans, machinists, builders, teamsters, and draymen. This is not a substantive change; these classes are included in the defined terms used in this section.

For provisions concerning architects, engineers, and surveyors, see Section 3181.1 *et seq.*

See also Sections 3082.025 (“direct contractor” defined), 3082.030 (“labor, service, equipment, or material” defined), 3082.040 (“laborer” defined), 3082.060 (“lien” defined), 3082.070 (“material supplier” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

☞ **Staff Note.** We have not yet integrated the Design Professionals’ Lien (Civ. Code §§ 3081.1-3081.10) with this material.

We have bracketed subdivision (i). The term “builder” was not defined in former law and was used only in former Section 3110. **Can there be a builder who is not either a direct contractor or subcontractor, or a laborer, by definition?**

1 **§ 3083.220. Lien right of express trust fund**

2 3083.220. An express trust fund to which a portion of a laborer’s total
3 compensation is to be paid under an employment agreement or a collective
4 bargaining agreement for the provision of benefits, including, but not limited to,
5 employer payments described in Section 1773.1 of the Labor Code and
6 implementing regulations, has the same lien right under this chapter as a laborer,
7 to the extent of the compensation agreed to be paid to the express trust fund for
8 labor on that improvement only.

9 **Comment.** Section 3083.220 continues former Section 3111 without substantive change. The
10 duplicative description of the laborer’s lien right and other unneeded language is omitted. These
11 are technical, nonsubstantive changes.

12 See also Sections 3082.040 (“laborer” defined), 3082.060 (“lien” defined).

13 ☞ **Staff Note.** Is this section redundant to the general provision of Section 3082.410 (standing to
14 enforce laborer’s rights? **The staff would appreciate input from knowledgeable sources.**

15 **§ 3083.230. Site improvement lien**

16 3083.230. A person that provides labor, service, equipment, or material under a
17 contract for a site improvement has a lien right under this chapter.

18 **Comment.** Section 3083.230 supersedes former Section 3112. The reference to work done or
19 material furnished is superseded by the reference to labor, service, equipment, or material. See
20 Section 3082.030 (“labor, service, equipment, or material” defined). The reference to work at the
21 instance or request of the owner or any person acting by or under authority of the owner as
22 contractor or otherwise is replaced by the reference to work done under a contract. See Section
23 3083.240 (who may authorize work).

24 A site improvement is treated in the same manner as a work of improvement under this chapter,
25 except as provided in Sections 3083.550 (claim against separate residential units), 3083.610
26 (priority of lien), 3083.640 (priority of site improvement lien). See also Section 3082.190 (“work
27 of improvement” defined).

28 See also Sections 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.170 (“site
29 improvement” defined).

30 **§ 3083.240. Who may authorize work**

31 3083.240. For the purpose of this chapter, labor, service, equipment, or material
32 is provided under a contract for a work of improvement if:

33 (a) Provided at the request of the owner.

34 (b) Provided or authorized by a direct contractor, subcontractor, architect,
35 project manager, or other person having charge of all or part of the work of
36 improvement.

37 **Comment.** Section 3083.240 restates parts of former Sections 3110 and 3112.

38 The reference to work provided at the request of an owner in subdivision (a) includes work
39 provided at the instance of the owner, or of a person acting by or under the owner’s authority. See
40 Section 3082.100 (“owner” defined).

41 The references in former law to sub-subcontractors and builders have been omitted as surplus.
42 A contractor either has a contract with the owner (direct contractor) or does not (subcontractor).
43 This title does not distinguish among levels of subcontractor. The term “builder” was not defined
44 in former law and was used only in former Section 3110. A work of improvement includes a site
45 improvement. See Section 3082.190 (“work of improvement” defined).

1 See also Sections 3082.025 (“direct contractor” defined), 3082.030 (“labor, service, equipment,
2 or material” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

3 ☞ **Staff Note.** We have added project manager to the list of work authorizers.

4 Article 3. Conditions to Enforcing a Lien

5 § 3083.310. Preliminary notice required

6 3083.310. A claimant may enforce a lien only if the claimant has given a
7 preliminary notice (private work) and made proof of service as provided in Article
8 1 (commencing with Section 3089.110) of Chapter 8.

9 **Comment.** Section 3083.310 continues former Section 3114 without substantive change. A
10 claimant must give preliminary notice to the extent provided in the preliminary notice provisions
11 of this titled. See Section 3089.110 *et seq.* A preliminary notice is not required of a direct
12 contractor or a laborer or laborer’s compensation fund. Section 3089.110.(b) (preliminary notice
13 prerequisite to remedies).

14 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.120
15 (“preliminary notice (private work)” defined).

16 ☞ **Staff Note.** This provision may need to be generalized or duplicated when we get to notice to
17 withhold funds and bond provisions.

18 § 3083.320. Time for claim of lien by direct contractor

19 3083.320. A direct contractor may not enforce a lien unless the contractor
20 records a claim of lien after the contractor completes the contract and before the
21 earlier of the following times:

22 (a) Ninety days after completion of the work of improvement.

23 (b) Sixty days after the owner records a notice of completion.

24 **Comment.** Section 3083.320 restates former Section 3115. For “completion” of a work of
25 improvement, see Section 3089.410. For recordation of a notice of completion, see Section
26 3089.430 (notice of completion). The notice of completion includes notice of cessation.

27 See also Sections 3082.025 (“direct contractor” defined), 3082.060 (“lien” defined), 3082.100
28 (“owner” defined), 3082.190 (“work of improvement” defined).

29 ☞ **Staff Note.** The Commission has approved the concept of making this provision applicable to
30 a notice to withhold funds. How this will be done mechanically (so to speak) will be determined
31 when we start work on the notice to withhold funds and bond provisions. We may duplicate it for
32 those purposes.

33 § 3083.330. Time for claim of lien by claimant other than direct contractor

34 3083.330. A claimant other than a direct contractor may not enforce a lien unless
35 the claimant records a claim of lien after the claimant ceases to provide labor,
36 service, equipment, or material and before the earlier of the following times:

37 (a) Ninety days after completion of the work of improvement.

38 (b) Thirty days after the owner records a notice of completion.

39 **Comment.** Section 3083.330 restates former Section 3116. For “completion” of a work of
40 improvement, see Section 3089.410. For recordation of a notice of completion, see Section
41 3089.430 (notice of completion). The notice of completion includes notice of cessation.

1 An express trust fund may have a longer period in the case of a claim against a separate
2 residential unit. See Section 3083.340.

3 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
4 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien” defined), 3082.100
5 (“owner” defined), 3082.190 (“work of improvement” defined).

6 ☞ **Staff Note.** The Commission has approved the concept of making this provision applicable to
7 a notice to withhold funds. How this will be done mechanically (so to speak) will be determined
8 when we start work on the notice to withhold funds and bond provisions. We may duplicate it for
9 those purposes.

10 **§ 3083.340. Special rule for express trust fund claim on separate residential unit in**
11 **condominium**

12 3083.340. Notwithstanding any other provision of this chapter, completion of a
13 separate residential unit within the meaning of Section 3083.550 does not operate
14 in any manner to impair the lien right of an express trust fund under Section
15 3083.220 if the claim of lien is recorded within 120 days after completion of the
16 separate residential unit.

17 **Comment.** Section 3083.340 continues the last paragraph of former Section 3131 without
18 substantive change.

19 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

20 **§ 3083.350. Claim of lien**

21 3083.350. A claim of lien shall be in writing, signed and verified by the
22 claimant, and shall contain all of the following information:

23 (a) A statement of the claimant’s demand after deducting all just credits and
24 offsets.

25 (b) The name of the owner or reputed owner, if known.

26 (c) A general statement of the kind of labor, service, equipment, or material
27 provided by the claimant.

28 (d) The name of the person that contracted for the labor, service, equipment, or
29 material.

30 (e) A description of the site sufficient for identification.

31 [(f) The claimant’s address.]

32 **Comment.** Subdivisions (a)-(e) of Section 3083.350 continue former Section 3084 without
33 substantive change. The claim of lien may be executed by the claimant’s authorized agent. See
34 Section 3082.270 (agency).

35 Subdivision (d) requires the name of the person that “contracted for” the labor, service,
36 equipment, or material, rather than who “employed” the claimant. See Section 3083.240 (who
37 may authorize work). See also Section 3082.250 (filing and recording of papers).

38 [Subdivision (f) is new. It implements other provisions that invoke a claimant’s address. Cf.
39 Sections 3083.560 (release bond), 3083.830 (notice of hearing).]

40 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
41 material” defined), 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.110 (“person”
42 defined), 3082.160 (“site” defined).

43 ☞ **Staff Note.** We have bracketed subdivision (f) for now. It may be more important for a notice
44 to withhold funds than a claim of lien. We will evaluate its need for the mechanics lien as the
45 statute evolves.

1 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
2 material” defined), 3082.060 (“lien” defined), 3082.110 (“person” defined), Section 3083.350
3 (claim of lien).

4 ☞ **Staff Note.** The reference in subdivision (a)(2) to Sections 3235 and 3236 relates to a
5 payment bond. We will review this provision in connection with our review of payment bonds.

6 Likewise, notice to withhold funds provisions will be reviewed in light of this section.
7 Presumably the amount recoverable pursuant to a notice to withhold funds would be the same as
8 the amount recoverable pursuant to a lien. We will look at this issue separately.

9 **§ 3083.420. Lien limited to amount of contract or modification**

10 3083.420. (a) A lien does not extend to labor, service, equipment, or material not
11 included in a contract between the owner and direct contractor or a modification of
12 the contract if the labor, service, equipment, or material was contracted for by the
13 direct contractor or subcontractor and the claimant had actual knowledge or
14 constructive notice of the contract or modification before providing the labor,
15 service, equipment, or material.

16 (b) The filing of a contract or of a modification of the contract with the county
17 recorder, before the commencement of work, is equivalent to giving actual notice
18 of the provisions of the contract or modification by the owner to a person
19 providing labor, service, equipment, or material.

20 **Comment.** Section 3083.420 restates former Section 3124 without substantive change. “Direct
21 contractor” is substituted for the undefined “contractor” in subdivision (a). The concept of
22 “contracted for” is substituted for “employed” in subdivision (a). See Section 3083.240 (who may
23 authorize work).

24 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
25 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien” defined), 3082.100
26 (“owner” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

27 **Article 5. Property Subject to Lien**

28 **§ 3083.510. Property subject to lien**

29 3083.510. A lien attaches to the work of improvement and property on which the
30 work of improvement is situated, together with a convenient space about the work
31 of improvement or as much space as is required for the convenient use and
32 occupation of the work of improvement.

33 **Comment.** Section 3083.510 restates the parts of former Sections 3128 and 3112 (site
34 improvement lien on lot or tract of land) that described property subject to the lien, without
35 substantive change. References to “property” have been substituted for references to “land.”

36 See also Sections 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined).

37 **§ 3083.520. Interest subject to lien**

38 3083.520. A lien attaches to the following interests in the property on which the
39 work of improvement is situated:

40 (a) The interest of a person that contracted for the work of improvement.

41 (b) The interest of a person that did not contract for the work of improvement, if
42 labor, service, equipment, or material for which the lien is claimed was provided

1 with the knowledge of the person. This subdivision does not apply to the interest
2 of a person that gives notice of nonresponsibility under Section 3083.530.

3 **Comment.** Section 3083.520 restates former Section 3129 and the last portion of former
4 Section 3128. A reference to “labor, service, equipment, or material” has been substituted for the
5 former reference to “commencement of the work or of the furnishing of the materials”. Cf.
6 Section 3082.030 (“labor, service, equipment, or material” defined).

7 See also Sections 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.190 (“work of
8 improvement” defined).

9 **§ 3083.530. Notice of nonresponsibility**

10 3083.530. (a) An owner of property on which a work of improvement is situated
11 that did not contract for the work of improvement may give notice of
12 nonresponsibility.

13 (b) A notice of nonresponsibility shall be in writing, signed and verified by the
14 owner, and shall contain all of the following information:

15 (1) A description of the site sufficient for identification.

16 (2) The name and nature of the owner’s title or interest.

17 (3) The name of a purchaser under contract, if any, or lessee, if known.

18 (4) A statement that the person giving the notice is not responsible for claims
19 arising from the work of improvement.

20 (c) A notice of nonresponsibility is not effective unless, within 10 days after the
21 person giving notice has knowledge of the work of improvement, the person posts
22 the notice in a conspicuous place on the site and records the notice.

23 **Comment.** Section 3083.530 restates former Section 3094 without substantive change. The
24 notice of nonresponsibility may be signed and verified by the owner or person owning or
25 claiming an interest in the property, or by the owner or other person’s agent. See Section
26 3082.100 (“owner” defined). A notice of nonresponsibility is recorded in the office of the county
27 recorder of the county in which the site or part of it is situated. Section 3082.250 (filing and
28 recording of papers).

29 See also Sections 3082.110 (“person” defined), 3082.160 (“site” defined), 3082.190 (“work of
30 improvement” defined).

31 **§ 3083.540. Multiple works of improvement**

32 3083.540. A claimant may record one claim of lien on two or more works of
33 improvement, subject to the following conditions:

34 (a) The works of improvement have or are reputed to have the same owner, or
35 the labor, service, equipment, or material was contracted for by the same person
36 for the works of improvement whether or not they have the same owner.

37 (b) The claimant in the claim of lien designates the amount due for each work of
38 improvement. If the claimant contracted for a lump sum payment for labor,
39 service, equipment, and material provided for the works of improvement and the
40 contract does not segregate the amount due for each work of improvement
41 separately, the claimant may estimate an equitable distribution of the sum due for
42 each work of improvement based on the proportionate amount of labor, service,

1 equipment, or material provided for each. If the claimant does not designate the
2 amount due for each work of improvement, the lien is subordinate to other liens.

3 (c) If there is a single structure on property of different owners, the claimant
4 need not segregate the proportion of labor, service, equipment, or material
5 provided for the portion of the structure situated on property of each owner. In the
6 lien enforcement action the court may, if it determines it equitable to do so,
7 designate an equitable distribution of the lien among the property of the owners.

8 (d) The lien does not extend beyond the amount designated as against other
9 creditors having liens, by judgment, mortgage, or otherwise, on either the works of
10 improvement or the property on which the works of improvement are situated.

11 **Comment.** Section 3083.540 restates former Section 3130 without substantive change. The
12 concept of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section
13 3083.240 (who may authorize work).

14 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
15 material” defined), 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.110 (“person”
16 defined), 3082.190 (“work of improvement” defined).

17 ☞ **Staff Note.** Subdivision (a) refers to recording one claim of lien against multiple works of
18 improvement that have, or are “reputed” to have, the same owner. **If in fact they do not have the
19 same owner, how can a claim of lien against a reputed owner bind another person who is an
20 actual owner?**

21 § 3083.550. Claim against separate residential units

22 3083.550. (a) As used in this section, “separate residential unit” means one
23 residential structure, including a residential structure containing multiple
24 condominium units, together with any common area, garage, or other appurtenant
25 improvements.

26 (b) If a work of improvement consists of the construction of two or more
27 separate residential units:

28 (1) Each unit is deemed a separate work of improvement, and completion of
29 each unit is determined separately for purposes of the time for recording a claim of
30 lien on that unit. This paragraph does not affect any lien right under Section
31 3083.230 (site improvement lien) or 3083.540 (multiple works of improvement).

32 (2) Material provided for the work of improvement is deemed to be provided for
33 use or consumption in each separate residential unit in which the material is
34 actually used or consumed; but if the claimant is unable to segregate the amounts
35 used or consumed in separate residential units, the claimant has the right to all the
36 benefits of Section 3083.540 (multiple works of improvement).

37 **Comment.** Section 3083.550 restates the first paragraph of former Section 3131 without
38 substantive change. The reference to “filing” a claim of lien has been changed to recording. See
39 Sections 3083.320, 3083.330 (recordation of claim of lien). For the purpose of this section, a
40 claim of lien is not considered recorded unless done in the manner provided by Section 3082.250
41 (filing and recording of papers).

42 The second paragraph of former Section 3131 is continued in Section 3083.340 (special rule for
43 express trust fund claim on separate residential unit in condominium).

44 For “completion” of a work of improvement, see Section 3089.410.

1 See also Sections 3083.350 (claim of lien), 3082.010 (“claimant” defined), 3082.060 (“lien”
2 defined), 3082.190 (“work of improvement” defined).

3 **§ 3083.560. Release bond**

4 3083.560. (a) An owner of property subject to a recorded claim of lien or a direct
5 contractor or subcontractor affected by the claim of lien that disputes the
6 correctness or validity of the claim may obtain release of the property from the
7 claim of lien by recording a lien release bond. The principal on the bond may be
8 the owner of the property or the contractor or subcontractor.

9 (b) The bond shall be conditioned on payment of any judgment and costs the
10 claimant recovers on the lien. The bond shall be in an amount equal to 1-1/2 times
11 the amount of the claim of lien or 1-1/2 times the amount allocated in the claim of
12 lien to the property to be released. The bond shall be executed by an admitted
13 surety insurer.

14 (c) The bond may be recorded either before or after commencement of an action
15 to enforce the lien. On recordation of the bond the property is released from the
16 claim of lien and from any action to enforce the lien.

17 (d) A person that obtains and records a lien release bond shall give notice to the
18 claimant by mailing a copy of the bond to the claimant at the address on the claim
19 of lien. Failure to give the notice required by this section does not affect the
20 validity of the bond, but the statute of limitations for an action on the bond is
21 tolled until notice is given. The claimant shall commence an action on the bond
22 within six months after notice is given.

23 **Comment.** Subdivisions (a)-(c) of Section 3083.560 continue former Section 3143 without
24 substantive change. The language of the section has been harmonized with the Bond and
25 Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the
26 Code of Civil Procedure.

27 Subdivision (d) continues former Section 3144.5 without substantive change. For service and
28 proof of service by mail, see Section 3082.240 (mailed notice).

29 The owner of an interest in property may obtain a release bond. See Section 3082.100 (“owner”
30 defined). The reference to recordation of the bond in the county in which the claim of lien is
31 recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office
32 of the county recorder of the county in which the work of improvement or part of it is situated.
33 Section 3082.250 (filing and recording of papers).

34 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
35 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

36 **Article 6. Priorities**

37  **Staff Note.** A payment bond affects priorities among parties. Civ. Code §§ 3138, 3139. We
38 have not included these provisions in this draft, but will integrate them in connection with our
39 review of payment bond provisions generally.

40 **§ 3083.610. Priority of lien**

41 3083.610. (a) A lien under this chapter is superior to a lien, mortgage, deed of
42 trust, or other encumbrance on the work of improvement or the property on which
43 the work of improvement is situated, that (1) attaches after commencement of the

1 work of improvement, or (2) was unrecorded at the commencement of the work of
2 improvement and of which the claimant had no notice.

3 (b) Subdivision (a) does not apply to either of the following:

4 (1) A lien provided for in Section 3083.230 (site improvement lien).

5 (2) The exception provided for in Section 3138 (payment bond).

6 **Comment.** Section 3083.610 continues former Section 3134 without substantive change. For a
7 site improvement lien, see Section 3083.640 (priority of site improvement lien).

8 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.170 (“site
9 improvement” defined), 3082.190 (“work of improvement” defined).

10 ☞ **Staff Note.** Subdivision (b)(2) refers to the effect of a payment bond. We will review payment
11 bond provisions later in this project.

12 § 3083.620. Separate contract for site improvement

13 3083.620. If a site improvement is provided for in a contract separate from the
14 contract for the remainder of the work of improvement, the site improvement is
15 deemed a separate work of improvement and commencement of the site
16 improvement is not commencement of the remainder of the work of improvement.

17 **Comment.** Section 3083.620 restates former Section 3135 without substantive change.

18 See also Sections 3082.170 (“site improvement” defined), 3082.190 (“work of improvement”
19 defined).

20 § 3083.630. Priority of advances by lender

21 3083.630. (a) This section applies to a construction loan secured by a mortgage
22 or deed of trust that has priority over a lien under this chapter.

23 (b) An optional advance of funds by the construction lender that is used for
24 construction costs has the same priority as a mandatory advance of funds by the
25 construction lender, provided that the total of all advances does not exceed the
26 amount of the original construction loan.

27 **Comment.** Section 3083.630 rewrites former Section 3136 for clarity.

28 See also Sections 3082.020 (“construction lender” defined), 3082.060 (“lien” defined).

29 ☞ **Staff Note.** The Commission solicits comment on the fidelity of the rewrite to the original
30 meaning of the section.

31 § 3083.640. Priority of site improvement lien

32 3083.640. Except as provided in Section 3139 (payment bond), a lien provided
33 for in Section 3083.230 (site improvement lien) is superior to:

34 (a) A mortgage, deed of trust, or other encumbrance that (1) attaches after
35 commencement of the site improvement, or (2) was unrecorded at the
36 commencement of the site improvement and of which the claimant had no notice.

37 (b) A mortgage, deed of trust, or other encumbrance that was recorded before
38 commencement of the site improvement, if given for the sole or primary purpose
39 of financing the site improvement. This subdivision does not apply if the loan
40 proceeds are, in good faith, placed in the control of the lender under a binding
41 agreement with the borrower to the effect that (1) the proceeds are to be applied to

1 the payment of claimants and (2) no portion of the proceeds will be paid to the
2 borrower in the absence of satisfactory evidence that all claims have been paid or
3 that the time for recording a claim of lien has expired and no claim of lien has
4 been recorded.

5 **Comment.** Section 3083.640 continues former Section 3137 without substantive change.

6 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.170 (“site
7 improvement” defined).

8 ☞ **Staff Note.** The introductory clause refers to the effect of a payment bond. We will review
9 payment bond provisions later in this project.

10 **§ 3083.650. Amount of recovery**

11 3083.650. A direct contractor or a subcontractor may enforce a lien only for the
12 amount due under the terms of the contract after deducting all claims of other
13 claimants for labor, service, equipment, and material provided and embraced
14 within the contract.

15 **Comment.** Section 3083.650 continues former Section 3140 without substantive change.

16 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
17 material” defined), 3082.060 (“lien” defined), 3082.025 (“direct contractor” defined), 3082.180
18 (“subcontractor” defined).

19 **Article 7. Enforcement of Lien**

20 **§ 3083.710. Time for commencement of enforcement action**

21 3083.710. (a) Except as provided in subdivision (b), the claimant shall
22 commence an action to enforce a lien within 90 days after recordation of the claim
23 of lien.

24 (b) If the claimant extends credit, and notice of the fact and terms of the
25 extension of credit is recorded within 90 days after recordation of the claim of lien,
26 the claimant shall commence an action to enforce the lien within 90 days after the
27 expiration of the credit, but in no case later than one year after completion of the
28 work of improvement.

29 (c) If an action to enforce a lien is not commenced within the time provided in
30 this section, the claim of lien expires and is unenforceable.

31 **Comment.** Section 3083.710 restates former Section 3144.

32 For completion of a work of improvement, see Section 3089.410.

33 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.190 (“work
34 of improvement” defined).

35 **§ 3083.720. Bona fide purchaser or encumbrancer**

36 3083.720. The rights of a purchaser or encumbrancer for value and in good faith
37 acquired after expiration of the time within which to commence an action to
38 enforce a lien under Section 3083.710 are not affected by an extension of credit, or
39 by an extension of the lien or of the time to enforce the lien, unless evidenced by a

1 notice or agreement recorded before the acquisition of the rights by the purchaser
2 or encumbrancer.

3 **Comment.** Section 3083.720 restates former Section 3145 without substantive change.
4 See also Section 3082.060 (“lien” defined).

5 **§ 3083.730. Lis pendens**

6 3083.730. After commencement of an action to enforce a lien, the claimant may
7 record a notice of the pendency of action under Title 4.5 (commencing with
8 Section 405) of Part 2 of the Code of Civil Procedure.

9 **Comment.** Section 3083.730 restates former Section 3146 without substantive change. The
10 reference to the lis pendens statute has been corrected, to reflect the repeal of Code of Civil
11 Procedure 409. See 1992 Cal. Stat. ch. 883, § 1. See also Section 3082.230 (rules of practice).

12 The second sentence of former Section 3146 is omitted because it is unnecessary. See Code
13 Civ. Proc. § 405.24 (constructive notice).

14 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

15 ☞ **Staff Note.** It is arguable that this section can be omitted altogether in reliance on Section
16 3082.230 (rules of practice). On the other hand, Code of Civil Procedure Section 405.4 now limits
17 the lis pendens statute to actions that affect title to, or the right to possession of, property. The
18 new language probably covers a lien enforcement action, but there is not yet case law on the
19 point. It probably doesn’t hurt to include express language here. **But does recordation of a lis
20 pendens serve a useful purpose in the context of lien enforcement?**

21 **§ 3083.740. Dismissal for lack of prosecution**

22 3083.740. Notwithstanding Section 583.420 of the Code of Civil Procedure, the
23 court may dismiss an action to enforce a lien that is not brought to trial within two
24 years after commencement.

25 **Comment.** Section 3083.740 continues former Section 3147 without substantive change. The
26 cross-reference to the Code of Civil Procedure is added to make clear that this section modifies
27 the general three-year period for discretionary dismissal. See also Section 3082.230 (rules of
28 practice).

29 See also Section 3082.060 (“lien” defined).

30 **§ 3083.750. Dismissal of action or judgment of no lien**

31 3083.750. Dismissal of an action to enforce a lien, unless the dismissal is
32 expressly stated to be without prejudice, or a judgment that no lien exists, is
33 equivalent to cancellation of the lien and its removal from the record.

34 **Comment.** Subdivision (a) of Section 3083.750 continues former Section 3148 without
35 substantive change.

36 See also Section 3082.060 (“lien” defined).

37 **§ 3083.760. Costs**

38 3083.760. In addition to any other costs allowed by law, the court in an action to
39 enforce a lien shall allow as costs to each claimant whose lien is established the
40 amount paid to verify and record the claim of lien, whether the claimant is a
41 plaintiff or defendant.

42 **Comment.** Section 3083.760 continues former Section 3150 without substantive change.

1 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

2 ➡ **Staff Note.** The statutes allow attorneys fees in some types of stop notice and payment bond
3 enforcement actions, but not for enforcement of a mechanics lien. *Abbett Elec. Corp. v.*
4 *California Fed. Sav. & Loan Ass’n*, 230 Cal. App. 3d 355 (1991). **The Commission solicits**
5 **comment on whether this differential treatment is appropriate.**

6 **§ 3083.770. Deficiency**

7 3083.770. If there is a deficiency of proceeds from the sale of property on a
8 judgment for enforcement of a lien, a deficiency judgment may be entered against
9 a party personally liable for the deficiency in the same manner and with the same
10 effect as in an action to foreclose a mortgage.

11 **Comment.** Section 3083.770 restates former Section 3151 without substantive change.
12 See also Section 3082.060 (“lien” defined).

13 **§ 3083.780. Personal liability**

14 3083.780. This chapter does not affect any of the following rights of a claimant:

15 (a) The right to maintain a personal action to recover a debt against the person
16 liable, either in a separate action or in an action to enforce a lien.

17 (b) The right to a writ of attachment. In an application for a writ of attachment,
18 the claimant shall refer to this section. The claimant’s recording of a claim of lien
19 does not affect the right to a writ of attachment.

20 (c) The right to enforce a judgment. A judgment obtained by the claimant in a
21 personal action described in subdivision (a) does not impair or merge the claim of
22 lien, but any amount collected on the judgment shall be credited on the amount of
23 the lien.

24 **Comment.** Section 3083.780 restates former Section 3152 without substantive change. The
25 reference in the introductory portion of the section to “this title” has been changed to “this
26 chapter” consistent with the scope of the chapter.

27 For provisions relating to attachment, see Code Civ. Proc. § 481.010 *et seq.* For provisions
28 relating to enforcement of a money judgment, see Code Civ. Proc. § 681.010 *et seq.*

29 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.110
30 (“person” defined).

31 **§ 3083.790. Liability of contractor for lien enforcement**

32 3083.790. In an action to enforce a lien for labor, service, equipment, or material
33 provided to a contractor:

34 (a) The contractor shall defend the action at the contractor’s own expense.
35 During the pendency of the action the owner may withhold from the direct
36 contractor the amount claimed in the action.

37 (b) If the judgment in the action is against the owner or the owner’s property, the
38 owner may deduct the amount of the judgment and costs from any amount owed to
39 the direct contractor. If the amount of the judgment and costs exceeds the amount
40 owed to the direct contractor, or if the owner has settled with the direct contractor
41 in full, the owner may recover from the contractor, or the sureties on a bond given
42 by the contractor for faithful performance of the contract, the amount of the

1 judgment and costs that exceed the contract price and for which the contractor was
2 originally liable.

3 **Comment.** Section 3083.790 restates former Section 3153 without substantive change.

4 See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien”
5 defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined).

6 ☞ **Staff Note. Should this section be limited to an action for labor, service, equipment, or**
7 **material provided to a direct contractor?** Given the fact that the owner can be held liable for
8 amounts in excess of the contract, the section might well be applied to an action for labor, service,
9 equipment, or material provided to a subcontractor.

10 Article 8. Release Order

11 § 3083.810. Petition for release order

12 3083.810. (a) If the claimant does not commence an action to enforce a lien
13 within the time provided in Section 3083.710, the owner of property subject to the
14 claim of lien may petition the court for an order to release the property from the
15 claim of lien.

16 (b) This article does not bar any other cause of action or claim for relief by the
17 owner of the property, nor does a release order bar any other cause of action or
18 claim for relief by the claimant, other than an action to enforce the lien. However,
19 another action or claim for relief may not be joined with a petition under this
20 article.

21 (c) Notwithstanding Section 3082.230 (rules of practice), Chapter 2.5
22 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil
23 Procedure does not apply to a proceeding under this article.

24 **Comment.** Subdivision (a) of Section 3083.810 continues former Section 3154(a) without
25 substantive change. Subdivision (b) continues former Section 3154(h) without substantive
26 change. Subdivision (c) continues former Section 3154(i) without substantive change. As used in
27 this section, the owner of property includes the owner of an interest in the property. See Section
28 3082.100 (“owner” defined).

29 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

30 § 3083.820. Contents of petition

31 3083.820. A petition for a release order shall be verified and shall allege all of
32 the following:

33 (a) The date of recordation of the claim of lien. A certified copy of the claim of
34 lien shall be attached to the petition.

35 (b) The county in which the claim of lien is recorded.

36 (c) The book and page of the place in the official records where the claim of lien
37 is recorded.

38 (d) The legal description of the property subject to the claim of lien.

39 (e) That no action to enforce the lien is pending, no extension of credit has been
40 recorded within the time required by Section 3083.710, and the time for
41 commencement of an action to enforce the lien has expired.

1 (f) That the claimant is unable or unwilling to execute a release of the claim of
2 lien or cannot with reasonable diligence be found.

3 (g) That the owner of the property has not filed for relief under any law
4 governing bankruptcy, and there exists no other restraint to prevent the claimant
5 from commencing an action to enforce the lien.

6 **Comment.** Subdivisions (a) and (d)-(g) of Section 3083.820 continues subdivision (b) of
7 former Section 3154 without substantive change. As used in this section, the owner of property
8 includes the owner of an interest in the property. See Section 3082.100 (“owner” defined).

9 Subdivisions (b) and (c) are new. They are intended to facilitate the court’s order under Section
10 3083.840 (hearing and order).

11 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

12 ☞ **Staff Note.** We have expanded the contents of the petition consistent with the contents of the
13 court’s order in Section 3083.840.

14 § 3083.830. Notice of hearing

15 3083.830. (a) On the filing of a petition for a release order, the clerk shall set a
16 hearing date. The date shall be not more than 30 days after the filing of the
17 petition. The court may continue the hearing beyond the 30-day period on a
18 showing of good cause.

19 (b) The petitioner shall serve a copy of the petition and notice of hearing on the
20 claimant at least 10 days before the hearing. Service shall be made in the same
21 manner as service of summons, or by mail addressed to the claimant at the
22 claimant’s address as shown in any of the following:

23 (1) The preliminary notice (private work) given by the claimant.

24 (2) The records of the Contractors’ State License Board.

25 (3) The contract on which the claim of lien is based.

26 (4) The claim of lien.

27 (c) Notwithstanding Section 3082.240, when service is made by mail, service is
28 complete on the fifth day following deposit of the petition and notice in the mail.

29 **Comment.** Section 3083.830 continues subdivisions (c), (d), and the first sentence of (e) of
30 former Section 3154 without substantive change. The reference to “if there is no clerk, the judge”
31 has been deleted. All courts now have a clerk. See also Section 3082.220 (proper court).

32 For service and proof of service by mail, see Section 3082.240 (mailed notice). This expands
33 the permissible methods of mailing. However, the time when service by mail is complete under
34 this section is governed by subdivision (c) and not by Section 3082.240.

35 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.120
36 (“preliminary notice (private work)” defined).

37 § 3083.840. Hearing and order

38 3083.840. (a) At the hearing both the petition and the issue of compliance with
39 the service requirements of this article are deemed controverted by the claimant.
40 The petitioner has the burden of proof that service was made in compliance with
41 this article.

42 (b) If judgment is in favor of the petitioner, the court shall order release of the
43 property from the claim of lien. The release order shall state:

- 1 (1) The date of recordation of the claim of lien.
2 (2) The county in which the claim of lien is recorded.
3 (3) The book and page of the place in the official records where the claim of lien
4 is recorded.
5 (4) The legal description of the property.
6 (c) The prevailing party is entitled to attorneys fees not to exceed two thousand
7 dollars (\$2,000).

8 **Comment.** Subdivision (a) of Section 3083.840 continues the last sentence of former Section
9 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change.
10 Subdivision (b) continues former Section 3154(f) without substantive change. The reference to
11 the city where the claim of lien is recorded is omitted as superfluous. Subdivision (c) continues
12 former Section 3154(g) without substantive change.

13 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

14 **§ 3083.850. Release of property from claim of lien**

15 3083.850. On recordation of a certified copy of a release order, the property
16 described in the order is released from the claim of lien.

17 **Comment.** Section 3083.850 continues the second sentence of former Section 3154(f)(4)
18 without substantive change.

19 See also Section 3082.060 (“lien” defined).

20 CHAPTER 3. NOTICE TO WITHHOLD FUNDS FOR PRIVATE
21 WORK

22 [Reserved]

23 CHAPTER 4. NOTICE TO WITHHOLD FUNDS FOR PUBLIC WORK

24 [Reserved]

25 CHAPTER 5. GENERAL PROVISIONS RELATING TO BONDS

26 [Reserved]

27 CHAPTER 6. PAYMENT BOND FOR PRIVATE WORK

28 [Reserved]

29 CHAPTER 7. PAYMENT BOND FOR PUBLIC WORK

30 [Reserved]

1 CHAPTER 8. MISCELLANEOUS PROVISIONS

2 Article 1. Preliminary Notice of Private Work

3 **§ 3089.110. Preliminary notice prerequisite to remedies**

4 3089.110. (a) Except as otherwise provided in this section, a preliminary notice
5 (private work) is a necessary prerequisite to the validity of a lien, notice to
6 withhold funds, or payment bond claim with respect to a private work.

7 (b) A preliminary notice (private work) is not required of a laborer or laborer’s
8 compensation fund.

9 (c) A preliminary notice (private work) is not required of a direct contractor
10 except with respect to a construction lender.

11 **Comment.** Subdivision (a) of Section 3089.110 restates part of the introductory clause of
12 former Section 3097 without substantive change.

13 Subdivision (b) restates part of former Section 3097(a) without substantive change.

14 Subdivision (c) restates parts of former Section 3097(a) and (b), omitting the exception of “the
15 contractor”.

16 See also Sections 3082.010 (“claimant” defined), 3082.040 (“laborer” defined), 3082.050
17 (“laborer’s compensation fund” defined), 3082.060 (“lien” defined), 3082.025 (“direct
18 contractor” defined), 3082.130 (“private work” defined).

19 **§ 3089.120. Preliminary notice requirement**

20 3089.120. Before recording a claim of lien, filing a notice to withhold funds, or
21 asserting a claim against a payment bond, the claimant shall give a preliminary
22 notice (private work) to each of the following persons:

23 (a) The owner or reputed owner.

24 (b) The direct contractor or reputed contractor.

25 (c) The construction lender or reputed construction lender, if any.

26 **Comment.** Section 3089.120 restates parts of the introductory clause and subdivision (a) of
27 former Section 3097, without substantive change. Some repetitive detail has been omitted in
28 reliance on defined terms and other substantive provisions. The preliminary notice must be in
29 writing. Section 3089.130 (contents of preliminary notice).

30 See also Sections 3082.010 (“claimant” defined), 3082.020 (“construction lender” defined),
31 3082.060 (“lien” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
32 3082.110 (“person” defined).

33  **Staff Note. It is not clear whether preliminary notice is required to the owner of the
34 work of improvement or to the owner of the property, if these two are not the same person.**

35 The staff would argue that notice to both should be necessary. The owner of the work of
36 improvement needs to be able to protect against double payment liability. The owner of the
37 property needs to be able to give notice of nonresponsibility.

38 Gordon Hunt would leave the matter ambiguous. It would be for the courts to decide as to what
39 is or is not compliance with the requirement. To require notice to both the owner of the work of
40 improvement and the owner of the property would place an additional unreasonable burden on a
41 claimant.

1 § 3089.130. Contents of preliminary notice

2 3089.130. (a) A preliminary notice (private work) shall be in writing and shall
3 contain all of the following information:

4 (1) A general description of the labor, service, equipment, or material provided,
5 or to be provided, and an estimate of the total price.

6 (2) The name and address of the person providing the labor, service, equipment,
7 or material.

8 (3) The name of the person that contracted for the labor, service, equipment, or
9 material.

10 (4) A description of the site sufficient for identification.

11 (5) The following statement in boldface type:

12 **NOTICE TO PROPERTY OWNER**

13 **If the person or firm that has given you this notice is not paid in full for**
14 **labor, service, equipment, or material provided or to be provided to your**
15 **construction project, a lien may be placed on your property. Foreclosure of**
16 **the lien may lead to loss of all or part of your property, even though you have**
17 **paid your contractor in full. You may wish to protect yourself against this by**
18 **(1) requiring your contractor to provide a signed release by the person or**
19 **firm that has given you this notice before making payment to your contractor,**
20 **or (2) any other method that is appropriate under the circumstances.**

21 **If you record a notice of completion of your construction project, you must**
22 **within 10 days after recording notify your contractor and the person or firm**
23 **that has given you this notice. Notification must be by registered or certified**
24 **mail. Failure to give the notification will extend the deadlines to record a**
25 **claim of lien. You are not required to give the notification if you are a**
26 **residential homeowner of a dwelling containing four or fewer units.**

27 (b) If a preliminary notice (private work) is given by a subcontractor that has not
28 paid all compensation due to a laborer or laborer's compensation fund, the notice
29 shall contain the name and address of the laborer and any laborer's compensation
30 fund to which payments are due.

31 (c) If an invoice for material or certified payroll contains the information
32 required by this section, a copy of the invoice or payroll, given in the manner
33 provided by this article for giving of notice, is sufficient.

34 **Comment.** Section 3089.130 continues the substance of former Section 3097(c)(1)-(6) and the
35 unnumbered paragraph following paragraph (6) without substantive change. The reference to an
36 "express trust fund" has been replaced by the defined term, "laborer's compensation fund." See
37 Section 3082.050 ("laborer's compensation fund" defined). It also continues the requirement of
38 former Section 3097(a) that the preliminary notice be written.

39 See also Sections 3082.030 ("labor, service, equipment, or material" defined), 3082.040
40 ("laborer" defined), 3082.060 ("lien" defined), 3082.110 ("person" defined), 3082.160 ("site"
41 defined), 3082.180 ("subcontractor" defined).

1 **§ 3089.140. Effect of preliminary notice**

2 3089.140. (a) A claimant may record a claim of lien, file a notice to withhold
3 funds, or assert a claim against a payment bond only for labor, service, equipment,
4 or material provided within 20 days before giving a preliminary notice (private
5 work) and at any time thereafter.

6 (b) Notwithstanding subdivision (a), a certificated architect, registered engineer,
7 or licensed land surveyor may record a claim of lien, file a notice to withhold
8 funds, or assert a claim against a payment bond for architectural, engineering, or
9 surveying services provided for the design of the work of improvement if the
10 claimant gives a preliminary notice (private work) not later than 20 days after the
11 work of improvement has commenced.

12 **Comment.** Subdivision (a) of Section 3089.140 supersedes former Section 3097(d). The
13 provision is simplified so that it refers only to the effect of giving the preliminary notice.

14 Subdivision (b) restates the unnumbered paragraph preceding former Section 3097(d).

15 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
16 material” defined), 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined).

17 ☞ **Staff Note.** We have not yet integrated the Design Professionals’ Lien (Civ. Code §§ 3081.1-
18 3081.10) with this material.

19 **§ 3089.150. Giving preliminary notice**

20 3089.150. (a) Subject to subdivision (b), a preliminary notice (private work)
21 shall be given to the person to be notified by any of the following methods:

22 (1) Delivering it personally.

23 (2) Leaving it at the person’s address of residence or place of business with a
24 person in charge.

25 (3) Mailing it to the person addressed to (i) the person’s residence or place of
26 business, (ii) the address shown by the building permit on file with the authority
27 issuing a building permit for the work of improvement, or (iii) an address recorded
28 under Section 3082.330 (construction trust deed).

29 (b) If the person to be notified does not reside in the state, a preliminary notice
30 (private work) shall be given by any method provided in subdivision (a) or, if the
31 person cannot be notified by any method provided in subdivision (a), by mail
32 addressed to the construction lender or the direct contractor.

33 (c) Proof that preliminary notice was given to a person in the manner required by
34 this section shall be made by the proof of notice affidavit described in subdivision
35 (d) and, if given by mail, shall be accompanied by proof in the manner provided in
36 Section 3082.240.

37 (d) A proof of notice affidavit shall show all of the following:

38 (1) The time, place, and manner of notice and facts showing that notice was
39 given in the manner required by this section.

40 (2) The name and address of the person to which the preliminary notice was
41 given, and, if appropriate, the title or capacity in which the person was given
42 notice.

1 **Comment.** Subdivisions (a) and (b) of Section 3089.150 continue former Section 3097(f)
2 without substantive change. Service of notice terminology has been changed to giving of notice
3 terminology.

4 Subdivisions (c) and (d) continue former Section 3097.1 without substantive change. Service of
5 notice terminology has been changed to giving of notice terminology.

6 For service and proof of service by mail, see Section 3082.240 (mailed notice). This expands
7 the permissible methods of mailing.

8 See also Sections 3082.020 (“construction lender” defined), 3082.025 (“direct contractor”
9 defined), 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

10 **§ 3089.160. Coverage of preliminary notice**

11 3089.160. (a) Except as provided in subdivision (b), a claimant need give only
12 one preliminary notice (private work) to each person to which notice must be
13 given under this article with respect to all labor, service, equipment, and material
14 provided by the claimant for a work of improvement.

15 (b) If a claimant provides labor, service, equipment, or material under contracts
16 with more than one subcontractor, the claimant shall give a separate preliminary
17 notice with respect to labor, service, equipment, or material provided to each
18 contractor.

19 (c) A preliminary notice that contains a general description of labor, service,
20 equipment, or material provided by the claimant before the date of the notice also
21 covers labor, service, equipment, or material provided by the claimant after the
22 date of the notice whether or not they are within the scope of the general
23 description contained in the notice

24 **Comment.** Section 3089.160 restates former Section 3097(g) without substantive change.

25 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
26 material” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined), 3082.190
27 (“work of improvement” defined).

28 ☞ **Staff Note.** It is unclear whether the references to contractor and subcontractor in
29 subdivision (b) are proper.

30 **§ 3089.170. Direct contractor’s duty to provide information**

31 3089.170. A direct contractor shall make available to any person seeking to give
32 a preliminary notice (private work) the following information:

33 (a) The name and residence address of the owner.

34 (b) The name and address of the construction lender, if any.

35 **Comment.** Section 3089.170 continues without substantive change the parts of former Section
36 3097(l)-(m) relating to the direct contractor’s duty to provide information. For provisions
37 concerning the content of contracts, see Section 3082.310 (contract forms).

38 See also Sections 14 (singular includes plural), 3082.020 (“construction lender” defined),
39 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person”
40 defined).

1 **§ 3089.180. Owner’s duty to give notice of construction loan**

2 3089.180. If a construction loan is obtained after commencement of work, the
3 owner shall provide the name and address of the construction lender to each
4 person that has given the owner a preliminary notice (private work).

5 **Comment.** Section 3089.180 continues former Section 3097(n) without substantive change.
6 The reference to commencement of construction has been changed to commencement of work for
7 consistency with the remainder of this title.

8 See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),
9 3082.110 (“person” defined).

10 **§ 3089.190. Waiver void**

11 3089.190. An agreement made or entered into by an owner, whereby the owner
12 agrees to waive the rights conferred on the owner by this article is void and
13 unenforceable.

14 **Comment.** Section 3089.190 continues former Section 3097(e) without substantive change.
15 See also Section 3082.100 (“owner” defined).

16 **§ 3089.200. Disciplinary action**

17 3089.200. A licensed subcontractor is subject to disciplinary action under the
18 Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of
19 Division 3 of the Business and Professions Code, if all of the following conditions
20 are satisfied:

21 (a) The subcontractor does not pay all compensation due to a laborer’s
22 compensation fund.

23 (b) The subcontractor fails to give a preliminary notice (private work) or include
24 in the notice the information required by subdivision (b) of Section 3089.130.

25 (c) The subcontractor’s failure results in the laborer’s compensation fund
26 recording a claim of lien, filing a notice to withhold funds, or asserting a claim
27 against a payment bond.

28 (d) The amount due the laborer’s compensation fund is not paid.

29 **Comment.** Section 3089.200 continues the substance of the second paragraph of former
30 Section 3097(h), The first paragraph, relating to disciplinary action if a subcontractor fails to give
31 preliminary notice on a work of improvement exceeding \$400, is not continued.

32 The reference to an “express trust fund” has been replaced by the defined term, “laborer’s
33 compensation fund” which arguably expands the scope of the provision. See Section 3082.050
34 (“laborer’s compensation fund” defined).

35 See also Sections 3082.060 (“lien” defined), 3082.120 (“preliminary notice (private work)”
36 defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

37 **§ 3089.210. Notices filed with county recorder**

38 3089.210. The county recorder may cause to be destroyed all documents filed
39 under subdivision (o) of former Section 3097 on or after January 1, 2007.

40 **Comment.** Section 3089.210 supersedes former Section 3097(o) relating to filing the
41 preliminary notice with the county recorder. This title no longer provides for filing a preliminary
42 notice with the county recorder or for the county recorder to notify persons who filed a
43 preliminary notice of the recording of a notice of completion or notice of cessation.

1 § 3089.430. Notice of completion

2 3089.430. (a) On completion of a work of improvement an owner may record a
3 notice of completion.

4 (b) The notice of completion shall be in writing, signed and verified by the
5 owner, and contain all of the following information:

6 (1) The name and address of the owner and the nature of the owner's interest.

7 (2) A description of the site sufficient for identification, including the street
8 address of the site, if any. If a sufficient legal description of the site is given, the
9 effectiveness of the notice is not affected by the fact that the street address is
10 erroneous or is omitted.

11 (3) The name of the direct contractor, if any, for the work of improvement or, if
12 the notice is given only of completion of a contract for a particular portion of the
13 work of improvement as provided in Section 3089.440, the name of the direct
14 contractor under that contract and a general statement of the kind of labor, service,
15 equipment, or material provided under the contract.

16 (4) If signed by the owner's successor in interest, the names and addresses of the
17 successor's transferor.

18 (5) The date of completion. An erroneous statement of the date of completion
19 does not affect the effectiveness of the notice if the true date of completion is
20 within 10 days preceding the date of recordation of the notice.

21 (6) If the notice is based on cessation of labor, the date on or about which labor
22 ceased, and that cessation of labor has been continuous until recordation of the
23 notice. If labor recommences before expiration of time for recording a claim of
24 lien, the notice is ineffective.

25 **Comment.** Section 3089.430 combines former Section 3093 (notice of completion) with
26 former Section 3092 (notice of cessation). For date of completion of a work of improvement, see
27 Section 3089.410. For the effect of a notice of completion, see Sections 3083.320-.330 (time for
28 claim of line), 3083.710 (time for commencement of enforcement action).

29 This section eliminates the 10-day period for recording a notice of completion under former
30 law. A claim of lien must be filed within 30 or 60 days after recording a notice of completion
31 (depending on the nature of the claimant), subject to a maximum of 90 days after actual
32 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the
33 effect of existing law, See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58
34 (1959).

35 The second sentence of subdivision (b)(5), relating to recommencement of labor is new.

36 A notice of completion is recorded in the office of the county recorder of the county in which
37 the site or part of it is situated. Section 3082.250 (filing and recording of papers). A notice of
38 completion is recorded when it is filed for record. Section 3082.250 (filing and recording of
39 papers).

40 As used in this section, the owner is the person who causes a building, improvement, or
41 structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of
42 a notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee
43 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a
44 cotenant. A notice of completion may be signed and verified by the owner's agent. See Sections
45 3082.100 ("owner" defined), 3082.260 (co-owners).

46 The reference to a successor's "transferors" is omitted from subdivision (b)(4). See Section 14
47 (singular includes plural).

1 See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.025
2 (“direct contractor” defined), 3082.160 (“site” defined), 3082.190 (“work of improvement”
3 defined), Section 3082.250 (filing and recording of papers).

4 ☞ **Staff Note.** This draft addresses the issue of recommencement of labor after recordation of a
5 notice of completion. See subdivision (b)(6).

6 **§ 3089.440. Notice of completion of contract for portion of work of improvement**

7 3089.440. If a work of improvement is made under two or more contracts, each
8 covering a portion of the work of improvement:

9 (a) The owner may record a notice of completion of a contract for a portion of
10 the work of improvement. On recordation of the notice of completion, for the
11 purpose of Sections 3083.320 and 3083.330 (recordation of claim of lien) a direct
12 contractor is deemed to have completed the contract for which the notice of
13 completion is recorded and a claimant other than a direct contractor is deemed to
14 have ceased providing labor, service, equipment, or material.

15 (b) If the owner does not record a notice of completion under this section, the
16 period for recording a claim of lien is that provided in Sections 3083.320 and
17 3083.330.

18 **Comment.** Section 3089.440 continues the substance of former Section 3117, but eliminates
19 the 10-day period for recording a notice of completion. A claim of lien must be filed within 60
20 days after recording a notice of completion, subject to a maximum of 90 days after actual
21 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the
22 effect of existing law. See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58
23 (1959).

24 This section omits the rules found in former law governing the time for recording a claim of
25 lien after a notice of completion for a portion of a work of improvement. The general rules
26 governing the time for recording do not distinguish among types of notice of completion, and
27 appear to be satisfactory for purposes of this section, with the clarification set out in subdivision
28 (a). See Sections 3083.320 and 3083.330 (recordation of claim of lien).

29 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
30 material” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.190
31 (“work of improvement” defined).

32 ☞ **Staff Note. The Commission solicits comment on the policy of this section.** Where there
33 are two or more separate contracts on a single job, it may be advantageous for an owner-builder,
34 for example, to narrow liability exposure. A notice of completion as to a portion of a project can
35 also benefit subcontractors whose right to receive a retention may be triggered by the notice of
36 completion. On the other hand, a notice of completion as to a portion of a project can also cause
37 problems by triggering a lien claim or foreclosure as to that portion of the project. If that portion
38 of the project is stand-alone, the foreclosure may be feasible; if it is part of an integrated whole,
39 foreclosure may be difficult.

40 **§ 3089.450. Notice of recordation by owner**

41 3089.450. (a) An owner of a private work that records a notice of completion
42 shall within 10 days after recordation give a copy of the notice by mail to all of the
43 following persons:

44 (1) A direct contractor.

45 (2) A claimant that has given the owner a preliminary notice (private work).

1 (b) Failure of the owner to give notice to a person under subdivision (a) extends
2 the time in which that person may record a claim of lien or file a notice to
3 withhold funds to 90 days after the date of recordation of the notice of completion.
4 The extension of time is the sole liability of the owner for failure to give notice to
5 a person under subdivision (a).

6 (c) This section does not apply to any of the following owners:

7 (1) A person that occupies the property as a personal residence, if the dwelling
8 contains four or fewer residential units.

9 (2) A person that has a security interest in the property.

10 (3) A person that obtains an interest in the property pursuant to a transfer
11 described in subdivision (b), (c), or (d) of Section 1102.2.

12 **Comment.** Section 3089.450 restates former Section 3259.5, replacing the notice of
13 recordation with a copy of the recorded notice. As used in this section “owner” includes a person
14 who has an interest in property (or the person’s successor in interest on the date a notice of
15 completion is recorded) that causes a building, improvement, or structure, to be constructed,
16 altered, or repaired on the property), and includes a cotenant. See Section 3082.100 (“owner”
17 defined). A notice is recorded when it is filed for record. Section 3082.250 (filing and recording
18 of papers). The references to a “mechanic’s” lien in subdivision (a) have been deleted.
19 Subdivision (a) is intended to apply to a site improvement lien as well. For service and proof of
20 service by mail, see Section 3082.240 (mailed notice).

21 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.025 (“direct
22 contractor” defined), 3082.110 (“person” defined), 3082.120 (“preliminary notice (private work)”
23 defined), 3082.130 (“private work” defined).

24 ☞ **Staff Note.** The provision of former Section 3097(o) relating to notice by the county recorder
25 to persons who have filed the preliminary notice is not continued. Notice by the owner under
26 Section 3089.450 is a more effective remedy.

27 Article 5. Waiver and Release

28 § 3089.610. Terms of contract

29 3089.610. (a) An owner or direct contractor may not, by contract or otherwise,
30 waive, affect, or impair a claimant’s rights under this title, whether with or without
31 notice, except with the claimant’s written consent, and any term of a contract that
32 purports to do so is void and unenforceable.

33 (b) A claimant’s written consent is void and unenforceable unless and until the
34 claimant executes and delivers a waiver and release under this article.

35 **Comment.** Section 3089.610 continues the first and second sentences of former Section
36 3262(a) without substantive change. See Section 3082.010 (“claimant” defined).

37 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
38 3082.100 (“owner” defined).

39 § 3089.620. Waiver and release

40 3089.620. A claimant’s waiver and release does not release the owner,
41 construction lender, or surety on a payment bond from a claim or lien unless both
42 of the following conditions are satisfied:

1 (a) The waiver and release is in substantially the form provided in this article and
2 is signed by the claimant.

3 (b) If the release is a conditional release, there is evidence of payment to the
4 claimant. Evidence of payment may be (i) the claimant's endorsement on a single
5 or joint payee check that has been paid by the financial institution on which it was
6 drawn or (ii) written acknowledgment of payment by the claimant.

7 **Comment.** Section 3089.620 continues the third and fourth sentences of former Section
8 3262(a) without substantive change. The waiver and release may be signed by the claimant's
9 agent. See Section 3082.270 (agency). The term "financial institution" has replaced "bank" in
10 subdivision (b) and in the forms provided in this article.

11 See also Sections 3082.010 ("claimant" defined), 3082.020 ("construction lender" defined),
12 3082.060 ("lien" defined), 3082.100 ("owner" defined).

13 **§ 3089.630. Statement of claimant**

14 3089.630. An oral or written statement purporting to waive, release, impair or
15 otherwise adversely affect a claim or lien is void and unenforceable and does not
16 create an estoppel or impairment of the claim or lien unless either of the following
17 conditions is satisfied:

- 18 (1) The statement is pursuant to a waiver and release under this article.
19 (2) The claimant has actually received payment in full for the claim.

20 **Comment.** Section 3089.630 continues former Section 3262(b) without substantive change.
21 See also Section 3082.010 ("claimant" defined).

22 **§ 3089.640. Accord and satisfaction or settlement agreement not affected**

23 3089.640. This article does not affect the enforceability of either an accord and
24 satisfaction concerning a bona fide dispute or an agreement made in settlement of
25 an action pending in court if the accord and satisfaction or agreement and
26 settlement make specific reference to the claim or lien.

27 **Comment.** Section 3089.640 continues former Section 3262(c) without substantive change.
28 See also Section 3082.060 ("lien" defined).

29 **§ 3089.650. Conditional waiver and release on progress payment**

30 3089.650. If a claimant is required to execute a waiver and release in exchange
31 for, or in order to induce the payment of, a progress payment and the claimant is
32 not, in fact, paid in exchange for the waiver and release or a single payee check or
33 joint payee check is given in exchange for the waiver and release, the waiver and
34 release shall be in substantially the following form:

35 **CONDITIONAL WAIVER AND RELEASE ON**
36 **PROGRESS PAYMENT**

37 On receipt by the undersigned of a check from

38 _____
39 (Maker of Check)

40 in the sum of \$ _____

41 (Amount of Check)

1 payable to _____
2 (Payee or Payees of Check)

3 and when the check has been properly endorsed and has
4 been paid by the financial institution on which it is drawn,
5 this document shall become effective to release any lien,
6 notice to withhold funds, or bond right the undersigned has
7 on the job of

8 _____
9 (Owner)
10 located at _____
11 (Job Description)

12 to the following extent. This release covers a progress
13 payment for labor, service, equipment, or material provided
14 to _____
15 (Your Customer)

16 through _____ only and
17 (Date)

18 does not cover any retentions retained before or after the
19 release date; unpaid progress payments for which
20 conditional waiver and releases have been given by the
21 undersigned in the sum of
22 \$ _____
23 (Amount)

24 dated _____;
25 (Date)

26 extras provided before the release date for which payment
27 has not been received; extras or items provided after the
28 release date. Rights based on work performed or items
29 provided under a written change order which has been fully
30 executed by the parties before the release date are covered
31 by this release unless specifically reserved by the claimant
32 in this release. This release of any lien, notice to withhold
33 funds, or bond right shall not otherwise affect the contract
34 rights of the parties, including rights between parties to the
35 contract based on a rescission, abandonment, or breach of
36 the contract, or the right of the undersigned to recover
37 compensation for provided labor, service, equipment, or
38 material covered by this release if that provided labor,
39 service, equipment, or material was not compensated by the
40 progress payment. Before any recipient of this document
41 relies on it, the recipient should verify evidence of payment
42 to the undersigned.

43 Dated: _____
44 (Company Name)
45 By _____
46 (Title)

47 **Comment.** Section 3089.650 continues former Section 3262(d)(1), with the addition of
48 language relating to progress payments covered by previous releases that have not been paid. The
49 references to a “mechanic’s” lien have been deleted from this section; it applies to a site
50 improvement lien as well.

1 See also Section 3082.010 (“claimant” defined).

2 **§ 3089.660. Unconditional waiver and release on progress payment**

3 3089.660. (a) If the claimant is required to execute a waiver and release in
4 exchange for, or in order to induce payment of, a progress payment and the
5 claimant asserts in the waiver it has, in fact, been paid the progress payment, the
6 waiver and release shall be in substantially the following form:

7 UNCONDITIONAL WAIVER AND RELEASE ON
8 PROGRESS PAYMENT

9 The undersigned has been paid and has received a
10 progress payment in the sum of \$_____ for labor, service,

11 equipment, or material provided to
12 _____

13 (Your Customer)

14 on the job of _____

15 (Owner)

16 located at _____

17 (Job Description)

18 and does hereby release any lien, notice to withhold funds,
19 or bond right that the undersigned has on the above
20 referenced job to the following extent. This release covers a
21 progress payment for labor, service, equipment, or material
22 provided to

23 _____ through

24 (Your Customer)

25 _____ only and does not cover

26 (Dates)

27 any retentions retained before or after the release date;
28 extras provided before the release date for which payment
29 has not been received; extras or items provided after the
30 release date. Rights based on work performed or items
31 provided under a written change order which has been fully
32 executed by the parties before the release date are covered
33 by this release unless specifically reserved by the claimant
34 in this release. This release of any lien, notice to withhold
35 funds, or bond right shall not otherwise affect the contract
36 rights of the parties, including rights between parties to the
37 contract based on a rescission, abandonment, or breach of
38 the contract or the right of the undersigned to recover
39 compensation for provided labor, service, equipment, or
40 material covered by this release if that provided labor,
41 service, equipment, or material was not compensated by the
42 progress payment.

43 Dated: _____

44 (Company Name)

45 By _____

(Title)

(b) Each unconditional waiver under this section shall contain the following language, in at least as large a type as the largest type otherwise on the document:

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

Comment. Section 3089.660 continues former Section 3262(d)(2) without substantive change. The references to a “mechanic’s” lien have been deleted from this section; it applies to a site improvement lien as well.

See also Section 3082.010 (“claimant” defined).

§ 3089.670. Conditional waiver and release on final payment

3089.670. If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON
FINAL PAYMENT

On receipt by the undersigned of a check from _____ in the sum of \$_____ payable to _____ and when the check has been properly endorsed and has been paid by the financial institution on which it is drawn, this document shall become effective to release any lien, notice to withhold funds, or bond right the undersigned has on the job of

(Owner)
located at _____
(Job Description)

This release covers the final payment to the undersigned for all labor, service, equipment, or material provided to

(Your Customer)

on the job, except for disputed claims for additional work in the amount of \$_____ unpaid progress payments for which conditional waiver and releases have been given by the undersigned

in the sum of \$_____ (Amount)

dated _____ (Dates).

1 Before any recipient of this document relies on it, the
2 recipient should verify evidence of payment to the
3 undersigned.

4 Dated: _____
5 (Company Name)

6 By _____
7 (Title)

8 **Comment.** Section 3089.670 continues former Section 3262(d)(3), with the addition of
9 language relating to progress payments covered by previous releases that have not been paid, and
10 the addition of a line for identification of the waivant's customer. The references to a
11 "mechanic's" lien have been deleted from this section; it applies to a site improvement lien as
12 well.

13 See also Section 3082.010 ("claimant" defined).

14 **§ 3089.680. Unconditional waiver and release on final payment**

15 3089.680. (a) If the claimant is required to execute a waiver and release in
16 exchange for, or in order to induce payment of, a final payment and the claimant
17 asserts in the waiver it has, in fact, been paid the final payment, the waiver and
18 release shall be in substantially the following form:

19 UNCONDITIONAL WAIVER AND RELEASE ON
20 FINAL PAYMENT

21 The undersigned has been paid in full for all labor,
22 service, equipment or material provided to

23 _____
24 (Your Customer)

25 on the job of _____
26 (Owner)

27 located at _____
28 (Job Description)

29 and does hereby waive and release any right to a lien,
30 notice to withhold funds, or any right against a labor and
31 material bond on the job, except for disputed claims for
32 extra work in the amount of \$_____.

33 Dated: _____
34 (Company Name)

35 By _____
36 (Title)

37 (b) Each unconditional waiver under this section shall contain the following
38 language, in at least as large a type as the largest type otherwise on the document:

39 NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY
40 AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE
41 RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU
42 SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN
43 PAID, USE A CONDITIONAL RELEASE FORM.

- 1 **Comment.** Section 3089.680 continues former Section 3262(d)(4) without substantive change.
2 The references to a “mechanic’s” lien have been deleted from this section; it applies to a site
3 improvement lien as well.
4 See also Section 3082.010 (“claimant” defined).
-