

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Mechanics Lien Law

February 2008

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335

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February 14, 2008

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

The mechanics lien law provides payment remedies to persons that provide work or material on a construction project, while at the same time providing safeguards to protect the interests of the other participants on the project. The remedies include a right to record a mechanics lien on the improved property, to assert a claim against construction funds, and to assert a claim against a bond that may have been posted to protect against payment defaults.

The mechanics lien law was first enacted in 1850, and the existing law still contains language dating back to 1872. Since the last recodification of the statute in 1969, individual provisions have been amended more than 70 times. Over time the statute has become increasingly difficult to use, generating litigation over confusing provisions, and often leaving participants unsure of their rights and obligations.

This recommendation recodifies and clarifies the entire mechanics lien statute. Terminology has been modernized and made more uniform, and inconsistencies have been eliminated. Longer provisions are divided into shorter and

more readable provisions, and all provisions have been organized in a functionally coherent order.

The recommendation does not propose radical changes to the operation of the existing construction law remedies. However, it does add a few substantive improvements designed to make it easier for owners to learn about the existence and validity of a recorded lien, and to challenge a clearly invalid lien.

The recommendation will make the existing law more understandable and usable, and will establish a foundation on which the Legislature may make future improvements in this area of law.

The recommendation was prepared pursuant to Resolution Chapter 1 of the Statutes of 2006.

Respectfully submitted,

Sidney Greathouse
Chairperson

TABLE OF CONTENTS

INTRODUCTION	535
BACKGROUND OF RECOMMENDATION	536
MECHANICS LIEN LAW IN PERSPECTIVE	536
Forces at Work	536
Remedies in General	537
Mechanics Liens	538
HISTORY OF CALIFORNIA STATUTE	539
Constitution	539
Legislative History	540
SUMMARY OF CALIFORNIA MECHANICS LIEN LAW	541
Policy Considerations	541
Mechanics Lien	543
Property Subject to Lien	543
Persons Entitled To Claim Lien	543
Interests Subject to Lien	544
Amount of Lien	545
Priority of Liens	545
Completion	546
Procedure for Enforcing Lien Claim	547
Preliminary Notice	547
Notice and Claim of Lien	548
Foreclosure Action	548
Stop Notice Right	549
Protection of Owner and Construction Lender	550
Waiver and Release	551
Release Bond	551
Attacking Lien or Stop Notice in Court	551
Notice of Completion	551
Retention	552
Payment Bond	552
REFORM OF CALIFORNIA LAW	553
CONTEXT OF MECHANICS LIEN LAW	553
GENERAL APPROACH	554
DRAFTING ISSUES	555
General Drafting Considerations	555
Relocation of Public Work Provisions	555
Location, Numbering, and Organization of Private Work Provisions	557
Terminology	558
“Mechanics Lien”	559

“Original Contractor”	559
“Contract Change”	560
Design Professionals Lien	560
Operative Date and Transitional Provisions.....	561
GENERAL PROVISIONS	562
NOTICE	562
Terminology	563
Contents of Notice	563
Manner of Notice	564
Mailed Notice	565
Posted Notice	565
Recordation of Notice	566
Electronic Notice	566
Proof of Notice	568
Proof of Mailing	568
Proof of Personal Delivery	569
Address at Which Notice is Given.....	569
When Notice is Complete.....	570
COMMENCEMENT AND COMPLETION	571
Completion of a Private Work	572
“Actual” Completion.....	572
Acceptance by Owner	573
Completion of a Public Work	573
Cessation of Labor.....	574
Notice of Completion or Cessation.....	575
Time for Recording Notice of Completion.....	575
Notice of Recordation	575
Notice by County Recorder	576
Separate Contracts on Single Job	576
Notice of Acceptance	577
WAIVER AND RELEASE	577
PRELIMINARY NOTICE.....	578
Function of Preliminary Notice.....	578
Simplification of Statute.....	578
Notice to Construction Lender	579
Disciplinary Action for Failure to Give Preliminary Notice.....	579
Recordation of Preliminary Notice	580
MECHANICS LIENS	581
Notice of Claim of Lien.....	581
Time for Commencement of Enforcement Action	582
Invalid or Unenforceable Claim of Lien	583
New Lis Pendens Requirement.....	584

Judicial Procedure for Release of Lien	585
Lien Rights of a Laborer's Benefit Fund.....	586
Use of Material in Structure	587
STOP PAYMENT NOTICE	588
Terminology	588
Stop Payment Notice.....	588
Bonded Stop Payment Notice.....	589
Contents of Notice	589
Amount of Claimant's Claim.....	589
Claim for Contract Changes and Damages for Breach	590
Demand for Notice.....	590
Duty to Withhold Funds	590
Withholding by Owner.....	590
Amount of Withholding	591
Claim Against Construction Lender	592
Notification of Stop Payment Claimant on Public Work	592
Release Bond for Funds Withheld Pursuant to Notice	593
Who May Give Bond	593
Sureties on Bond.....	593
Release of Notice or Reduction of Amount of Claim.....	594
Public Work Summary Release Procedure	595
Notice of Hearing in Summary Proceeding	596
PAYMENT BOND	596
Private Work Provisions.....	596
Admitted Surety Insurer.....	597
Payment Bond Required by Construction Lender.....	598
Statute of Limitations for Enforcement of Bond.....	598
Public Work Provisions	599
Overview of Provisions.....	599
State Contract Act	600
Reconciliation of Existing Provisions	601
Supplemental Contract	602
Statute of Limitations for Enforcement of Bond.....	602
Provisions Applicable to Both Private and Public Work	603
Claimants on Bond	603
OTHER REMEDIES	604
Security for Large Project	604
Stop Work Notice	604
PROPOSED LEGISLATION.....	607
DISPOSITION OF EXISTING LAW	949

MECHANICS LIEN LAW

INTRODUCTION

This report recommends comprehensive revision of the California mechanics lien law. The mechanics lien law generally specifies obligations, rights, and remedies for participants in any type of construction project.

The recommendation derives from a 1999 request to the Law Revision Commission from the Chair and Vice Chair of the Assembly Judiciary Committee urging a Commission study of the mechanics lien law.¹ The letter noted that the Judiciary Committee has heard and continues to hear numerous bills seeking to amend, and amending, that law. As a result, the mechanics lien law has been revised dozens of times since lien rights were added to the state Constitution.

We do not wish to impede the evolution of this important area of our law in any way, but we do believe it would be helpful if the Commission would provide the Legislature with a comprehensive review of this area of the law, making suggestions for possible areas of reform and aiding the review of such proposals in future legislative sessions. As you know, this subject area is complex and there are many stakeholders with competing interests.

The letter noted the existing general authority of the Commission in this area,² and suggested that the Commission prioritize the matter.

1. See Letter from Assembly Members Sheila James Kuehl (Chair) and Rod Pacheco (Vice Chair), to Nat Sterling (Executive Secretary, California Law Revision Commission), June 28, 1999 (attached to Commission Staff Memorandum 99-85 (available from the Commission, www.clrc.ca.gov)).

2. Historically, the Commission's calendar has included general authority to study the topics of real property law and creditors remedies law. The current authority is expressed in 2007 Cal. Stat. res. ch. 100.

The Commission agreed to the request and commenced work on the study. This recommendation represents the completion of that work; it is preceded by two interim recommendations³ and a prospectus for reform.⁴ Consistent with the Judiciary Committee's vision, the Commission intends that this recommendation make the existing law more understandable and usable, establishing a foundation on which the Legislature may make improvements in the future.

BACKGROUND OF RECOMMENDATION

MECHANICS LIEN LAW IN PERSPECTIVE

Forces at Work

The construction industry represents about 3.5% of California's gross domestic product — roughly \$50 billion annually (combined residential and nonresidential construction). The industry employs about 4.5% of California's workforce — somewhere around 800,000 workers. These numbers fluctuate greatly with general economic conditions.

Stakeholders involved in a typical construction project may include the owner of the property being improved (as well as co-owners, and perhaps the owner of a less than fee interest such as a leasehold or easement), the construction lender, a surety company, a design professional, a construction manager, a prime or general contractor, multiple subcontractors, multiple material suppliers and equipment

3. See *The Double Payment Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm'n Reports 281 (2001) (not enacted), and *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 31 Cal. L. Revision Comm'n Reports 333 (2001) (enacted as 2003 Cal. Stat. ch. 113).

4. See *Mechanic's Lien Law Reform*, 31 Cal L. Revision Comm'n Reports 343 (2001).

lessors, and laborers, among others. Their relationships and obligations to each other may be spelled out in detailed contractual arrangements that may subsequently be altered with change orders. The practice in the industry is to extend credit readily and rely on prompt payment after work is done. Many of the stakeholders may not be well capitalized, and the default of one may trigger a chain reaction resulting in nonpayment of many. In addition, disputes over construction delays or quality are not uncommon, triggering withholding of payment and resultant problems caused by the withholding.

With numerous parties and many adverse interests involved, mechanics lien law is subject to ongoing pressure as each party tries legitimately to best protect its interests.

Remedies in General

The “mechanics lien law” is a loosely used term, governing various construction remedies provided in the Civil Code.⁵ Those remedies include not only a right to record a mechanics lien on the improved property for both site work⁶ and construction,⁷ but also a garnishment remedy against construction funds (the stop notice),⁸ a bond remedy (a claim against a bond guaranteeing payment in the event of default),⁹ and various other rights and remedies relating to prompt payment.¹⁰

In general, the mechanics lien law applies to both private and public work. However, the mechanics lien remedy itself is not available when the improved property is publicly

5. See Civ. Code §§ 3082-3267.

6. See Civ. Code § 3112.

7. See Civ. Code § 3110.

8. See Civ. Code §§ 3156-3227.

9. See Civ. Code §§ 3225-3252.

10. See, e.g., Civ. Code §§ 3110.5 (security for large project), 3260 (retention payment), 3260.2 (stop work notice).

owned¹¹ — on this type of project, the principal remedies are the stop notice and the payment bond.

Related construction remedies that are not part of the mechanics lien law include a special lien available to design professionals,¹² and licensing remedies found in the Contractors' State License Law.¹³

Mechanics Liens

Every state grants a mechanics lien right on a private work of improvement.

The laws all operate similarly, generally giving a provider of labor or materials a lien right against the improved property, to the extent of the value of the labor or materials contributed and unpaid. The lien right is converted to a lien claim against the property, by recordation of the lien in the county recorder's office. If necessary, the lien claim may then be enforced through a court action, in which a sale of the property may be ordered to satisfy the lien claim.

As a practical matter, however, a lien claim is rarely enforced. Most property owners are motivated to take whatever steps are necessary to ensure that a legitimate lien claimant is paid, rather than risk the forced sale of their property.

Although the basic function and operation of mechanics lien laws around the country are the same, the details of the statutes are not. Variations include the type of property subject to lien rights (public, private, quasi-public), persons entitled to lien rights (contractors, subcontractors, sub-subcontractors, material suppliers, skilled versus unskilled laborers, design professionals), type of ownership subject to

11. See *North Bay Construction, Inc. v. City of Petaluma*, 143 Cal. App. 4th 552, 49 Cal. Rptr. 3d 455 (2006).

12. See Civ. Code §§ 3081.1-3081.10.

13. See Bus. & Prof. Code §§ 7000-7191.

lien rights (fee simple, leasehold), type of work subject to lien rights (construction, alteration, landscaping), performance prerequisite to lien rights (full performance, contractor in default), the extent of the lien (whether or not limited by the amount of the prime contract), procedural prerequisites to enforcement (preliminary notices, statutory deadlines for filing and foreclosure), defenses (contractual waivers), and priorities among liens (including priorities among mechanics lien claimants and between a mechanics lien and a construction loan lien).

The drafters of the Uniform Construction Lien Act (1987) note the extraordinary variety of mechanics lien laws from state to state. “In fact, variation among the states may be greater in this area than in any other statutory area.” The drafters observe however that despite the diversity, state laws tend to fall into a limited number of patterns on the major issues involved.

HISTORY OF CALIFORNIA STATUTE

Constitution

In California, the mechanics lien has a constitutional basis. Article XIV, Section 3, of the California Constitution provides:

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.

This provision has remained in the Constitution essentially unchanged since it was added in 1879. It was amended in 1974 to substitute “persons furnishing materials” for “materialmen.” It was moved to its current location in 1976.

Legislative History

The statutory history of the California mechanics lien law predates the constitutional provision. California's first Legislature enacted a rudimentary mechanics lien statute in 1850.¹⁴ Section 1 of that act granted a lien to "master builders, mechanics, lumber merchants, and all other persons performing labor or furnishing materials" in constructing any building or wharf. Section 2 provided a stop notice procedure whereby a "sub-contractor, journeyman, or laborer" could garnish payments from the owner. Section 3 provided for recordation and commencement of an action to enforce the lien.

The California statute has been revised and recodified many times since. During that process, the law made its way from the general statutes into the Code of Civil Procedure, and then into the Civil Code. All told, since its codification in the 1872 Code of Civil Procedure, the mechanics lien law has been affected by more than 150 enacted bills.

Today's mechanics lien law still contains language dating back to the 1872 codification. Recodifications in 1951 and 1969 continued much of the pre-existing language, and were not intended to be substantive reforms.¹⁵ Since the 1969 recodification, the statute has been amended more than 70 times.

14. See Compiled Laws ch. 155.

15. See 1951 Cal. Stat. ch. 1159, § 5 (legislative intent as "only a formal revision of the law ... [not] an alteration in the public policy ... nor in the meaning or substance thereof"); 1969 Cal. Stat. ch. 1362, § 10 (legislative intent "to revise and restate ... shall not be construed to constitute a change in ... preexisting law").

This process has taken its toll on a body of law that one California Supreme Court justice labeled “confused and confusing” nearly 90 years ago.¹⁶

SUMMARY OF CALIFORNIA MECHANICS LIEN LAW

Key features of the California mechanics lien law and its operation are summarized below.¹⁷ The summary includes a discussion of policy considerations, the mechanics lien, procedures for enforcement of a lien claim, the stop notice remedy, the claim against a payment bond, and devices available to the owner and construction lender to protect against the lien or stop notice.

Policy Considerations

A supplier of labor or material on a construction project has no practical opportunity to contract for a security interest to ensure payment. The law therefore provides various statutory remedies for a contractor, supplier, or worker to secure payment for work or material provided. The remedies include a mechanics lien, a stop notice and a claim against a payment bond.

The mechanics lien is unique among creditor remedies in California due to its constitutional basis. For this reason, the law is generally liberally construed to ensure maximum protection for a lien claimant.

An unpaid contributor to a work of improvement may assert a lien against the improved property, and if necessary force a sale of the property to obtain payment from the proceeds of the sale. The law thus prevents an owner from being enriched

16. *Roystone Co. v. Darling*, 171 Cal. 526, 546, 154 P. 15 (1915) (Henshaw, J. concurring).

17. This summary is drawn from Acret, *A Brief Summary of Mechanics' Liens and Stop Notices*, in *Handling A Mechanics' Lien* (Cal. Cont. Ed. Bar 1993).

by a claimant's contribution to the improvement, if the contributor has not been fully paid.

However, because the lien right extends to a "lower tier" claimant such as a subcontractor or supplier, this claimant protection may in some cases result in unfairness to an owner. Based on the trickle down nature of payment on a typical project, a lower tier claimant may remain unpaid even after an owner has paid the general contractor for the work provided by the claimant. For example, the owner may have made a progress payment to the general contractor for electrical work, but the general contractor may have used that money for another purpose, and failed to pay the electrical subcontractor. Even though the owner has paid the general contractor for the work performed by the electrical subcontractor, the subcontractor may still assert a lien on the owner's property to recover the amount the general contractor has not paid the subcontractor.

Much of the development of the mechanics lien law is an attempt to ensure appropriate compensation of a lien claimant while at the same time attempting to protect an owner against undue exposure to double payment.

For example, the mechanics lien law contains a series of notices, procedural requirements, and time deadlines. A claimant must comply with each of these requirements in order to enforce a lien claim. Compliance with the requirements affords an owner an opportunity to attempt to ensure that all contributors to a project are paid before a nonpayment progresses to a lien claim against the property.

In recent years, the Legislature has also enacted prompt payment statutes.¹⁸ These statutes impose a monetary penalty on an owner or a general contractor that is dilatory in paying a contributor an amount due for work performed.

18. See, e.g., Civil Code § 3260.

Mechanics Lien

A mechanics lien gives a claimant a security interest in real property, similar to that provided by a deed of trust or mortgage. It secures for a claimant a right to be paid from funds generated by a sale of the owner's property.

The mechanics lien is only as good as the owner's equity in the property. If the owner's equity is absorbed by other liens, or by deeds of trust that have priority over the mechanics lien claim, the mechanics lien may be worthless.

Property Subject to Lien

The mechanics lien attaches to the work of improvement for which the claimant provided work or material. A claimant cannot assert a lien on other property of the owner not related to the work of improvement.

A mechanics lien is available only on a private work of improvement. There is no lien right on property owned by a public entity. However, a claimant on a public work of improvement is not without a remedy. On a state or local public work, an unpaid subcontractor, supplier or laborer has stop notice and payment bond rights. On a federal public work, an unpaid contributor may make a claim against a federally mandated payment bond.

Persons Entitled To Claim Lien

The class of persons entitled to a lien includes a contractor, subcontractor, supplier, equipment lessor, architect, engineer, land surveyor, builder, trucker, laborer, and any other person that furnishes labor or material on a "work of improvement" (a project intended to permanently improve real property). To be entitled to claim the lien however, the claimant must contribute work or material that is authorized by the owner, the owner's agent, or a contractor having charge of all or part of the work of improvement or site improvement.

Thus, not every person that furnishes labor or material ultimately used in a work of improvement may claim a lien. A person that supplies material to a general contractor or subcontractor has a lien right, but a person that supplies material to another supplier (who has no authority relating to the work of improvement) does not. For example, a lumber yard that contracts with a contractor to supply finished wood to a jobsite may claim a lien on the property that is improved, but the sawmill that contracts to provide the raw lumber to that lumber yard may not. Also, the labor or material provided must contribute to a permanent improvement of the property. Thus, a landscape contractor that supplies and installs plants on a site has a lien right, but one that merely maintains the existing landscaping on the site does not.

In addition, an unlicensed contractor is generally barred from enforcing a mechanics lien for work provided.¹⁹

A right to assert a mechanics lien does not exist until commencement of the work of improvement, marked either by delivery to the work site of material that is thereafter used in the work of improvement, or by the beginning of visible work at the site. However, California allows an architect, engineer, or surveyor to claim a related design professionals lien for services provided before a work of improvement has commenced.

Interests Subject to Lien

A mechanics lien attaches to the work of improvement, and to the land beneath the improvement “together with a convenient space about the same or so much as may be required for the convenient use and occupation thereof.”

In the case of improvement of leased property, the lien attaches not only to the leasehold interest but also to the owner’s fee interest, unless the owner posts and records a

19. See Bus. & Prof. Code § 7031.

notice of nonresponsibility. The notice of nonresponsibility is a written notice signed and verified by the owner or owner's agent, notifying a potential lien claimant that the fee owner of the property is not responsible for the work performed. In that event, the lien attaches only to the leasehold interest of the tenant that ordered the improvement. However, if the tenant's lease requires the tenant to install the improvement, the owner's interest is subject to the lien.

Amount of Lien

The lien is for the lesser of the reasonable value of the labor, services, equipment, or material furnished or for the price agreed upon, including change orders and extras. Attorney's fees may not be included in a lien claim.

Priority of Liens

As a general rule, a mechanics lien has priority over any mortgage, deed of trust, or other encumbrance that attaches after commencement of the work of improvement. As between each other, all mechanics liens on a work of improvement relate back to the commencement of the work of improvement as a whole, regardless of when a particular lien claimant began work, or when a lien claim is recorded, and all recorded liens have the same priority.

However, if a site improvement on a construction project is provided for in a contract separate from the contract for the remainder of the work of improvement, the site improvement is deemed a separate work of improvement for purposes of determining priorities.²⁰ In this situation, a lien based on site improvement work also has priority over a lien for work on the remainder of the work of improvement.²¹ Further, a lien for work on the remainder of the work of improvement has

20. See Civ. Code § 3135.

21. See Civ. Code § 3137.

priority only over any mortgage, deed of trust, or other encumbrance that attaches after commencement of the remainder of the work of improvement.

If the total amount of lien claims with equal priority exceeds the amount available from a forced sale of the property, the lien claims are satisfied pro rata.

Completion

Completion of a work of improvement triggers time limitations for a claimant to pursue the various mechanics lien remedies.

Completion generally means that all work called for in the construction contract is finished. Completion is defined differently depending on whether a project is a private or public work.

On a private work, “actual completion” of the project constitutes completion. Occupancy and use by the owner plus cessation of labor is also deemed to constitute completion. Alternatively, if no work has occurred for a continuous period of 60 days, the project is deemed to be completed. Acceptance of the project by the owner also constitutes completion.

On a public work, completion generally occurs only upon acceptance of the work by the public entity. On some public work, continuous cessation of labor for 30 days is also deemed to be completion.

Completion means completion of the entire work of improvement, not just one subcontractor’s portion. However, if work is done under separate original contracts with the owner, the owner may record a notice of completion for each individual contract. The occasion for recording a separate notice of completion arises, for example, when a subdivider or developer “subs everything out” to subcontractors that then effectively become original contractors since each contracts directly with the owner of the project.

An owner may record a notice of completion, which shortens time limitations for a claimant to pursue a remedy. An owner will generally record this notice to identify all potential claims as soon as possible.

An owner may also record a notice of cessation of labor, if labor on a job has continuously ceased for 30 days. This recordation generally has the same effect as the recordation of a notice of completion, but is generally used mid-project to take stock of outstanding claims, typically upon a change of original contractors.

Procedure for Enforcing Lien Claim

Three steps are required to perfect a lien claim:

- (1) Timely service of a preliminary 20-day notice (unless a claimant is statutorily exempted from this requirement).
- (2) Timely recordation of a claim of lien in a county recorder's office.
- (3) Timely initiation of a foreclosure action in court.

Preliminary Notice

A preliminary 20-day notice must be given by all claimants, except persons that directly contract with the owner of the property, or those that perform actual labor for wages. The notice protects an owner or lender against a "secret lien." By virtue of the notice, an owner or lender is made aware of the identity of a potential lien claimant, so it may attempt to ensure that the potential claimant is properly paid.

The 20-day preliminary notice must describe the work or material provided and give an estimate of the total cost, together with a warning in statutory language regarding the possibility of the recording of a mechanics lien claim.

The preliminary notice is to be given within 20 days of starting work. Giving the notice more than 20 days after starting work does not bar a lien claim entirely, but does bar a

lien claim for work performed more than 20 days before the notice is given.

The notice must be served on the owner, the construction lender (if any), and the owner's contractor. Service is made by registered mail, certified mail, or personal delivery. If service is by mail, proof of service requires an affidavit accompanied by a return receipt. A copy of the notice may be recorded with the county recorder.

The failure of a licensed contractor to give a required 20-day preliminary notice may subject the contractor to disciplinary action.

Notice and Claim of Lien

A lien claim is recorded in the county recorder's office in the county in which the property is located. The claim must contain a description of the work or material supplied and a statement of the balance due. Willful misstatement of the amount provided or due invalidates the lien.

The earliest a claimant may record a lien claim is after the claimant has completed its own work. The latest a lien claim can be recorded is 90 days after completion of the entire work of improvement. If the owner or owner's agent records either a notice of completion or notice of cessation, the time for an owner's contractor to record a lien claim is reduced to 60 days from the recordation of the notice, and the time for all other lien claimants is reduced to 30 days from the recordation of the notice.

A lien can be released by using a statutory form of release, by obtaining a lien claim release bond, or by a court order granting a petition to release the lien claim.

Foreclosure Action

The final step in perfecting a mechanics lien is the timely filing of a lawsuit to foreclose the lien. The lawsuit must be

filed within 90 days from whatever date the lien claim is recorded.

The lawsuit to enforce the lien must be filed in the county in which the property is situated. Once the foreclosure suit has been filed, the lien claimant must prosecute the suit with due diligence. Failure to bring a lien claim enforcement action to trial within two years gives the court discretion to dismiss the action.

After filing suit, if the claimant seeks to protect the priority of the lien claim against a bona fide purchaser of the property, the lien claimant must record a *lis pendens*.

If a lien claimant fails to file a foreclosure action within 90 days after recording a lien claim, the owner may petition the court for an order to release the claim.

An owner may also agree to an extension of time for a claimant to bring the action to foreclose the lien claim. The owner and the claimant must execute a “notice of credit” and record it in the county recorder’s office.

Stop Notice Right

A claimant that has a mechanics lien right also has a stop notice right.

A stop notice is a notice to an owner, construction lender, or public entity to withhold a portion of the construction funds sufficient to satisfy the claimant’s claim. Rather than attaching to real property, the stop notice attaches to the construction loan fund, or to money in the hands of the owner or public entity that is to be paid to the original contractor. The stop notice has the effect of intercepting these funds. The ultimate result of the enforcement of a stop notice is entry of a judgment against the holder of the fund for the amount claimed in the stop notice.

An original contractor may not give a stop notice on a public work, or to an owner on a private work.

A stop notice must include a description of the work performed, the value of the work already done and of the entire work agreed to be done.

On a private work, except in the case of a stop notice given to a lender by an original contractor, the recipient of a stop notice need not withhold funds if a payment bond has been recorded prior to the giving of the first stop notice on the project.

As with a mechanics lien claim, serving a preliminary 20-day notice is a prerequisite to asserting a stop notice. A stop notice must be given no later than the expiration of the time within which to record a mechanics lien. However, unlike a mechanics lien claim which may only be given upon the claimant's completion of the claimant's work, a stop notice may be given at any time after a claimant commences work.

In order to compel a construction lender on a private work to withhold funds, the stop notice must be accompanied by a stop notice bond. A stop notice to an owner or public entity does not have to be bonded.

A stop notice must be served personally or by registered or certified mail. A lawsuit to enforce the stop notice must be filed in the proper court within the same time limitation applicable in general to the enforcement of a mechanics lien claim. Typically, an action to enforce the stop notice is part of the same complaint as an action to foreclose a lien claim.

If more than one stop notice attaches to a construction fund and the amount of the fund is insufficient to satisfy all notices, the funds are disbursed pro rata. Distribution is made without regard to the relative timing of the stop notices. There is no priority among valid stop notice claims.

Protection of Owner and Construction Lender

The law gives the owner and lender several ways to protect against a mechanics lien or stop notice.

Waiver and Release

The owner and lender may require a claimant to release a potential lien claim or stop notice before making payment for the work that would be the subject of the lien claim. In order to be effective, the release must be in the form prescribed by the statute.

Release Bond

An owner or contractor may release a lien or stop notice claim by obtaining and recording a release bond. The bond obligates the surety to pay any sum the claimant may recover on the claimant's claim, together with costs of suit.

On recordation of a release bond, the owner's property is released from the lien, and from any action brought to foreclose the lien. The claimant's claim is effectively converted to a claim against the bond, thereby freeing the owner to sell or finance the property free from any encumbrance, and freeing up the construction fund.

Attacking Lien or Stop Notice in Court

An owner on a private work may challenge a recorded lien by petitioning the court in a summary proceeding to release the lien.

On a public work, a contractor may challenge a stop notice in a summary court proceeding.

Notice of Completion

The recordation of a notice of completion by an owner or a public entity shortens the time in which a claimant may record a lien claim or give a stop notice from 90 days after completion of the project to 30 days after recordation of the notice of completion (or, in the case of the lien of a contractor dealing directly with a private owner, to 60 days after the recordation of the notice of completion).

Retention

An owner on a private work is permitted to retain a portion of the contract amount owed to the general contractor until 45 days after completion of the work of improvement. Because a lien claim of a subcontractor or supplier must be recorded within 30 days after the recordation of a notice of completion, these two provisions together enable an owner to identify and attempt to resolve any lien claims that have been recorded before making final payment to the original contractor.

Payment Bond

A payment bond is a bond issued by a surety that guarantees payment to claimants on a project in the event they are not otherwise paid. On most public work, the original contractor is required to provide a payment bond. On a private work, the payment bond is optional.

An owner or developer on a private work can limit exposure to a lien claim by recording the construction contract and a payment bond for 50% of the contract price, before the work commences. The recorded contract precludes a lien claim for labor or material not included in the recorded contract, and the payment bond obligates the surety on the bond to assume responsibility for paying potential lien claimants any amount due that exceeds the owner's contractual obligation to the original contractor.

A bond claimant must either give the 20-day preliminary notice required by law, or give the surety and principal written notice of the bond claim within 75 days of completion, or 15 days from the recordation of a notice of completion.

REFORM OF CALIFORNIA LAW

CONTEXT OF MECHANICS LIEN LAW

The mechanics lien law implements a policy intended to protect an unpaid contributor to a work of improvement against the unjust enrichment of a property owner. The law also fosters other public policies. It promotes development of property by protecting the construction industry. It also recognizes the reality of an industry characterized by independent contractors that contribute to a work of improvement without having a direct contractual relationship with the owner of the improvement.

Mechanics lien remedies are not the only remedies available to the construction industry. Other remedies include liability under a theory of contract, quasi-contract, common law tort, attachment, constructive trust, and imputed liability.²²

But the mechanics lien remedies are undoubtedly the most effective remedies available in the event of nonpayment. The remedies are relatively simple, and relief is often available quite expeditiously. In fact, after making an initial claim a claimant often need take no further action, because an owner will almost always seek resolution rather than have property encumbered by a lien, or have construction come to a halt due to interruption of the flow of funds.

The importance of the construction industry, the informality of credit extension in the industry, and the frequency of conflict and litigation, among other factors, all find expression in the mechanics lien law. For these reasons, despite availability of other remedies, the legislative focus on

22. See generally California Mechanics' Liens and Related Statutory Remedies §§ 1.19-1.29 (Cal. Cont. Ed. Bar, 3d ed. 2003).

the mechanics lien and stop notice remedies continues unabated.

GENERAL APPROACH

The Law Revision Commission has undertaken this review and revision of the mechanics lien law and related provisions in order to modernize, simplify, and clarify the law, so as to make it more user friendly, efficient, and effective for all stakeholders.²³

The Commission has taken a moderate approach in this revision, starting with the existing statute and then seeking to improve it by simplifying and streamlining within the existing statutory framework. This approach offers a number of advantages. It makes revisions within a known structure, enabling a stakeholder to understand and evaluate the effect of the changes in the law. It preserves to a maximum extent the knowledge, experience, and body of interpretation accumulated over years of operation under the existing scheme. It reflects the Commission's experience that reform of the law in a highly contentious area often proceeds on an evolutionary rather than revolutionary basis.

The proposed legislation also includes a limited number of substantive and procedural improvements, in addition to statutory simplification. The Commission has taken care to ensure that the proposed improvements represent a fair balance for all stakeholders.

These improvements are summarized below. Unless otherwise specified, the proposed revisions would affect both private and public works of improvement.

23. See also *Mechanic's Lien Law Reform*, 31 Cal. L. Revision Comm'n Reports 343 (2001).

DRAFTING ISSUES

General Drafting Considerations

In addition to the substantive and procedural improvements described in this recommendation, the proposed legislation includes a complete overhaul and technical cleanup of existing law. The proposed legislation breaks long sections into shorter ones, inserts appropriate paragraphing, relocates out of place provisions, modernizes drafting style, substitutes gender-neutral language, seeks to achieve consistency in usage throughout the statute, and in general attempts to make the statute better and more usable from a technical perspective.

Because the technical revisions in the legislation are so minor and so numerous, they are generally not described in this part of this recommendation. However, each section of the proposed legislation includes a Comment that identifies its source in existing law, and details more significant technical revisions. In addition, the proposed legislation includes a disposition table that identifies the specific section or sections in the proposed legislation where each provision of existing law is continued.

Relocation of Public Work Provisions

Public work construction remedies are presently contained within the mechanics lien law. This placement is confusing because a mechanics lien claim is not available on a public work.²⁴

The principal “mechanics lien” remedies provided by the statute for a claimant on a public work are the stop notice and the payment bond. The statute also contains provisions relating to a stop payment notice and a payment bond on a private work. But there are significant differences between

24. See Civ. Code § 3109.

the private work and public work provisions relating to these remedies.²⁵

When the public work remedies were first incorporated into the mechanics lien law, the Public Contract Code did not exist. That code, created in 1981,²⁶ has as one of its goals to consolidate statutory material relating to public contracts, because “placing all public contract law in one code will make that law clearer and easier to find.”²⁷ The Public Contract Code thus now contains substantial statutory material governing public work construction contracts, including payment bond and prompt payment requirements.

The proposed legislation moves all mechanics lien law provisions relating to public work into the Public Contract Code.²⁸ This relocation also results in a significant simplification of the mechanics lien law, which will no longer have multiple sets of corresponding but dissimilar provisions.

While it may have been a convenience for persons involved in both private and public work to have all mechanics lien remedies located in one code, any person presently doing work on a public project already has to look to the Public Contract Code in any event. Virtually all the prompt payment requirements for a public work are in the Public Contract Code, as is the main payment bond requirement applicable to most state agency construction contracts exceeding \$5,000.²⁹ Moreover, all of the provisions governing public work

25. Compare Civ. Code § 3097 (preliminary 20-day notice (private work)) with Civ. Code § 3098 (preliminary 20-day notice (public work)); Civ. Code §§ 3156-3176.5 (stop notice for private work) with Civ. Code §§ 3179-3214 (stop notice for public work); Civ. Code §§ 3235-3242 (payment bond for private work) with Civ. Code §§ 3247-3252 (payment bond for public work).

26. 1981 Cal. Stat. ch. 306.

27. Pub. Cont. Code § 100.

28. See proposed Pub. Cont. Code §§ 41010-45090 *infra*.

29. See Pub. Cont. Code § 7103.

contract terms, bidding processes, awards, conduct of performance, and the like are also located in the Public Contract Code.

Removal of the public work remedies to the Public Contract Code does necessitate duplication of some generally applicable provisions found in the mechanics lien law. For example, some definitions and provisions of the existing statute relating to notice, construction of bonds, and completion are equally applicable to both a private and a public work. The proposed legislation largely duplicates these provisions in the Public Contract Code, tailoring them to a public work.

Location, Numbering, and Organization of Private Work Provisions

The mechanics lien law has been housed in various places in the California codes during its long existence. Most recently it resided in the Code of Civil Procedure, before being moved to its current Civil Code location in 1969.³⁰

The proposed legislation relocates the provisions of the mechanics lien law relating to a private work of improvement to the end of the Civil Code, beginning with Section 8000.³¹ The relocation accomplishes several purposes. It will avoid the confusing situation of using old section numbers for new and different provisions under the reorganized statute. It will position the statute in an easy-to-find spot at the end of the Civil Code. And the new location will allow room for future expansion of the law without having to resort to decimal section numbering. If the history of the mechanics lien law teaches us anything, it is that the statute will undergo continuing revision.

30. See Civ. Code §§ 3082-3267, enacted by 1969 Cal. Stats. ch. 1362.

31. See proposed Civ. Code §§ 8000-8848 *infra*.

Terminology

Many of the definitional provisions in the mechanics lien statute are confusing and disorganized. For example, Civil Code Section 3097 — purporting to define “preliminary 20-day notice (private work)” — is the longest section in the mechanics lien statute. It is twice as long as the entire mechanics lien statute in the 1872 Code of Civil Procedure. The section, amended over 15 times since 1969, is almost a mini-practice guide in itself, containing substantive and procedural material that would be better located with related substantive provisions.

Many other labeled definitions in the existing statute are in reality substantive rules that also should be integrated with related provisions.³²

Some terms are defined by existing law but then never used, such as “materialman”³³ and “subdivision.”³⁴ Other defined terms are largely unused, such as the term “site”³⁵ which is generally ignored in favor of references to land, real property, or jobsite. Archaic language, such as the references to flumes and aqueducts in the definition of “work of improvement,”³⁶ remain in existing law.

The proposed legislation cleans up and systematizes the statutory definitions, in order to provide for consistent usage throughout the mechanics lien law.

Three terminological issues are noteworthy.

32. See, e.g., Civ. Code §§ 3083 (bonded stop notice), 3084 (claim of lien), 3092 (notice of cessation), 3093 (notice of completion).

33. See Civ. Code § 3090.

34. See Civ. Code § 3105.

35. See Civ. Code § 3101.

36. See Civ. Code § 3106.

“Mechanics Lien”

The proposed legislation retains the term “mechanic’s lien” (but drops the apostrophe), even though the term is a 19th century relic. Despite the archaism, there is a common understanding of the term’s meaning in the construction industry, and it is useful shorthand.

“Original Contractor”

Existing law distinguishes between an “original contractor” — who contracts directly with the owner — and a subcontractor, who contracts with another contractor. The distinction is important, since questions of privity, notice, and various rights and responsibilities depend on it.

The term “original contractor” is confined to the mechanics lien law; it does not appear to be in common use outside of the statute.³⁷ Terms more commonly in use in the construction industry include “prime contractor” and “general contractor.” None of these terms is completely satisfactory, particularly in the owner-builder context, in which an owner effectively acts as a general contractor.

The proposed legislation substitutes the term “direct contractor” for “original contractor.”³⁸ It is more descriptive than the other commonly used terms, and invokes the operative fact that a direct contractor is in privity with the owner by virtue of a direct contractual relationship.

In a similar vein, the proposed legislation incorporates a special definition of the term “direct contract” to specifically identify a contract on a work of improvement between a direct contractor and an owner.³⁹

37. The term is also used in the Oil and Gas Lien Act and in the Public Contract Code, where it apparently has the same meaning.

38. See proposed Civ. Code § 8014 *infra*.

39. See proposed Civ. Code § 8013 *infra*.

“Contract Change”

Existing law does not clearly address whether a “contract” for a work of improvement referenced in the statute includes a contract change.

The proposed legislation deals with the issue globally by defining the terms “contract” and “contract price” to include a “contract change.”⁴⁰ The term “contract change” is then used consistently throughout the statute, replacing terms such as “extras.”⁴¹

Existing law requires that an owner notify the original contractor and construction lender on a private work of a change in the original contract, if the change increases the contract amount by 5% or more.⁴² The statute does not specify when the notification must be made, the manner of notification, or the consequences of failure to notify.⁴³ Practitioners indicate that this provision is not observed in the industry and serves no useful purpose.

The proposed legislation eliminates this provision.

Design Professionals Lien

An architect, engineer, or land surveyor that provides design services on a private work of improvement has a lien right under the mechanics lien law.⁴⁴ This right is

40. See proposed Civ. Code §§ 8008, 8010 *infra*.

41. See, e.g., Civ. Code § 3193, proposed Pub. Cont. Code § 44340(a) *infra*.

42. See Civ. Code § 3123(c).

43. The intent may be that if the owner fails to give the required notification, a lien may not extend to the work contemplated by the change order. Civ. Code § 3123(a). But if that were the case, it would not be in the owner’s interest to give the notification (except where the change order actually reduces the contract price).

44. See Civ. Code § 3110.

supplemented by a separate statutory lien, known as a design professionals lien.⁴⁵

The design professionals lien was statutorily authorized in 1990.⁴⁶ It is intended to cover services that are provided by a design professional prior to commencement of a work of improvement that is ultimately never commenced.⁴⁷ The lien is terminated by commencement of the work of improvement, at which time the design professional may use the mechanics lien remedy.

A design professionals lien is similar in concept to a mechanics lien. However, the statutory provisions authorizing the design professionals lien expressly incorporate only the mechanics lien enforcement procedure.

The proposed legislation retains the substance of the design professionals lien provisions, but relocates them to a chapter among the other private work provisions of the proposed legislation.⁴⁸ This relocation makes it easier to apply standard mechanics lien law definitions. However, the proposed legislation otherwise expressly retains the limited application of the other mechanics lien provisions to a design professionals lien.⁴⁹

Operative Date and Transitional Provisions

The proposed revision of the mechanics lien law is complex, with many changes in language, forms, and procedure. The proposed legislation therefore includes a one

45. See Civ. Code §§ 3081.1-3081.10.

46. 1990 Cal. Stat. ch. 1615.

47. A mechanics lien is unavailable to a design professional unless construction is commenced. *D'Orsay Int'l Partners v. Superior Court*, 123 Cal. App. 4th 836, 20 Cal. Rptr. 3d 399 (2004).

48. See proposed Civ. Code §§ 8300-8318 *infra*.

49. See proposed Civ. Code § 8308 *infra*.

year deferral of its operative date, for transitional purposes.⁵⁰ That will allow ample time for education about the new law, revision of forms, and any necessary corrective legislation.

The proposed legislation would apply generally to contracts entered into both before and after the operative date.⁵¹ However, any specific action taken on a project before the operative date of the new law would be governed by the applicable law in effect at the time of the action, and not by the new law.⁵²

GENERAL PROVISIONS

In the interest of simplification and clarity, the proposed legislation standardizes treatment of various issues common to the lien, stop notice, and payment bond remedies for a work of improvement. These include issues relating to notice, completion, waiver and release, and miscellaneous other matters.

NOTICE

The mechanics lien law is replete with notices. There is preliminary notice, stop notice, notice of overdue laborer compensation, notice of nonresponsibility, notice to principal and surety, stop work notice, notice of completion, notice of cessation, and so forth. Each notice is subject to unique provisions governing its content, manner of service, proof of service, and the like.

50. See proposed Civ. Code § 8051(a), Pub. Cont. Code § 42005(a) *infra*.

51. See proposed Civ. Code § 8051(b), Pub. Cont. Code § 42005(b) *infra*.

52. See proposed Civ. Code § 8051(c), Pub. Cont. Code § 42005(c) *infra*.

The proposed legislation standardizes these provisions in order to simplify procedures and provide consistency throughout the range of remedies.⁵³

Terminology

The existing law employs a variety of terms for communicating information. A party may be required to “notify” or “give notice to” another party, “serve notice” or make a “demand” on a party, or “advise” a party.

The proposed legislation standardizes this usage, generally speaking in terms of “giving notice.”

Many of the notice provisions in existing law require information to the extent “known” to the person giving the notice.

The proposed legislation codifies an objective standard of knowledge — information the person “knows or should have known.”⁵⁴

Contents of Notice

The various notices under the mechanics lien law typically require similar information, such as the name and address of the owner or public entity, original contractor, and construction lender, and a description of the site sufficient for identification. Each of these notices varies slightly; often there is no apparent reason for the variation.

For example, many notices require a description of the site and the street address, but excuse an erroneous address if there is an accurate legal description. Some simply require a description without elaboration. Others require a legal description.

53. See proposed Civ. Code §§ 8100-8118, Pub. Cont. Code §§ 42110-42190 *infra*.

54. See proposed Civ. Code § 8016 *infra*.

While the purpose of each notice is unique, there is no compelling reason for basic identifying information in each notice to vary.

The proposed legislation therefore prescribes (except where otherwise expressly provided), standard content applicable to all notices, to include:

- The name and address of the owner or reputed owner, or the public entity on a public work.
- The name and address of the direct contractor.
- The name and address of the construction lender, if any.
- A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.
- The name, address, and relationship to the parties of the person giving the notice.
- If the person giving the notice is a claimant:
 - (1) A general statement of the work provided.
 - (2) The name of the person to or for which the work is provided.
 - (3) A statement or estimate of the claimant's demand, if any, after deducting all just credits and offsets.⁵⁵

Manner of Notice

Many notices under the mechanics lien law must be given either by personal delivery, by leaving the notice at a specified place or with a specified person, or by deposit in the mail. Some notices are posted on the jobsite. Recordation may also be required.

55. See proposed Civ. Code § 8102, Pub. Cont. Code § 42120 *infra*.

Some notice requirements do not specify a manner of notice — the information is simply communicated by notifying a person, making a demand, advising a person, providing a copy, making information available, and so on. The statute does not indicate how this is to be done.

The proposed legislation establishes a general procedure for giving notice, to be applied throughout the mechanics lien law (again, except as otherwise expressly provided).⁵⁶ The general procedure would replace the individual variants in existing law applicable to one type of notice or another. Any notice could be given by personal delivery, mail, or by leaving the notice for the person and mailing a copy in the manner provided for service of summons in a civil action.⁵⁷

Mailed Notice

Under existing law, mailed notice ordinarily must be given by registered or certified mail. A few notices may be given by first class mail evidenced by a certificate of mailing.

The proposed legislation requires that all first class mail be registered or certified, but authorizes Express Mail, or another method of delivery providing for overnight delivery, as alternatives.⁵⁸

Posted Notice

A few notices on a private work must be posted.⁵⁹ The posting requirement is generally augmented by a supplemental means of notice, such as recording or giving a copy to subcontractors.

56. See proposed Civ. Code §§ 8106-8114, Pub. Cont. Code §§ 42140-42170 *infra*.

57. Code Civ. Proc. § 415.20.

58. See proposed Civ. Code § 8110, Pub. Cont. Code § 42160 *infra*.

59. These are the notice of nonresponsibility, and its cancellation, as well as the stop work notice.

The proposed legislation standardizes the posting provisions, requiring display in a conspicuous location at the site and at the main office of the site, if one exists.⁶⁰

Recordation of Notice

Recordation is used to give constructive notice under the mechanics lien law.

The proposed legislation generalizes and standardizes provisions governing recordation.⁶¹

A unique feature of the mechanics lien law is that, while most instruments are generally not recordable unless acknowledged,⁶² both a claim of lien and a notice of completion must be accepted by the recorder and are deemed duly recorded without acknowledgment.⁶³ These provisions reflect a legislative judgment that verification provides sufficient proof of authenticity, and that a faster and more efficient recording procedure is desirable for mechanics liens.⁶⁴

The proposed legislation generalizes these provisions for application to all recorded notices provided for throughout the mechanics lien law.⁶⁵

Electronic Notice

All significant notices and acts under the mechanics lien law are required to be in writing, including the preliminary notice, notice of nonresponsibility, notice of completion, notice of cessation, claim of lien, and various waivers and releases. Electronic delivery is not contemplated.

60. See proposed Civ. Code § 8114 *infra*.

61. See proposed Civ. Code § 8058, Pub. Cont. Code § 42250 *infra*.

62. See Gov't Code § 27287.

63. See Civ. Code §§ 3084, 3093.

64. 69 Ops. Cal. Atty. Gen. 97 (1986).

65. See proposed Civ. Code § 8058(b), Pub. Cont. Code § 42250(a) *infra*.

The Law Revision Commission believes the law should move towards electronic notification. Electronic notification would engender a number of benefits, including (1) reduced flow of paperwork, (2) reduced time for notice, (3) reduced cost of delivery, and (4) enhanced opportunity for monitoring notices, deadlines, and the like, through electronic databases.

Much of the construction industry remains paper based, however, and the law should move slowly in this area. The proposed legislation thus makes electronic notification permissible, but only where the party to be notified has agreed in writing to receive the notice by electronic means.⁶⁶

This approach is consistent with the California Uniform Electronic Transactions Act.⁶⁷ It is possible that the agreement provisions of California law may be preempted by the federal Electronic Signatures in Global and National Commerce Act, which contains more extensive requirements for consent in the case of a consumer.⁶⁸ To ensure that the California law is compliant in the event of federal preemption, the proposed legislation requires that in the case

66. See proposed Civ. Code § 8112, Pub. Cont. Code § 42170 *infra*.

67. Under that act, a specific method of communication prescribed by statute (such as the mechanics lien law) may not be waived by the parties, unless allowed by the statute. Civ. Code § 1633.8. The existence of an agreement is determined from the context and surrounding circumstances, including the parties' conduct; an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record. Civ. Code § 1633.5(b).

68. A consumer must affirmatively consent to receiving electronic communications and must confirm the consent electronically or by a reasonable demonstration that the electronic communication being consented to is capable of being received. 15 U.S.C. § 7001(c). A consumer transaction, for E-Sign purposes, is one involving an individual who obtains "products or services which are used primarily for personal, family, or household purposes." 15 U.S.C. § 7006(1). This would appear to extend to a construction contract for building, remodeling, or otherwise making an improvement to a home.

of a consumer construction contract, federal standards must be satisfied.⁶⁹

Proof of Notice

Like the manner of notice, proof of notice is treated inconsistently under existing mechanics lien law.

The proposed legislation standardizes proof of mailing and proof of delivery provisions, and adds a provision relating to proof of electronic notice.⁷⁰

Proof of Mailing

A number of provisions of the mechanics lien law contemplate notice by registered or certified mail. Typically these provisions provide for proof of notice by a return receipt or a photocopy of the record of delivery maintained by the post office, showing the date of delivery and to whom delivered. In the event of nondelivery, the returned envelope itself is proof of mailing.

Because the post office might not return either the proof of mailing or the envelope, the proposed legislation expands proof of proper mailing to include either proof of mailing issued by the post office (or an express service carrier), in addition to proof of delivery. Under the proposed legislation, proof of mailing may be made by:

- (1) Documentation provided by the United States Post Office showing that payment was made to mail the notice using registered or certified mail.
- (2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service.⁷¹

69. See proposed Civ. Code § 8112(c), Pub. Cont. Code § 42170(c) *infra*.

70. See proposed Civ. Code § 8118, Pub. Cont. Code § 42190 *infra*.

71. See proposed Civ. Code § 8118(b)(1) and (2), Pub. Cont. Code § 42190(b)(1) and (2) *infra*.

Proof of Personal Delivery

The proposed legislation includes general provisions on proof of notice by personal delivery.⁷² The provisions are generalized from the proof of delivery models in the statutes governing preliminary notice and the stop work notice.⁷³

Under the proposed legislation, proof of notice by personal delivery is made by a proof of notice affidavit, which shows (1) the type or description of the notice given, (2) the date, place, and manner of notice, and facts showing that notice was given in the manner required by statute, and (3) the name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice.

Address at Which Notice is Given

Under existing law, the address at which notice is given varies with the type of notice.

The proposed legislation standardizes the address at which notice is given.⁷⁴

Under the proposed legislation, all notice is given at the address of the recipient's residence or place of business. These locations include but are not limited to the following specified addresses:

- If the person to be notified is an owner, at the address shown on the contract, the building permit, or a construction trust deed.
- If the person to be notified is a construction lender, at the address shown on the construction loan agreement or construction trust deed.

72. See proposed Civ. Code § 8118(a), Pub. Cont. Code § 42190(a) *infra*.

73. See Civ. Code §§ 3097, 3199, 3260.2.

74. See proposed Civ. Code § 8108, Pub. Cont. Code § 42150 *infra*.

- If the person to be notified is a contractor, at the address shown on the building permit, the contractor's contract, or on the records of the Contractors' State License Board.
- If the person to be notified is a claimant, at the address shown on the claimant's contract, preliminary notice, claim of lien, stop payment notice, or claim against a payment bond, or on the records of the Contractors' State License Board.
- If the person to be notified is the principal or surety on a bond, at the address shown on the bond for service of notices, papers, and other documents, or on the records of the Department of Insurance.
- If the person to be notified is a public entity, at the office of the public entity or at another address specified by the public entity in the contract or elsewhere for service of notices, papers, and other documents.

When Notice is Complete

Under existing law, a variety of rules determine when particular notices are complete.

The proposed legislation standardizes these provisions by eliminating the variants, and providing that notice is complete at the following times:

- If given by personal delivery, when delivered.
- If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.
- If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after leaving the notice.
- If given by posting, when posted.
- If given by recording, when filed for record in the office of the county recorder.

- If given in the form of an electronic record, when the electronic record is transmitted.⁷⁵

COMMENCEMENT AND COMPLETION

Commencement and completion of a work of improvement are fundamental to the operation of the mechanics lien system. Various legal incidents of the mechanics lien law hinge on the time a work of improvement commences. For example, priorities may depend on whether a construction loan was recorded before or after commencement. The cases have developed a definition of commencement;⁷⁶ the proposed legislation codifies the cases in order to make the concept clear and accessible.⁷⁷

Completion of a work of improvement triggers time limits for recording a claim of lien, giving a stop notice, enforcing the liability on a payment bond, and paying the direct contractor a retention withheld by the owner, among other consequences.⁷⁸

Completion is defined differently by existing law depending on whether the work of improvement is a private or a public work.

On a private work, completion is deemed to have occurred in a number of circumstances. In addition to actual completion, completion is also deemed to occur on cessation of labor for a continuous period of 60 days, on acceptance by

75. See proposed Civ. Code § 8116, Pub. Cont. Code § 42180 *infra*.

76. See, e.g., *Walker v. Lytton Sav. & Loan Ass'n*, 2 Cal. 3d 152, 159, 84 Cal. Rptr. 521 (1970); *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* 6 Cal. App. 4th 1233, 1240-41, 8 Cal. Rptr. 2d 298 (1992) (commencement occurs when material or supplies are delivered to site or there is actual visible work of a permanent nature on site).

77. See proposed Civ. Code § 8004 *infra*.

78. See, e.g., Civ. Code §§ 3115, 3116 (time for recording claim of lien).

the owner, on occupation or use by the owner accompanied by cessation of labor, or on a private work subject to acceptance by a public entity, on the date of that acceptance.⁷⁹

On a public work, completion generally occurs on acceptance of the work by the public entity. On some public work, completion is also deemed to occur upon 30 days continuous cessation of labor.⁸⁰

The proposed legislation would make several changes relating to completion.

Completion of a Private Work

“Actual” Completion

Although the existing statute provides that “actual” completion constitutes completion, there is a general consensus among appellate courts that completion of a private work occurs when a project is “substantially” complete, i.e., when only “punchlist” or remedial work is left to be done.⁸¹ The term “substantial completion” is also much better understood by the average contractor, as it is used in the two statutes of limitation that govern construction actions.⁸²

The proposed legislation substitutes the term “substantial completion” for “actual completion” as a statutory basis for completion of a private work of improvement.⁸³

79. See Civ. Code § 3086.

80. See Civ. Code § 3086.

81. See Bronstein, *Trivial(?) Imperfections: The California Mechanics' Lien Recording Statutes*, 27 Loy. L.A. L. Rev. 735 (1994).

82. See Code Civ. Proc. §§ 337.1, 337.15.

83. See proposed Civ. Code § 8150(a)(1).

Acceptance by Owner

Under existing law, completion of a private work of improvement is also deemed to occur when an owner “accepts” the work.

The provision is ambiguous, as it fails to provide for any particular manner of acceptance, or specify how that acceptance is communicated to persons who need to know that completion has occurred.

The proposed legislation eliminates the provision. The owner’s recordation of a notice of completion is a preferable means for an owner to mark completion, since it occurs on a readily identifiable date and is communicated to interested persons.

Completion of a Public Work

The existing definition of completion causes a number of difficulties of interpretation in its application to a public work:

3086. “Completion” means, in the case of any work of improvement other than a public work, actual completion of the work of improvement. Any of the following shall be deemed equivalent to a completion:

(a) The occupation or use of a work of improvement by the owner, or his agent, accompanied by cessation of labor thereon.

(b) The acceptance by the owner, or his agent, of the work of improvement.

(c) After the commencement of a work of improvement, a cessation of labor thereon for a continuous period of 60 days, or a cessation of labor thereon for a continuous period of 30 days or more if the owner files for record a notice of cessation.

If the work of improvement is subject to acceptance by any public entity, the completion of such work of improvement shall be deemed to be the date of such acceptance; provided, however, that, except as to contracts awarded under the State Contract Act, Chapter 3

(commencing with Section 14250), Part 5, Division 3, Title 2 of the Government Code, a cessation of labor on any public work for a continuous period of 30 days shall be a completion thereof.⁸⁴

The first sentence of Civil Code Section 3086 defines completion as “actual completion,” *except* in the case of a public work. This exception apparently also extends to the other grounds for completion set out in subdivisions (a) through (c) of the section (occupation or use, acceptance, and cessation of labor), but this is far from clear.

The proposed legislation makes clear that completion of a public work occurs only as provided in the last paragraph of Section 3086.⁸⁵

Cessation of Labor

The second clause of the last paragraph of Section 3086 provides that cessation of labor for a continuous period of 30 days is considered completion on certain public works. On a private work, cessation of labor does not constitute completion until 60 days of continuous cessation of labor have elapsed.⁸⁶

The concept that cessation of labor for 30 days is deemed completion entered California law in 1887. That was extended to 60 days in the case of a private work in 1951, but there is no legislative history to shed light on the reasons, if any, for the difference in treatment.⁸⁷

84. Civil Code Section 3086.

85. See proposed Pub. Cont. Code § 42210 *infra*.

86. See Civ. Code § 3086(c).

87. See Bronstein, *Trivial(?) Imperfections: The California Mechanics' Lien Recording Statutes*, 27 Loy. L.A. L. Rev. 735, 763 (1994).

Given the complexity and scope of modern public work projects, the proposed legislation extends the time period to 60 days, paralleling the private work provision.⁸⁸

Notice of Completion or Cessation

Once completion has occurred, an owner or public entity may shorten the time limits for a claimant remedy by recording a notice of completion.⁸⁹

The proposed legislation generally continues provisions relating to the recordation of a notice of completion, with some revision.

Time for Recording Notice of Completion

Under existing law, a notice of completion must be recorded within 10 days after completion, or the notice is ineffective.⁹⁰ This period may be too short to enable an owner or public entity to determine that completion has occurred.

The proposed legislation allows an owner or public entity to record the notice up to 15 days after completion.⁹¹ The small increase allows the owner or public entity a reasonable amount of additional time, without disrupting basic time limits associated with completion and the notice of completion.

Notice of Recordation

If a private owner records a notice of completion, the owner must notify a potential lien claimant of the recordation, within 10 days of the date of recordation.⁹² Failure to notify a claimant of the recordation of a notice of completion renders

88. See proposed Pub. Cont. Code § 42210(b) *infra*.

89. See Civ. Code §§ 3115, 3116, 3159, 3160, 3184, 3242, 3252 *infra*.

90. See Civ. Code § 3093.

91. See proposed Civ. Code § 8152, Pub. Cont. Code § 42250 *infra*.

92. See Civ. Code § 3259.5.

the notice ineffective for purposes of affecting that claimant's time limits for pursuing a remedy.

A lien claimant may find it difficult to identify the claim to which the notice relates, due to incomplete information in the notice.

The proposed legislation addresses this problem by requiring that the owner provide the potential lien claimant with a copy of the notice of completion.⁹³

Notice by County Recorder

When a notice of completion is recorded on a private work, existing law requires the county recorder to give notice of the recordation to any person who has previously recorded a preliminary notice on the work of improvement.⁹⁴ However, there is no consequence for the recorder's failure to do this, and most recorders do not give the notice.

Due to the marginal benefit of the county recorder notice scheme, and in the interest of greater simplicity of the mechanics lien law, the proposed legislation eliminates this requirement. The owner's notice of recordation is a better way to notify potential lien claimants that a notice of completion has been recorded.

Separate Contracts on Single Job

Under existing law, where there are contracts for different parts of a private work of improvement, a notice of completion may be recorded separately as to each contract.⁹⁵ That technique may be advantageous for an owner, in order to narrow lien exposure. It can also benefit a subcontractor whose right to receive a retention may be triggered by the notice of completion.

93. See proposed Civ. Code § 8156, *infra*.

94. See Civ. Code § 3097(o)(2).

95. See Civ. Code § 3117.

The proposed legislation retains this provision, and extends it to make it applicable to a public work.⁹⁶

Notice of Acceptance

Civil Code Section 3184 provides that a notice of completion on a public work is “sometimes referred to in public works as a notice of acceptance.” That is the only place the term “notice of acceptance” is used in the mechanics lien law. The term is not used at all in the Public Contract Code.

Use of that term as a synonym for a notice of completion is problematic, as the concept of “acceptance” may have legal consequences.

The proposed legislation eliminates the “notice of acceptance” from the statute.⁹⁷

WAIVER AND RELEASE

Existing law prescribes forms that must be used in order for a claimant to execute a valid waiver and release.⁹⁸

The proposed legislation revises the statutory waiver and release forms for clarity, and makes the waiver and release provisions applicable to subcontractors as well as original contractors.⁹⁹

96. See proposed Civ. Code § 8154, Pub. Cont. Code § 42240 *infra*.

97. The proposed legislation also eliminates the term “acceptance of completion,” which likewise is used only in one provision. See Civ. Code § 3184. That term is evidently a longhand for “acceptance.”

98. See Civ. Code § 3262.

99. See proposed Civ. Code §§ 8170-8176, 8160; Pub. Cont. Code §§ 42360-42390 *infra*.

PRELIMINARY NOTICE

Function of Preliminary Notice

Preliminary notice serves a number of important functions in the operation of the system in its current form.

- (1) It alerts the owner or public entity to the existence of a potential claim of a subcontractor or material provider, and the corresponding possibility of double payment liability.
- (2) It enables the owner to structure payment to the direct contractor so as to ensure that the claimant is paid (for example, by use of a joint check, release, or similar approach) or take whatever other protective measures appear appropriate.
- (3) It provides general information about mechanics lien law to an owner unfamiliar with the subject.

Simplification of Statute

The preliminary notice provisions run several pages, and despite their substantive nature, are located among the definitional provisions of the existing statute.¹⁰⁰

In the proposed legislation, the preliminary notice provisions are moved to an appropriate location among the substantive provisions.¹⁰¹ The proposed legislation also breaks the provisions into smaller, more comprehensible pieces, thereby streamlining and simplifying their wording, and clarifies the language of the notice on a private work.

The proposed legislation retains most of the substance of the preliminary notice provisions of existing law, with a few revisions.

100. See Civ. Code §§ 3097, 3098.

101. See proposed Civ. Code §§ 8200-8214, Pub. Cont. Code §§ 43010-43050 *infra*.

Notice to Construction Lender

On a private work, some lien claimants are required to give preliminary notice to the construction lender as well as to the owner.

Existing law appears to both (1) require a direct contractor to give a preliminary notice to the construction lender and (2) exempt a direct contractor from the requirement.¹⁰² This internal contradiction has not gone unnoticed.¹⁰³

The proposed legislation generally clarifies that a direct contractor must give preliminary notice to the lender.¹⁰⁴

Disciplinary Action for Failure to Give Preliminary Notice

Existing law provides that if a subcontractor fails to give a preliminary notice where the contract price exceeds \$400, the subcontractor is subject to disciplinary action under the Contractors State License Law.¹⁰⁵

The proposed legislation eliminates this provision. Failure to give the preliminary notice precludes a subcontractor from making a lien claim or giving a stop notice. There seems to be no compelling reason why a subcontractor that wishes to voluntarily forego these remedies should be disciplined simply for making this election.¹⁰⁶

102. See Civ. Code § 3097(b).

103. See *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 82 n.3, 229 Cal. Rptr. 418 (1986).

104. See proposed Civ. Code § 8200 *infra*.

105. See Civ. Code § 3097(h).

106. There is an argument that this requirement is necessary to protect the interest of an express trust fund, a fund that collects and pay out benefits to laborers. See Civ. Code § 3097(h), ¶ 2. However, an express trust fund may exercise lien rights without the need for a preliminary notice. Civ. Code § 3097(a). Moreover, a subcontractor's giving of a preliminary notice does not guarantee that the subcontractor will ever take any further steps to preserve the interests of the express trust fund, by either recording or enforcing a claim of lien.

As a more appropriate disciplinary provision, the proposed legislation expands the requirement under existing law that any contractor (subcontractor or direct contractor) that employs laborers and fails to pay those laborers full compensation when due shall notify the laborers, their bargaining representatives, and the construction lender notice of the delinquency (thus providing notice of a potential lien claim), or face disciplinary action.¹⁰⁷ The proposed legislation requires that this notice also be given to the owner.¹⁰⁸

Recordation of Preliminary Notice

Under existing law, a copy of the preliminary notice may be recorded in the recorder's office. Recordation of the notice obligates the county recorder to notify the claimant if a notice of completion or notice of cessation of labor is recorded.¹⁰⁹

That option is seldom used, for several reasons:

- (1) County recorders often do not comply with their statutory obligation to provide notice to claimants.
- (2) Recording fees may be high.
- (3) A claimant usually has little difficulty in keeping track of job progress. Notice from the recorder would not be very useful.

The proposed legislation simplifies the law by eliminating the recordation provision and corresponding obligation of the county recorder to provide notice of the recordation of a notice of completion or cessation.

107. See Civ. Code § 3097(k).

108. See proposed Civ. Code § 8103, Pub. Cont. Code § 42130 *infra*.

109. See Civ. Code § 3097(o).

MECHANICS LIENS

The proposed legislation generally continues the provisions of existing law governing the operation and effect of a mechanics lien, but adds the improvements noted below.

Notice of Claim of Lien

There is no requirement under existing law that a lien claimant notify the owner when a claim of lien is recorded. The existence of a lien may only come to the owner's attention when the owner tries to refinance or sell the property. At that time, it may be difficult to locate the lien claimant to obtain a release, and it will be time consuming and costly to obtain judicial relief.

Until 2004, the county recorder was required to notify a property owner when an involuntary lien of any kind (not just a mechanics lien) was recorded against the property.¹¹⁰ The notification is no longer mandatory; the law encourages this notice by the county recorder, but no longer requires it. Under current practice, most county recorders will not send notice unless requested to do so, and paid a fee for the service by the lien claimant.¹¹¹

The law facilitates the recordation of a claim of lien, notwithstanding its encumbrance of property. A claimant may record a lien claim based on a simple allegation that money is owed, without bonding against damage caused by a false claim.¹¹² This procedure has been upheld by the California

110. See Gov't Code § 27297.5.

111. There are notable exceptions to the general practice. Orange County does not send notice at all, even on request; it is up to a lien claimant to notify the owner. Los Angeles County sends the notice automatically 10 days after filing, unless the lien claimant does not include a mailing address for the owner on the claim of lien.

112. This facility is somewhat mitigated by the requirement that the claim of lien be verified, which may help deter a false claim.

Supreme Court against a due process challenge.¹¹³ The court held that the preliminary notice and the right to bring an immediate court action to discharge a false claim provide adequate procedural protection for the owner.¹¹⁴

However, 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.

The proposed legislation would implement this policy. Before recording a lien claim, a claimant would be required to give notice of the intended recording to the owner of the work of improvement,¹¹⁵ and show proof of mailing to the county recorder.¹¹⁶

Time for Commencement of Enforcement Action

Under existing law, a lien enforcement action must be commenced within 90 days after recordation of the claim of lien, unless that time is extended by a recorded extension of time. If the time is extended, an enforcement action must be commenced within 90 days of the extension, but in no event more than one year after completion of the work of improvement.¹¹⁷

113. See *Connolly Dev., Inc. v. Superior Court*, 17 Cal. 3d 803, 553 P.2d 637, 132 Cal. Rptr. 477 (1976).

114. The court did not discuss the fact that some claimants are not required by the statute to give preliminary notice.

115. See proposed Civ. Code § 8418 *infra*.

116. See proposed Civ. Code § 8420 *infra*.

117. See Civ. Code § 3144.

The existing provision is somewhat ambiguous as to who must agree to this extension of time, and does not clearly provide that the owner must be a party to the agreement.¹¹⁸

As it is the owner's property that is affected by enforcement of a lien, the time to commence enforcement should not be extended without the owner's consent.¹¹⁹

The proposed legislation makes clear that the owner must agree to an extension of the time to enforce a lien.¹²⁰

Invalid or Unenforceable Claim of Lien

A person that has not been paid for labor, service, equipment, or material provided for a work of improvement may record a claim of lien against the property. No preliminary judicial determination of probable validity of the claim is necessary, nor is any security required.

A claim of lien may prove to be unenforceable, but remains as a cloud on title. This can happen, for example, where the owner has paid off the amount owed but the lien claimant has not provided a release of the lien. It can also happen where the lien claimant has not acted to enforce the lien within the statutory period (90 days after recordation). Or the lien claimant may have falsely recorded the claim of lien for purposes of obtaining leverage in a dispute with the owner or for other reasons.

The Law Revision Commission regularly receives communications from owners whose property is burdened with an invalid or unenforceable claim of lien but who lack an effective remedy. The Commission has no statistics concerning how common this circumstance is, but the

118. See *Dorer v. McKinsey*, 188 Cal. App. 2d 199, 200, 10 Cal. Rptr. 287, 288 (1961), *Richards v. Hillside Development Co.*, 177 Cal. App. 2d 776, 780, 2 Cal. Rptr. 693, 696 (1960).

119. *Cf.* 10 Miller & Starr, California Real Estate § 28:68, at 217 (3d ed. 2001).

120. See proposed Civ. Code § 8460(b) *infra*.

communications demonstrate the utility of a curative provision.

An owner has some remedies under existing law:

- (1) A claim of lien made with intent to defraud is invalid.¹²¹
- (2) An owner may post a release bond.¹²²
- (3) An owner may obtain a release order if the lien claimant fails to enforce the lien or obtain an extension of time within statutory time limits.
- (4) Under case law, an owner may seek declaratory and injunctive relief against an invalid claim immediately on receipt of a preliminary notice or on the filing of a claim of lien.

None of these remedies is expedient. A determination that a claim of lien has been made with intent to defraud requires a court proceeding. A release bond may be unavailable or too costly for many owners. The release order process is not available for immediate attack on a fraudulent lien, as the owner must wait for the statutory enforcement period to run. Court remedies are costly and time consuming. It is easy to impose a lien but hard to clear the record of it.

The proposed legislation addresses this problem in two ways. It would add a new *lis pendens* requirement in order to enforce a lien claim, and improve the existing judicial procedure for release of a lien claim.

New Lis Pendens Requirement

Under existing law, a claim of lien is voided by operation of law without the need for a court order, if no enforcement action has been commenced within the statutory time

121. See Civ. Code § 3118.

122. See Civ. Code § 3143.

limits.¹²³ This is not an effective remedy however, because the commencement of an enforcement action is an off-record event that a title insurer cannot readily determine from inspection of the record. The Commission has been informed that most title companies will not insure title until a full year has elapsed after the recordation of a lien claim.

The proposed legislation would require that a claimant who commences an action to enforce a lien claim record a *lis pendens* disclosing the enforcement action within 110 days of recording the lien claim.¹²⁴ If the *lis pendens* is not recorded, the claim of lien expires and is unenforceable.

In most cases, this will allow title insurers to insure title within a few months after recordation of an unenforced lien claim, rather than having to wait a year or more.

Judicial Procedure for Release of Lien

Existing law provides an expedited court proceeding for release of a claim of lien that is not enforced within the statutory limitation period (including any recorded extension of that period).¹²⁵

However, the judicial release remedy under existing law is limited. The only basis for relief is failure of the lien claimant to commence enforcement of the lien claim within 90 days after recordation of the claim. The waiting period is problematic, as is the ground for relief. If a fraudulent lien is recorded, no purpose is served by requiring an owner to wait 90 days to challenge it.

The proposed legislation would allow an immediate action to remove a lien on the following grounds:

- (1) The claimant's demand stated in the claim of lien has been paid to the claimant in full.

123. See Civ. Code § 3144(b).

124. See proposed Civ. Code § 8460 *infra*.

125. See Civ. Code § 3154.

- (2) None of the work stated in the claim of lien has been provided.
- (3) The claimant was not licensed as required by statute.
- (4) There is a final judgment in another proceeding that the petitioner is not indebted to the claimant for the demand on which the claim of lien is based.¹²⁶

The proposed legislation would make a number of other minor improvements to the lien release procedure:

- (1) Require that an owner demand the release of the lien claim before commencing the lien release proceeding.
- (2) Require more factual detail in the owner's petition for release.
- (3) Clarify the burden of proof.
- (4) Require the court to rule on the petition within 60 days after commencement of the proceeding.
- (5) Eliminate the existing \$2,000 cap on the award of attorney's fees to the prevailing party.
- (6) Make clear that a release order issued by the court is a recordable instrument.
- (7) Delay the effective date of a release order for 20 days after service of the entry of the order, to allow a claimant an opportunity to seek appellate relief.¹²⁷

Lien Rights of a Laborer's Benefit Fund

Existing law gives lien rights to a fund established to collect and distribute funds to secure employee benefits for laborers. These provisions have been heavily litigated and the subject of significant legislative attention. A key issue has

126. See proposed Civ. Code § 8480(a)(2)-(5) *infra*.

127. See proposed Civ. Code §§ 8482-8490 *infra*.

been whether these provisions are preempted by federal law governing employee benefits.¹²⁸

The existing provisions on this issue are confusing, sometimes referring to these funds as a laborer's compensation fund,¹²⁹ sometimes as an express trust fund,¹³⁰ and sometimes as a "laborer."¹³¹ It is not clear whether these differences in treatment are intentional, or are simply the result of inconsistent drafting over several legislative sessions.

The proposed legislation simplifies drafting by including these funds within an expanded definition of "laborer," and making corresponding changes throughout the statute.¹³² This treatment also avoids individualized statutory treatment of these funds in a manner that might give rise to federal preemption.

Use of Material in Structure

A material supplier has a lien for material that is provided "to be used or consumed in" a work of improvement.¹³³ The implication of this language is that the material supplier is entitled to the lien whether or not the material is in fact used in the work of improvement.

However, the courts have held that the material must actually be used in the work of improvement in order for the material supplier to have a lien.¹³⁴ This interpretation of the

128. See *Betancourt v. Storke Housing Investors*, 31 Cal. 4th 1157, 82 P.3d 286, 8 Cal. Rptr. 3d 259 (2003).

129. See Civ. Code § 3089(b).

130. See Civ. Code § 3111.

131. See Civ. Code § 3097.

132. See proposed Civ. Code § 8020, Pub. Cont. Code § 41070 *infra*.

133. See Civ. Code §§ 3090, 3110.

134. See *Consolidated Elec. Distributors v. Kirkham, Chaon & Kirkham, Inc.*, 18 Cal. App. 3d 54, 58, 95 Cal. Rptr. 673 (1971).

statutes stems from the unjust enrichment theory underlying the mechanics lien right. A person whose material permanently improves real property should be paid because value has been added to the property. However, if the material does not actually improve the property, the owner of the property has not been unjustly enriched.

Under existing law, before claiming a lien a material supplier must therefore prove that the material was actually used in the particular construction project. While delivery provides “some evidence of use and consumption if coupled with other evidence tending to show use,”¹³⁵ mere delivery does not create a presumption of use.

Once a material supplier has delivered material to a jobsite however, it is often difficult to determine whether the material was actually used on the job, especially if the delivered materials are fungible.

Under the proposed legislation, delivery of materials to the jobsite would create a rebuttable presumption that the materials were used in the construction project.¹³⁶

STOP PAYMENT NOTICE

The proposed law generally continues existing provisions relating to a claimant’s stop notice rights, with the improvements noted below.

Terminology

Stop Payment Notice

A “stop notice” under existing law is a directive to an owner, construction lender, public entity, or other person holding construction funds not to pay out the funds until

135. Marsh & Marsh, *California Mechanics’ Lien Law and Construction Industry Practice* § 4.13 (6th ed. 2003).

136. See proposed Civ. Code § 8026(b) *infra*.

resolution of the dispute over payment. The term “stop notice” is somewhat cryptic, and can be confused with the “stop work order.”

The proposed legislation replaces the term with the more descriptive “stop payment notice.”¹³⁷

Bonded Stop Payment Notice

A stop payment notice may be bonded, which provides the claimant giving the notice greater rights. For many purposes, the law treats a bonded stop payment notice the same as an unbonded stop payment notice.

In order to simplify drafting, the proposed legislation uses the generic term “stop payment notice” to include both a bonded and an unbonded notice, except where a bonded notice receives special treatment.

Contents of Notice

Amount of Claimant’s Claim

Existing law requires a claimant to include in a stop payment notice the amount in value, as near as may be, of the claimant’s claim. The meaning of the phrase “as near as may be” is obscure.¹³⁸

The proposed legislation replaces the existing standard with the requirement that the notice state the claimant’s demand after deducting all just credits and offsets.¹³⁹ That is the same standard used for a claim of lien, and will help achieve consistency in the statute.

137. See proposed Civ. Code § 8044, Pub. Cont. Code § 41140 *infra*.

138. See Civ. Code § 3103.

139. See proposed Civ. Code §§ 8102(a)(6)(C), 8502(c); Pub. Cont. Code § 42120 *infra*.

Claim for Contract Changes and Damages for Breach

Existing law allows a lien claimant to include in the claim of lien an amount due as a result of rescission, abandonment, or breach of the contract.¹⁴⁰ The provision governing the amount of a stop payment notice is silent on this issue.

No court has yet addressed whether a stop payment notice can include such amounts. However, many practitioners believe the stop payment notice is co-extensive with the mechanics lien, and that whatever amounts may be included in a mechanics lien may also be included in a stop payment notice.

The proposed legislation clears up the ambiguity by stating expressly that these items may be included in a claim covered by a stop payment notice.¹⁴¹

Demand for Notice

An owner on a private work may demand that a claimant give the owner a stop payment notice. If the claimant fails to do so, the claimant forfeits the mechanics lien right.¹⁴²

The proposed legislation makes clear that a claimant may comply with this requirement by giving either a bonded or an unbonded stop payment notice.¹⁴³

Duty to Withhold Funds

Withholding by Owner

Existing law states that if the owner on a private work is given a stop payment notice, it is the duty of the owner to:

140. See Civ. Code § 3123.

141. See proposed Civ. Code § 8502, Pub. Cont. Code § 44120 *infra*.

142. “Any person who shall fail to serve such a Stop Notice after a written demand therefor from the owner shall forfeit his right to a Mechanic’s Lien.” Civ. Code § 3158.

143. See proposed Civ. Code § 8520(b).

withhold from the original contractor or from any person acting under his or her authority and to whom labor or materials, or both, have been furnished, or agreed to be furnished, sufficient money due or to become due to such contractor to answer such claim and any claim of lien that may be recorded therefore.¹⁴⁴

This statute is garbled. It is unclear whether the person from which funds are to be withheld must be acting under authority of the owner or of the original contractor, and whether labor or materials must have been furnished to the owner, the original contractor, or the person acting under authority of one of them.

The comparable provision of the public work stop payment notice, from which this statute evolved, states simply that the public entity must withhold from the direct contractor, or from any person acting under the direct contractor's authority, an amount sufficient to pay the claim stated in the notice.¹⁴⁵

That interpretation is sensible, and the proposed legislation adopts it.¹⁴⁶

Amount of Withholding

Existing law provides that the funds withheld pursuant to a stop payment notice be sufficient to cover the amount claimed both in the stop payment notice and "in any claim of lien that is recorded."¹⁴⁷

The claim of lien reference is problematic, as the amounts claimed in a stop payment notice and a lien claim may overlap. Moreover, that rule would require the recipient of a stop payment notice to do a title search for recorded lien claims.

144. See Civ. Code § 3161.

145. Civ. Code § 3186.

146. See proposed Civ. Code § 8522(a).

147. See Civ. Code §§ 3161, 3162.

The proposed legislation would require only that the stop payment notice recipient withhold an amount sufficient to pay the amount claimed in the stop payment notice.¹⁴⁸

Claim Against Construction Lender

Existing law provides that a contractor giving a stop payment notice to a construction lender may only recover “the net amount due the original contractor or subcontractor after deducting the stop notice claims of all subcontractors or material suppliers who have filed bonded stop notices on account of work done on behalf of the original contractor or the subcontractor.”¹⁴⁹

This provision appears to contain a defect. A construction lender, although not obligated to do so, may choose to accept an *unbonded* stop payment notice from a lower tier subcontractor or material supplier. The stop payment notice claim of a direct contractor or higher tier subcontractor should thus properly be reduced by the *amount withheld* by the lender pursuant to stop payment notices of lower tier subcontractors or material suppliers (whether such notices are bonded or unbonded).

The proposed legislation corrects this problem.¹⁵⁰

Notification of Stop Payment Claimant on Public Work

On a public work, within 10 days after completion or the recordation of notice of completion, whichever is later, a public entity must notify each person that has given a stop payment notice of the expiration of “such period.”¹⁵¹ The

148. See proposed Civ. Code §§ 8522(a), 8536(a) *infra*.

149. Civ. Code §3162(b).

150. See proposed Civ. Code § 8542 *infra*.

151. See Civ. Code § 3185.

quoted language is probably intended to refer to the period for enforcement of the stop payment notice.¹⁵²

The proposed legislation adopts this interpretation.¹⁵³

The proposed legislation provides that recordation of a notice of cessation (which generally has the same impact on time requirements as a recorded notice of completion) also triggers the public entity's duty of notification.

The existing provision only requires that notice be given to stop payment notice claimants who have paid a fee of two dollars (\$2.00).

That fee was established in 1969. It would amount to about \$10.00 in today's buying power. The proposed legislation increases the fee to \$10.00.

Release Bond for Funds Withheld Pursuant to Notice

Who May Give Bond

On a private work, "an owner, construction lender, direct contractor, or subcontractor that disputes the correctness or validity of a stop payment notice" may obtain the release of funds withheld pursuant to the notice by giving the person withholding the funds a release bond.¹⁵⁴

There is no apparent reason to limit who may give such a bond. The proposed legislation simplifies the statute by eliminating the restriction.¹⁵⁵

Sureties on Bond

The release bond for funds held pursuant to a stop payment notice is analogous to a lien release bond. Under existing law,

152. J.H. Thompson Corp. v. DC Contractors, 4 Cal. App. 4th 1355, 7 Cal. Rptr. 2d 1355 (1992), assumes "such period" refers to the period for enforcement of a stop payment notice, as do various treatises on mechanics lien law.

153. See proposed Pub. Cont. Code § 44170 *infra*.

154. See Civ. Code § 3171.

155. See proposed Civ. Code § 8510(a) *infra*.

a lien release bond must be issued by an admitted surety insurer,¹⁵⁶ whereas the stop payment notice release bond need not be.¹⁵⁷

The two bonds are similar in function, as they both stand in place of funds or property that have been sequestered for a claim.

The proposed legislation requires that a stop payment notice release bond also be issued by admitted surety insurer.¹⁵⁸

Release of Notice or Reduction of Amount of Claim

The statutory waiver and release forms¹⁵⁹ need not be used for a claimant's release or reduction of a stop payment notice given to an owner.¹⁶⁰ It is unclear whether that provision applies to a public work, but it appears the Legislature intended such application.¹⁶¹

The proposed legislation would eliminate the ambiguity by making the provision expressly applicable to both types of work.¹⁶² Further, the proposed legislation would make the provision applicable to a stop payment notice given to a construction lender.¹⁶³

156. An "admitted surety insurer" is a corporate insurer to which the state Insurance Commissioner has issued a certificate of authority to transact surety insurance within the state. See Civ. Code § 8140, Code Civ. Proc. § 995.120.

157. See Civ. Code §§ 3143, 3171.

158. See proposed Civ. Code § 8510(b) *infra*.

159. The forms are prescribed in Civil Code Section 3262.

160. See Civ. Code § 3262(b)(2).

161. See, e.g., Assembly Judiciary Committee, Analysis of SB 130 (Margett) (June 6, 2005).

162. See proposed Civ. Code § 8166(a), Pub. Cont. Code § 42340(a) *infra*.

163. See proposed Civ. Code § 8166(a) *infra*.

For clarity, the proposed legislation also provides that any written release shall expressly state whether it is a full release of the stop payment notice claim, or only a reduction.¹⁶⁴

Public Work Summary Release Procedure

Under existing law, a direct contractor on a public work may obtain the release of funds withheld pursuant to an improper stop payment notice by a summary proceeding. The matter is determined by the court sitting without a jury, based on affidavits of the parties.

One of the summary proceeding provisions notes that “Nothing in this article shall be construed to deprive any party of the right to a trial by jury in any case where such right is given by the California Constitution, but a jury trial may be waived in like manner as in the trial of an action.”¹⁶⁵

The California Constitution states that “Trial by jury is an inviolate right and shall be secured to all.”¹⁶⁶ It is generally accepted that this provision codifies the right to jury trial as it existed at common law in 1850, when the Constitution was adopted.

Because the mechanics lien law remedies generally, and the summary release procedure for a stop payment claim specifically, were unknown to the common law and are equitable in nature, there would ordinarily be no constitutional right to a jury trial.¹⁶⁷ The summary release procedure for funds withheld pursuant to a stop payment

164. See proposed Civ. Code § 8166(b), Pub. Cont. Code § 42340(b) *infra*.

165. See Civ. Code § 3204.

166. Cal. Const. art. I, § 16.

167. However, if the defendant in a mechanics lien enforcement proceeding raises a contract defense, that may entail legal issues for which there is a right to jury trial. See, e.g., *Selby Constructors v. McCarthy*, 91 Cal. App. 3d 517, 154 Cal. Rptr. 164 (1979).

notice does not implicate the loss of any rights for which a jury trial would be required.

The jury trial provision thus serves no useful purpose, and the proposed legislation eliminates it.

Notice of Hearing in Summary Proceeding

Under existing law, a party moving for the summary adjudication of a stop payment notice on a public work need give only five days' notice of a hearing in the matter.¹⁶⁸

The proposed legislation extends the time to 10 days, if the notice of hearing is given by mail.¹⁶⁹

PAYMENT BOND

Provisions relating to payment bonds on a work of improvement differ significantly depending on whether the work is private or public. The two contexts are discussed separately below.

Private Work Provisions

An owner on a private work may limit lien claims by obtaining a payment bond covering 50% of the contract price and recording it with the original construction contract. The owner's total liability for lien claims is then limited to the unpaid balance on the contract.¹⁷⁰ If the owner pays the direct contractor in full, the owner has no lien liability.

While it is clear that the contract must be recorded before commencement of work, it is not entirely clear that the payment bond must be recorded before commencement:

In case the original contract for a private work of improvement is filed in the office of the county recorder of

168. See Civ. Code § 3201.

169. See proposed Pub. Cont. Code § 44250(c) *infra*.

170. See Civ. Code §§ 3235, 3236.

the county where the property is situated before the work is commenced, and the payment bond of the original contractor in an amount not less than 50 percent of the contract price named in such contract is recorded in such office, then the court must, where it would be equitable so to do, restrict the recovery under lien claims to an aggregate amount equal to the amount found to be due from the owner to the original contractor¹⁷¹

The Commission believes this was simply a drafting error. Leading authorities construe the provision as requiring recordation of the payment bond prior to commencement of work.¹⁷²

The proposed legislation clarifies the issue by expressly providing that in order to obtain the lien protection offered by the provision, the payment bond must be recorded prior to commencement of work.¹⁷³

Admitted Surety Insurer

Most bonds provided for under existing mechanics lien law must be issued by an admitted surety insurer (a corporate insurer to which the state Insurance Commissioner has issued a certificate of authority to transact surety insurance within the state).¹⁷⁴

The proposed legislation generalizes that requirement so that a payment bond that provides the owner lien protection

171. Civ. Code § 3235.

172. See Hunt, *California Mechanics Lien and Related Construction Remedies* (3d ed.), § 8.38, p. 555 (Cal. Cont. Ed. Bar 2006), Miller & Starr, *California Real Estate* (3rd edition), § 28.39, pp. 136-137 (2006).

173. See proposed Civ. Code § 8602(a) *infra*.

174. See Civ. Code §§ 3110.5 (payment bond as security for large project), 3143 (mechanics lien release bond), 3196 (public work stop notice release bond), Code Civ. Proc. § 995.311(a) (public work payment bond); *cf.* Code Civ. Proc. § 995.120.

on a private work must also be issued by an admitted surety insurer.¹⁷⁵

Payment Bond Required by Construction Lender

Existing law provides that if a construction lender requires a payment bond as a condition of making the loan and accepts the bond that is offered, the lender may question the bond and go back on the loan commitment “only if the bond underwriter was licensed by the Department of Insurance.”¹⁷⁶ The provision seems counterintuitive. A bond given by a licensed surety should be more reliable than a bond from an unlicensed surety, and therefore less subject to challenge.

The provision was enacted as part of an effort to preclude a construction lender from renegeing on a loan commitment.¹⁷⁷ The opposite rule was probably intended, to prevent a lender from questioning a bond executed by a licensed surety.¹⁷⁸

The proposed legislation codifies that rule.¹⁷⁹

Statute of Limitations for Enforcement of Bond

Existing law provides a shortened six month statute of limitations for an action against a surety on a private work payment bond that is recorded before completion of a work of improvement.¹⁸⁰

175. See proposed Civ. Code § 8606(a) *infra*.

176. See Civ. Code § 3237.

177. See SB 1851 (Ayala) (1984).

178. Miller & Starr, 12 California Real Estate § 36:4 at 11 n.10 (3d ed. 2001) interprets the provision in this way.

179. See proposed Civ. Code § 8604 *infra*.

180. See Civ. Code § 3240. The limitation period is otherwise four years. See Code. Civ. Proc. § 337(1).

In the interest of simplicity and standardization, the proposed legislation extends this provision to an action against the principal on the bond.¹⁸¹

Public Work Provisions

The existing public work payment bond provisions are confusing, both in their application and in their coverage. The proposed legislation addresses these problems, as discussed below.

Overview of Provisions

Civil Code Section 3247 requires a payment bond in conjunction with every contract over \$25,000 awarded by a public entity, “except as provided in subdivision (d) of Section 7103 of the Public Contract Code.”

Public Contract Code Section 7103(d) requires a payment bond in every construction contract over \$5,000 awarded by a “state entity”:

For purposes of this section, “state entity” means every state office department [sic], division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by the provisions of Section 3247 of the Civil Code.

The circularity of this provision leaves doubt as to the rule applicable to the Legislature, the judiciary, and the University of California. Are those entities exempt from any payment bond requirement, or are they subject to a \$25,000 threshold? The law is unclear.

The judicial branch, for example, understands the intent of the existing statutory scheme to be that it is exempt from any payment bond requirement. The judicial branch indicates that,

181. See proposed Civ. Code § 8610 *infra*.

in any event, separation of powers doctrine would immunize it from a statutory payment bond requirement. The judicial branch voluntarily requires a payment bond for any contract over \$25,000. This has not been a significant issue in the past because most court facilities were county owned. However, the judicial branch will be more heavily involved with construction contract matters in the future, now that the state has taken control of the trial courts.

The University of California also believes it is constitutionally exempt from any statutory payment bond requirement.¹⁸² Nonetheless, the university voluntarily adheres to the rule of Section 7103 and requires a payment bond for any contract over \$5,000.

State Contract Act

To complicate matters, there are additional payment bond requirements under the State Contract Act that are applicable to some public works.¹⁸³ Subject to a number of exceptions, that act applies to a state project for which the total cost exceeds \$100,000, as adjusted to reflect changes in the annual California Construction Index.¹⁸⁴

The exact scope of the State Contract Act is not defined. A bond under that act is subject to approval of the “department,”¹⁸⁵ which is defined to mean the Department of Water Resources, General Services, Boating and Waterways, or Corrections, with respect to a project within its jurisdiction, or the Department of Transportation with respect to all other projects.¹⁸⁶ This may be intended as a limitation on the scope of the act. There is no case law on the matter.

182. See Cal. Const. art. IX, § 9.

183. See Pub. Cont. Code §§ 10100-10285.1.

184. See Pub. Cont. Code § 10105.

185. See Pub. Cont. Code § 10221.

186. See Pub. Cont. Code § 10106.

The act requires that every contract to which the act is applicable include a payment bond executed by an admitted surety insurer.¹⁸⁷ Subject to exceptions, the bond must be for at least one-half the contract price.¹⁸⁸

A key exception to the one-half contract price requirement is “as otherwise provided in Section 3248 of the Civil Code.”¹⁸⁹ At the time the exception was written, Civil Code Section 3248 provided a sliding scale for the amount of the payment bond required for a public work, based on the contract price. Section 3248 now requires that, “The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract.”¹⁹⁰

Reconciliation of Existing Provisions

Reading all these statutes together and interpreting legislative intent as rationally as possible, the Law Revision Commission concludes:

- A public entity other than the state must require a 100% payment bond in a construction project over \$25,000.
- The state, other than the Legislature, the judiciary, or the University of California, must require a 100% payment bond in a construction project over \$5,000.
- It is unclear what, if any, requirements apply to the Legislature, the judiciary, and the University of California. There are constitutional considerations affecting these entities, and their practices with respect to a payment bond vary.
- Special rules may apply to specific types of state projects that are the subject of an express statute. For

187. See Pub. Cont. Code § 10221.

188. See Pub. Cont. Code § 10222.

189. See Pub. Cont. Code § 10222.

190. Civ. Code § 3248(a).

example, the Department of Transportation may specify a smaller than 100% payment bond in a project over \$250,000,000, subject to limitations.¹⁹¹

The proposed legislation does not attempt to provide uniform rules applicable to all public works contracts, state and local, as the public cost implications could be significant. Instead, the proposed legislation preserves the status quo as to these issues (as stated above), in a more understandable fashion.¹⁹²

Supplemental Contract

After a payment bond is posted in connection with a public work contract, the public entity may enter into another contract supplementing the work called for in the original contract. Existing law provides that work may proceed on that supplemental contract without obtaining a new payment bond, if the public entity consents to that result.¹⁹³ It is unclear whether claimants that provide work under the supplemental contract may make a claim against the payment bond corresponding to the original contract.

The proposed legislation clarifies this issue by expressly providing that the original bond will also provide coverage for work performed under the supplemental contract.¹⁹⁴

Statute of Limitations for Enforcement of Bond

Existing law provides that an action against a surety on a public work payment bond must be commenced within six

191. See Pub. Cont. Code § 10222.

192. See proposed Pub. Cont. Code §§ 41080, 45010-45030 *infra*.

193. See Civ. Code § 3247(b).

194. See proposed Pub. Cont. Code § 45010(c) *infra*.

months after the period in which a stop payment notice may be given.¹⁹⁵

In the interest of simplicity and standardization, the proposed legislation extends this provision to an action against the principal on the bond.¹⁹⁶

Provisions Applicable to Both Private and Public Work

Claimants on Bond

It is not entirely clear whether persons that provide work to lower tier subcontractors (i.e., subcontractors that report to other subcontractors, rather than to a direct contractor) may make a claim against a payment bond, on either a private or a public work:

Nothing contained in this title shall be construed to give to any person any right of action on any original contractor's private or public work payment bond described in Chapter 6 (commencing with Section 3235) or Chapter 7 (commencing with Section 3247), unless the work forming the basis for his claim was performed by such person for the principal on such payment bond, *or one of his subcontractors*, pursuant to the contract between the original contractor and the owner.¹⁹⁷

One could read that language to limit bond rights to persons who provide work for the direct contractor or a first tier subcontractor (i.e., one of "his" subcontractors). Under that reading, a person who provides work for a subcontractor of a subcontractor could not make a claim against the bond.

The Commission has uncovered no legislative history suggesting an intent to preclude payment bond claims from claimants that provide work to subcontractors below the first

195. See Civ. Code § 3249.

196. See proposed Pub. Cont. Code § 45050 *infra*.

197. Civ. Code § 3267 (emphasis added).

tier. The court in *Union Asphalt v. Planet Ins.*, 21 Cal. App. 4th 1762, 27 Cal. Rptr. 2d 371 (1994) reached the same conclusion.

The proposed legislation clarifies this issue by expressly providing that a claimant that provides work to *any* subcontractor may make a claim against a payment bond.¹⁹⁸

OTHER REMEDIES

Security for Large Project

In addition to the main remedies of the lien, stop notice, and payment bond, the mechanics lien law also requires the owner of a large private work project to provide security for payment of the contractor. The security may take the form of a payment bond, irrevocable letter of credit, or escrow account.¹⁹⁹

The remedy is presently contained in one extremely long section of the code.

The proposed legislation rewrites the section in a nonsubstantive way to make it more comprehensible, by simplifying language, standardizing terminology, and breaking the section into smaller pieces.²⁰⁰

Stop Work Notice

Existing mechanics lien law also provides a contractor on a private work that has not been paid with some practical leverage — the contractor may serve notice on the owner that the contractor intends to stop work, unless paid within 10 days. Thereafter, the contractor is statutorily authorized to stop work on the project without liability to the owner or to subcontractors.

198. See proposed Civ. Code § 8608(a), Pub. Cont. Code § 45090(a) *infra*.

199. See Civ. Code § 3110.5.

200. See proposed Civ. Code §§ 8700-8730 *infra*.

The proposed legislation preserves the substance of the statute. However, it denominates the remedy a stop work “notice” rather than an order, since it is not a court order and it should be given and proved in the same manner as other notices under the mechanics lien law.²⁰¹

The proposed legislation also clarifies provisions that address direct contractor and subcontractor rights and liabilities upon the giving of a stop work notice. These provisions are apparently an artifact of the legislative process. Under the proposed legislation, only the direct contractor may give a stop work notice.²⁰²

Existing law provides for an expedited court proceeding that a direct contractor or the direct contractor’s surety may use to resolve a stop work notice dispute.

The proposed legislation expands that procedure to permit its use by an owner.²⁰³

201. See proposed Civ. Code § 8830 *infra*.

202. See proposed Civ. Code § 8838 *infra*.

203. See proposed Civ. Code § 8844 *infra*.

CONTENTS OF PROPOSED LEGISLATION

PROPOSED LEGISLATION	621
Civ. Code §§ 3081.1-3081.10 (repealed). Design professionals lien	621
Civ. Code §§ 3082-3267 (repealed). Works of improvement.....	621
Civ. Code §§ 7100-7106 (repealed). Automatic checkout system	621
PRIVATE WORK OF IMPROVEMENT	621
Civ. Code §§ 8000-8848 (added). Private work of improvement.....	621
PART 6. PRIVATE WORK OF IMPROVEMENT	622
CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS	622
Article 1. Definitions	622
§ 8000. Application of definitions	622
§ 8002. “Claimant”	622
§ 8004. “Commencement”	622
§ 8006. “Construction lender”	623
§ 8008. “Contract”	623
§ 8010. “Contract price”	624
§ 8012. “Design professional”	624
§ 8013. “Direct contract”	624
§ 8014. “Direct contractor”	625
§ 8016. “Know or knowledge”	625
§ 8018. “Labor, service, equipment, or material”	625
§ 8020. “Laborer”	626
§ 8022. “Lending institution”	626
§ 8024. “Lien”	627
§ 8026. “Material supplier”	627
§ 8028. “Owner”	627
§ 8030. “Payment bond”	628
§ 8032. “Person”	628
§ 8034. “Preliminary notice”	628
§ 8036. “Public entity”	629
§ 8038. “Reputed owner, direct contractor, or construction lender”	629
§ 8040. “Site”	629
§ 8042. “Site improvement”	630
§ 8044. “Stop payment notice”	630
§ 8046. “Subcontractor”	631
§ 8048. “Work”	631
§ 8050. “Work of improvement”	631

Article 2. Miscellaneous Provisions	632
§ 8051. Application of former law	632
§ 8052. Application of part.....	633
§ 8054. Rules of practice	633
§ 8056. Calculation of time	633
§ 8058. Filing and recordation of papers	634
§ 8060. Effect of act by owner	635
§ 8062. Co-owners	635
§ 8064. Agency	635
§ 8066. Relation to other statutes.....	636
Article 3. Notice.....	636
§ 8100. Written notice	636
§ 8102. Contents of notice.....	637
§ 8104. Notice of overdue laborer compensation	638
§ 8106. Manner of giving notice	639
§ 8108. Address at which notice is given	639
§ 8110. Mailed notice	640
§ 8112. Notice by electronic communication.....	641
§ 8114. Posting of notice	641
§ 8116. When notice complete	642
§ 8118. Proof of notice	642
Article 4. Construction Documents	644
§ 8130. Contract forms	644
§ 8132. Designation of construction lender on building permit	645
§ 8134. Construction trust deed	645
Article 5. Bonds	646
§ 8140. Application of Bond and Undertaking Law.....	646
§ 8142. No release of surety from liability.....	646
§ 8144. Construction of bond.....	647
Article 6. Completion	647
§ 8150. Completion.....	647
§ 8152. Notice of completion	648
§ 8154. Notice of completion of contract for portion of work of improvement	650
§ 8155. Notice of cessation	651
§ 8156. Notice of recordation by owner	652
Article 7. Waiver and Release	653
§ 8160. Terms of contract.....	653
§ 8162. Waiver and release	653
§ 8164. Statement of claimant.....	654
§ 8166. Reduction or release of stop payment notice	654

§ 8168. Accord and satisfaction or settlement agreement not affected.....	655
§ 8170. Conditional waiver and release on progress payment.....	655
§ 8172. Unconditional waiver and release on progress payment.....	657
§ 8174. Conditional waiver and release on final payment	659
§ 8176. Unconditional waiver and release on final payment	660
CHAPTER 2. PRELIMINARY NOTICE	662
§ 8200. Preliminary notice prerequisite to remedies	662
§ 8202. Contents of preliminary notice	663
§ 8204. Effect of preliminary notice.....	665
§ 8206. Coverage of preliminary notice	665
§ 8208. Direct contractor's duty to provide information.....	666
§ 8210. Owner's duty to give notice of construction loan	666
§ 8212. Waiver void.....	667
§ 8214. Notices filed with county recorder	667
CHAPTER 3. DESIGN PROFESSIONALS LIEN	667
§ 8300. Owner	667
§ 8302. Lien.....	667
§ 8304. Prerequisites for lien.....	668
§ 8306. Creation, expiration, and release of lien	669
§ 8308. Application of part.....	670
§ 8310. Mechanics lien right not affected	670
§ 8312. Time for claim of lien	670
§ 8314. Right to pursue other remedies	671
§ 8316. Priorities	671
§ 8318. Exemption	671
CHAPTER 4. MECHANICS LIEN.....	672
Article 1. Who is Entitled to Lien.....	672
§ 8400. Persons entitled to lien	672
§ 8402. Site improvement lien	673
§ 8404. Who may authorize work.....	673
Article 2. Conditions to Enforcing a Lien	674
§ 8410. Preliminary notice required	674
§ 8412. Time for claim of lien by direct contractor.....	674
§ 8414. Time for claim of lien by claimant other than direct contractor	675
§ 8416. Contents of claim of lien.....	676
§ 8418. Notice of intended recording of claim of lien.....	676
§ 8420. Notice prerequisite to recording claim of lien	677
§ 8422. Forfeiture of lien for false claim.....	677
§ 8424. Release bond	678

Article 3. Amount of Lien679

 § 8430. Amount of lien679

 § 8432. Lien limited to work included in contract or
 modification680

 § 8434. Amount of recovery681

Article 4. Property Subject to Lien681

 § 8440. Property subject to lien681

 § 8442. Interest subject to lien681

 § 8444. Notice of nonresponsibility682

 § 8446. Multiple works of improvement683

 § 8448. Claim against separate residential units684

Article 5. Priorities685

 § 8450. Priority of lien685

 § 8452. Payment bond obtained by holder of mortgage or deed
 of trust686

 § 8454. Separate contract for site improvement686

 § 8456. Priority of advances by lender686

 § 8458. Priority of site improvement lien687

Article 6. Enforcement of Lien688

 § 8460. Time for commencement of enforcement action688

 § 8462. Dismissal for lack of prosecution689

 § 8464. Costs689

 § 8466. Deficiency690

 § 8468. Other remedies690

 § 8470. Defense of lien enforcement action by contractor691

Article 7. Release Order691

 § 8480. Petition for release order691

 § 8482. Demand prerequisite to petition693

 § 8484. Contents of petition693

 § 8486. Time of hearing694

 § 8488. Hearing and order695

Article 8. Removal of Claim of Lien from Record696

 § 8490. Court order696

 § 8494. Effect of expiration or recordation of court order697

CHAPTER 5. STOP PAYMENT NOTICE697

Article 1. General Provisions697

 § 8500. Stop payment notice exclusive remedy to reach
 construction funds697

 § 8502. Contents of stop payment notice698

 § 8504. False stop payment notice699

 § 8506. Manner of giving stop payment notice699

§ 8508. Requirements for valid stop payment notice	700
§ 8510. Release bond	700
Article 2. Stop Payment Notice to Owner	701
§ 8520. Stop payment notice to owner	701
§ 8522. Duty of owner	701
Article 3. Stop Payment Notice to Construction Lender	702
§ 8530. Stop payment notice to construction lender	702
§ 8532. Bonded stop payment notice	702
§ 8534. Objection to bond	703
§ 8536. Duty of construction lender	703
§ 8538. Notice of election	704
Article 4. Priorities	705
§ 8540. Distribution of funds withheld pursuant to stop payment notice	705
§ 8542. Amount withheld	706
§ 8544. Effect of stop payment notice on assignment of funds	707
Article 5. Enforcement of Claim Stated in Stop Payment Notice	707
§ 8550. Time for enforcement of claim stated in stop payment notice	707
§ 8552. Joinder, consolidation, and interpleader	708
§ 8554. Dismissal of enforcement action for lack of prosecution	708
§ 8556. Dismissal of action or judgment against claimant	709
§ 8558. Attorney's fee in action to enforce payment of claim stated in bonded stop payment notice	709
§ 8560. Interest in action to enforce payment of claim stated in bonded stop payment notice	710
CHAPTER 6. PAYMENT BOND	710
§ 8600. Public policy of payment bond	710
§ 8602. Limitation of owner's liability	710
§ 8604. Bond required by lending institution	711
§ 8606. Conditions of payment bond	712
§ 8608. Limitation on part	712
§ 8610. Statute of limitations for suit on recorded bond	713
§ 8612. Notice prerequisite to enforcement	713
CHAPTER 7. SECURITY FOR LARGE PROJECT	714
Article 1. Application of Chapter	714
§ 8700. Application of chapter	714
§ 8702. Single-family residence and low income housing excluded	715
§ 8704. Qualified publicly traded company and qualified private company excluded	715
Article 2. Security Requirement	717

§ 8710. Security for owner's payment obligation.....	717
§ 8712. Demand for security	717
§ 8714. Security not waivable	718
§ 8716. Rights of subcontractor not affected	718
Article 3. Form of Security	718
§ 8720. Form of security	718
§ 8722. Bond	719
§ 8724. Irrevocable letter of credit.....	719
§ 8726. Escrow account.....	720
§ 8728. Deposits to and disbursements from escrow account	721
§ 8730. Contract price.....	722
CHAPTER 8. PROMPT PAYMENT	723
Article 1. Progress Payment	723
§ 8800. Progress payment between owner and direct contractor.....	723
§ 8802. Progress payment between direct contractor and subcontractor on public utility work	724
Article 2. Retention Payment	725
§ 8810. Application of article	725
§ 8812. Payment of retention by owner.....	725
§ 8814. Payment of retention by direct contractor	726
§ 8816. Payment for disputed work	726
§ 8818. Wrongful withholding	727
§ 8820. Waiver against public policy	727
§ 8822. Construction loan exempt	727
Article 3. Stop Work Notice	727
§ 8830. "Stop work notice" defined.....	727
§ 8832. Stop work notice.....	728
§ 8834. Additional notice	728
§ 8836. Notice to construction lender	729
§ 8838. Immunity from liability	729
§ 8840. Notice of resolution of dispute or cancellation of stop work notice	730
§ 8842. Stop work remedy not exclusive	730
§ 8844. Judicial proceeding.....	731
§ 8846. Waiver against public policy	731
§ 8848. Application of article.....	731
PUBLIC WORK OF IMPROVEMENT.....	733
Pub. Cont. Code §§ 41010-45090 (added). Public works contract remedies	733

PART 6. PUBLIC WORKS CONTRACT REMEDIES	733
CHAPTER 1. DEFINITIONS	733
§ 41010. Application of definitions	733
§ 41020. "Claimant"	733
§ 41030. "Design professional"	733
§ 41040. "Direct contractor"	734
§ 41050. "Funds"	734
§ 41060. "Labor, service, equipment, or material"	734
§ 41070. "Laborer"	735
§ 41080. "Payment bond"	736
§ 41090. "Person"	736
§ 41100. "Preliminary notice"	736
§ 41110. "Public entity"	736
§ 41120. "Public works contract"	737
§ 41130. "Site"	737
§ 41140. "Stop payment notice"	737
§ 41150. "Subcontractor"	737
§ 41160. "Work"	737
§ 41170. "Work of improvement"	738
CHAPTER 2. GENERAL PROVISIONS	738
Article 1. Miscellaneous Provisions	738
§ 42005. Application of former law	738
§ 42010. Application of part	739
§ 42020. Relation to other statutes	739
§ 42030. Who may use remedies	740
§ 42040. Rules of practice	741
§ 42050. Calculation of time	741
§ 42060. Agency	741
§ 42070. Liability of surety	741
Article 2. Notice	742
§ 42110. Written notice	742
§ 42120. Contents of notice	742
§ 42130. Notice of overdue laborer compensation	743
§ 42140. Manner of giving notice	744
§ 42150. Address at which notice is given	745
§ 42160. Mailed notice	746
§ 42170. Notice by electronic communication	746
§ 42180. When notice complete	747
§ 42190. Proof of notice	748
Article 3. Completion	749
§ 42210. Completion	749

§ 42220. Notice of cessation749

§ 42230. Notice of completion750

§ 42240. Notice of completion of contract for portion of work of improvement751

§ 42250. Recordation of notice752

Article 4. Waiver and Release752

§ 42310. Terms of contract.....752

§ 42320. Waiver and release753

§ 42330. Statement of claimant.....754

§ 42340. Reduction or release of stop payment notice754

§ 42350. Accord and satisfaction or settlement agreement not affected.....755

§ 42360. Conditional waiver and release on progress payment.....755

§ 42370. Unconditional waiver and release on progress payment.....757

§ 42380. Conditional waiver and release on final payment759

§ 42390. Unconditional waiver and release on final payment760

CHAPTER 3. PRELIMINARY NOTICE761

§ 43010. Preliminary notice prerequisite to remedies761

§ 43040. Giving preliminary notice762

§ 43050. Effect of preliminary notice763

CHAPTER 4. STOP PAYMENT NOTICE763

Article 1. General Provisions763

§ 44110. Stop payment notice exclusive remedy to reach construction funds763

§ 44120. Contents of stop payment notice764

§ 44130. Giving of stop payment notice764

§ 44140. Time for giving notice.....765

§ 44150. Duty to withhold funds765

§ 44160. Payment notwithstanding stop payment notice766

§ 44170. Notice to claimant766

§ 44180. Release bond767

Article 2. Summary Proceeding for Release of Funds768

§ 44210. Grounds for summary proceeding768

§ 44220. Contractor’s affidavit and demand for release768

§ 44230. Notice to claimant769

§ 44240. Claimant’s counteraffidavit769

§ 44250. Commencement of action770

§ 44260. Pleadings and burden of proof.....771

§ 44270. Court determination771

§ 44280. Summary determination not res judicata772

Article 3. Distribution of Funds Withheld772

§ 44310. Distribution of funds withheld pursuant to stop payment notice	772
§ 44320. Stop payment notice remedy not exclusive	773
§ 44330. Forfeiture for false notice	773
§ 44340. Effect of assignment or garnishment.....	773
Article 4. Enforcement of Payment of Claim Stated in Stop Payment Notice	774
§ 44410. Prerequisites for enforcement of notice	774
§ 44420. Time for enforcement of payment of claim stated in stop payment notice	774
§ 44430. Notice of action	775
§ 44440. Joinder, consolidation, and interpleader	775
§ 44450. Dismissal of enforcement action for lack of prosecution	776
§ 44460. Dismissal of action or judgment against claimant	776
CHAPTER 5. PAYMENT BOND	777
§ 45010. Payment bond requirement	777
§ 45020. Consequences of failure to give bond	778
§ 45030. Bond requirements	778
§ 45040. Construction of bond.....	779
§ 45050. Statute of limitations	780
§ 45060. Notice required	780
§ 45070. Notice to principal and surety.....	781
§ 45080. Action on bond	781
§ 45090. Limitation on chapter	781
Operative Date and Transitional Provision	782
CONFORMING REVISIONS	783
BUSINESS AND PROFESSIONS CODE.....	783
Bus. & Prof. Code § 7034 (amended). Prohibited contract clauses	783
Bus. & Prof. Code § 7071.5 (amended). Contractor's bond	783
Bus. & Prof. Code § 7071.10 (amended). Qualifying individual's bond.....	784
Bus. & Prof. Code § 7159 (amended). Home improvement contract.....	786
Bus. & Prof. Code § 7159.1 (amended). Notice to buyer	800
Bus. & Prof. Code § 7159.5 (amended). Home improvement contract violation.....	802
Bus. & Prof. Code § 7159.14 (amended). Service and repair contract.....	805
Bus. & Prof. Code § 7164 (amended). Contract for construction of single-family dwelling.....	807

Bus. & Prof. Code § 8513 (amended). Notice to owner by pest control company	810
Bus. & Prof. Code § 17577.5 (amended). Contract for home water treatment device	812
CIVIL CODE	813
Civ. Code §§ 1749.70-1749.76 (added). Automatic checkout system	813
Title 1.4C. Automatic Checkout System.....	813
Civ. Code § 1749.70. Name of title	813
Civ. Code § 1749.71. Clearly readable price on commodities.....	813
Civ. Code § 1749.72. Violations and penalty	816
Civ. Code § 1749.73. Cause of action	816
Civ. Code § 1749.74. Unintentional error	817
Civ. Code § 1749.75. Exclusive remedies.....	817
Civ. Code § 1749.76. Preemption	817
Civ. Code § 1917.166 (amended). Priority of lien.....	817
Civ. Code § 1917.615 (amended). Priority of lien.....	818
Civ. Code § 3059 (amended). Mechanics lien	818
Civ. Code § 3060 (amended). Lien on mine	819
Civ. Code § 3319 (amended). Design professional private work contract.....	819
Civ. Code § 3320 (amended). Payment to design professional on public work contract.....	821
Civ. Code § 3321 (amended). Payment by design professional on public work contract.....	823
CODE OF CIVIL PROCEDURE	824
Code Civ. Proc. § 86 (amended). Classification of limited civil cases	824
Code Civ. Proc. § 410.42 (amended). Dispute resolution provisions in construction contract	828
Code Civ. Proc. § 708.760 (amended). Judgment debtor a public work contractor.....	828
Code Civ. Proc. § 1203.61 (amended). Oil and gas lien	829
Code Civ. Proc. § 1281.5 (amended). Arbitration	830
Code Civ. Proc. § 1800 (amended). Assignment for benefit of creditors	831
EDUCATION CODE	838
Educ. Code § 17307.5 (amended). Stop work order on public school construction.....	838
Educ. Code § 81133.5 (amended). Stop work order on community college construction	839
GOVERNMENT CODE	840

Gov't Code § 7480 (amended). Disclosure of financial records.....	840
Gov't Code § 14975 (amended). Payment bond.....	851
Gov't Code § 15820.105 (amended). Other requirements	851
Gov't Code § 27287 (amended). Recordation of instrument	852
Gov't Code § 27361.9 (repealed). Filing fee for preliminary notice	853
Gov't Code § 66499.2 (amended). Form of surety bond	853
Gov't Code § 66499.7 (amended). Release of improvement security	855
HEALTH AND SAFETY CODE	858
Health & Safety Code § 5463 (amended). Sewer system construction	858
Health & Safety Code § 16017.5 (amended). Stop work order	860
Health & Safety Code § 19825 (amended). Building permit.....	861
Health & Safety Code § 34218 (amended). Comprehensive improvement assistance program housing projects.....	865
INSURANCE CODE	865
Ins. Code § 11751.82 (amended). Wrap-up insurance policy	865
LABOR CODE.....	866
Lab. Code § 218.5 (amended). Nonpayment action	866
PUBLIC CONTRACT CODE	867
Pub. Cont. Code § 4107.7 (amended). Hazardous waste contract.....	867
Pub. Cont. Code § 7103 (amended). Payment bond on state contract.....	867
Pub. Cont. Code § 10222 (amended). Amount of payment bond.....	868
Pub. Cont. Code § 10822 (amended). Amount of bond	869
Pub. Cont. Code § 20104 (amended). Resolution of construction claims	869
Pub. Cont. Code § 20134 (amended). Emergency repairs	870
Pub. Cont. Code § 20461 (amended). Assignment by contractor.....	874
Pub. Cont. Code § 20496 (amended). Municipal Improvement Act of 1913	875
Pub. Cont. Code § 20682.5 (amended). Bids for contract.....	875
Pub. Cont. Code § 20688.4 (amended). Redevelopment agencies	877
Pub. Cont. Code § 20813 (amended). Fire protection districts.....	877
Pub. Cont. Code § 20815.3 (amended). Recreation and park districts	878
Pub. Cont. Code § 20991 (amended). Los Angeles County Flood Control District.....	879
Pub. Cont. Code § 21061 (amended). San Bernardino County Flood Control District	880

Pub. Cont. Code § 21071 (amended). Ventura County Watershed Protection District	882
Pub. Cont. Code § 21081 (amended). Humboldt County Flood Control District.....	884
Pub. Cont. Code § 21091 (amended). Riverside County Flood Control and Water Conservation District	885
Pub. Cont. Code § 21101 (amended). San Luis Obispo County Flood Control and Water Conservation District	886
Pub. Cont. Code § 21111 (amended). Santa Barbara County Water Agency	887
Pub. Cont. Code § 21121 (amended). Monterey County Flood Control and Water Conservation District	889
Pub. Cont. Code § 21131 (amended). Sonoma County Flood Control and Water Conservation District	890
Pub. Cont. Code § 21141 (amended). Mendocino County Flood Control and Water Conservation District	892
Pub. Cont. Code § 21151 (amended). Alameda County Flood Control and Water Conservation District	893
Pub. Cont. Code § 21161 (amended). Santa Clara Valley Water District.....	895
Pub. Cont. Code § 21171 (amended). Napa County Flood Control and Water Conservation District	896
Pub. Cont. Code § 21181 (amended). Lake County Flood Control and Water Conservation District	898
Pub. Cont. Code § 21196 (amended). Solano County Water Agency	899
Pub. Cont. Code § 21212 (amended). Sacramento County Water Agency	900
Pub. Cont. Code § 21231 (amended). Marin County Flood Control and Water Conservation District	902
Pub. Cont. Code § 21241 (amended). Contra Costa County.....	903
Pub. Cont. Code § 21251 (amended). San Benito County Water Conservation and Flood Control District.....	905
Pub. Cont. Code § 21261 (amended). Del Norte County Flood Control District.....	906
Pub. Cont. Code § 21271 (amended). Santa Barbara County Flood Control and Water Conservation District	907
Pub. Cont. Code § 21311 (amended). San Joaquin County Flood Control and Water Conservation District	910
Pub. Cont. Code § 21321 (amended). Placer County Water Agency	911
Pub. Cont. Code § 21331 (amended). Tehama County Flood Control and Water Conservation District	913

Pub. Cont. Code § 21341 (amended). Shasta County Water Agency	914
Pub. Cont. Code § 21351 (amended). Yuba County Water Agency	915
Pub. Cont. Code § 21361 (amended). Mariposa County Water Agency	917
Pub. Cont. Code § 21371 (amended). Sutter County Water Agency	918
Pub. Cont. Code § 21381 (amended). San Mateo County Flood Control District.....	919
Pub. Cont. Code § 21391 (amended). Plumas County Flood Control and Water Conservation District	920
Pub. Cont. Code § 21401 (amended). Siskiyou County Flood Control and Water Conservation District	921
Pub. Cont. Code § 21411 (amended). Nevada County Water Agency	923
Pub. Cont. Code § 21421 (amended). Sierra County Flood Control and Water Conservation District	924
Pub. Cont. Code § 21431 (amended). Lassen-Modoc County Flood Control and Water Conservation District	925
Pub. Cont. Code § 21441 (amended). Yuba-Bear River Basins Authority	927
Pub. Cont. Code § 21451 (amended). Amador County Water Agency	928
Pub. Cont. Code § 21461 (amended). El Dorado County Water Agency	929
Pub. Cont. Code § 21491 (amended). Kern County Water Agency	930
Pub. Cont. Code § 21501 (amended). Desert Water Agency	931
Pub. Cont. Code § 21511 (amended). San Geronio Pass Water Agency	933
Pub. Cont. Code § 21521 (amended). Alpine County Water Agency	934
Pub. Cont. Code § 21531 (amended). Castaic Lake Water Agency	935
Pub. Cont. Code § 21541 (amended). Crestline-Lake Arrowhead Water Agency	937
Pub. Cont. Code § 21572 (amended). Madera County Flood Control and Water Conservation Agency	938
Pub. Cont. Code § 21581 (amended). Tulare County Flood Control District.....	939
Pub. Cont. Code § 21591 (amended). Bighorn Mountains Water Agency	941

Pub. Cont. Code § 21601 (amended). Tuolumne County Water Agency942

Pub. Cont. Code § 21622 (amended). Monterey Peninsula Water Management District.....944

Pub. Cont. Code § 21631 (amended). Merced County Flood Control District.....944

STREETS AND HIGHWAYS CODE946

 Sts. & Hy. Code § 136.5 (amended). Competitive bidding and payment bonds.....946

DISPOSITION OF EXISTING LAW 949

PROPOSED LEGISLATION

Civ. Code §§ 3081.1-3081.10 (repealed). Design professionals lien

SEC. _____. Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 of the Civil Code is repealed.

Comment. Former Chapter 8 (former Sections 3081.1-3081.10) is replaced by Chapter 3 (Sections 8300-8318) of Part 6 of Division 4. For the disposition of a section in former Chapter 8, see *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

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

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

Comment. Former Title 15 (former Sections 3082-3267) is replaced by new Part 6 (Sections 8000-8848) of Division 4 of the Civil Code (private work of improvement) and by new Part 6 (Sections 41010-45090) of Division 2 of the Public Contract Code (public works contract remedies). For the disposition of a section in former Title 15, see *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

Civ. Code §§ 7100-7106 (repealed). Automatic checkout system

SEC. _____. Part 8 (commencing with Section 7100) of Division 4 of the Civil Code is repealed.

Comment. Former Part 8 (former Sections 7100-7106) is relocated to new Title 1.4C (Sections 1749.70-1749.76) of Part 4 of Division 3. For the disposition of a section in former Part 8, see *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

PRIVATE WORK OF IMPROVEMENT

Civ. Code §§ 8000-8848 (added). Private work of improvement

SEC. _____. Part 6 (commencing with Section 8000) is added to Division 4 of the Civil Code, to read:

PART 6. PRIVATE WORK OF IMPROVEMENT

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

§ 8000. Application of definitions

8000. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

Comment. Section 8000 continues former Section 3082 without substantive change.

§ 8002. “Claimant”

8002. “Claimant” means a person that has a right under this part to record a claim of lien, give a stop payment notice, or assert a claim against a payment bond.

Comment. Section 8002 restates former Section 3085 without substantive change, omitting reference to the combination of remedies as unnecessary.

See also Sections 8024 (“lien”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8004. “Commencement”

8004. A work of improvement “commences” on either of the following events:

(a) Delivery to the site of rental equipment, material or supplies that are thereafter used, consumed, or incorporated in the work of improvement.

(b) Visible work of a permanent nature on the site.

Comment. Section 8004 is new. It codifies case law. See, e.g., *Walker v. Lytton Sav. & Loan Ass’n*, 2 Cal. 3d 152, 159, 465 P.2d 497, 84 Cal. Rptr. 521 (1970); *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4th 1233, 1240-1241, 8 Cal. Rptr. 2d 298 (1992).

Although mere delivery of rental equipment, material, or supplies to a site can mark “commencement” of the work of improvement, the person delivering the rental equipment, material, or supplies has no lien right until the rental equipment, material, or supplies are actually used, consumed, or incorporated in the work of improvement.

See also Sections 8040 (“site”), 8050 (“work of improvement”).

§ 8006. “Construction lender”

8006. “Construction lender” means either of the following:

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

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

Comment. Section 8006 restates former Section 3087 without substantive change.

See also Section 14 (present includes future).

See also Sections 8028 (“owner”), 8032 (“person”), 8050 (“work of improvement”).

§ 8008. “Contract”

8008. “Contract” means an agreement that provides for all or part of a work of improvement. The term includes a contract change.

Comment. Section 8008 broadens the definition of “contract” in former Section 3088 and adds a reference to a contract change. The term “contract change” replaces “written modification of the contract” as used in former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

There are instances in this part where the term is not used in its defined sense. See, e.g., Sections 8028 (contract of purchase). See also Section 8000 (application of definitions).

An agreement between an owner and a direct contractor that provides for all or part of a work of improvement is a “direct contract.” See Section 8013.

See also Section 8050 (“work of improvement”).

§ 8010. “Contract price”

8010. “Contract price” means the price agreed to in a direct contract for a work of improvement, including a contract change. If the parties have not agreed to a price for the work of improvement, the contract price is the reasonable value of the work provided for the work of improvement.

Comment. Section 8010 generalizes provisions found in former Section 3123 and throughout the mechanics lien law.

See also Sections 8013 (“direct contract”), 8050 (“work of improvement”).

§ 8012. “Design professional”

8012. “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code that provides services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement.

Comment. Section 8012 restates the first paragraph of former Section 3081.1. The introductory clause and the second paragraph of former Section 3081.1 are not continued because they are surplus. See Section 8000 (application of definitions).

See also Section 8050 (“work of improvement”).

§ 8013. “Direct contract”

8013. “Direct contract” means a contract between an owner and a direct contractor that provides for all or part of a work of improvement. The term includes a contract change.

Comment. Section 8013 continues the substance of former Section 3088, but adds a reference to a contract change. The term “contract

change” replaces “written modification of the contract” as used in former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 7050 (“work of improvement”).

§ 8014. “Direct contractor”

8014. “Direct contractor” means a contractor that has a direct contractual relationship with an owner.

Comment. Section 8014 supersedes former Section 3095 (“original contractor”). A direct contractor within the meaning of this section is one that contracts directly with the owner, as opposed to one that contracts with another contractor (i.e., a subcontractor).

See also Section 8028 (“owner”).

§ 8016. “Know or knowledge”

8016. A person “knows” or “has knowledge” of information if the person knows or should have known that information.

Comment. Section 8016 is new. See also Section 8032 (“person”).

§ 8018. “Labor, service, equipment, or material”

8018. “Labor, service, equipment, or material” includes but is not limited to labor, skills, services, material, supplies, equipment, appliances, power, and surveying, provided for a work of improvement.

Comment. Section 8018 is a new definition. It is included for drafting convenience. The phrase is intended to replace various phrases used throughout the former law, including “labor or material,” “labor, services, equipment, or materials,” “appliances, teams, or power,” and the like, and is not intended to effect any change in the law. The definition applies to variant grammatical forms of the phrase used in this part, such as “labor, service, equipment, *and* material.”

See also Section 8050 (“work of improvement”).

§ 8020. “Laborer”

8020. (a) “Laborer” means a person that, acting as an employee, performs labor, or bestows skill or other necessary services, on a work of improvement.

(b) “Laborer” includes a person or entity to which a portion of a laborer’s compensation for a work of improvement, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with that laborer or the collective bargaining agent of that laborer.

(c) A person or entity described in subdivision (b) that has standing under applicable law to maintain a direct legal action, in its own name or as an assignee, to collect any portion of compensation owed for a laborer for a work of improvement, shall have standing to enforce any rights or claims of the laborer under this part, to the extent of the compensation agreed to be paid to the person or entity for labor on that improvement. This subdivision is intended to give effect to the long-standing public policy of this state to protect the entire compensation of a laborer on a work of improvement, regardless of the form in which that compensation is to be paid.

Comment. Subdivision (a) of Section 8020 continues former Section 3089(a) without substantive change.

Subdivision (b) restates the first sentence of former Section 3089(b) and a part of former Section 3111 without substantive change.

Subdivision (c) restates the second and third sentences of former Section 3089(b) and a part of former Section 3111 without substantive change.

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8022. “Lending institution”

8022. “Lending institution” includes a commercial bank, savings and loan institution, credit union, or other organization or person engaged in the business of financing loans.

Comment. Section 8022 continues the second paragraph of former Section 3237 without substantive change.

See also Section 8032 (“person”).

§ 8024. “Lien”

8024. “Lien” means a lien under this part and includes a lien of a design professional under Section 8302, a lien for a work of improvement under Section 8400, and a lien for a site improvement under Section 8402.

Comment. Section 8024 is a new definition. It is included for drafting convenience. There are instances in this part where the term is not used in its defined sense. See Section 8000 (application of definitions).

Note that the application of this part to a design professionals lien is limited. See Section 8308 (application of part).

See also Sections 8012 (“design professional”), 8042 (“site improvement”), 8050 (“work of improvement”).

§ 8026. “Material supplier”

8026. (a) “Material supplier” means a person that provides material or supplies to be used or consumed in a work of improvement.

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

Comment. Subdivision (a) of Section 8026 continues former Section 3090 without substantive change. It replaces the term “materialman” with the term “material supplier” to conform to contemporary usage under this part.

Subdivision (b) is new. It reverses existing law. See, e.g., Consolidated Elec. Distributors, Inc. v. Kirkham, Chacon & Kirkham, Inc., 18 Cal. App. 3d 54, 58, 95 Cal. Rptr. 673 (1971).

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8028. “Owner”

8028. “Owner” means:

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

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

(c) A successor in interest of a person described in subdivision (a) or (b).

Comment. Section 8028 generalizes provisions found in former Section 3092 (notice of cessation) and throughout the mechanics lien law.

For the authority of an owner to act on behalf of co-owners, see Section 8062 (co-owners). For general provisions on the authority of an agent, see Section 8064 (agency).

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8030. “Payment bond”

8030. “Payment bond” means a bond given under Chapter 6 (commencing with Section 8600).

Comment. Section 8030 supersedes former Section 3096. There are instances in this part where the term is not used in its defined sense. See, e.g., Sections 8452 (payment bond obtained by holder of mortgage or deed of trust), 8720-8722 (payment bond as security for large project). See also Section 8000 (application of definitions).

§ 8032. “Person”

8032. “Person” means an individual, corporation, public entity, business trust, estate, trust, partnership, limited liability company, association, or other entity.

Comment. Section 8032 is a new definition. It is included for drafting convenience. It supplements Section 14 (“person” includes corporation as well as natural person).

See also Section 8036 (“public entity”).

§ 8034. “Preliminary notice”

8034. “Preliminary notice” means the notice provided for in Chapter 2 (commencing with Section 8200).

Comment. Section 8034 supersedes former Section 3097. The substantive requirements for preliminary notice are relocated to Section 8200 *et seq.*

§ 8036. “Public entity”

8036. “Public entity” means the state, Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

Comment. Section 8036 continues former Section 3099 without change.

This part does not apply to a public work. See Section 8052 (application of part). For remedies on a public work, see Public Contract Code Sections 41010-45090.

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

§ 8038. “Reputed owner, direct contractor, or construction lender”

8038. (a) “Reputed owner” means a person that a claimant reasonably and in good faith believes is an owner.

(b) “Reputed direct contractor” means a person that a claimant reasonably and in good faith believes is a direct contractor.

(c) “Reputed construction lender” means a person that a claimant reasonably and in good faith believes is a construction lender.

Comment. Section 8038 is new. It codifies case law. See *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 85, 229 Cal. Rptr. 418 (1986).

A reference in this part to a reputed owner, contractor, or lender, includes co-owners, contractors, or lenders. See Section 14 (singular includes plural).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”), 8028 (“owner”).

§ 8040. “Site”

8040. “Site” means the property on which a work of improvement is situated or planned.

Comment. Section 8040 continues former Section 3101 without substantive change, except to add a reference to a planned work of improvement. See Section 8302 (design professionals lien).

See also Section 8050 (“work of improvement”).

§ 8042. “Site improvement”

8042. “Site improvement” means any of the following work on property:

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

(b) Drilling test holes.

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

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

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

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

Comment. Section 8042 continues former Section 3102 without substantive change, except that subdivision (f) makes clear that the reference in former law to “making any improvements” means preparatory work, and does not include construction of a structure.

See also Sections 8040 (“site”), 8050 (“work of improvement”).

§ 8044. “Stop payment notice”

8044. (a) “Stop payment notice” means the notice given under Chapter 5 (commencing with Section 8500). A reference in another statute to a “stop notice” in connection with the remedies provided in this part means a stop payment notice.

(b) A stop payment notice may be bonded or unbonded. A “bonded stop payment notice” is a notice given with a bond under Section 8532. An “unbonded stop payment notice” is a notice not given with a bond under Section 8532.

(c) Except to the extent this part distinguishes between a bonded and an unbonded stop payment notice, a reference in this part to a stop payment notice includes both a bonded and an unbonded notice.

Comment. Section 8044 supersedes former Section 3103. The term “stop payment notice” replaces the term “stop notice” used in former law.

§ 8046. “Subcontractor”

8046. “Subcontractor” means a contractor that does not have a direct contractual relationship with an owner. The term includes a contractor that has a contractual relationship with a direct contractor or with another subcontractor.

Comment. The first sentence of Section 8046 continues former Section 3104 without substantive change. The second sentence is new; it makes clear that the term “subcontractor” includes a subcontractor of a subcontractor.

See also Sections 8014 (“direct contractor”), 8028 (“owner”).

§ 8048. “Work”

8048. “Work” means labor, service, equipment, or material provided to a work of improvement.

Comment. Section 8048 is a new definition. It is included for drafting convenience.

See also Sections 8018 (“labor, service, equipment, or material”), 8050 (“work of improvement”).

§ 8050. “Work of improvement”

8050. (a) “Work of improvement” includes but is not limited to:

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

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

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

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

Comment. Section 8050 restates former Section 3106. The section is revised to reorganize and tabulate the different types of work falling within the definition, to expand the coverage of the definition, and to make various technical, nonsubstantive revisions. The term “property” replaces “lot or tract of land.”

A site improvement is treated under this part in the same manner as a work of improvement, except as specifically provided in this part. See e.g., Sections 8450 (priority of lien), 8458 (priority of site improvement lien).

See also Section 8042 (“site improvement”).

Article 2. Miscellaneous Provisions

§ 8051. Application of former law

8051. (a) This part is operative on January 1, 2010.

(b) Except as otherwise provided in this section, this part applies to a contract for a work of improvement executed before, on, or after the operative date.

(c) The effectiveness of a notice given or other action taken on a work of improvement before the operative date is governed by the applicable law in effect before the operative date and not by this part.

(d) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

Comment. Section 8051 is new. Although this part applies generally to all contracts for a work of improvement, it does not govern notices given or actions taken on a work of improvement prior to January 1, 2010, which are governed by former law.

See also Sections 8008 (“contract”), 8050 (“work of improvement”).

§ 8052. Application of part

8052. This part applies only to a work of improvement that is not governed by Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code.

Comment. Section 8052 is new. It subsumes various provisions of former law, including former Sections 3097 (preliminary notice of private work), 3109 (application of mechanics lien provisions), 3156 (application of stop notice provisions), 3235 to 3242 (provisions relating to payment bonds on private work), 3260 (retention payment provisions), 3260.1 (progress payment provisions), 3260.2 (stop work notice provisions).

Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code applies to a work of improvement performed pursuant to a public works contract awarded by a public entity. See Pub. Cont. Code § 42010.

See also Section 8050 (“work of improvement”).

§ 8054. Rules of practice

8054. Except as otherwise provided in this part, Part 2 (commencing with Section 307) of the Code of Civil Procedure provides the rules of practice in proceedings under this part.

Comment. Section 8054 continues the first sentence of former Section 3259 without substantive change. The second sentence of former Section 3259 is not continued; this part does not include special provisions relating to new trials or appeals.

Section 8054 makes former Section 3149, relating to joinder and consolidation of actions, unnecessary. Part 2 of the Code of Civil Procedure enables persons claiming liens on the same property to join in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive joinder). If separate actions are commenced, the court may consolidate them. See Code Civ. Proc. § 1048 (consolidation of actions).

§ 8056. Calculation of time

8056. For purposes of this part, the term “day” means a calendar day.

Comment. Section 8056 is new. A reference to the term “day” in a statute typically means a calendar day, unless otherwise specifically

indicated. *Iverson v. Superior Court*, 167 Cal. App. 3d 544, 548, 213 Cal. Rptr. 399 (1985).)

See also Sections 10 (computing time), 11 (holidays).

§ 8058. Filing and recordation of papers

8058. (a) If this part provides for filing a contract, plan, or other paper with the county recorder, the provision is satisfied by filing the paper in the office of the county recorder of the county in which the work of improvement or part of it is situated.

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

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

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

Comment. Subdivisions (a) and (b) of Section 8058 are new. They generalize a number of provisions of former law. The provision of subdivision (b) for recordation without acknowledgment is drawn from former Sections 3084 and 3093; it is an exception to the general rule of Government Code Section 27287. See also Section 1170 (recordation).

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

See also Sections 8008 (“contract”), 8024 (“lien”), 8030 (“payment bond”), 8050 (“work of improvement”).

§ 8060. Effect of act by owner

8060. No act of an owner in good faith and in compliance with a provision of this part shall be construed to prevent a direct contractor's performance of the contract, or exonerate a surety on a performance or payment bond.

Comment. Section 8060 restates former Section 3263 without substantive change.

See also Section 8142 (no release of surety from liability).

See also Sections 8008 ("contract"), 8014 ("direct contractor"), 8028 ("owner"), 8030 ("payment bond").

§ 8062. Co-owners

8062. An owner may give a notice or execute or file a document under this part on behalf of a co-owner if the owner acts on the co-owner's behalf and includes in the notice or document the name and address of the co-owner on whose behalf the owner acts.

Comment. Section 8062 is new. It generalizes provisions found in former Sections 3092 (notice of cessation) and 3093 (notice of completion).

See also Section 8028 ("owner").

§ 8064. Agency

8064. An act that may be done by or to a person under this part may be done by or to the person's agent to the extent the act is within the scope of the agent's authority.

Comment. Section 8064 is a specific application of Section 2305. This section makes clear that an agent's authority is limited to the scope of the agency. Thus, to the extent a direct contractor is deemed to be the agent of an owner for the purpose of engaging a subcontractor, the scope of the agency does not include other acts, such as compromise of litigation.

For provisions relating to the agent of an owner and to the agency authority of co-owners, see Sections 8028 ("owner") and 8062 (co-owners).

See also Section 8032 ("person").

§ 8066. Relation to other statutes

8066. (a) This part does not apply to a transaction governed by the Oil and Gas Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of the Code of Civil Procedure.

(b) This part does not apply to or change improvement security under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

(c) This part does not apply to a transaction governed by Sections 20457 to 20464, inclusive, of the Public Contract Code.

Comment. Subdivision (a) of Section 8066 restates former Section 3266(a).

Subdivision (b) is new. It clarifies the interrelation between this part and the Subdivision Map Act. For relevant provisions of that act, see Government Code Sections 66499-66499.10 (improvement security).

Subdivision (c) restates former Section 3266(b). This provision updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, § 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under Division 2 (commencing with Section 1600) of the Public Contract Code. See Pub. Cont. Code § 20457.

Article 3. Notice

§ 8100. Written notice

8100. (a) Notice under this part shall be in writing.

(b) Written notice under this part may be given by electronic communication to the extent authorized under Section 8112.

Comment. Subdivision (a) of Section 8100 generalizes various provisions of former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion), 3094 (notice of

nonresponsibility), 3097 (preliminary notice (private work)), 3103 (stop notice).

Subdivision (b) is new.

See also Section 14 (writing includes printing and typewriting).

See also Evid. Code § 250 (“writing”).

§ 8102. Contents of notice

8102. (a) Notice under this part shall, in addition to any other information required by statute for that type of notice, include all of the following information to the extent known to the person giving the notice:

(1) The name and address of the owner or reputed owner.

(2) The name and address of the direct contractor.

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

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

(5) The name, address, and relationship to the parties of the person giving the notice.

(6) If the person giving the notice is a claimant:

(A) A general statement of the work provided.

(B) The name of the person to or for which the work is provided.

(C) A statement or estimate of the claimant’s demand, if any, after deducting all just credits and offsets.

(b) Notice is not invalid by reason of any variance from the requirements of this section if the notice is sufficient to substantially inform the person given notice of the information required by this section and other information required in the notice.

Comment. Section 8102 is new. It generalizes and standardizes provisions found throughout former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion), 3097 (preliminary notice), 3103 (stop notice).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”), 8028 (“owner”), 8032 (“person”), 8038 (“reputed owner”), 8040 (“site”), 8048 (“work”).

§ 8104. Notice of overdue laborer compensation

8104. (a) A direct contractor or subcontractor that employs a laborer and fails to pay the full compensation due the laborer, including any employer payments described in Section 1773.1 of the Labor Code and implementing regulations, shall not later than the date the compensation became delinquent, give the laborer, the laborer’s bargaining representative, if any, the construction lender or reputed construction lender, if any, and the owner or reputed owner, notice that includes all of the following information, in addition to the information required by Section 8102:

(1) The name and address of the laborer, and of any person or entity described in subdivision (b) of Section 8020 to which employer payments are due.

(2) The total number of straight time and overtime hours worked by the laborer on each job.

(3) The amount then past due and owing.

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

Comment. Section 8104 restates former Section 3097(k), with the additional requirement that the information provided be given to the owner or reputed owner, and include the name and address of the unpaid laborer. See also Sections 8100-8118 (notice).

The reference to the Registrar of Contractors in the final sentence of former Section 3097(k) is revised to refer to the Contractors’ State License Law. This is a technical, nonsubstantive change.

The information required in this notice is in addition to the information required by Section 8102 (contents of notice).

Compliance with this section does not excuse compliance with Section 8202(b), if applicable. See Section 8202 (contents of preliminary notice).

See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8020 (“laborer”), 8028 (“owner”), 8038 (“reputed owner, direct contractor, or construction lender”), 8046 (“subcontractor”).

§ 8106. Manner of giving notice

8106. Except as otherwise provided by statute, notice under this part shall be given by any of the following means:

(a) Personal delivery.

(b) Mail in the manner provided in Section 8110.

(c) Leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons and complaint in a civil action.

Comment. Section 8106 is new. It generalizes and standardizes provisions found throughout former law. See, e.g., former Sections 3097 (preliminary notice), 3103 (stop notice), 3144.5 (notice of release bond), 3227 (notice to principal and surety), 3259.5 (notice of recordation of notice of completion), 3260.2 (stop work notice).

Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure Section 415.20 for service of summons and complaint, the notice is complete five days after mailing the notice. See Section 8116 (when notice complete). The 10 day delay provided in the Code of Civil Procedure for completion of service under that code is inapplicable.

This part may prescribe a different or more limited manner of giving a particular notice. See, e.g., Section 8486 (service of petition for order releasing lien).

§ 8108. Address at which notice is given

8108. Except as otherwise provided by this part, notice under this part shall be given to the person to be notified at the person’s residence, the person’s place of business, or at any of the following addresses:

(a) If the person to be notified is an owner, at the owner’s address shown on the direct contract, the building permit, or a construction trust deed.

(b) If the person to be notified is a construction lender, at the construction lender’s address shown on the construction loan agreement or construction trust deed.

(c) If the person to be notified is a direct contractor or a subcontractor, at the contractor's address shown on the building permit, on the contractor's contract, or on the records of the Contractors' State License Board.

(d) If the person to be notified is a claimant, at the claimant's address shown on the claimant's contract, preliminary notice, claim of lien, stop payment notice, or claim against a payment bond, or on the records of the Contractors' State License Board.

(e) If the person to be notified is a surety on a bond, at the surety's address shown on the bond for service of notices, papers, and other documents, or on the records of the Department of Insurance.

Comment. Section 8108 is new. It generalizes and standardizes provisions found throughout former law. For an example of a more particularized notice provision, see Section 8506.

Subdivision (e) does not continue the unique provisions found in former Section 3227 for notice to alternate persons in the case of a personal surety or admitted surety insurer. The bond and undertaking law requires every bond to include the address at which the principal and sureties may be served with notices, papers, and other documents. See Code Civ. Proc. § 995.320.

See also Sections 8002 ("claimant"), 8006 ("construction lender"), 8008 ("contract"), 8013 ("direct contract"), 8014 ("direct contractor"), 8024 ("lien"), 8028 ("owner"), 8030 ("payment bond"), 8032 ("person"), 8034 ("preliminary notice"), 8044 ("stop payment notice"), 8046 ("subcontractor"), 8048 ("work").

§ 8110. Mailed notice

8110. Except as otherwise provided by this part, notice by mail under this part shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.

Comment. Section 8110 is a new provision included for drafting convenience. It generalizes a number of provisions of former law, and expands the methods of giving notice to include delivery by express service carrier.

For an example of a more particularized notice provision, see Section 8486.

§ 8112. Notice by electronic communication

8112. (a) As used in this section, “electronic record” has the meaning provided in Section 1633.2.

(b) A notice under this part may be given to a person in the form of an electronic record if the person has agreed in writing to receive the notice in the form of an electronic record.

(c) If a person that has agreed to receive a notice in the form of an electronic record is a consumer within the meaning of Section 7006 of Title 15 of the United States Code, the person’s agreement shall satisfy the requirements of Section 7001 of Title 15 of the United States Code relating to consumer consent to an electronic record.

Comment. Section 8112 is new. It combines the agreement requirement of the California Uniform Electronic Transactions Act (UETA) (Sections 1633.1-1633.17) with the consumer protections of the federal Electronic Signatures in Global and National Commerce Act (E-Sign) (15 U.S.C. § 7001 *et seq.*).

A consumer within the meaning of E-Sign is “an individual who obtains products or services used primarily for personal, family, or household purposes.” 15 U.S.C. § 7006(1). The consumer consent requirements of E-Sign include (i) affirmative consent, (ii) disclosure, (iii) electronic access, (iv) software and hardware upgrades. See 15 U.S.C. § 7001(c)(1).

See also Section 8032 (“person”), Evid. Code § 250 (“writing”).

§ 8114. Posting of notice

8114. A notice required by this part to be posted shall be displayed in a conspicuous location at the site and at the main office of the site, if one exists.

Comment. Section 8114 is new. It generalizes and standardizes provisions found in former law. See, e.g., former Sections 3094 (notice of nonresponsibility), 3260.2 (stop work notice).

See also Section 8040 (“site”).

§ 8116. When notice complete

8116. Notice under this part is complete and deemed to have been given at the following times:

(a) If given by personal delivery, when delivered.

(b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

(c) If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after mailing.

(d) If given by posting, when displayed.

(e) If given by recording, when recorded in the office of the county recorder.

(f) If given in the form of an electronic record, when the electronic record is transmitted.

Comment. Section 8116 is new. It generalizes and standardizes provisions found in former law. See, e.g., former Section 3097(f)(3) (service of preliminary notice).

Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure Section 1013, the notice is complete when deposited in the mail or with an express service carrier. The 10 and 20 day delays provided in the Code of Civil Procedure for completion of service under that code are inapplicable. For an exception to this rule, see Section 8486 (notice of hearing on lien release petition).

Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure Section 415.20 for service of summons and complaint, the notice is complete five days after mailing of the notice. The 10 day delay provided in the Code of Civil Procedure for completion of service under that code is inapplicable.

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers), 8110 (mailed notice), 8112 (notice by electronic communication), 8114 (posting of notice).

§ 8118. Proof of notice

8118. (a) Proof that notice was given to a person in the manner required by this part shall be made by a proof of notice declaration that states all of the following:

(1) The type or description of the notice given.

(2) The date, place, and manner of notice, and facts showing that notice was given in the manner required by statute.

(3) The name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice.

(b) If the notice is given by mail, the declaration shall be accompanied by one of the following:

(1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail.

(2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service.

(3) A return receipt, delivery confirmation, signature confirmation, or other proof of delivery or attempted delivery provided by the United States Postal Service, or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the returned envelope itself.

(4) A tracking record or other documentation provided by an express service carrier showing delivery or attempted delivery of the notice.

(c) If notice is given in the form of an electronic record, the declaration shall also state that the document was served electronically and that no notice of nontransmission was received, and shall be accompanied by the recipient's written agreement to receive the notice in the form of an electronic record.

Comment. Section 8118 is new. It generalizes and standardizes provisions found throughout former law, and expands the methods of proof to include documentation of the mailing provided by the United

States Postal Service or an express service carrier. See, e.g., former Sections 3097 (preliminary notice), 3260.2 (stop work notice).

See also Sections 8110 (mailed notice), 8112 (notice by electronic communication).

See also Section 8032 (“person”).

Article 4. Construction Documents

§ 8130. Contract forms

8130. (a) A written direct contract shall provide a space for the owner to enter the following information:

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

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

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

Comment. Section 8130 restates the parts of former Section 3097(l) and (m) relating to the contents of contracts, deleting the limitation to the owner’s residence address. The reference to “written” contract is added to subdivision (b) for consistency with subdivision (a). The reference to “lender or lenders” in subdivision (a) is shortened to “lender” for consistency with subdivision (b). See Section 14 (singular includes plural, and plural includes singular). These and other minor wording changes are technical, nonsubstantive revisions.

For the direct contractor’s duty to provide information to persons seeking to serve a preliminary notice, see Section 8208.

This section does not require that all contracts between an owner and a direct contractor be in writing.

See also Sections 8006 (“construction lender”), 8008 (“contract”), 8013 (“direct contract”), 8014 (“direct contractor”), 8028 (“owner”), 8046 (“subcontractor”).

§ 8132. Designation of construction lender on building permit

8132. (a) A public entity that issues building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the public entity.

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

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

Comment. Section 8132 continues former Section 3097(i) without substantive change.

See also Sections 8006 (“construction lender”), 8032 (“person”), 8034 (“preliminary notice”), 8036 (“public entity”).

§ 8134. Construction trust deed

8134. (a) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for a work of improvement, shall bear the designation “Construction Trust Deed” prominently on its face and shall state all of the following:

(1) The name and address of the construction lender.

(2) The name and address of the owner of the property described in the instrument.

(3) A legal description of the property that secures the loan and, if known, the street address of the property.

(b) Failure to comply with subdivision (a) does not affect the validity of the mortgage, deed of trust, or other instrument.

(c) Failure to comply with subdivision (a) does not relieve a person required to give preliminary notice from that duty.

(d) The county recorder of the county in which the instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

Comment. Section 8134 continues former Section 3097(j) without substantive change.

See also Section 8058 (filing and recordation of papers).

See also Sections 8006 (“construction lender”), 8028 (“owner”), 8032 (“person”), 8034 (“preliminary notice”), 8050 (“work of improvement”).

Article 5. Bonds

§ 8140. Application of Bond and Undertaking Law

8140. The Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond given under this part, except to the extent this part prescribes a different rule or is inconsistent.

Comment. Section 8140 is new. It is a specific application of Code of Civil Procedure Section 995.020 (application of Bond and Undertaking Law).

Former Section 3227, relating to notice to principal and surety, is not continued. Its substance is superseded by Sections 8100-8118 (notice).

§ 8142. No release of surety from liability

8142. None of the following releases a surety from liability on a bond given under this part:

(a) A change to a contract, plan, specification, or agreement for a work of improvement or for work provided for a work of improvement.

(b) A change to the terms of payment or an extension of the time for payment for a work of improvement.

(c) A rescission or attempted rescission of a contract, agreement, or bond.

(d) A condition precedent or subsequent in the bond purporting to limit the right of recovery of a claimant

otherwise entitled to recover pursuant to a contract, agreement, or bond.

(e) In the case of a bond given for the benefit of claimants, the fraud of a person other than the claimant seeking to recover on the bond.

Comment. Section 8142 restates former Section 3225 without substantive change. See also Section 8060 (effect of act by owner).

See also Sections 8002 (“claimant”), 8008 (“contract”), 8032 (“person”), 8048 (“work”), 8050 (“work of improvement”).

§ 8144. Construction of bond

8144. (a) A bond given under this part shall be construed most strongly against the surety and in favor of the beneficiary.

(b) A surety is not released from liability to the beneficiary by reason of a breach of the direct contract or on the part of any obligee named in the bond.

(c) Except as otherwise provided by statute, the sole conditions of recovery on the bond are that the beneficiary is a person described in Article 1 (commencing with Section 8400) of Chapter 4 and the beneficiary has not been paid the full amount of the claim.

Comment. Section 8144 restates former Section 3226 without substantive change. See also Sections 8400-8404 (who is entitled to lien).

See also Section 8013 (“direct contract”),

Cf. Code Civ. Proc. § 995.130 (“beneficiary”).

Article 6. Completion

§ 8150. Completion

8150. (a) For the purpose of this part, completion of a work of improvement occurs at the earliest of the following times:

(1) Substantial completion of the work of improvement.

(2) Occupation or use by the owner accompanied by cessation of labor.

(3) Cessation of labor for a continuous period of 60 days.

(4) Recordation of a notice of cessation after cessation of labor for a continuous period of 30 days.

(b) Notwithstanding subdivision (a), if a work of improvement is subject to acceptance by a public entity, completion occurs on acceptance.

Comment. Section 8150 restates former Section 3086, to the extent it applied to a private work.

Subdivision (a)(1) replaces the term “actual completion” in former Section 3086 with “substantial completion,” consistent with judicial interpretation of the former term. See cases collected in *Lewis v. Hopper*, 140 Cal. App. 2d 365, 367, 295 P.2d 93 (1956). This is a nonsubstantive change.

References to occupation or use by an owner may include occupation or use by the owner’s agent. See Section 8064 (agency).

“Acceptance by the owner” is not continued as a form of completion.

Subdivision (b) relates to a private work for which acceptance by a public entity is required. For an interpretation of this provision, see *A. J. Raisch Paving Co. v. Mountain View Sav. & Loan Assn.* 28 Cal. App. 3d 832, 105 Cal. Rptr. 96 (1972).

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers), 855 (notice of cessation).

See also Sections 8036 (“public entity”), 8050 (“work of improvement”).

§ 8152. Notice of completion

8152. (a) An owner may record a notice of completion on or within 15 days after completion of a work of improvement.

(b) The notice of completion shall be signed and verified by the owner.

(c) The notice shall comply with Section 8102, and shall also include all of the following information:

(1) If the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 8154, the name of the direct contractor under that contract and a general statement of the work provided pursuant to the contract.

(2) If signed by the owner’s successor in interest, the name and address of the successor’s transferor.

(3) The nature of the interest or estate of the owner.

(4) The date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice.

(d) A notice of completion that does not comply with the provisions of this section is not effective.

Comment. Section 8152 restates former Section 3093 without substantive change, except that the 10 day period for recording a notice of completion is extended to 15 days. For the date of completion of a work of improvement, see Section 8150.

As used in this section, the owner is the person that causes a building, improvement, or structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of a notice of cessation is recorded) whether the interest or estate of the owner is in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a cotenant. See Section 8028 ("owner").

A notice of completion may be signed and verified or recorded by an agent of the owner, to the extent the act is within the scope of the agent's authority. See Section 8064 (agency).

For the effect of a recordation of a notice of completion, see Sections 8412 and 8414 (time for claim of lien), 8612 (notice of payment bond claim).

A claim of lien must be filed within 30 or 60 days after recordation of a notice of completion (depending on the nature of the claimant), subject to a maximum of 90 days after actual completion. See Sections 8412 and 8414 (recordation of claim of lien). However, an owner that records a notice of completion that states an incorrect date of completion may be estopped from asserting the running of the filing period. See *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58 (1959).

A notice of completion is ineffective to shorten the time for a claim of lien unless notice of recordation is given to the person whose claim of lien is affected. See Section 8156 (notice of recordation by owner).

A notice of completion is recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. See Section 8058(a) (filing and recordation of papers). A notice of completion is recorded when it is filed for record. See Sections 1170 (recordation), 8058(b) (filing and recordation of papers).

The reference to a successor's "transferors" is omitted from subdivision (b)(2). See Section 14 (singular includes plural).

See also Sections 8056 (calculation of time), 8062 (co-owners).

See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 8040 (“site”), 8048 (“work”), 8050 (“work of improvement”).

§ 8154. Notice of completion of contract for portion of work of improvement

8154. If a work of improvement is made pursuant to two or more direct contracts, each covering a portion of the work of improvement:

(a) The owner may record a notice of completion of a direct contract for a portion of the work of improvement. On recordation of the notice of completion, for the purpose of Sections 8412 and 8414 a direct contractor is deemed to have completed the contract for which the notice of completion is recorded and a claimant other than a direct contractor is deemed to have ceased providing work.

(b) If the owner does not record a notice of completion under this section, the period for recording a claim of lien is that provided in Sections 8412 and 8414.

Comment. Section 8154 continues the substance of former Section 3117, but eliminates the 10 day period for recordation of a notice of completion of a contract for a portion of a work of improvement.

This section omits the rules found in former law governing the time for recordation of a lien claim after a notice of completion for a portion of a work of improvement. The general rules governing the time for recordation do not distinguish among types of notice of completion, and appear to be satisfactory for purposes of this section, with the clarification set out in subdivision (a). A claim of lien must be recorded within 30 or 60 days after recordation of a notice of completion (depending on the nature of the claimant), subject to a maximum of 90 days after actual completion. See Sections 8412 and 8414 (time for recordation of lien claim).

For the effect of a recordation of a notice of completion, see Sections 8412 and 8414 (time for recordation of lien claim), 8612 (notice of payment bond claim).

The recordation of a notice of completion of a contract for a portion of a work of improvement does not affect the rights of a claimant with respect to work provided pursuant to another contract.

See also Sections 8062 (co-owners), 8152 (notice of completion).

See also Sections 8002 (“claimant”), 8013 (“direct contract”), 8014 (“direct contractor”), 8028 (“owner”), 8048 (“work”), 8050 (“work of improvement”).

§ 8155. Notice of cessation

8155. (a) An owner may record a notice of cessation if there has been a continuous cessation of labor on a work of improvement for at least 30 days prior to the recordation that continues through the date of the recordation.

(b) The notice shall be signed and verified by the owner.

(c) The notice shall comply with the requirements of Article 4 (commencing with Section 8100), and shall also include all of the following information:

(1) The date on or about which labor ceased.

(2) A statement that the cessation has continued until the recordation of the notice.

Comment. Section 8155 restates former Section 3092 without substantive change.

As used in this section, the owner is the person that causes a building, improvement, or structure, to be constructed, altered, or repaired (or the owner’s successor in interest at the date of a notice of cessation is recorded) whether the interest or estate of the owner is in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a cotenant. See Section 8028 (“owner”).

The notice of cessation may be signed, verified, and recorded by an agent of the owner to the extent the act is within the scope of the agent’s authority. See Section 8064 (agency).

For the effect of a recordation of a notice of cessation, see Sections 8412 and 8414 (time for recordation of lien claim).

A notice of cessation is recorded in the office of the county recorder of the county in which the work of improvement or part of it is performed. See Section 8058(a) (filing and recordation of papers). The notice is recorded when it is filed for record. See Sections 1170 (recordation), 8058(b) (filing and recordation of papers).

A notice of cessation is ineffective to shorten the time for a claim of lien unless notice of recordation is given to the person whose claim of lien is affected. See Section 8156 (notice of recordation by owner).

See also Sections 8056 (calculation of time), 8062 (co-owners).

See also Section 8050 (“work of improvement”).

§ 8156. Notice of recordation by owner

8156. (a) An owner that records a notice of completion or cessation shall, within 10 days of the date the notice of completion or cessation is filed for record, give a copy of the notice to all of the following persons:

(1) A direct contractor.

(2) A claimant that has given the owner preliminary notice.

(b) The copy of the notice shall be given in compliance with the requirements of Article 3 (commencing with Section 8100).

(c) If the owner fails to give notice to a person as required by subdivision (a), the notice is ineffective to shorten the time within which that person may record a claim of lien under Sections 8412 and 8414. The ineffectiveness of the notice is the sole liability of the owner for failure to give notice to a person under subdivision (a).

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

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

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

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

Comment. Section 8156 restates former Section 3259.5, replacing the notice of recordation with a copy of the notice that the owner files for recordation, and expanding the manner of notice. The notice may no longer be given by regular mail. See Sections 8106 (manner of giving notice), 8110 (mailed notice).

As used in this section, “owner” includes a person that has an interest in property (or the person’s successor in interest on the date a notice of completion or cessation is recorded) that causes a building, improvement, or structure, to be constructed, altered, or repaired on the property, and includes a cotenant. See Section 8028 (“owner”).

Subdivision (c) is recast in terms of the ineffectiveness of the notice of completion or cessation, in place of the former references to extension of time.

A notice is recorded when it is filed for record. See Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8056 (calculation of time), 8062 (co-owners), 8150 (completion), 8152 (notice of completion), 8154 (notice of completion of contract for portion of work of improvement), 8155 (notice of cessation).

See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8032 (“person”), 8034 (“preliminary notice”).

Article 7. Waiver and Release

§ 8160. Terms of contract

8160. An owner, direct contractor, or subcontractor may not, by contract or otherwise, waive, affect, or impair any other claimant’s rights under this part, whether with or without notice, and any term of a contract that purports to do so is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.

Comment. Section 8160 continues the first and second sentences of former Section 3262(a) without substantive change, except to add a reference to a subcontractor.

See also Sections 8002 (“claimant”), 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 8046 (“subcontractor”).

§ 8162. Waiver and release

8162. A claimant’s waiver and release does not release the owner, construction lender, or surety on a payment bond from a lien or claim unless both of the following conditions are satisfied:

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

(b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be (1) the claimant’s endorsement on a single or joint payee check that has been paid by the financial institution on which it was

drawn or (2) written acknowledgment of payment by the claimant.

Comment. Section 8162 continues the third and fourth sentences of former Section 3262(a) without substantive change. The term “financial institution” replaces “bank” in subdivision (b) and in the forms provided in this article.

The waiver and release may be signed by the claimant’s agent. See Section 8064 (agency).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8024 (“lien”), 8028 (“owner”).

§ 8164. Statement of claimant

8164. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a lien or claim is void and unenforceable and does not create an estoppel or impairment of the lien or claim unless either of the following conditions is satisfied:

(a) The statement is pursuant to a waiver and release under this article.

(b) The claimant has actually received payment in full for the claim.

Comment. Section 8164 continues former Section 3262(b) without substantive change.

See also Section 8002 (“claimant”), 8024 (“lien”).

§ 8166. Reduction or release of stop payment notice

8166. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a waiver and release form provided in this article.

(b) The writing shall identify whether it is a reduction of the amount of the stop payment notice, or a release of the notice in its entirety. If the writing is a reduction, it shall state the amount of the reduction, and the amount to remain withheld after the reduction.

(c) A claimant’s reduction or release of a stop payment notice has the following effect:

(1) The reduction or release releases the claimant's right to enforce payment of the claim stated in the notice to the extent of the reduction or release.

(2) The reduction or release releases the person given the notice from the obligation to withhold funds pursuant to the notice to the extent of the reduction or release.

(3) The reduction or release does not preclude the claimant from giving a subsequent stop payment notice that is timely and proper.

(4) The reduction or release does not release any right of the claimant other than the right to enforce payment of the claim stated in the stop payment notice to the extent of the reduction or release.

Comment. Subdivisions (a) and (c) of Section 8166 generalize former Section 3262(b)(2), so as to apply to a stop payment notice given to a construction lender as well as to a stop payment notice given to an owner.

Subdivision (b) is new.

See also Sections 8002 ("claimant"), 8032 ("person"), 8044 ("stop payment notice").

§ 8168. Accord and satisfaction or settlement agreement not affected

8168. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the lien or claim.

Comment. Section 8168 continues former Section 3262(c) without substantive change.

See also Section 8024 ("lien").

§ 8170. Conditional waiver and release on progress payment

8170. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress 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 PROGRESS
PAYMENT

NOTICE: This document waives the claimant's lien and certain other rights effective on receipt of payment. A person should not rely on this document unless satisfied that the claimant has received payment.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document.

This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: _____

Check Payable to: _____

Exceptions

This document does not apply to a lien right based on any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): \$_____

This document does not affect contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Comment. Section 8170 restates former Section 3262(d)(1) without substantive change, except to add language relating to progress payments covered by previous releases that have not been paid. The statutory form is recast for clarity.

See also Sections 8002 ("claimant"), 8024 ("lien"), 8028 ("owner"), 8030 ("payment bond"), 8032 ("person"), 8044 ("stop payment notice").

§ 8172. Unconditional waiver and release on progress payment

8172. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall be in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: This document waives and releases 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 waiver and release form.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. The claimant has received the following progress payment: \$_____

Exceptions

This document does not apply to a lien right based on any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.

This document does not affect contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant’s Signature: _____

Claimant’s Title: _____

Date of Signature: _____

Comment. Section 8172 restates former Section 3262(d)(2) without substantive change. The statutory form is recast for clarity.

See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8030 (“payment bond”), 8044 (“stop payment notice”).

§ 8174. Conditional waiver and release on final payment

8174. 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

NOTICE: This document waives the claimant’s lien and certain other rights effective on receipt of payment. A person should not rely on this document unless satisfied that the claimant has received payment.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered to the customer on this job.

This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

(1) Disputed claims for extras in the amount of \$ _____

(2) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Comment. Section 8174 restates former Section 3262(d)(3) without substantive change, except to add language relating to progress payments covered by previous releases that have not been paid, and a line for identification of the waivant's customer. The statutory form is recast for clarity.

See also Section 8002 ("claimant"), 8024 ("lien"), 8028 ("owner"), 8030 ("payment bond"), 8032 ("person"), 8044 ("stop payment notice").

§ 8176. Unconditional waiver and release on final payment

8176. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall be in substantially the following form, with the text of the

“Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL
PAYMENT

NOTICE TO CLAIMANT: This document waives and releases 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 waiver and release form.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. The claimant has been paid in full.

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Comment. Section 8176 restates former Section 3262(d)(4) without substantive change. The statutory form is recast for clarity.

See also Section 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8030 (“payment bond”), 8044 (“stop payment notice”).

CHAPTER 2. PRELIMINARY NOTICE

§ 8200. Preliminary notice prerequisite to remedies

8200. (a) Except as otherwise provided by statute, before recording a lien claim, giving a stop payment notice, or asserting a claim against a payment bond, a claimant shall give preliminary notice to the following persons:

(1) The owner or reputed owner.

(2) The direct contractor or reputed direct contractor to which the claimant provides work, either directly or through one or more subcontractors.

(3) The construction lender or reputed construction lender, if any.

(b) The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

(c) Compliance with this section is a necessary prerequisite to the validity of a lien claim or stop payment notice under this part.

(d) Compliance with this section or with Section 8612 is a necessary prerequisite to the validity of a claim against a payment bond under this part.

(e) Notwithstanding the foregoing subdivisions:

(1) A laborer is not required to give preliminary notice.

(2) A claimant with a direct contractual relationship with an owner or reputed owner is required to give preliminary notice only to the construction lender or reputed construction lender, if any.

Comment. Section 8200 restates the introductory clause and parts of subdivisions (a) and (b) of former Section 3097. Some repetitive detail is omitted in reliance on defined terms and other substantive provisions.

Subdivision (e)(2) makes clear that all direct contractors must give preliminary notice to the construction lender or reputed construction lender, if any. This resolves a possible ambiguity in former Section 3097(b).

For an exception to the requirement that preliminary notice must be given before asserting a claim against a payment bond, see Section 8612.

The substance of former Sections 3097(f) and 3097.1 are continued in the general notice provisions of this part. See Sections 8100-8118 (notice).

The transitional provisions of former Section 3097(p) are obsolete and not continued.

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”), 8020 (“laborer”), 8024 (“lien”), 8028 (“owner”), 8030 (“payment bond”), 8038 (“reputed owner, direct contractor, or construction lender”), 8046 (“subcontractor”).

§ 8202. Contents of preliminary notice

8202. (a) The preliminary notice shall comply with the requirements of Section 8102, and shall also include:

- (1) A general description of the work to be provided.
- (2) An estimate of the total price of the work provided and to be provided.
- (3) The following statement in boldface type:

NOTICE TO PROPERTY OWNER

EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances.

This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the

financial condition of the contractor or the person employed by you on the construction project.

If you record a notice of cessation or completion of your construction project, you must within 15 days after recording send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling containing four or fewer units.

(b) If preliminary notice is given by a subcontractor that has not paid all compensation due to a laborer, the notice shall include the name and address of the laborer and any person or entity described in subdivision (b) of Section 8020 to which payments are due.

(c) If an invoice for material or certified payroll contains the information required by this section and Section 8102, a copy of the invoice or payroll, given in compliance with the requirements of Article 3 (commencing with Section 8100) of Chapter 1, is sufficient.

Comment. Section 8202 continues the substance of former Section 3097(c)(1)-(6), the unnumbered paragraph following paragraph (6), and the requirement of former Section 3097(a) that the preliminary notice be written. See also Sections 8100-8118 (notice). The reference to an “express trust fund” is replaced by a reference to a generalized category of persons or entities included within the definition of “laborer.” See Section 8020 (“laborer”).

The continuation of the provision in subdivision (c) is not intended to make any change with respect to otherwise applicable privacy rights.

The information required in this notice is in addition to the information required by Section 8102 (contents of notice).

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers), 8152 (notice of completion), 8154 (notice of completion of contract for portion of work of improvement), 8155 (notice of cessation).

See also Sections 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”).

§ 8204. Effect of preliminary notice

8204. (a) A claimant may record a claim of lien, give a stop payment notice, or assert a claim against a payment bond only for work provided within 20 days before giving preliminary notice or at any time thereafter.

(b) Notwithstanding subdivision (a), a certificated architect, registered engineer, or licensed land surveyor that has furnished services for the design of the work of improvement may record a claim of lien, give a stop payment notice, or assert a claim against a payment bond for design professional services provided for the design of the work of improvement, if the architect, engineer, or land surveyor gives preliminary notice not later than 20 days after the work of improvement has commenced.

Comment. Subdivision (a) of Section 8204 supersedes former Section 3097(d). The provision is simplified so that it refers only to the effect of giving preliminary notice.

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

See also Section 8056 (calculation of time).

See also Sections 8002 (“claimant”), 8024 (“lien”), 8030 (“payment bond”), 8044 (“stop payment notice”), 8048 (“work”), 8050 (“work of improvement”).

§ 8206. Coverage of preliminary notice

8206. (a) Except as provided in subdivision (b), a claimant need give only one preliminary notice to each person to which notice must be given under this chapter with respect to all work provided by the claimant for a work of improvement.

(b) If a claimant provides work pursuant to contracts with more than one subcontractor, the claimant shall give a separate preliminary notice with respect to work provided pursuant to each contract.

(c) A preliminary notice that contains a general description of work provided by the claimant through the date of the notice also covers work provided by the claimant after the date of the notice whether or not they are within the scope of the general description contained in the notice.

Comment. Section 8206 restates former Section 3097(g) without substantive change.

See also Sections 8002 (“claimant”), 8008 (“contract”), 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”), 8050 (“work of improvement”).

§ 8208. Direct contractor’s duty to provide information

8208. A direct contractor shall make available to any person seeking to give preliminary notice the following information:

(a) The name and address of the owner.

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

Comment. Section 8208 restates the parts of former Section 3097(l) and (m) relating to a direct contractor’s duty to provide information, deleting the limitation to the owner’s residence address.

See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8028 (“owner”), 8032 (“person”).

§ 8210. Owner’s duty to give notice of construction loan

8210. If a construction loan is obtained after commencement of a work of improvement, the owner shall give notice of the name and address of the construction lender to each person that has given the owner preliminary notice.

Comment. Section 8210 continues former Section 3097(n) without substantive change. The reference to commencement of construction is changed to commencement of a work of improvement for consistency with the remainder of this part.

See also Sections 8004 (“commencement”), 8006 (“construction lender”), 8028 (“owner”), 8032 (“person”), 8050 (“work of improvement”).

§ 8212. Waiver void

8212. An agreement made or entered into by an owner whereby the owner agrees to waive the rights conferred on the owner by this chapter is void and unenforceable.

Comment. Section 8212 continues former Section 3097(e) without substantive change.

See also Section 8028 (“owner”).

§ 8214. Notices filed with county recorder

8214. The county recorder may cause to be destroyed all documents filed under subdivision (*o*) of former Section 3097.

Comment. Section 8214 supersedes former Section 3097(*o*) relating to filing preliminary notice with the county recorder. This part no longer provides for filing a preliminary notice with the county recorder or for the county recorder to give notice to persons that filed preliminary notice of the recordation of a notice of completion or notice of cessation.

The former reference to the date after which the county recorder is authorized to act is deleted as a transitional provision that is now obsolete.

CHAPTER 3. DESIGN PROFESSIONALS LIEN

§ 8300. Owner

8300. Notwithstanding Section 8028, for purposes of this chapter “owner” means a fee owner of a site.

Comment. Section 8300 is new. The defined term replaces the term “landowner” as used in former Sections 3081.1 through 3081.9.

See also Section 8040 (“site”).

§ 8302. Lien

8302. (a) A design professional has, from the date of recordation of a claim of lien under this chapter, a lien on the site notwithstanding the absence of commencement of the planned work of improvement, if the owner that contracted for the design professional’s services is also the owner of the site at the time of recordation of the claim of lien.

(b) The lien of the design professional is for the amount of the design professional's fee for services provided under the contract or the reasonable value of those services, whichever is less. The amount of the lien is reduced by the amount of any deposit or prior payment under the contract.

(c) A design professional may not record a claim of lien, and a lien may not be created, under this chapter unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services provided by the design professional.

Comment. Section 8302 restates former Section 3081.2. The amount of the lien is limited to the fee for services provided under the contract rather than the fee for services provided before commencement of the work of improvement, since the lien provided by this section is only available prior to commencement of the work of improvement. See also Section 8306 (lien terminates on commencement of work).

See also Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8012 ("design professional"), 8024 ("lien"), 8040 ("site"), 8050 ("work of improvement"), 8300 ("owner").

§ 8304. Prerequisites for lien

8304. A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied:

(a) The work of improvement for which the design professional provided services has not commenced.

(b) The owner defaults in a payment required under the contract or refuses to pay the demand of the design professional made under the contract.

(c) Not less than 10 days before recording a claim of lien, the design professional gives the owner notice making a demand for payment, and stating that a default has occurred under the contract and the amount of the default.

(d) The design professional records a claim of lien. The claim of lien shall include all of the following information:

- (1) The name of the design professional.
- (2) The amount of the claim.
- (3) The current owner of record of the site.
- (4) A legal description of the site.

(5) Identification of the building permit or other governmental approval for the work of improvement.

Comment. Section 8304 restates former Section 3081.3, with the clarification that a lien under this chapter is unavailable if construction has commenced. See subdivision (a).

A building permit or other governmental approval for the work of improvement obtained in connection with or utilizing the services provided by the design professional is required as a condition of recordation of a lien claim under Section 8302 (lien).

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers).

See also Sections 8012 (“design professional”), 8024 (“lien”), 8040 (“site”), 8050 (“work of improvement”), 8300 (“owner”).

§ 8306. Creation, expiration, and release of lien

8306. (a) On recordation of the claim of lien, a lien is created in favor of the named design professional.

(b) The lien automatically expires and is null and void and of no further force or effect on the occurrence of either of the following events:

(1) The commencement of the work of improvement for which the design professional provided services.

(2) The expiration of 90 days after recording the claim of lien, unless the design professional commences an action to enforce the lien within that time.

(c) If the owner partially or fully satisfies the lien, the design professional shall execute and record a document that evidences a partial or full satisfaction and release of the lien, as applicable.

Comment. Section 8306 restates former Section 3081.4. On expiration of the lien as a result of commencement of the work of improvement, the

design professional may obtain a lien under Section 8400 (mechanics lien). See Section 8310 (mechanics lien right not affected).

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers).

See also Sections 8012 (“design professional”), 8024 (“lien”), 8050 (“work of improvement”), 8300 (“owner”).

§ 8308. Application of part

8308. (a) Except as provided in subdivision (b), no provision of this part applies to a lien created under this chapter.

(b) The following provisions of this part apply to a lien created under this chapter:

(1) This chapter.

(2) Article 1 (commencing with Section 8000) of Chapter 1.

(3) Section 8428.

(4) Article 7 (commencing with Section 8480) of Chapter 4.

(5) Article 8 (commencing with Section 8490) of Chapter 4.

Comment. Section 8308 continues the substance of former Section 3081.5, and provides for the application of the definitional provisions of this part.

See also Section 8024 (“lien”).

§ 8310. Mechanics lien right not affected

8310. This chapter does not affect the ability of a design professional to obtain a lien for a work of improvement under Section 8400.

Comment. Section 8310 restates former Section 3081.6.

See also Sections 8012 (“design professional”), 8024 (“lien”), 8050 (“work of improvement”).

§ 8312. Time for claim of lien

8312. A design professional shall record a claim of lien under this chapter no later than 90 days after the design professional knows or has reason to know that the work of improvement will not be commenced.

Comment. Section 8312 restates former Section 3081.7.

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers).

See also Sections 8012 (“design professional”), 8024 (“lien”), 8050 (“work of improvement”).

§ 8314. Right to pursue other remedies

8314. The creation of a lien under this chapter does not affect the ability of the design professional to pursue other remedies.

Comment. Section 8314 restates former Section 3081.8.

See also Sections 8012 (“design professional”), 8024 (“lien”).

§ 8316. Priorities

8316. (a) No lien created under this chapter affects or takes priority over the interest of record of a purchaser, lessee, or encumbrancer, if the interest of the purchaser, lessee, or encumbrancer in the property was duly recorded before recordation of the claim of lien.

(b) No lien created under this chapter affects or takes priority over an encumbrance of a construction lender that funds the loan for the work of improvement for which the design professional provided services.

Comment. Section 8316 restates former Section 3081.9.

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers).

See also Sections 8006 (“construction lender”), 8012 (“design professional”), 8024 (“lien”), 8050 (“work of improvement”).

§ 8318. Exemption

8318. A design professional may not obtain a lien under this chapter for services provided for a work of improvement relating to a single-family owner-occupied residence for which the expected construction cost is less than one hundred thousand dollars (\$100,000).

Comment. Section 8318 restates former Section 3081.10. The exemption is based on expected construction cost, since the lien is only

available if the work of improvement is not constructed. See Section 8306 (creation, expiration, and release of lien).

See also Sections 8012 (“design professional”), 8024 (“lien”), 8050 (“work of improvement”).

CHAPTER 4. MECHANICS LIEN

Article 1. Who is Entitled to Lien

§ 8400. Persons entitled to lien

8400. A person that provides work authorized for a work of improvement, including, but not limited to, the following persons, has a lien right under this chapter:

- (a) Direct contractor.
- (b) Subcontractor.
- (c) Material supplier.
- (d) Equipment lessor.
- (e) Laborer.
- (f) Design professional.

Comment. Section 8400 restates 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 8400 to work “authorized” 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 8404 (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 8400 as provision of “work.” 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 8048 (“work”).

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

A person or entity described in Section 8020(b) has the same lien right as the laborer in subdivision (e), to the extent of the laborer's compensation agreed to be paid to the person or entity for labor on the improvement. See Section 8020 ("laborer").

See also Sections 8012 ("design professional"), 8014 ("direct contractor"), 8024 ("lien"), 8026 ("material supplier"), 8032 ("person"), 8046 ("subcontractor"), 8050 ("work of improvement").

§ 8402. Site improvement lien

8402. A person that provides work authorized for a site improvement has a lien right under this chapter.

Comment. Section 8402 restates former Section 3112. The reference to work done or material furnished is superseded by the reference to work. See Section 8048 ("work"). The reference to work at the instance or request of the owner or any person acting by or under authority of the owner as contractor or otherwise is replaced by the reference to work authorized. See Section 8404 (who may authorize work).

A site improvement is treated in the same manner as a work of improvement, except as provided in Sections 8448 (claim against separate residential units), 8450 (priority of lien), 8454 (separate contract for site improvement), 8458 (priority of site improvement lien). See Section 8050 ("work of improvement").

See also Sections 8024 ("lien"), 8032 ("person"), 8042 ("site improvement"),

§ 8404. Who may authorize work

8404. Work is authorized for a work of improvement or for a site improvement in any of the following circumstances:

(a) It is provided at the request of or agreed to by the owner.

(b) It is provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person

having charge of all or part of the work of improvement or site improvement.

Comment. Section 8404 restates parts of former Sections 3110 and 3112.

The reference in subdivision (a) to work provided at the request of an owner includes work provided at the instance of the owner, or of a person acting by or under the owner's authority. See Section 8064 (agency).

The inclusion in subdivision (b) of project managers is new.

The references in former law to sub-subcontractors and builders are omitted as surplus. A contractor either has a contract with the owner (and is a direct contractor) or does not (and is a subcontractor). This part does not distinguish among levels of subcontractor. The term "builder" was not defined in former law and was used only in former Section 3110.

A work of improvement includes a site improvement. See Section 8050 ("work of improvement").

See also Sections 8014 ("direct contractor"), 8028 ("owner"), 8048 ("work"), 8032 ("person"), 8042 ("site improvement"), 8046 ("subcontractor").

Article 2. Conditions to Enforcing a Lien

§ 8410. Preliminary notice required

8410. A claimant may enforce a lien only if the claimant has given preliminary notice to the extent required by Chapter 2 (commencing with Section 8200) and made proof of notice.

Comment. Section 8410 restates former Section 3114 without substantive change. A claimant must give preliminary notice to the extent provided in the preliminary notice provisions of this part. See Section 8200 *et seq.*

See also Section 8118 (proof of notice).

See also Sections 8002 ("claimant"), 8024 ("lien"), 8034 ("preliminary notice").

§ 8412. Time for claim of lien by direct contractor

8412. A direct contractor may not enforce a lien unless the contractor records a claim of lien after the contractor completes the direct contract, and before the earlier of the following times:

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

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

Comment. Section 8412 restates former Section 3115 without substantive change. A contract is complete within the meaning of this section when the contractor's obligations under it are substantially performed, excused, or otherwise discharged. See *Howard S. Wright Construction Co. v. BBIC Investors, LLC*, 136 Cal. App. 4th 228, 38 Cal. Rptr. 3d 769 (2006).

For completion of a work of improvement, see Section 8150. For recordation of a notice of completion, see Sections 8152 (notice of completion), 8154 (notice of completion of contract for portion of work of improvement). For recordation of a notice of cessation, see Section 8155 (notice of cessation).

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers).

See also Sections 8013 ("direct contract"), 8014 ("direct contractor"), 8024 ("lien"), 8028 ("owner"), 8050 ("work of improvement").

§ 8414. Time for claim of lien by claimant other than direct contractor

8414. A claimant other than a direct contractor may not enforce a lien unless the claimant records a claim of lien within the following times:

(a) After the claimant ceases to provide work.

(b) Before the earlier of the following times:

(1) Ninety days after completion of the work of improvement.

(2) Thirty days after the owner records a notice of completion or cessation.

Comment. Section 8414 restates former Section 3116 without substantive change.

For completion of a work of improvement, see Section 8150. For recordation of a notice of completion, see Sections 8152 (notice of completion), 8154 (notice of completion of contract for portion of work of improvement). For recordation of a notice of cessation, see Section 8155 (notice of cessation).

See also Sections 1170 (recordation) 8056 (calculation of time), 8058 (filing and recordation of papers).

See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8048 (“work”), 8050 (“work of improvement”).

§ 8416. Contents of claim of lien

8416. A claim of lien shall be in writing, signed and verified by the claimant, and shall include all of the following information:

(a) An itemization of the claimant’s demand after deducting all just credits and offsets.

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

(c) A general statement of the kind of work provided by the claimant.

(d) The name of the person that contracted with the claimant for the work.

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

(f) The claimant’s address.

Comment. Subdivisions (a)-(e) of Section 8416 restate former Section 3084 without substantive change.

Subdivision (d) requires the name of the person that “contracted for” the work, rather than the person that “employed” the claimant. See Section 8404 (who may authorize work).

Subdivision (f) is new. It implements other provisions that invoke a claimant’s address. *Cf.* Sections 8424 (release bond), 8486 (time of hearing).

The claim of lien may be executed by the claimant’s authorized agent. See Section 8064 (agency).

See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8032 (“person”), 8038 (“reputed owner”), 8040 (“site”), 8048 (“work”).

§ 8418. Notice of intended recording of claim of lien

8418. (a) Before recording a claim of lien, the claimant shall give notice of the intended recording to the owner or reputed owner of property subject to the claim of lien, if known. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

(b) Notice of the intended recording of a claim of lien shall include a copy of the claim of lien.

Comment. Section 8418 is new. A claim of lien may not be recorded unless accompanied by proof of notice to the owner. See Section 8420 (notice prerequisite to recordation of lien claim).

See also Sections 1170 (recordation), 8058 (filing and recordation of papers), 8100-8118 (notice).

See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8038 (“reputed owner”).

§ 8420. Notice prerequisite to recording claim of lien

8420. The county recorder shall not record a claim of lien that is filed for record unless accompanied by a declaration under penalty of perjury attesting to service of a true and accurate copy of the lien claim on the owner or reputed owner.

Comment. Section 8420 is new. *Cf.* Gov’t Code § 27297.5 (notification by county recorder of person against which involuntary lien is recorded).

See also Sections 1170 (recordation), 8058 (filing and recordation of papers), 8118 (proof of notice).

See also Sections 8024 (“lien”), 8028 (“owner”), 8038 (“reputed owner”).

§ 8422. Forfeiture of lien for false claim

8422. (a) Except as provided in subdivision (b), erroneous information contained in a claim of lien relating to the claimant’s demand, credits and offsets deducted, the work provided, or the description of the site, does not invalidate the claim of lien.

(b) Erroneous information contained in a claim of lien relating to the claimant’s demand, credits and offsets deducted, or the work provided, invalidates the claim of lien if the court determines either of the following:

(1) The claim of lien was made with intent to slander title or defraud.

(2) An innocent third party, without notice, actual or constructive, became the bona fide owner of the property after recordation of the claim of lien, and the claim of lien was so deficient that it did not put the party on further inquiry in any manner.

Comment. Section 8422 combines the substance of former Sections 3118 and 3261. The terminology of the combined provision is conformed to Section 8416 (contents of claim of lien).

Subdivision (b)(1) expands the bases for invalidity to include intent to slander title.

See also Sections 8002 (“claimant”), 8048 (“work”), 8024 (“lien”), 8040 (“site”).

§ 8424. Release bond

8424. (a) An owner of property subject to a recorded claim of lien or a direct contractor or subcontractor affected by the claim of lien that disputes the correctness or validity of the claim may obtain release of the property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property, the direct contractor, or the subcontractor.

(b) The bond shall be conditioned on payment of any judgment and costs the claimant recovers on the lien. The bond shall be in an amount equal to 150 percent of the amount of the claim of lien or 150 percent of the amount allocated in the claim of lien to the property to be released. The bond shall be executed by an admitted surety insurer.

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

(d) A person that obtains and records a lien release bond shall give notice to the claimant. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1 and shall include a copy of the bond. Failure to give the notice required by this section does not

affect the validity of the bond, but the statute of limitations for an action on the bond is tolled until notice is given. The claimant shall commence an action on the bond within six months after notice is given.

Comment. Subdivisions (a)-(c) of Section 8424 restate former Section 3143 without substantive change. The language of the section is harmonized with the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure.

Subdivision (d) restates former Section 3144.5 without substantive change, except to broaden the notice provisions.

The owner of an interest in property may obtain a release bond. See Section 8028 (“owner”). The reference to recordation of the bond in the county in which the claim of lien is recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. See Sections 1170 (recordation), 8058 (filing and recordation of papers).

If an action to enforce a lien has been timely commenced before a release bond is recorded, the claimant may name the surety as a defendant and seek recovery against the bond in the enforcement action; the claimant is not required to commence a new action on the bond. See *Hutnick v. United States Fidelity & Guaranty Co.*, 47 Cal. 3d 456, 763 P.2d 1326, 253 Cal. Rptr. 236 (1988).

See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8032 (“person”), 8046 (“subcontractor”), Code Civ. Proc. § 995.120 (“admitted surety insurer”).

Article 3. Amount of Lien

§ 8430. Amount of lien

8430. (a) The lien is a direct lien for the lesser of the following amounts:

(1) The reasonable value of the work provided by the claimant.

(2) The price agreed to by the claimant and the person that contracted for the work.

(b) The lien is not limited in amount by the contract price for the work of improvement except as provided in Section 8602.

(c) This section does not preclude the claimant from including in a claim of lien work performed as a result of rescission, abandonment, or breach of the contract. If there is a rescission, abandonment, or breach of the contract, the amount of the lien may not exceed the reasonable value of the work provided by the claimant.

Comment. Section 8430 restates former Section 3123(a)-(b) and a part of former Section 3110. The provision of former Section 3123(c) that required an owner to give notice of a change of 5 percent or more is not continued.

As used in this section, the reasonable value of work includes the reasonable use value of appliances, equipment, teams, and power.

The term “contract price” in subdivision (b) includes contract changes. See Section 8010.

See also Sections 8416 (contents of claim of lien), 8602 (payment bond).

See also Sections 8002 (“claimant”), 8008 (“contract”), 8024 (“lien”), 8032 (“person”), 8048 (“work”),

§ 8432. Lien limited to work included in contract or modification

8432. (a) A lien does not extend to work, whether or not the work is authorized by a direct contractor or subcontractor, if the work is not included in a direct contract, and the claimant had actual knowledge or constructive notice of the provisions of that contract before providing the work.

(b) The filing of a contract with the county recorder, before the commencement of a work of improvement, is constructive notice of the provisions of the contract to a person providing work on that work of improvement.

Comment. Section 8432 restates former Section 3124 without substantive change.

In subdivision (a), “direct contractor” is substituted for the undefined “contractor.” The concept of “authorized” is substituted for “employed.” See Section 8404 (who may authorize work). The reference to a modification of the contract is omitted in reliance of the definition of

“direct contract,” which includes a contract change. See Section 8013 (“direct contract”).

See also Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8002 (“claimant”), 8008 (“contract”), 8014 (“direct contractor”), 8016 (“know or knowledge”), 8024 (“lien”), 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”).

§ 8434. Amount of recovery

8434. A direct contractor or a subcontractor may enforce a lien only for the amount due pursuant to that contractor’s contract after deducting all lien claims of other claimants for work provided and embraced within that contract.

Comment. Section 8434 continues former Section 3140 without substantive change.

See also Sections 8002 (“claimant”), 8008 (“contract”), 8024 (“lien”), 8014 (“direct contractor”), 8046 (“subcontractor”), 8048 (“work”).

Article 4. Property Subject to Lien

§ 8440. Property subject to lien

8440. Subject to Section 8442, a lien attaches to the work of improvement and to the property on which the work of improvement is situated, including as much space about the work of improvement as is required for the convenient use and occupation of the work of improvement.

Comment. Section 8440 restates the parts of former Sections 3128 and 3112 that described property subject to the lien, without substantive change. References to “property” are substituted for references to “land.”

See also Sections 8024 (“lien”), 8050 (“work of improvement”).

§ 8442. Interest subject to lien

8442. The following interests in property to which a lien attaches are subject to the lien:

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

(b) The interest of a person that did not contract for the work of improvement, if work for which the lien is claimed was provided with the knowledge of the person. This subdivision does not apply to the interest of a person that gives notice of nonresponsibility under Section 8444.

Comment. Section 8442 restates the last part of former Section 3128, and former Section 3129, without substantive change. A reference to “work” is substituted for the former reference to “commencement of the work or of the furnishing of the materials.” See Section 8048 (“work”).

It should be noted that under this section, the interest of a person that contracts for a work of improvement indirectly, for example through a provision in a lease that requires a tenant to make the work of improvement, may be subject to the lien. Likewise, the interest of a person that did not contract for a work of improvement might in some circumstances be subject to the lien if the person is a “participating owner.” See, e.g., *Los Banos Gravel Co. v. Freeman*, 58 Cal. App. 3d 785, 130 Cal. Rptr. 180 (1976).

See also Sections 8016 (“know or knowledge”), 8024 (“lien”), 8032 (“person”), 8050 (“work of improvement”).

§ 8444. Notice of nonresponsibility

8444. (a) An owner of property on which a work of improvement is situated that did not contract for the work of improvement may give notice of nonresponsibility.

(b) A notice of nonresponsibility shall be signed and verified by the owner.

(c) The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

(d) The notice shall also include all of the following information:

(1) The nature of the owner’s title or interest.

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

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

(e) A notice of nonresponsibility is not effective unless, within 10 days after the person giving notice has knowledge

of the work of improvement, the person both posts and records the notice.

Comment. Section 8444 restates former Section 3094.

The information required in this notice is in addition to the information required by Section 8102 (contents of notice).

The notice of nonresponsibility may be signed and verified by the owner or person owning or claiming an interest in the property, or by the owner's or other person's agent. See Sections 8028 ("owner"), 8064 (agency).

A notice of nonresponsibility is recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. See Section 8058 (filing and recordation of papers).

See also Sections 1170 (recordation), 8056 (calculation of time), 8062 (co-owners), 8114 (posting of notice).

See also Sections 8016 ("know or knowledge"), 8032 ("person"), 8050 ("work of improvement").

§ 8446. Multiple works of improvement

8446. A claimant may record one claim of lien on two or more works of improvement, subject to the following conditions:

(a) The works of improvement have or are reputed to have the same owner, or the work was contracted for by the same person for the works of improvement whether or not they have the same owner.

(b) The claimant in the claim of lien designates the amount due for each work of improvement. If the claimant contracted for a lump sum payment for work provided for the works of improvement and the contract does not segregate the amount due for each work of improvement separately, the claimant may estimate an equitable distribution of the amount due for each work of improvement based on the proportionate amount of work provided for each. If the claimant does not designate the amount due for each work of improvement, the lien is subordinate to other liens.

(c) If there is a single structure on property of different owners, the claimant need not segregate the proportion of

work provided for the portion of the structure situated on property of each owner. In the lien enforcement action the court may, if it determines it equitable to do so, designate an equitable distribution of the lien among the property of the owners.

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

Comment. Section 8446 restates former Section 3130 without substantive change. The concept of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section 8404 (who may authorize work).

Subdivision (c) is intended to apply to a single work of improvement situated on two or more parcels of land that have distinct owners.

See also Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8002 (“claimant”), 8008 (“contract”), 8024 (“lien”), 8028 (“owner”), 8032 (“person”), 8048 (“work”), 8050 (“work of improvement”).

§ 8448. Claim against separate residential units

8448. (a) As used in this section, “separate residential unit” means one residential structure, including a residential structure containing multiple condominium units, together with any common area, garage, or other appurtenant improvements.

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

(1) Each unit is deemed a separate work of improvement, and completion of each unit is determined separately for purposes of the time for recording a claim of lien on that unit. This paragraph does not affect any lien right under Section 8402 or 8446.

(2) Material provided for the work of improvement is deemed to be provided for use or consumption in each

separate residential unit in which the material is actually used or consumed; but if the claimant is unable to segregate the amounts used or consumed in separate residential units, the claimant has the right to all the benefits of Section 8446.

Comment. Section 8448 restates the first paragraph of former Section 3131 without substantive change. The reference to “filing” a claim of lien is changed to recording. See Sections 1170 (recordation), 8058 (filing and recordation of papers), 8412 and 8414 (recordation of claim of lien).

The second paragraph of former Section 3131 is not continued.

See also Sections 8150 (completion), 8402 (site improvement lien), 8416 (contents of claim of lien), 8446 (multiple works of improvement).

See also Sections 8002 (“claimant”), 8024 (“lien”), 8050 (“work of improvement”).

Article 5. Priorities

§ 8450. Priority of lien

8450. (a) A lien under this chapter, other than a lien provided for in Section 8402, has priority over a lien, mortgage, deed of trust, or other encumbrance on the work of improvement or the property on which the work of improvement is situated, that (1) attaches after commencement of the work of improvement, or (2) was unrecorded at the commencement of the work of improvement and of which the claimant had no notice.

(b) Subdivision (a) is subject to the exception provided for in Section 8452.

Comment. Section 8450 restates former Section 3134 without substantive change. For the priority of a site improvement lien, see Section 8458 (priority of site improvement lien).

See also Sections 1170 (recordation), 8058 (filing and recordation of papers), 8402 (site improvement lien), 8452 (payment bond obtained by holder of mortgage or deed of trust).

See also Sections 8002 (“claimant”), 8004 (“commencement”), 8024 (“lien”), 8050 (“work of improvement”).

§ 8452. Payment bond obtained by holder of mortgage or deed of trust

8452. A mortgage or deed of trust, otherwise subordinate to a lien under Section 8450, has priority over a lien for work provided after recordation of a payment bond that satisfies all of the following requirements:

(a) The bond refers to the mortgage or deed of trust.

(b) The bond is in an amount not less than 75 percent of the principal amount of the mortgage or deed of trust.

Comment. Section 8452 restates former Section 3138 without substantive change. See also Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8024 (“lien”), 8030 (“payment bond”), 8048 (“work”).

§ 8454. Separate contract for site improvement

8454. If a site improvement is provided for in a direct contract separate from the direct contract for the remainder of the work of improvement, the site improvement is deemed a separate work of improvement and commencement of the site improvement is not commencement of the remainder of the work of improvement.

Comment. Section 8454 restates former Section 3135 without substantive change.

See also Sections 8004 (“commencement”), 8013 (“direct contract”), 8042 (“site improvement”), 8050 (“work of improvement”).

§ 8456. Priority of advances by lender

8456. (a) This section applies to a construction loan secured by a mortgage or deed of trust that has priority over a lien under this chapter.

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

Comment. Section 8456 restates former Section 3136.
See also Sections 8006 (“construction lender”), 8024 (“lien”).

§ 8458. Priority of site improvement lien

8458. (a) Except as provided in subdivision (b), a lien provided for in Section 8402 has priority over:

(1) A mortgage, deed of trust, or other encumbrance that attaches after commencement of the site improvement.

(2) A mortgage, deed of trust, or other encumbrance that was unrecorded at the commencement of the site improvement and of which the claimant had no notice.

(3) A mortgage, deed of trust, or other encumbrance that was recorded before commencement of the site improvement, if given for the sole or primary purpose of financing the site improvement. This subdivision does not apply if the loan proceeds are, in good faith, placed in the control of the lender pursuant to a binding agreement with the borrower to the effect that (A) the proceeds are to be applied to the payment of claimants and (B) no portion of the proceeds will be paid to the borrower in the absence of satisfactory evidence that all claims have been paid or that the time for recording a claim of lien has expired and no claim of lien has been recorded.

(b) A mortgage or deed of trust, otherwise subordinate under subdivision (a), has priority over a lien provided for in Section 8402 if a payment bond in an amount not less than 50 percent of the principal amount of the mortgage or deed of trust is recorded before completion of the work of improvement.

Comment. Subdivision (a) of Section 8458 restates former Section 3137 without substantive change.

Subdivision (b) restates former Section 3139 without substantive change.

See also Sections 1170 (recordation), 8058 (filing and recordation of papers), 8150 (completion), 8402 (site improvement lien).

See also Sections 8002 (“claimant”), 8004 (“commencement”), 8024 (“lien”), 8030 (“payment bond”), 8042 (“site improvement”), 8050 (“work of improvement”).

Article 6. Enforcement of Lien

§ 8460. Time for commencement of enforcement action

8460. (a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien and record a notice of the pendency of the action under Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure within 110 days after recordation of the claim of lien. If the claimant does not commence an action and record notice of the pendency of the action within the time provided in this subdivision, the claim of lien expires and is unenforceable.

(b) Subdivision (a) does not apply if the claimant and owner agree to extend credit, and notice of the fact and terms of the extension of credit is recorded (1) within 90 days after recordation of the claim of lien or (2) more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. In that event the claimant shall commence an action to enforce the lien and record a notice of the pendency of the action within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action and record notice of the pendency of the action within the time provided in this subdivision, the claim of lien expires and is unenforceable.

Comment. Section 8460 restates former Sections 3144, 3145, and the first sentence of former Section 3146, adding the requirement that a claim of lien is unenforceable if a lis pendens is not recorded within the statutory periods. The reference to the lis pendens statute in former Section 3146 is corrected to reflect the repeal of Code of Civil Procedure

Section 409. See 1992 Cal. Stat. ch. 883, § 1. See also Sections 8054 (rules of practice).

The second sentence of former Section 3146 is not continued. It is superseded by general provisions governing the effect of a *lis pendens*. See Code Civ. Proc. § 405.24 (constructive notice).

Subdivision (b) makes clear that the owner must be a party to the extension of credit, and allows for late recording of the extension of credit. This codifies the rule in *Richards v. Hillside Development Co.*, 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960), and overrules *Dorer v. McKinsey*, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961).

See also Sections 1170 (recordation), 8056 (calculation of time), 8058 (filing and recordation of papers), 8150 (completion of work of improvement).

See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8050 (“work of improvement”).

§ 8462. Dismissal for lack of prosecution

8462. Notwithstanding Section 583.420 of the Code of Civil Procedure, the court may dismiss an action to enforce a lien that is not brought to trial within two years after commencement of the action.

Comment. Section 8462 restates former Section 3147 without substantive change. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. See also Section 8054 (rules of practice).

See also Section 8024 (“lien”).

§ 8464. Costs

8464. In addition to any other costs allowed by law, the court in an action to enforce a lien shall allow as costs to each claimant whose lien is established the amount paid to verify and record the claim of lien, whether the claimant is a plaintiff or defendant.

Comment. Section 8464 continues former Section 3150 without substantive change.

See also Sections 8002 (“claimant”), 8024 (“lien”).

§ 8466. Deficiency

8466. If there is a deficiency of proceeds from the sale of property on a judgment for enforcement of a lien, a deficiency judgment may be entered against a party personally liable for the deficiency in the same manner and with the same effect as in an action to foreclose a mortgage.

Comment. Section 8466 restates former Section 3151 without substantive change.

See also Section 8024 (“lien”).

§ 8468. Other remedies

8468. (a) This chapter does not affect any of the following rights of a claimant:

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

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

(3) The right to enforce a judgment.

(b) A judgment obtained by the claimant in a personal action described in subdivision (a) does not impair or merge the claim of lien, but any amount collected on the judgment shall be credited on the amount of the lien.

Comment. Section 8468 restates former Section 3152 without substantive change. The reference in the introductory portion of the section to “this title” is changed to “this chapter” consistent with the scope of the chapter.

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

See also Sections 8002 (“claimant”), 8024 (“lien”), 8032 (“person”).

§ 8470. Defense of lien enforcement action by contractor

8470. In an action to enforce a lien for work provided to a contractor:

(a) The contractor shall defend the action at the contractor's own expense. During the pendency of the action the owner may withhold from the direct contractor the amount of the lien claim.

(b) If the judgment in the action is against the owner or the owner's property, the owner may deduct the amount of the judgment and costs from any amount owed to the direct contractor. If the amount of the judgment and costs exceeds the amount owed to the direct contractor, or if the owner has settled with the direct contractor in full, the owner may recover from the direct contractor, or the sureties on a bond given by the direct contractor for faithful performance of the direct contract, the amount of the judgment and costs that exceed the contract price and for which the direct contractor was originally liable.

Comment. Section 8470 restates former Section 3153 without substantive change. This section does not apply to an action to enforce a lien brought by a direct contractor.

See also Sections 8010 ("contract price"), 8013 ("direct contract"), 8024 ("lien"), 8014 ("direct contractor"), 8028 ("owner"), 8048 ("work").

Article 7. Release Order

§ 8480. Petition for release order

8480. (a) The owner of property subject to 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 8460.

(2) The claimant's demand stated in the claim of lien has been paid to the claimant in full.

(3) None of the work stated in the claim of lien has been provided.

(4) The claimant was not licensed to provide the work stated in the claim of lien for which a license was required by statute.

(5) There is a final judgment in another proceeding that the petitioner is not indebted to the claimant for the demand on which the claim of lien is based.

(b) This article does not bar any other cause of action or claim for relief by the owner of the property, including, but not limited to, the filing of a complaint with the Contractors' State License Board. A release order does not bar any other cause of action or claim for relief by the claimant, other than an action to enforce the claim of lien that is the subject of the release order.

(c) A petition for a release order under this article may be joined with a pending action to enforce the claim of lien that is the subject of the petition. No other action or claim for relief may be joined with a petition under this article.

(d) Notwithstanding Section 8054, 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 8480 restates former Section 3154(a) without substantive change. Subdivisions (a)(2)-(6) 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 under this section. *Cf.* Section 8422 (forfeiture of lien for false claim).

Subdivision (a)(2) includes payment in full to an assignee of the claimant.

Subdivision (b) restates the first sentence of former Section 3154(h) without substantive change. In *Solit v. Tokai Bank, Ltd. New York Branch*, 68 Cal. App. 4th 1435, 81 Cal. Rptr. 2d 243 (1999), the court held that an order releasing a lien because it had not been timely enforced may not bar the recordation of a new claim for the same work, if the time for recordation of a new claim of lien had not yet expired.

Subdivision (c) provides a limited exception to the last sentence of former Section 3154(h), allowing the petition to be joined with a pending action to enforce the claim of lien that is the subject of the petition.

Subdivision (d) continues former Section 3154(i) without substantive change.

See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”), 8048 (“work”).

§ 8482. Demand prerequisite to petition

8482. An owner of property may not petition the court for a release order under this article unless at least 10 days before filing the petition the owner gives the claimant notice demanding that the claimant execute and record a release of the claim of lien. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1, and shall state the grounds for the demand.

Comment. Section 8482 is new. If the lien claimant complies with the demand, a release proceeding is unnecessary.

See also Section 8056 (calculation of time).

See also Sections 8002 (“claimant”), 8024 (“lien”), 8028 (“owner”).

§ 8484. Contents of petition

8484. 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 or series number 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) The facts on which the petition is based. If the petition is based on expiration of the time to enforce the lien, the petition shall state whether an extension of credit has been granted under Section 8460, if so to what date, and shall allege that the time for commencement of an action to enforce the lien has expired.

(f) That the owner has given the claimant notice under Section 8482 demanding that the claimant execute and record a release of the lien and that the claimant is unable or unwilling to do so or cannot with reasonable diligence be found.

(g) Whether an action to enforce the lien is pending.

(h) Whether the owner has filed for relief in bankruptcy or there is another restraint that prevents the claimant from commencing an action to enforce the lien.

Comment. Section 8484 supersedes former Section 3154(b).

As used in this section, the owner of property includes the owner of an interest in the property. See Section 8028 (“owner”).

The information included in the petition is intended to facilitate the court’s order under Section 8488 (hearing and order). The reference to series number is added to cover a county in which the recorder uses a sequence number for record location.

See also Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8002 (“claimant”), 8024 (“lien”).

§ 8486. Time of hearing

8486. (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 only on a showing of good cause, but in any event the court shall rule and make any necessary orders on the petition not later than 60 days after the filing of the petition.

(b) The petitioner shall serve a copy of the petition and a notice of hearing on the claimant at least 15 days before the hearing. Service shall be made in the same manner as service of summons, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the claimant as provided in Section 8108.

(c) Notwithstanding Section 8116, 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 8486 restates former Section 3154(c)-(d), and the first sentence of Section 3154(e), increasing the time for serving a copy of the petition and notice of hearing to 15 days, and adding a requirement that the court act no later than 60 days after the petition is filed. See also Section 8056 (calculation of time).

The specific notice provisions in subdivisions (b) and (c) supersede the general notice provisions in Sections 8100-8118, to the extent inconsistent.

The reference in former Section 3154 to “if there is no clerk, the judge” is deleted. All courts now have a clerk.

See also Section 8002 (“claimant”).

§ 8488. Hearing and order

8488. (a) At the hearing both (1) the petition and (2) the issue of compliance with the service and date for hearing requirements of this article are deemed controverted by the claimant. The petitioner has the initial burden of producing evidence on those matters. The petitioner has the burden of proof as to the issue of compliance with the service and date for hearing requirements of this article. The claimant has the burden of proof as to the validity of the lien.

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

(c) The prevailing party is entitled to a reasonable attorney’s fee.

Comment. Subdivision (a) of Section 8488 restates the last sentence of former Section 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change, except that language is added to clarify the burden of production and the burden of proof.

Subdivision (b) restates a part of former Section 3154(f); the remainder of the former provision is continued in Article 8 (commencing with Section 8490) (removal of claim of lien from record).

Subdivision (c) restates former Section 3154(g), deleting the \$2,000 limitation.

See also Section 8054 (rules of practice), Evid. Code §§ 500 (burden of proof), 550 (burden of producing evidence).

See also Sections 8002 (“claimant”), 8024 (“lien”).

Article 8. Removal of Claim of Lien from Record

§ 8490. Court order

8490. (a) A court order dismissing a cause of action to enforce a lien or releasing property from a claim of lien, or a judgment that no lien exists, shall include all of the following information:

(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 or series number of the place in the official records where the claim of lien is recorded.

(4) The legal description of the property.

(b) A court order or judgment under this section is equivalent to cancellation of the claim of lien and its removal from the record.

(c) A court order or judgment under this section is a recordable instrument. On recordation of a certified copy of the court order or judgment, the property described in the order or judgment is released from the claim of lien.

(d) A court order or judgment under this section is not effective, and may not be recorded, until 20 days after service by the court or any party of notice of the entry of the order or judgment.

(e) This section does not apply to a court order dismissing an action to enforce a lien that is expressly stated to be without prejudice.

Comment. Subdivision (a) of Section 8490 generalizes a part of former Section 3154(f). The reference to sequence number is added to cover a county in which the recorder uses a series number for record location. The reference to the city where the claim of lien is recorded is omitted as superfluous.

Subdivisions (b) and (e) generalize former Section 3148.

Subdivision (c) generalizes the second sentence of former Section 3154(f)(4).

Subdivision (d) is new. It is intended to allow a losing claimant time to seek appellate review and a stay of the court order or judgment. See California Rules of Court 8.112, 8.116 (request for stay). This provision does not affect the time period for seeking appellate review of the order or judgment.

See also Sections 1170 (recording), 8056 (calculation of time), 8058 (filing and recording of papers).

See also Section 8024 (“lien”).

§ 8494. Effect of expiration or recording of court order

8494. If a claim of lien expires and is unenforceable under Section 8460, or if a court order or judgment is recorded under Section 8490, the claim of lien does not constitute actual or constructive notice of any of the matters contained, claimed, alleged, or contended in the claim of lien, or create a duty of inquiry in any person thereafter dealing with the affected property.

Comment. Section 8494 is drawn from Code of Civil Procedure Section 405.60 (lis pendens).

See also Sections 8024 (“lien”), 8032 (“person”).

CHAPTER 5. STOP PAYMENT NOTICE

Article 1. General Provisions

§ 8500. Stop payment notice exclusive remedy to reach construction funds

8500. The rights of all persons furnishing work for any work of improvement, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to such fund, other than a right created by a written contract between such person and the person holding the fund, except pursuant to the provisions of this chapter.

Comment. Section 8500 continues Section 3264 without substantive change, except that it is limited to a private work. See Section 8052

(application of part). For a comparable provision applicable to a public work, see Public Contract Code Section 44110 (stop payment notice exclusive remedy to reach construction funds).

The reference to a “direct” written contract has been revised to avoid confusion with the term “direct contract.” See Section 8013 (“direct contract”). The revision is non-substantive.

This section is not intended to either ratify or abrogate the holding of *Nibbi Brothers, Inc. v. Home Fed. Sav. & Loan Ass’n*, 205 Cal. App. 3d 1415, 253 Cal. Rptr. 289 (1988), that in an appropriate case a person providing labor or materials may recover from a construction lender on a theory of unjust enrichment.

See also Sections 8032 (“person”), 8048 (“work”), 8050 (“work of improvement”).

§ 8502. Contents of stop payment notice

8502. (a) A stop payment notice shall comply with the requirements of Section 8102, and shall be signed and verified by the claimant.

(b) The notice shall include a general description of work to be provided, and an estimate of the total amount in value of the work to be provided.

(c) The amount claimed in the notice may include only the amount due the claimant for work provided through the date of the notice.

(d) The claimant may include in a stop payment notice an amount due for work performed as a result of rescission, abandonment, or breach of the contract. If there is a rescission, abandonment, or breach of the contract, the amount of the stop payment notice may not exceed the reasonable value of the work provided by the claimant.

Comment. Subdivisions (a) through (c) of Section 8502 supersede subdivisions (a) through (d) of former Section 3103.

Subdivision (c) provides a special rule that supplements the general requirement of Section 8102(a)(6)(iii) (demand of claimant).

Subdivision (d) applies provisions applicable to a claim of lien to the stop payment notice. *Cf.* Section 8430 (amount of lien).

A stop payment notice may be executed by the claimant’s agent. See Section 8064 (agency).

This section does not preclude the claimant from including in a stop payment notice an amount due for work provided pursuant to a contract change. See Section 8008 (“contract”).

See also Sections 8100-8118 (notice).

See also Sections 8002 (“claimant”), 8008 (“contract”), 8044 (“stop payment notice”), 8048 (“work”).

§ 8504. False stop payment notice

8504. A claimant that willfully gives a false stop payment notice or that willfully includes in the notice a demand to withhold for work that has not been provided forfeits all right to participate in the distribution of the funds withheld and all right to a lien under Chapter 4 (commencing with Section 8400).

Comment. Section 8504 restates former Section 3168 without substantive change.

See also Sections 8002 (“claimant”), 8024 (“lien”), 8044 (“stop payment notice”), 8048 (“work”).

§ 8506. Manner of giving stop payment notice

8506. (a) A stop payment notice to an owner shall be given to the owner or to the owner’s architect, if any.

(b) A stop payment notice to a construction lender holding construction funds shall not be effective unless given to the manager or other responsible officer or person at the office or branch of the lender administering or holding the construction funds.

(c) A stop payment notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

Comment. Subdivisions (a) and (b) of Section 8506 restate a part of the last two sentences of former Section 3083, and a part of the second paragraph of former Section 3103, without substantive change.

Subdivision (c) supersedes the last paragraph of former Section 3103.

See also Sections 8006 (“construction lender”), 8028 (“owner”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8508. Requirements for valid stop payment notice

8508. A stop payment notice is not valid unless both of the following conditions are satisfied:

(a) The claimant gave preliminary notice to the extent required by Chapter 2 (commencing with Section 8200).

(b) The claimant gave the stop payment notice before expiration of the time within which a claim of lien must be recorded under Chapter 4 (commencing with Section 8400).

Comment. Section 8508 restates a part of the first sentence of former Section 3159 and former Section 3160 without substantive change. For the time within which a claim of lien must be recorded, see Sections 8412 and 8414 (time for claim of lien); see also Section 8154 (notice of completion of contract for portion of work of improvement). For the person to which the notice must be given, see Section 8506.

See also Sections 8002 (“claimant”), 8024 (“lien”), 8034 (“preliminary notice”), 8044 (“stop payment notice”).

§ 8510. Release bond

8510. (a) A person may obtain release of funds withheld pursuant to a stop payment notice by giving the person withholding the funds a release bond.

(b) A release bond shall be given by an admitted surety insurer and shall be conditioned for payment of any amount not exceeding the penal obligation of the bond that the claimant recovers on the claim, together with costs of suit awarded in the action. The bond shall be in an amount equal to 125 percent of the amount claimed in the stop payment notice.

(c) On receipt of a release bond, the person withholding funds pursuant to the stop payment notice shall release them.

Comment. Section 8510 restates former Section 3171, eliminating the restrictions on the persons and the conditions under which a release bond may be given, and requiring the bond to be given by an admitted surety insurer. See Section 8140 (application of Bond and Undertaking Law); Code Civ. Proc. § 995.120 (“admitted surety insurer”).

See also Sections 8002 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

Article 2. Stop Payment Notice to Owner

§ 8520. Stop payment notice to owner

8520. (a) A person that has a lien right under Chapter 4 (commencing with Section 8400), other than a direct contractor, may give the owner a stop payment notice.

(b) The owner may give notice, in compliance with the requirements of Article 3 (commencing with Section 8100) of Chapter 1, demanding that a person that has a lien right under Chapter 4 (commencing with Section 8400) give the owner a stop payment notice. If the person fails to give the owner a bonded or unbonded stop payment notice, the person forfeits the right to a lien under Chapter 4 (commencing with Section 8400).

Comment. Section 8520 restates former Section 3158. It makes clear that the owner's demand under subdivision (b) requires either a bonded or an unbonded stop payment notice.

See also Sections 8014 ("direct contractor"), 8024 ("lien"), 8028 ("owner"), 8032 ("person"), 8044 ("stop payment notice").

§ 8522. Duty of owner

8522. (a) Except as provided in subdivision (b), on receipt of a stop payment notice an owner shall withhold from the direct contractor or from any person acting under authority of a direct contractor a sufficient amount due or to become due to the direct contractor to pay the claim stated in the notice.

(b) The owner may, but is not required to, withhold funds if the owner has previously recorded a payment bond under Section 8602. If the owner does not withhold funds, the owner shall, within 30 days after receipt of the stop payment notice, give notice to the claimant that a payment bond has been recorded and provide the claimant a copy of the bond. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

Comment. Section 8522 restates former Section 3161.

See also Sections 8056 (calculation of time), 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8028 (“owner”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

Article 3. Stop Payment Notice to Construction Lender

§ 8530. Stop payment notice to construction lender

8530. A person that has a lien right under Chapter 4 (commencing with Section 8400) may give a construction lender a stop payment notice.

Comment. Section 8530 restates a part of the first sentence of former Section 3159 without substantive change. See also Section 8508 (requirements for valid stop payment notice).

For provisions governing the amount withheld where the person giving a stop payment notice is a direct contractor or subcontractor and there is a claim of another subcontractor or material supplier, see Section 8542 (amount withheld).

See also Sections 8006 (“construction lender”), 8024 (“lien”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8532. Bonded stop payment notice

8532. A claimant may give a construction lender a stop payment notice accompanied by a bond in an amount equal to 125 percent of the amount of the claim. The bond shall be conditioned that if the defendant recovers judgment in an action to enforce payment of the claim stated in the stop payment notice or to enforce a claim of lien recorded by the claimant, the claimant will pay all costs that are awarded the owner, direct contractor, or construction lender, and all damages to the owner, direct contractor, or construction lender that result from the stop payment notice or recordation of the claim of lien, not exceeding the amount of the bond.

Comment. Section 8532 restates the first sentence of former Section 3083 without substantive change. The former reference to “good and

sufficient sureties” on the bond is omitted as unnecessary. See Code Civ. Proc. § 995.310 (sufficient sureties on bond required). The second two sentences of former Section 3083 are continued in Section 8506(a)(2) (manner of giving stop payment notice).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8044 (“stop payment notice”).

§ 8534. Objection to bond

8534. (a) A construction lender that objects to the sufficiency of sureties on the bond given with a bonded stop payment notice shall give notice to the claimant of the objection, within 20 days after the bonded stop payment notice is given. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

(b) The claimant may within 10 days after notice of the objection is given substitute for the initial bond a bond executed by an admitted surety insurer. If the claimant does not substitute a bond executed by an admitted surety insurer, the construction lender may disregard the bonded stop payment notice and release all funds withheld in response to that notice.

Comment. Section 8534 restates former Section 3163 without substantive change.

See also Section 8056 (calculation of time).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8044 (“stop payment notice”), Code Civ. Proc. § 995.120 (“admitted surety insurer”).

§ 8536. Duty of construction lender

8536. (a) Except as provided in subdivision (b), on receipt of a stop payment notice a construction lender shall withhold from the borrower or other person to which the lender or the owner is obligated to make payments or advancement out of the construction fund sufficient funds to pay the claim stated in the notice.

(b) The construction lender may, at its option, elect not to withhold funds in any of the following circumstances:

(1) The stop payment notice is unbonded.

(2) The stop payment notice is given by a claimant other than a direct contractor, and a payment bond is recorded before the lender is given any stop payment notice.

Comment. Section 8536 restates former Sections 3159(a)(1)-(2) and 3162(a)(1)-(2). The requirement in former Section 3162(a) that the lender withhold sufficient funds to pay “any claim of lien that may be recorded therefor” is omitted; any amount paid pursuant to a stop payment notice reduces the claim of lien. The reference to recordation of a payment bond “in the office of the county recorder where the site is located” is omitted from subdivision (b)(2) as unnecessary.

If a bonded stop payment notice is given by a direct contractor, the construction lender must withhold funds regardless of whether a payment bond has previously been recorded under Section 8602.

For provisions governing the amount withheld where the person giving a stop payment notice is a direct contractor or subcontractor and there is a claim of another subcontractor or material supplier, see Section 8542 (amount withheld).

See Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8538. Notice of election

8538. (a) The claimant may make a written request for notice of an election by the construction lender under Section 8536 not to withhold funds. The request shall be made at the time the claimant gives the construction lender the stop payment notice and shall be accompanied by a preaddressed, stamped envelope.

(b) If the construction lender elects not to withhold funds under Section 8536, the lender shall, within 30 days after making the election, give notice of that fact to a claimant that has requested notice of the election under subdivision (a). The notice shall comply with the requirements of Article 3

(commencing with Section 8100) of Chapter 1. If the basis of the election is the recordation of a payment bond under Section 8602, the construction lender shall include a copy of the bond with the notice.

(c) A construction lender is not liable for failure to include a copy of the bond with the notice under this section if all of the following conditions are satisfied:

(1) The failure was not intentional and resulted from a bona fide error.

(2) The lender maintains reasonable procedures to avoid an error of that type.

(3) The lender corrected the error not later than 20 days after the date the lender discovered the violation.

Comment. Section 8538 restates former Sections 3159(a)(3) and 3162(a)(3) without substantive change, except that the last sentence of former Section 3159(a)(3) is continued in Section 8502(c) (contents of stop payment notice).

See also Section 8056 (calculation of time).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8030 (“payment bond”), 8044 (“stop payment notice”).

Article 4. Priorities

§ 8540. Distribution of funds withheld pursuant to stop payment notice

8540. (a) Funds withheld pursuant to a stop payment notice shall be distributed in the following order of priority:

(1) First, to pay claims of persons that have given a bonded stop payment notice. If funds are insufficient to pay the claims of those persons in full, the funds shall be distributed pro rata among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a bonded stop payment notice is given.

(2) Second, to pay claims of persons that have given an unbonded stop payment notice. If funds are insufficient to pay the claims of those persons in full, the funds shall be

distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which an unbonded stop payment notice is given.

(b) Pro rata distribution under this section shall be made among the persons entitled to share in the distribution without regard to the order in which the person has given a stop payment notice or commenced an enforcement action.

Comment. Section 8540 restates former Section 3167 without substantive change. Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. *Cf.* Idaho Lumber Co. v. Northwestern S. & L. Ass'n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968).

The amount of the claim of a contractor is governed by Section 8542.

See also Sections 8002 ("claimant"), 8032 ("person"), 8044 ("stop payment notice").

§ 8542. Amount withheld

8542. Notwithstanding Section 8540:

(a) If funds are withheld pursuant to a stop payment notice given to a construction lender by a direct contractor or subcontractor, the direct contractor or subcontractor may recover only the net amount due the direct contractor or subcontractor after deducting any funds that are withheld by the construction lender pursuant to the claims of subcontractors and material suppliers that have given a stop payment notice for work done on behalf of the direct contractor or subcontractor.

(b) In no event is the construction lender required to withhold, pursuant to a stop payment notice, more than the net amount provided in subdivision (a). Notwithstanding any other provision of this chapter, a construction lender is not liable for failure to withhold more than that net amount on receipt of a stop payment notice.

Comment. Section 8542 restates former Sections 3159(b)-(c) and 3162(b)-(c), except that the rules governing a bonded notice are generalized to also apply to funds that a construction lender actually withholds pursuant to an unbonded notice.

See also Sections 8006 (“construction lender”), 8014 (“direct contractor”), 8026 (“material supplier”), 8044 (“stop payment notice”), 8046 (“subcontractor”).

§ 8544. Effect of stop payment notice on assignment of funds

8544. The rights of a claimant that gives a construction lender a stop payment notice are not affected by an assignment of construction loan funds made by the owner or direct contractor, and the stop payment notice has priority over the assignment, whether the assignment is made before or after the stop payment notice is given.

Comment. Section 8544 restates former Section 3166 without substantive change.

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8014 (“direct contractor”), 8028 (“owner”), 8044 (“stop payment notice”).

Article 5. Enforcement of Claim Stated in Stop
Payment Notice

§ 8550. Time for enforcement of claim stated in stop payment notice

8550. (a) A claimant shall commence an action to enforce payment of the claim stated in a stop payment notice not earlier than 10 days after the date the claimant gives the notice and not later than 90 days after expiration of the time within which a stop payment notice must be given. The action may not be brought to trial or judgment entered before expiration of the time prescribed in this subdivision.

(b) If a claimant does not commence an action to enforce payment of the claim stated in a stop payment notice within the time prescribed in subdivision (a), the notice ceases to be effective and the person withholding funds pursuant to the notice shall release them.

(c) Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice of commencement of the action

to the persons to which the stop payment notice was given. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

Comment. Section 8550 restates former Section 3172 without substantive change. A stop payment notice must be given before expiration of the time within which a claim of lien must be recorded under Chapter 4 (commencing with Section 8400). See Section 8508 (requirements for valid stop payment notice).

For the manner in which notice of commencement of an enforcement action is to be given, see Section 8506 (manner of giving stop payment notice).

Funds released for failure to timely commence an enforcement action must be paid or delivered to the person to which they are due.

See also Section 8056 (calculation of time).

See also Sections 8002 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8552. Joinder, consolidation, and interpleader

8552. If more than one claimant has given a stop payment notice:

(a) Any number of claimants may join in the same enforcement action.

(b) If claimants commence separate actions, the court first acquiring jurisdiction may order the actions consolidated.

(c) On motion of the owner or construction lender the court shall require all claimants to be impleaded in one action, to the end that the rights of all parties may be adjudicated in the action.

Comment. Section 8552 restates former Section 3175 without substantive change. Subdivision (a) is a specific application of the general rule stated in Section 8054 (rules of practice).

See also Sections 8002 (“claimant”), 8006 (“construction lender”), 8028 (“owner”), 8044 (“stop payment notice”).

§ 8554. Dismissal of enforcement action for lack of prosecution

8554. Notwithstanding Section 583.420 of the Code of Civil Procedure, the court may dismiss an action to enforce payment of the claim stated in a stop payment notice that is

not brought to trial within two years after commencement of the action.

Comment. Section 8554 restates former Section 3173 without substantive change. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. *Cf.* Section 8054 (rules of practice).

See also Section 8044 (“stop payment notice”).

§ 8556. Dismissal of action or judgment against claimant

8556. A stop payment notice ceases to be effective, and a person withholding funds pursuant to the notice shall release them, in either of the following circumstances:

(a) An action to enforce payment of the claim stated in the stop payment notice is dismissed, unless expressly stated to be without prejudice.

(b) Judgment in an action to enforce payment of the claim stated in the stop payment notice is against the claimant.

Comment. Section 8556 restates former Section 3174 without substantive change. Funds released as a result of dismissal of the action or judgment against the claimant must be paid or delivered to the person to which they are due.

See also Sections 8002 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8558. Attorney’s fee in action to enforce payment of claim stated in bonded stop payment notice

8558. (a) In an action to enforce payment of the claim stated in a bonded stop payment notice, the prevailing party is entitled to a reasonable attorney’s fee in addition to costs and damages.

(b) The court, on notice and motion by a party, shall determine which is the prevailing party or that there is no prevailing party for the purpose of this section, regardless of whether the action proceeds to final judgment. The prevailing party is the party that recovers greater relief in the action, subject to the following limitations:

(1) If the action is voluntarily dismissed or dismissed pursuant to a settlement, there is no prevailing party.

(2) If the defendant tenders to the claimant the full amount to which the defendant is entitled, and deposits in court for the claimant the amount so tendered, and alleges those facts in the answer and the allegation is determined to be true, the defendant is deemed to be the prevailing party.

Comment. Section 8558 restates former Section 3176 without substantive change.

See also Sections 8002 (“claimant”), 8044 (“stop payment notice”).

§ 8560. Interest in action to enforce payment of claim stated in bonded stop payment notice

8560. If the claimant is the prevailing party in an action to enforce payment of the claim stated in a bonded stop payment notice, any amount awarded on the claim shall include interest at the legal rate calculated from the date the stop payment notice is given.

Comment. Section 8560 continues former Section 3176.5 without substantive change.

See also Sections 8002 (“claimant”), 8044 (“stop payment notice”).

CHAPTER 6. PAYMENT BOND

§ 8600. Public policy of payment bond

8600. An owner may require a performance bond, payment bond, or other security as protection against a direct contractor’s failure to perform the direct contract or to make full payment for all work provided pursuant to the contract.

Comment. Section 8600 restates the second sentence of former Section 3236 without substantive change.

See also Sections 8013 (“direct contract”), 8014 (“direct contractor”), 8028 (“owner”), 8030 (“payment bond”), 8048 (“work”).

§ 8602. Limitation of owner’s liability

8602. (a) This section applies if, before the commencement of work, the owner in good faith files a direct contract with

the county recorder, and records a payment bond of the direct contractor in an amount not less than 50 percent of the price stated in the direct contract.

(b) If the conditions of subdivision (a) are satisfied, the court shall, where equitable to do so, restrict lien enforcement under this part to the aggregate amount due from the owner to the direct contractor and shall enter judgment against the direct contractor and surety on the bond for any deficiency that remains between the amount due to the direct contractor and the whole amount due to claimants.

Comment. Subdivision (a) of Section 8602 restates the first part of former Section 3235 and the first sentence of former Section 3236 without substantive change. It makes clear that the bond, as well as the contract, must be recorded before the commencement of work. See also Sections 1170 (recordation), 8058 (filing and recordation of papers).

Subdivision (b) restates the last part of former Section 3235 without substantive change.

See also Sections 8002 (“claimant”), 8004 (“commencement”), 8013 (“direct contract”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8030 (“payment bond”), 8048 (“work”).

§ 8604. Bond required by lending institution

8604. If a lending institution requires that a payment bond be given as a condition of lending money to finance a work of improvement, and accepts in writing as sufficient a bond given in fulfillment of the requirement, the lending institution may not thereafter object to the borrower as to the validity of the bond or refuse to make the loan based on an objection to the bond if the bond is given by an admitted surety insurer.

Comment. Section 8604 supersedes former Section 3237. It makes clear that the lender may not object to the bond if given by an admitted surety insurer.

See also Sections 8022 (“lending institution”), 8030 (“payment bond”), 8050 (“work of improvement”), Code Civ. Proc. § 995.120 (“admitted surety insurer”).

§ 8606. Conditions of payment bond

8606. (a) A payment bond under this part shall be conditioned for the payment in full of the claims of all claimants and shall by its terms inure to the benefit of all claimants so as to give a claimant a right of action to enforce the liability on the bond. The bond shall be given by an admitted surety insurer.

(b) An owner, direct contractor, or subcontractor may be the principal on the bond.

(c) A claimant may enforce the liability on the bond in an action to enforce a lien under this part or in a separate action on the bond.

Comment. Section 8606 restates former Section 3096 without substantive change, except to add a requirement that the bond be given by an admitted surety insurer. See also Section 8140 (application of Bond and Undertaking Law).

See also Sections 8002 (“claimant”), 8014 (“direct contractor”), 8024 (“lien”), 8028 (“owner”), 8046 (“subcontractor”), Code Civ. Proc. § 995.120 (“admitted surety insurer”).

§ 8608. Limitation on part

8608. (a) This part does not give a claimant a right to recover on a direct contractor’s payment bond given under this chapter unless the claimant provided work to the direct contractor either directly or through one or more subcontractors, pursuant to a direct contract.

(b) Nothing in this section affects the stop payment notice right of, and relative priorities among, design professionals and holders of secured interests in the property.

Comment. Section 8608 restates former Section 3267 without substantive change, clarifying that claimants providing work to subcontractors at every level have a right to recover against a direct contractor’s payment bond as provided in this section. See *Union Asphalt, Inc. v. Planet Ins. Co.*, 21 Cal. App. 4th 1762, 27 Cal. Rptr. 2d 371 (1994).

See also Sections 8002 (“claimant”), 8012 (“design professional”), 8013 (“direct contract”), 8014 (“direct contractor”), 8046 (“subcontractor”), 8048 (“work”).

§ 8610. Statute of limitations for suit on recorded bond

8610. If a payment bond under this part is recorded before completion of a work of improvement, an action to enforce the liability on the bond may not be commenced later than six months after completion of the work of improvement.

Comment. Section 8610 restates former Section 3240, broadening it to cover enforcement of any liability on the bond, not limited to the liability of the surety. *Cf.* Code Civ. Proc. § 996.440 (judgment on bond against principal and sureties). It supersedes former Section 3239.

See also Sections 1170 (recordation), 8058 (filing and recordation of papers), 8150 (completion).

See also Sections 8030 (“payment bond”), 8050 (“work of improvement”).

§ 8612. Notice prerequisite to enforcement

8612. (a) In order to enforce a claim against a payment bond under this part, a claimant shall give the preliminary notice provided in Chapter 2 (commencing with Section 8200).

(b) If preliminary notice was not given as provided in Chapter 2 (commencing with Section 8200), a claimant may enforce a claim by giving written notice to the surety and the bond principal within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.

Comment. Section 8612 restates former Section 3242 without substantive change. The former limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

See also Sections 1170 (recordation), 8100-8118 (notice), 8056 (calculation of time), 8058 (filing and recordation of papers), 8150 (completion), 8152 (notice of completion), 8154 (notice of completion of contract for portion of work of improvement).

See also Sections 8002 (“claimant”), 8030 (“payment bond”), 8034 (“preliminary notice”), 8050 (“work of improvement”).

CHAPTER 7. SECURITY FOR LARGE PROJECT

Article 1. Application of Chapter

§ 8700. Application of chapter

8700. (a) This chapter applies if any of the following conditions is satisfied:

(1) The owner of the fee interest in property contracts for a work of improvement on the property with a contract price greater than five million dollars (\$5,000,000).

(2) The owner of a less than fee interest in property contracts for a work of improvement on the property with a contract price greater than one million dollars (\$1,000,000).

(b) For the purpose of this section:

(1) The owner of the fee interest in property is not deemed to be the owner of a less than fee interest by reason of a mortgage, deed of trust, ground lease, or other lien or encumbrance or right of occupancy that encumbers the fee interest.

(2) A lessee of property is deemed to be the owner of a fee interest in the property if all of the following conditions are satisfied:

(A) The initial term of the lease is at least 35 years.

(B) The lease covers one or more lawful parcels under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code, and any applicable local ordinance adopted under that act, in their entirety, including, but not limited to, a parcel approved pursuant to a certificate of compliance proceeding.

Comment. Subdivision (a) of Section 8700 restates former Section 3110.5(a)(2) without substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive change.

This section standardizes terminology consistent with the remainder of the mechanics lien law. A less than fee interest includes a leasehold interest in the property. See Section 8028 (“owner”).

Under this section, if the owner that contracts for the work of improvement owns the fee interest in the property, the owner of a less than fee interest that does not contract for the work of improvement is not required to provide security or to comply with any other obligation of an owner under this chapter.

If the owner that contracts for a work of improvement owns a less than fee interest in the property, the owner of the fee interest that does not contract for the work of improvement is not required to provide security or to comply with any other obligation of an owner under this chapter.

See also Sections 8010 (“contract price”), 8050 (“work of improvement”).

§ 8702. Single-family residence and low income housing excluded

8702. This chapter does not apply to any of the following works of improvement:

(a) A single-family residence, including a single-family residence located within a subdivision, and any associated fixed work that requires the services of a general engineering contractor as defined in Section 7056 of the Business and Professions Code. As used in this subdivision, “single-family residence” means a real property improvement used or intended to be used as a dwelling unit for one family.

(b) A housing development eligible for a density bonus under Section 65915 of the Government Code.

Comment. Section 8702 restates former Section 3110.5(e) without substantive change, except to omit reference to a public work. This part does not apply to a public work. See Section 8052 (application of part).

See also Section 8050 (“work of improvement”).

§ 8704. Qualified publicly traded company and qualified private company excluded

8704. This chapter does not apply to any of the following owners:

(a) A qualified publicly traded company or a wholly owned subsidiary of a qualified publicly traded company, if the

obligations of the subsidiary pursuant to the contract for the work of improvement are guaranteed by the parent. As used in this subdivision, “qualified publicly traded company” means a company having a class of equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ stock market, and the nonsubordinated debt securities of which are rated as “investment grade” by either Fitch ICBA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings Services, or a similar statistical rating organization that is nationally recognized for rating the creditworthiness of a publicly traded company. If at any time before final payment of all amounts due pursuant to the contract the nonsubordinated debt securities of the qualified publicly traded company are downgraded to below “investment grade” by any of those rating organizations, the owner is no longer exempt from this chapter.

(b) A qualified private company or a wholly owned subsidiary of a qualified private company, if the obligations of the subsidiary pursuant to the contract for the work of improvement are guaranteed by the parent. As used in this subdivision, “qualified private company” means a company that has no equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ stock market, and that has a net worth determined in accordance with generally accepted accounting principles in excess of fifty million dollars (\$50,000,000). If at any time before final payment of all amounts due pursuant to the contract the net worth of the qualified private company is reduced below that level, the owner is no longer exempt from this chapter.

Comment. Section 8704 restates former Section 3110.5(f) without substantive change.

See also Sections 8008 (“contract”), 8028 (“owner”), 8050 (“work of improvement”).

Article 2. Security Requirement

§ 8710. Security for owner's payment obligation

8710. An owner shall provide the direct contractor all of the following:

(a) Security for the owner's payment obligation pursuant to the contract. The security shall be used only if the owner defaults on the payment obligation to the direct contractor. This subdivision does not apply to an owner that is the majority owner of the direct contractor.

(b) A copy, certified by the county recorder, of any recorded mortgage or deed of trust that secures the construction loan of a lending institution for the work of improvement, disclosing the amount of the loan.

Comment. Section 8710 restates the first part of former Section 3110.5(b) without substantive change. As used in this section, "owner" includes the owner of the fee simple absolute interest or any lesser interest in the property. See Section 8028 ("owner").

See also Sections 8058 (filing and recordation of papers), 8100-8118 (notice), 8134 (construction trust deed).

See also Sections 8008 ("contract"), 8014 ("direct contractor"), 8022 ("lending institution").

§ 8712. Demand for security

8712. If an owner fails to provide or maintain the security required by this chapter, the direct contractor may give the owner notice demanding security. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1. If the owner does not provide or maintain the security within 10 days after notice demanding security is given, the direct contractor may suspend work until the owner provides or maintains the security.

Comment. Section 8712 restates the second sentence of former Section 3110.5(c) without substantive change.

See also Section 8056 (calculation of time).

See also Sections 8014 ("direct contractor"), 8028 ("owner"), 8048 ("work").

§ 8714. Security not waivable

8714. It is against public policy to waive the provisions of this chapter by contract.

Comment. Section 8714 restates former Section 3110.5(g) without substantive change. This part does not apply to a public work. See Section 8052 (application of part).

§ 8716. Rights of subcontractor not affected

8716. This chapter does not affect any statute providing a subcontractor the right to record a claim of lien, give a stop payment notice, assert a claim against a payment bond, or receive prompt payment, including the direct contractor's payment responsibilities under Section 7108.5 of the Business and Professions Code.

Comment. Section 8716 restates former Section 3110.5(d) without substantive change, except to omit the reference to Public Contract Code Section 10262. This part does not apply to a public work. See Section 8052 (application of part).

See also Sections 8014 ("direct contractor"), 8024 ("lien"), 8030 ("payment bond"), 8044 ("stop payment notice"), 8046 ("subcontractor").

Article 3. Form of Security

§ 8720. Form of security

8720. An owner shall provide security by any of the following means:

(a) A bond that satisfies Section 8722.

(b) An irrevocable letter of credit that satisfies Section 8724.

(c) An escrow account that satisfies Section 8726.

Comment. Section 8720 restates a part of former Section 3110.5(b) without substantive change.

See also Section 8028 ("owner").

§ 8722. Bond

8722. A bond under this chapter shall satisfy all of the following requirements:

(a) The bond shall be executed by an admitted surety insurer that is either listed in the Department of the Treasury's Listing of Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or better and has an underwriting limitation, under Section 12090 of the Insurance Code, greater than the amount of the bond.

(b) The bond shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.

(c) The bond shall be conditioned for payment on default by the owner of any undisputed amount pursuant to the contract that is due and payable for more than 30 days.

Comment. Section 8722 restates former Section 3110.5(b)(1) without substantive change.

See also Section 8056 (calculation of time).

See also Sections 8004 ("commencement"), 8008 ("contract"), 8010 ("contract price"), 8028 ("owner"), 8050 ("work of improvement"), Code Civ. Proc. § 995.120 ("admitted surety insurer").

§ 8724. Irrevocable letter of credit

8724. An irrevocable letter of credit under this chapter shall satisfy all of the following requirements:

(a) The letter of credit shall be issued by a financial institution, as defined in Section 5107 of the Financial Code, inuring to the benefit of the direct contractor.

(b) The letter of credit shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.

(c) The maturity date and other terms of the letter of credit shall be determined by agreement between the owner, the direct contractor, and the financial institution, except that the owner shall maintain the letter of credit in effect until the owner has satisfied its payment obligation to the direct contractor.

Comment. Section 8724 restates former Section 3110.5(b)(2) without substantive change.

See also Sections 8004 (“commencement”), 8010 (“contract price”), 8014 (“direct contractor”), 8028 (“owner”), 8050 (“work of improvement”).

§ 8726. Escrow account

8726. An escrow account under this chapter shall satisfy all of the following requirements:

(a) The account shall be designated as a “construction security escrow account.”

(b) The account shall be located in this state and maintained with an escrow agent licensed under the Escrow Law, Division 6 (commencing with Section 17000) of the Financial Code, or with any person exempt from the Escrow Law under paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial Code.

(c) The owner shall deposit funds in the account in the amount provided in Section 8728. This chapter does not require a construction lender to agree to deposit proceeds of a construction loan in the account.

(d) The owner shall grant the direct contractor a perfected, first priority security interest in the account and in all funds deposited by the owner in the account and in their proceeds, established to the reasonable satisfaction of the direct contractor, which may be by a written opinion of legal counsel for the owner.

(e) The funds on deposit in the account shall be the sole property of the owner, subject to the security interest of the

direct contractor. The owner and the direct contractor shall instruct the escrowholder to hold the funds on deposit in the account for the purpose of perfecting the direct contractor's security interest in the account and to disburse those funds only on joint authorization of the owner and the direct contractor, or pursuant to a court order that is binding on both of them.

Comment. Section 8726 restates parts of former Section 3110.5(b)(3) without substantive change.

See also Sections 8006 ("construction lender"), 8014 ("direct contractor"), 8028 ("owner").

§ 8728. Deposits to and disbursements from escrow account

8728. The following provisions govern a deposit to or disbursement from a construction security escrow account under this chapter:

(a) Before the commencement of work the owner shall make an initial deposit to the account in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.

(b) If the contract provides for a retention to be withheld from a periodic payment to the direct contractor, the owner shall deposit to the account the amount withheld as retention at the time the owner makes the corresponding payment to the direct contractor from which the retention is withheld.

(c) The amount required to be maintained on deposit shall not exceed the total amount remaining to be paid to the direct contractor pursuant to the contract or as adjusted by agreement between the owner and the direct contractor. If the amount on deposit equals or exceeds the total amount remaining to be paid to the direct contractor, the owner and the direct contractor shall authorize disbursement to the direct

contractor for progress payments then due the direct contractor, but a party is not obligated to authorize disbursement that would cause the amount remaining on deposit following the disbursement to be less than the total amount remaining to be paid to the direct contractor.

(d) The owner and the direct contractor shall authorize the disbursement to the owner of any funds remaining on deposit after the direct contractor has been paid all amounts due pursuant to the contract. The owner and the direct contractor shall authorize the disbursement of funds on deposit pursuant to a court order that is binding on both of them. The owner and the direct contractor may agree in the contract to additional conditions for the disbursement of funds on deposit, except that the conditions may not cause the amount remaining on deposit to be less than the amount required under this section.

Comment. Section 8728 restates parts of former Section 3110.5(b)(3) without substantive change.

See also Sections 8008 (“contract”), 8010 (“contract price”), 8014 (“direct contractor”), 8028 (“owner”), 8050 (“work of improvement”).

§ 8730. Contract price

8730. If the contract price for a work of improvement is not a fixed price, the amount of security provided under this chapter shall be the guaranteed maximum price or, if there is no guaranteed maximum price, the owner’s and direct contractor’s good faith estimate of the reasonable value of the work to be provided pursuant to the contract.

Comment. Section 8730 restates the first sentence of former Section 3110.5(c) without substantive change.

See also Sections 8008 (“contract”), 8010 (“contract price”), 8014 (“direct contractor”), 8028 (“owner”), 8048 (“work”), 8050 (“work of improvement”).

CHAPTER 8. PROMPT PAYMENT

Article 1. Progress Payment

§ 8800. Progress payment between owner and direct contractor

8800. (a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract, any progress payment due as to which there is no good faith dispute between them. The notice given shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

(b) If there is a good faith dispute between the owner and direct contractor as to a progress payment due, the owner may withhold from the progress payment an amount not in excess of 150 percent of the disputed amount.

(c) An owner that violates this section is liable to the direct contractor for a penalty of 2 percent per month on the amount wrongfully withheld, in place of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee.

(d) This section does not supersede any requirement of Article 2 (commencing with Section 8810) relating to the withholding of a retention.

Comment. Section 8800 restates former Section 3260.1, adding a reasonableness limitation on an attorney's fee.

This part is limited to a private work. See Section 8052 (application of part).

The owner's duty runs from the time notice is complete, rather than the time of "receipt." See Section 8116 (when notice is complete).

The operative date provision of former Section 3260.1 is omitted due to lapse of time.

See also Section 8056 (calculation of time).

See also Sections 8008 ("contract"), 8014 ("direct contractor"), 8028 ("owner").

§ 8802. Progress payment between direct contractor and subcontractor on public utility work

8802. (a) This section applies to a contract between a public utility and a direct contractor for all or part of a work of improvement.

(b) Unless the direct contractor and a subcontractor otherwise agree in writing, within 21 days after receipt of a progress payment from the public utility the direct contractor shall pay the subcontractor the amount allowed the direct contractor on account of the work performed by the subcontractor to the extent of the subcontractor's interest in the work. If there is a good faith dispute over all or part of the amount due on a progress payment from the direct contractor to a subcontractor, the direct contractor may withhold an amount not in excess of 150 percent of the disputed amount.

(c) A direct contractor that violates this section is liable to the subcontractor for a penalty of 2 percent of the disputed amount due per month for every month that payment is not made. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee.

(d) This section does not limit or impair a contractual, administrative, or judicial remedy otherwise available to a contractor or subcontractor in a dispute involving late payment or nonpayment by the contractor or deficient performance or nonperformance by the subcontractor.

Comment. Section 8802 restates former Section 3262.5, adding a reasonableness limitation on an attorney's fee.

The reference to 15 "working days" is converted to 21 "days," consistent with the remainder of the mechanics lien law. See Section 8056 (calculation of time).

See also Sections 8008 ("contract"), 8014 ("direct contractor"), 8046 ("subcontractor"), 8048 ("work"), 8050 ("work of improvement").

Article 2. Retention Payment

§ 8810. Application of article

8810. This article governs a retention withheld by an owner from a direct contractor or by a direct contractor from a subcontractor.

Comment. Section 8810 restates former Section 3260(b) without substantive change. This part is limited to a private work. See Section 8052 (application of part).

The transitional provision found in subdivision (a) of former Section 3260, relating to contracts entered into before 1991, 1993, and 1994, is omitted due to lapse of time.

See also Sections 8014 (“direct contractor”), 8028 (“owner”), 8046 (“subcontractor”).

§ 8812. Payment of retention by owner

8812. (a) If an owner withholds a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor.

(b) If part of a work of improvement ultimately will become the property of a public entity, the owner may condition payment of a retention allocable to that part on acceptance of the part by the public entity.

(c) If there is a good faith dispute between the owner and direct contractor as to a retention payment due, the owner may withhold from final payment an amount not in excess of 150 percent of the disputed amount.

Comment. Section 8812 restates subdivision (c) of former Section 3260 without substantive change, except that detailed provisions defining the date of completion are eliminated in reliance on the general provisions of this part governing completion. See Section 8150 (completion).

The right of the owner to withhold disputed amounts is made subject to a condition of good faith, consistent with other provisions of this part.

See also Section 8056 (calculation of time).

See also Sections 8014 (“direct contractor”), 8028 (“owner”), 8036 (“public entity”), 8050 (“work of improvement”).

§ 8814. Payment of retention by direct contractor

8814. (a) If a direct contractor has withheld a retention from a subcontractor, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay the subcontractor its share of the payment.

(b) If a retention payment received by the direct contractor is specifically designated for a particular subcontractor, the direct contractor shall pay the retention payment to the designated subcontractor, if consistent with the terms of the subcontract.

(c) If a good faith dispute exists between the direct contractor and a subcontractor, the direct contractor may withhold from the retention payment to the subcontractor an amount not in excess of 150 percent of the estimated value of the disputed amount.

Comment. Section 8814 restates former Section 3260(d)-(e) without substantive change.

See also Section 8056 (calculation of time).

See also Sections 8014 (“direct contractor”), 8046 (“subcontractor”).

§ 8816. Payment for disputed work

8816. (a) If the direct contractor gives the owner, or a subcontractor gives the direct contractor, notice that work in dispute has been completed in accordance with the contract, the owner or direct contractor shall within 10 days give notice advising the notifying party of the acceptance or rejection of the disputed work. Both notices shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

(b) Within 10 days after acceptance of disputed work, the owner or direct contractor shall pay the portion of the retention relating to the disputed work.

Comment. Section 8816 restates former Section 3260(f) without substantive change.

See also Section 8056 (calculation of time).

See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 8046 (“subcontractor”), 8048 (“work”).

§ 8818. Wrongful withholding

8818. If an owner or direct contractor does not make a retention payment within the time required by this article:

(a) The owner or direct contractor is liable to the person to which payment is owed for a penalty of 2 percent per month on the amount wrongfully withheld, in place of any interest otherwise due.

(b) In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and reasonable attorney’s fees.

Comment. Section 8818 restates former Section 3260(g) without substantive change, except to add a reasonableness limitation on an attorney’s fee.

See also Sections 8014 (“direct contractor”), 8028 (“owner”), 8032 (“person”).

§ 8820. Waiver against public policy

8820. It is against public policy to waive the provisions of this article by contract.

Comment. Section 8820 restates former Section 3260(h) without substantive change.

§ 8822. Construction loan exempt

8822. This article does not apply to a retention withheld by a lender pursuant to a construction loan agreement.

Comment. Section 8822 restates former Section 3260(i) without substantive change.

Article 3. Stop Work Notice

§ 8830. “Stop work notice” defined

8830. “Stop work notice” means notice given under this article by a direct contractor to an owner that the contractor

will stop work if the amount owed the contractor is not paid within 10 days after notice is given.

Comment. Section 8830 restates a part of the first sentence of former Section 3260.2(a) without substantive change. The term “stop work notice” replaces the term “10-day stop work order “ used in former law.

This article is limited to a private work of improvement. See Section 8052 (application of part).

Former Section 3260.2(g), relating to the mechanics of the notice, is superseded by Sections 8100-8118 (notice).

See also Section 8056 (calculation of time).

See also Sections 8014 (“direct contractor”), 8028 (“owner”).

§ 8832. Stop work notice

8832. If a direct contractor is not paid the amount due pursuant to a written contract within 35 days after the date payment is due under the contract, and there is no dispute as to the satisfactory performance of the contractor, the contractor may give the owner a stop work notice. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

Comment. Section 8832 restates a part of the first sentence of former Section 3260.2(a) without substantive change.

See also Section 8056 (calculation of time).

See also Sections 8008 (“contract”), 8014 (“direct contractor”), 8028 (“owner”), 8830 (“stop work notice”).

§ 8834. Additional notice

8834. A direct contractor that gives an owner a stop work notice shall give the following additional notice:

(a) At least five days before giving the stop work notice, the contractor shall post notice of intent to give a stop work notice. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

(b) At the same time the contractor gives the stop work notice, the contractor shall give a copy of the stop work notice to all subcontractors with which the contractor has a direct contractual relationship on the work of improvement.

Comment. Section 8834 restates the second and third sentences of former Section 3260.2(a), and requires that the contractor give a copy of the stop work notice to the contractor's subcontractors.

See also Sections 8056 (calculation of time), 8114 (posting of notice).

See also Sections 8014 ("direct contractor"), 8028 ("owner"), 8040 ("site"), 8046 ("subcontractor"), 8050 ("work of improvement"), 8830 ("stop work notice").

§ 8836. Notice to construction lender

8836. Within five days after receipt of a stop work notice from a direct contractor, the owner shall give a copy of the notice to the construction lender, if any. The copy of the notice shall be given in compliance with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

Comment. Section 8836 restates the fourth sentence of former Section 3260.2(a).

See Sections 8056 (calculation of time).

See also Sections 8006 ("construction lender"), 8014 ("direct contractor"), 8028 ("owner"), 8830 ("stop work notice").

§ 8838. Immunity from liability

8838. (a) The direct contractor or the direct contractor's surety, or a subcontractor or a subcontractor's surety, is not liable for delay or damage that the owner or a subcontractor may suffer as a result of the direct contractor giving a stop work notice and subsequently stopping work for nonpayment, if the notice and posting requirements of this article are satisfied.

(b) A direct contractor's or subcontractor's liability to a subcontractor or material supplier after the direct contractor stops work under this article is limited to the amount the subcontractor or material supplier could otherwise recover under this part for work provided up to the date the subcontractor or material supplier ceases work, subject to the following exceptions:

(1) The direct contractor's or subcontractor's liability continues for work provided up to and including the 10 day notice period and not beyond.

(2) This subdivision does not limit liability for custom work, including materials that have been fabricated, manufactured, or ordered to specifications that are unique to the job.

Comment. Section 8838 restates former Section 3260.2(c), correcting two inadvertent drafting errors in former law.

See also Sections 8014 ("direct contractor"), 8026 ("material supplier"), 8028 ("owner"), 8046 ("subcontractor"), 8048 ("work"), 8830 ("stop work notice").

§ 8840. Notice of resolution of dispute or cancellation of stop work notice

8840. On resolution of the claim in the stop work notice or the direct contractor's cancellation of the stop work notice, the contractor shall post, and give subcontractors with which the contractor has a direct contractual relationship on the work of improvement, notice of the resolution or cancellation. The notice shall comply with the requirements of Article 3 (commencing with Section 8100) of Chapter 1.

Comment. Section 8840 restates the second paragraph of former Section 3260.2(a) without substantive change.

See also Section 8114 (posting of notice).

See also Sections 8014 ("direct contractor"), 8046 ("subcontractor"), 8050 ("work of improvement"), 8830 ("stop work notice").

§ 8842. Stop work remedy not exclusive

8842. A direct contractor's right to stop work under this article is in addition to other rights the direct contractor may have under the law.

Comment. Section 8842 restates former Section 3260.2(b) without substantive change.

See also Section 8014 ("direct contractor"), 8048 ("work").

§ 8844. Judicial proceeding

8844. (a) If payment of the amount claimed is not made within 10 days after a stop work notice is given, the direct contractor, the direct contractor's surety, or an owner may in an expedited proceeding in the superior court in the county in which the private work of improvement is located, seek a judicial determination of liability for the amount due.

(b) The expedited proceeding shall be set for hearing or trial at the earliest possible date in order that it shall be quickly heard and determined, and shall take precedence over all other cases except older matter of the same character and other matters to which special precedence has been given.

Comment. Subdivision (a) of Section 8844 restates former Section 3260.2(d) without substantive change, except to additionally allow an owner to seek a judicial determination of liability for the amount due in an expedited proceeding.

Subdivision (b) is comparable to Code of Civil Procedure Sections 1062.3 and 1260.010.

See also Section 8056 (calculation of time).

See also Section 8014 ("direct contractor"), 8028 ("owner"), 8050 ("work of improvement"), 8830 ("stop work notice").

§ 8846. Waiver against public policy

8846. It is against public policy to waive the provisions of this article by contract.

Comment. Section 8846 restates former Section 3260.2(e) without substantive change.

§ 8848. Application of article

8848. (a) This article applies to a contract entered into on or after January 1, 1999.

(b) This article does not apply to a retention withheld by a lender pursuant to a construction loan agreement.

Comment. Section 8848 restates former Section 3260.2(f) without substantive change.

See also Section 8008 ("contract").

PUBLIC WORK OF IMPROVEMENT

Pub. Cont. Code §§ 41010-45090 (added). Public works contract remedies

SEC. _____. Part 6 (commencing with Section 41010) is added to Division 2 of the Public Contract Code, to read:

PART 6. PUBLIC WORKS CONTRACT REMEDIES

CHAPTER 1. DEFINITIONS

§ 41010. Application of definitions

41010. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 41010 supersedes former Civil Code Section 3082.

§ 41020. “Claimant”

41020. “Claimant” means a person that has a right under this part to give a stop payment notice or assert a claim against a payment bond.

Comment. Section 41020 restates former Civil Code Section 3085, omitting as unnecessary the reference to the claimant’s “entitlement” and to the combination of remedies. For persons having the right to give a stop payment notice or assert a claim against a payment bond, see Section 42030 (who may use remedies).

See also Sections 41080 (“payment bond”), 41090 (“person”), 41140 (“stop payment notice”).

§ 41030. “Design professional”

41030. “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the

Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

Comment. Section 41030 is a new definition. It is included for drafting convenience. It generalizes provisions of former Civil Code Sections 3247 and 3267.

See also Section 41090 (“person”).

§ 41040. “Direct contractor”

41040. “Direct contractor” means a contractor that has a direct contractual relationship with a public entity. With respect to the amount due or to become due to a direct contractor, the term includes the direct contractor’s assignee.

Comment. Section 41040 supersedes former Civil Code Section 3095 (“original contractor”).

The definition generalizes provisions of former Civil Code Section 3187 relating to payment of the assignee of a direct contractor. See also Section 44340 (effect of assignment or garnishment).

A direct contractor within the meaning of this section is one that contracts directly with a public entity, as opposed to one that contracts with another contractor (i.e., a subcontractor).

See also Section 41110 (“public entity”).

§ 41050. “Funds”

41050. “Funds” means warrant, check, money, or bonds (if bonds are to be issued in payment of the public works contract).

Comment. Section 41050 is a new definition. It is included for drafting convenience. It generalizes provisions of former Civil Code Sections 3186, 3187, and 3196.

See also Section 41120 (“public works contract”).

§ 41060. “Labor, service, equipment, or material”

41060. “Labor, service, equipment, or material” includes but is not limited to labor, skills, services, material, supplies, equipment, appliances, power, and surveying, provided pursuant to a public works contract.

Comment. Section 41060 is a new definition. It is included for drafting convenience. The phrase is intended to encompass all things of value provided pursuant to a public works contract, and replaces various phrases used throughout the former law, including “labor or material,” “labor, services, equipment, or materials,” “appliances, teams, or power,” “provisions, provender, or other supplies,” and the like. The definition applies to variant grammatical forms of the phrase used in this part, such as “labor, service, equipment, *and* material.”

See also Section 41120 (“public works contract”).

§ 41070. “Laborer”

41070. (a) “Laborer” means a person that, acting as an employee, performs labor, or bestows skill or other necessary services, pursuant to a public works contract.

(b) “Laborer” includes a person or entity to which a portion of a laborer’s compensation for a public works contract, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with that laborer or the collective bargaining agent of that laborer.

(c) A person or entity described in subdivision (b) that has standing under applicable law to maintain a direct legal action, in its own name or as an assignee, to collect any portion of compensation owed for a laborer for work pursuant to a public works contract, shall have standing to enforce any rights or claims of the laborer under this part, to the extent of the compensation agreed to be paid to the person or entity for that work. This subdivision is intended to give effect to the long-standing public policy of this state to protect the entire compensation of a laborer, regardless of the form in which that compensation is to be paid.

Comment. Subdivision (a) of Section 41070 restates former Civil Code Section 3089(a).

Subdivision (b) restates the first sentence of former Civil Code Section 3089(b) and a part of former Civil Code Section 3111.

Subdivision (c) restates the second and third sentences of former Civil Code Section 3089(b) and a part of former Civil Code Section 3111.

§ 41080. “Payment bond”

41080. “Payment bond” means a payment bond required by Section 45010.

Comment. Section 41080 supersedes former Civil Code Section 3096.

§ 41090. “Person”

41090. “Person” means an individual, corporation, public entity, business trust, estate, trust, partnership, limited liability company, association, or other entity.

Comment. Section 41090 is a new definition. It is included for drafting convenience.

See also Section 41110 (“public entity”).

§ 41100. “Preliminary notice”

41100. “Preliminary notice” means the notice provided for in Chapter 3 (commencing with Section 43010).

Comment. Section 41100 supersedes former Civil Code Section 3098. The substantive requirements for preliminary notice are relocated to Chapter 3 (commencing with Section 43010).

§ 41110. “Public entity”

41110. (a) “Public entity” has the meaning provided in Section 1100 and includes all of the following:

- (1) The Regents of the University of California.
- (2) An officer authorized to act for a public entity.

(b) A reference in this part to a public entity means the public entity that awarded the public works contract.

Comment. Subdivision (a) of Section 41110 restates former Civil Code Section 3099. Under Section 1100, “public entity” means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state. The reference to an officer of the public entity is included for drafting convenience. *Cf.* former Civ. Code §§ 3247, 3250, 3251 (public entity or officer).

Subdivision (b) is new; it is included for drafting convenience. *Cf.* former Civ. Code §§ 3247, 3250, 3251.

See also Section 41120 (“public works contract”).

§ 41120. “Public works contract”

41120. “Public works contract” has the meaning provided in Section 1101.

Comment. Section 41120 supersedes former Civil Code Section 3100 (“public work”). Under Section 1101, “public works contract” means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

§ 41130. “Site”

41130. “Site” means the property on which a public works contract is performed or is to be performed.

Comment. Section 41130 restates the substance of former Civil Code Section 3101 to apply to a public works contract, and adds a reference to a contract to be performed.

See also Section 41120 (“public works contract”).

§ 41140. “Stop payment notice”

41140. “Stop payment notice” means a notice given under Chapter 4 (commencing with Section 44110).

Comment. Section 41140 supersedes former Civil Code Section 3103. The term “stop payment notice” replaces the term “stop notice” used in former law.

§ 41150. “Subcontractor”

41150. “Subcontractor” means a contractor that does not have a direct contractual relationship with a public entity. The term includes a contractor that has a contractual relationship with a direct contractor or with another subcontractor.

Comment. The first sentence of Section 41150 restates former Civil Code Section 3104, to the extent it applied to a public works contract.

The second sentence is new; it makes clear that the term “subcontractor” includes a subcontractor of a subcontractor.

See also Sections 41040 (“direct contractor”), 41110 (“public entity”).

§ 41160. “Work”

41160. “Work” means labor, service, equipment, or material provided pursuant to a public works contract.

Comment. Section 41160 is a new definition. It is included for drafting convenience.

See also Sections 41060 (“labor, service, equipment, or material”), 41120 (“public works contract”).

§ 41170. “Work of improvement”

41170. (a) “Work of improvement” includes but is not limited to:

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

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

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

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

Comment. Section 41170 restates former Civil Code Section 3106. The section is revised to reorganize and tabulate the different types of works falling within the definition, to expand the coverage of the definition, and to make various technical, nonsubstantive revisions. The term “property” replaces “lot or tract of land.”

CHAPTER 2. GENERAL PROVISIONS

Article 1. Miscellaneous Provisions

§ 42005. Application of former law

42005. (a) This part is operative on January 1, 2010.

(b) Except as otherwise provided in this section, this part applies to a public works contract executed before, on, or after the operative date.

(c) The effectiveness of a notice given or other action taken on a public works contract before the operative date is

governed by the applicable law in effect before the operative date and not by this part.

(d) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

Comment. Section 42005 is new. Although this part applies generally to all public works contracts, it does not govern notices given or actions taken on a public works contract prior to January 1, 2010, which are governed by former law.

See also Section 8008 (“public works contract”).

§ 42010. Application of part

42010. (a) This part applies to a public works contract awarded by a public entity.

(b) This part does not apply to a transaction governed by Sections 20457 to 20464, inclusive.

Comment. Subdivision (a) of Section 42010 restates former Civil Code Sections 3100 and 3179.

Subdivision (b) restates former Civil Code Section 3266(b). This provision updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, § 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code. See Pub. Cont. Code § 20457.

See also Sections 41110 (“public entity”), 41120 (“public works contract”).

§ 42020. Relation to other statutes

42020. (a) This part does not apply to or change improvement security under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

(b) The Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of

the Code of Civil Procedure, applies to a bond given under this part, except to the extent this part prescribes a different rule or is inconsistent.

Comment. Subdivision (a) of Section 42020 is new. It clarifies the interrelation between this part and the Subdivision Map Act. For relevant provisions of that act, see Gov't Code §§ 66499-66499.10 (improvement security).

Subdivision (b) is new. It is a specific application of Code of Civil Procedure Section 995.020 (application of Bond and Undertaking Law).

§ 42030. Who may use remedies

42030. (a) Except as provided in subdivision (b), any of the following persons that has not been paid in full may give a stop payment notice to the public entity or assert a claim against a payment bond:

(1) A person that provides work for a public works contract, if the work is authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the public works contract.

(2) A laborer.

(3) A person described in Section 4107.7.

(b) A direct contractor may not give a stop payment notice or assert a claim against a payment bond under this part.

Comment. Section 42030 restates former Civil Code Section 3181, and parts of former Civil Code Sections 3110, 3111, and 3112. The former references to site improvement work and to provisions, provender, or other supplies are included within the meaning of subdivision (a). See Section 41160 (“work”).

The reference to an “express trust fund” in former Civil Code Section 3111 is replaced by a reference to a generalized category of persons or entities included within the definition of “laborer.” See Section 41070 (“laborer”).

See also Sections 41040 (“direct contractor”), 41080 (“payment bond”), 41090 (“person”), 41110 (“public entity”), 41120 (“public works contract”), 41140 (“stop payment notice”).

§ 42040. Rules of practice

42040. Except as otherwise provided in this part, Part 2 (commencing with Section 307) of the Code of Civil Procedure provides the rules of practice in proceedings under this part.

Comment. Section 42040 continues the first sentence of former Civil Code Section 3259 without substantive change. The second sentence of former Civil Code Section 3259 is not continued; this part does not include special provisions relating to new trials or appeals.

§ 42050. Calculation of time

42050. For purposes of this part, the term “day” means a calendar day.

Comment. Section 42050 is new. A reference to the term “day” in a statute typically means a calendar day, unless otherwise specifically indicated. *Iverson v. Superior Court*, 167 Cal. App. 3d 544, 548, 213 Cal. Rptr. 399 (1985).

See also Civ. Code §§ 10 (computing time), 11 (holidays).

§ 42060. Agency

42060. An act that may be done by or to a person under this part may be done by or to the person’s agent to the extent the act is within the scope of the agent’s authority.

Comment. Section 42060 generalizes a provision of former Civil Code Section 3103. It makes clear that an agent’s authority is limited to the scope of the agency. Thus, to the extent a direct contractor is deemed to be the agent of a public entity for the purpose of engaging a subcontractor, the scope of the agency does not include other acts, such as compromise of litigation.

See also Section 41090 (“person”).

§ 42070. Liability of surety

42070. None of the following releases a surety from liability on a bond given under this part:

(a) A change to a contract, plan, specification, or agreement for a public works contract or for work provided for a public works contract.

(b) A change to the terms of payment or an extension of the time for payment for a public works contract.

(c) A rescission or attempted rescission of a contract, agreement, or bond.

(d) A condition precedent or subsequent in the bond purporting to limit the right of recovery of a claimant otherwise entitled to recover pursuant to a contract, agreement, or bond.

(e) In the case of a bond given for the benefit of claimants, the fraud of a person other than the claimant seeking to recover on the bond.

Comment. Section 42070 restates former Civil Code Section 3225.

See also Sections 41020 (“claimant”), 41090 (“person”), 41120 (“public works contract”), 41160 (“work”).

Article 2. Notice

§ 42110. Written notice

42110. (a) Notice under this part shall be in writing. Writing includes printing and typewriting.

(b) Written notice under this part may be given by electronic communication to the extent authorized under Section 42170.

Comment. Subdivision (a) of Section 42110 generalizes various provisions of former law. See, e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3098 (preliminary notice), 3103 (stop notice).

Subdivision (b) is new.

See also Evid. Code § 250 (“writing”).

§ 42120. Contents of notice

42120. (a) Notice under this part shall, in addition to any other information required by statute for that type of notice, include all of the following information to the extent known to the person giving the notice:

(1) The name and address of the public entity.

(2) The name and address of the direct contractor.

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

(4) The name, address, and relationship to the parties of the person giving the notice.

(5) If the person giving the notice is a claimant:

(A) A general statement of the labor, service, equipment or material provided or to be provided by the claimant.

(B) The name of the person that contracted for the labor, service, equipment or material provided or to be provided.

(C) A statement or estimate of the claimant's demand, if any, after deducting all just credits and offsets.

(b) Notice is not invalid by reason of any variance from the requirements of this section if the notice is sufficient to substantially inform the person given notice of the information required by this section and other information required in the notice.

Comment. Section 42120 is new. It generalizes and standardizes provisions found throughout former law. See, e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3098 (preliminary notice), 3103 (stop notice), 3252 (notice to principal and surety).

See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41060 ("labor, service, equipment, or material"), 41090 ("person"), 41110 ("public entity"), 41130 ("site").

§ 42130. Notice of overdue laborer compensation

42130. (a) A direct contractor or subcontractor that employs a laborer and fails to pay the full compensation due the laborer, including any employer payments described in Section 1773.1 of the Labor Code and implementing regulations, shall not later than the date the compensation became delinquent, give the laborer, the laborer's bargaining

representative, if any, and the public entity, notice that includes all of the following information, in addition to the information specified in Section 42120:

(1) The name and address of the laborer, and of any person or entity described in subdivision (b) of Section 41070 to which employer payments are due.

(2) The total number of straight time and overtime hours worked by the laborer on each job.

(3) The amount then past due and owing.

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

Comment. Section 42130 restates former Civil Code Section 3097(k), with the additional requirement that the information provided be given to the public entity, and include the name and address of the unpaid laborer.

Former Civil Code Section 3098(b), providing for disciplinary action if a subcontractor fails to give preliminary notice on a work of improvement exceeding \$400, is not continued.

The reference to the Registrar of Contractors in the final sentence of former Civil Code Section 3097(k) is revised to refer to the Contractors' State License Law. This is a technical, nonsubstantive change.

Compliance with this section does not excuse compliance with Section 43010, if applicable.

Nothing in this section affects any requirement to provide similar information for other purposes. See, e.g., Lab. Code § 1776 (payroll records).

See also Sections 41040 ("direct contractor"), 41070 ("laborer"), 41110 ("public entity"), 41150 ("subcontractor").

§ 42140. Manner of giving notice

42140. Except as otherwise provided by statute, notice under this part shall be given by any of the following means:

(a) Personal delivery.

(b) Mail in the manner provided in Section 42160.

(c) Leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons and complaint in a civil action.

Comment. Section 42140 is new. It generalizes and standardizes provisions found throughout former law. See, e.g., former Civ. Code §§ 3098 (preliminary notice), 3103 (stop notice), 3185 (notice of expiration of time to give stop notice), 3199 (notice of release of funds), 3227 (notice to principal and surety).

Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure Section 415.20 for service of summons and complaint, the notice is complete five days after mailing the notice. See Section 42180 (when notice complete). The 10 day delay provided in the Code of Civil Procedure for completion of service under that code is inapplicable.

This part may provide for a different or more limited manner of giving a particular notice. See e.g., Section 44130 (giving of stop payment notice).

§ 42150. Address at which notice is given

42150. Except as otherwise provided by this part, notice under this part shall be given to the person to be notified at the following addresses:

(a) If the person to be notified is the public entity, at the office of the public entity or at another address specified by the public entity in the contract or elsewhere for service of notices, papers, and other documents.

(b) If the person to be notified is a direct contractor or a subcontractor, at the contractor's residence or place of business, or at the contractor's address shown on the building permit, on the contractor's contract, or on the records of the Contractors' State License Board.

(c) If the person to be notified is a claimant, at the claimant's residence or place of business, or at the claimant's address shown on the claimant's contract, preliminary notice, stop payment notice, or claim against a payment bond, or on the records of the Contractors' State License Board.

(d) If the person to be notified is the surety on a bond, at the surety's residence or place of business, or at the surety's address shown on the bond for service of notices, papers, and other documents, or on the records of the Department of Insurance.

Comment. Section 42150 is new. It generalizes and standardizes provisions found throughout former law.

For examples of two more particularized notice provisions, see Sections 43040 (giving preliminary notice), 44130 (giving of stop payment notice).

Subdivision (d) does not continue the unique provisions found in former Civil Code Section 3227 for notice to alternate persons in the case of a personal surety or admitted surety insurer. The bond and undertaking law requires every bond to include the address at which the principal and sureties may be served with notices, papers, and other documents. Code Civ. Proc. § 995.320.

See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41060 ("labor, service, equipment, or material"), 41080 ("payment bond"), 41090 ("person"), 41100 ("preliminary notice"), 41110 ("public entity"), 41140 ("stop payment notice"), 41150 ("subcontractor").

§ 42160. Mailed notice

42160. Notice given by mail under this part shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.

Comment. Section 42160 is a new provision included for drafting convenience. It generalizes a number of provisions of former law, and expands the methods of giving notice to include delivery by express service carrier.

§ 42170. Notice by electronic communication

42170. (a) As used in this section, "electronic record" has the meaning provided in Section 1633.2 of the Civil Code.

(b) A notice under this part may be given to a person in the form of an electronic record if the person has agreed in writing to receive the notice in the form of an electronic record.

(c) If a person that has agreed to receive a notice in the form of an electronic record is a consumer within the meaning of Section 7006 of Title 15 of the United States Code, the person's agreement shall satisfy the requirements of Section 7001 of Title 15 of the United States Code relating to consumer consent to an electronic record.

Comment. Section 42170 is new. It makes the California Uniform Electronic Transactions Act (UETA) (Civ. Code §§ 1633.1-1633.17) expressly applicable to notices under this part.

A consumer within the meaning of E-Sign is "an individual who obtains products or services used primarily for personal, family, or household purposes." 15 U.S.C. § 7006(1). The consumer consent requirements of E-Sign include (i) affirmative consent, (ii) disclosure, (iii) electronic access, (iv) software and hardware upgrades. See 15 U.S.C. § 7001(c)(1).

See also Section 41090 ("person"), Evid. Code § 250 ("writing").

§ 42180. When notice complete

42180. Notice under this part is complete and deemed to have been given at the following times:

(a) If given by personal delivery, when delivered.

(b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

(c) If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after mailing.

(d) If given in the form of an electronic record, when the electronic record is transmitted.

Comment. Section 42180 is new. It generalizes and standardizes provisions found in former law.

Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure Section 1013, the notice is complete when deposited in the mail or with an express service carrier. The delays provided in the Code of Civil Procedure for completion of service under that code are inapplicable.

Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure Section 415.20 for service of summons and complaint, the notice is complete five days after mailing of the notice. The 10 day delay provided in the Code of Civil Procedure for completion of service under that code is inapplicable.

See also Sections 42050 (calculation of time), 42160 (mailed notice), 42170 (notice by electronic communication).

§ 42190. Proof of notice

42190. (a) Proof that notice was given to a person in the manner required by this part shall be made by a proof of notice declaration that states all of the following:

(1) The type or description of the notice given.

(2) The date, place, and manner of notice and facts showing that notice was given in the manner required by statute.

(3) The name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice.

(b) If the notice is given by mail, the declaration shall be accompanied by one of the following:

(1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail.

(2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service.

(3) A return receipt, delivery confirmation, signature confirmation, or other proof of delivery or attempted delivery provided by the United States Postal Service, or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the returned envelope itself.

(4) A tracking record or other documentation provided by an express service carrier showing delivery or attempted delivery of the notice.

(c) If notice is given in the form of an electronic record, the declaration shall also state that the document was served electronically and that no notice of nontransmission was received, and shall be accompanied by the recipient's written agreement to receive the notice in the form of an electronic record.

Comment. Section 42190 is new. It generalizes and standardizes provisions found throughout former law, and expands the methods of proof to include documentation of the mailing provided by the United States Postal Service or an express service carrier.

See also Sections 42160 (mailed notice), 42170 (notice by electronic communication).

See also Section 41090 ("person").

Article 3. Completion

§ 42210. Completion

42210. For the purpose of this part, completion of a work of improvement occurs at the earliest of the following times:

(a) Acceptance of the work of improvement by the public entity.

(b) Cessation of labor on the work of improvement for a continuous period of 60 days. This subdivision does not apply to a contract awarded under the State Contract Act, Part 2 (commencing with Section 10100).

Comment. Section 42210 restates former Civil Code Section 3086 to the extent it applied to a public work of improvement, but extends the period of continuous cessation of labor necessary to constitute completion from 30 days to 60 days.

See also Section 42050 (calculation of time).

See also Sections 41110 ("public entity"), 41170 ("work of improvement").

§ 42220. Notice of cessation

42220. (a) A public entity may record a notice of cessation if there has been a continuous cessation of labor for at least

30 days prior to the recordation that continues through the date of the recordation.

(b) The notice shall be signed and verified by the public entity or its agent.

(c) The notice shall comply with the requirements of Article 2 (commencing with Section 42110), and shall also include all of the following information:

(1) The date on or about which the labor ceased.

(2) A statement that the cessation has continued until the recordation of the notice.

Comment. Section 42220 restates former Civil Code Section 3092, to the extent it applied to a public works contract. For the effect of recordation of a notice of cessation, see Sections 44140 (time for giving stop payment notice), 45050 (time for enforcing payment bond claim).

A notice of cessation is recorded in the office of the county recorder of the county in which the public works contract or part of it is performed. See Section 42250 (recordation of notice). A notice of cessation is recorded when it is filed for record. See Section 42250 (recordation of notice), Civ. Code § 1170 (recordation).

See also Sections 42050 (calculation of time), 42060 (agency).

See also Section 41110 (“public entity”).

§ 42230. Notice of completion

42230. (a) A public entity may record a notice of completion on or within 15 days after completion of a work of improvement.

(b) The notice shall be signed and verified by the public entity or its agent.

(c) The notice shall comply with the requirements of Article 2 (commencing with Section 42110), and shall also include all of the following information:

(1) The date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is 15 days or less before the date of recordation of the notice.

(2) If the notice is given only of completion of a contract with the public entity for a portion of the work of

improvement as provided in Section 42240, the name of the direct contractor under that contract and a general statement of the work provided pursuant to the contract.

Comment. Section 42230 restates former Civil Code Section 3093 to the extent it applied to a public works contract, extending the 10 day period for recordation of a notice of completion under former law to 15 days. For the date of completion of a work of improvement, see Section 42210.

For the effect of recordation of a notice of completion, see Sections 44140 (time for giving stop payment notice), 45050 (time for enforcing payment bond claim), 45070 (notice of payment bond claim).

Subdivision (c)(2) is new. It is adopted from former Civil Code Section 3117. See Section 42240.

A notice of completion is recorded in the office of the county recorder of the county in which the public works contract or part of it is performed. Section 42250 (recordation of notice). A notice of completion is recorded when it is filed for record. See Section 42250 (recordation of notice), Civ. Code § 1170 (recordation).

See also Sections 42050 (calculation of time), 42060 (agency).

See also Sections 41040 (“direct contractor”), 41110 (“public entity”), 41170 (“work of improvement”).

§ 42240. Notice of completion of contract for portion of work of improvement

42240. (a) If a work of improvement is made pursuant to two or more contracts with a public entity, each covering a portion of the work of improvement, the public entity may record a notice of completion of a contract with the public entity for a portion of the work of improvement.

(b) The recordation of a notice of completion of a contract under this section governs only work provided pursuant to that contract.

Comment. Section 42240 is new. It is adopted from former Civil Code Section 3117.

A notice of completion is recorded in the office of the county recorder of the county in which the public works contract or part of it is performed. See Section 42250 (recordation of notice). A notice of cessation is recorded when it is filed for record. See Section 42250 (recordation of notice), Civ. Code § 1170 (recordation).

See also Sections 41110 (“public entity”), 41160 (“work”), 41170 (“work of improvement”).

§ 42250. Recordation of notice

42250. (a) A notice of cessation or completion is recorded when filed for record in the office of the county recorder of the county in which the public works contract or part of it is performed. A notice in otherwise proper form containing the information required by Section 42220 or 42230 shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.

(b) The county recorder shall number, index, and preserve a notice of cessation or completion presented for filing under this part, and shall number, index, and transcribe into the official records, in the same manner as a conveyance of real property, a notice of completion or cessation recorded under this part.

(c) The county recorder shall charge and collect the fees provided in Article 5 (commencing with Section 27460) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code for performing duties under this section.

Comment. Subdivision (a) of Section 42250 is new. It generalizes a number of provisions of former law. The provision for recordation without acknowledgment is drawn from former Sections 3084 and 3093; it is an exception to the general rule of Government Code Section 27287. See also Civ. Code § 1170 (recordation).

Subdivisions (b) and (c) restate former Civil Code Section 3258.

See also Sections 42220 (notice of cessation), 42230 (notice of completion), 42240 (notice of completion of contract for portion of work of improvement).

See also Section 41120 (“public works contract”).

Article 4. Waiver and Release

§ 42310. Terms of contract

42310. (a) A public entity or direct contractor may not, by contract or otherwise, waive, affect, or impair a claimant’s

rights under this part, whether with or without notice, except with the claimant's written consent, and any term of a contract that purports to do so is void and unenforceable.

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

Comment. Section 42310 restates the first and second sentences of former Civil Code Section 3262(a), to the extent they related to a public works contract.

See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41110 ("public entity").

§ 42320. Waiver and release

42320. A claimant's waiver and release does not release the public entity or surety on a payment bond from a claim unless both of the following conditions are satisfied:

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

(b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be either of the following:

(1) The claimant's endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn.

(2) Written acknowledgment of payment by the claimant.

Comment. Section 42320 restates the third and fourth sentences of former Civil Code Section 3262(a), to the extent they related to a public works contract.

The term "financial institution" replaces "bank" in subdivision (b) and in the forms provided in this article.

The waiver and release may be signed by the claimant's agent. See Section 42060 (agency).

See also Sections 41020 ("claimant"), 41080 ("payment bond"), 41110 ("public entity").

§ 42330. Statement of claimant

42330. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is void and unenforceable and does not create an estoppel or impairment of the claim unless either of the following conditions is satisfied:

(a) The statement is pursuant to a waiver and release under this article.

(b) The claimant has actually received payment in full for the claim.

Comment. Section 42330 restates former Civil Code Section 3262(b), to the extent it related to a public works contract.

See also Section 41020 (“claimant”).

§ 42340. Reduction or release of stop payment notice

42340. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall comply with Article 2 (commencing with Section 42100). The reduction or release may be given in a form other than a waiver and release form provided in this article.

(b) The writing shall identify whether it is a reduction of the amount of the stop payment notice, or a release of the notice in its entirety. If the writing is a reduction, it shall state the amount of the reduction, and the amount to remain withheld after the reduction.

(c) A claimant’s reduction or release of a stop payment notice has the following effect:

(1) The reduction or release releases the claimant’s right to enforce payment of the claim stated in the notice to the extent of the reduction or release.

(2) The reduction or release releases the public entity from the obligation to withhold funds pursuant to the notice to the extent of the reduction or release.

(3) The reduction or release does not preclude the claimant from giving a subsequent stop payment notice that is timely and proper.

(4) The reduction or release does not release any right of the claimant other than the right to enforce payment of the claim stated in the stop payment notice to the extent of the reduction or release.

Comment. Subdivisions (a) and (c) of Section 42340 restate former Civil Code Section 3262(b)(2), to the extent it related to a public works contract.

Subdivision (b) of Section 42340 is new.

See also Sections 41020 (“claimant”), 41050 (“funds”), 41090 (“person”), 41110 (“public entity”), 41140 (“stop payment notice”).

§ 42350. Accord and satisfaction or settlement agreement not affected

42350. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the claim.

Comment. Section 42350 restates former Civil Code Section 3262(c), to the extent it related to a public works contract.

§ 42360. Conditional waiver and release on progress payment

42360. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress 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 PROGRESS
PAYMENT

NOTICE: This document waives certain rights of the claimant effective on receipt of payment. A person should not rely on this document unless satisfied that the claimant has received payment.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Public Entity: _____

Through Date: _____

Conditional Waiver and Release

This document waives and releases stop payment notice and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): \$ _____
 (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Comment. Section 42360 restates former Civil Code Section 3262(d)(1) to the extent it related to a public works contract, adding language relating to progress payments covered by previous releases that have not been paid.

The statutory form is recast for clarity.

See also Section 41020 ("claimant"), 41080 ("payment bond"), 41090 ("person"), 41110 ("public entity"), 41140 ("stop payment notice").

§ 42370. Unconditional waiver and release on progress payment

42370. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall be in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: This document waives and releases 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 waiver and release form.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Public Entity: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases stop payment notice and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document.

The claimant has received the following progress payment:
\$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Comment. Section 42370 restates former Civil Code Section 3262(d)(2), to the extent it related to a public works contract. The statutory form is recast for clarity.

See also Section 41020 ("claimant"), 41080 ("payment bond"), 41110 ("public entity"), 41140 ("stop payment notice").

§ 42380. Conditional waiver and release on final payment

42380. 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

NOTICE: This document waives certain rights of the claimant effective on receipt of payment. A person should not rely on this document unless satisfied that the claimant has received payment.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Public Entity: _____

Conditional Waiver and Release

This document waives and releases stop payment notice and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

(1) Disputed claims for extras in the amount of \$ _____

(2) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____

Amount(s) of unpaid progress payment(s): \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

Comment. Section 42380 restates former Civil Code Section 3262(d)(3), to the extent it related to a public works contract, adding language relating to progress payments covered by previous releases that have not been paid, and a line for identification of the waivant's customer. The statutory form is recast for clarity.

See also Section 41020 ("claimant"), 41080 ("payment bond"), 41090 ("person"), 41110 ("public entity"), 41140 ("stop payment notice").

§ 42390. Unconditional waiver and release on final payment

42390. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the final payment, the waiver and release shall be in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: This document waives and releases 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 waiver and release form.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Public Entity: _____

Unconditional Waiver and Release

This document waives and releases stop payment notice and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. The claimant has been paid in full.

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of \$ _____

Signature

Claimant’s Signature: _____

Claimant’s Title: _____

Date of Signature: _____

Comment. Section 42390 restates former Civil Code Section 3262(d)(4), to the extent it related to a public works contract. The statutory form is recast for clarity.

See also Section 41020 (“claimant”), 41080 (“payment bond”), 41110 (“public entity”), 41140 (“stop payment notice”).

CHAPTER 3. PRELIMINARY NOTICE

§ 43010. Preliminary notice prerequisite to remedies

43010. (a) Except as otherwise provided by statute, before giving a stop payment notice or asserting a claim against a payment bond, a claimant shall give preliminary notice to the following persons:

(1) The public entity.

(2) The direct contractor to which the claimant provides work.

(b) Notwithstanding subdivision (a):

(1) A laborer is not required to give preliminary notice.

(2) A claimant that has a direct contractual relationship with a direct contractor is not required to give preliminary notice.

(c) Compliance with this section is a necessary prerequisite to the validity of a stop payment notice under this part.

(d) Compliance with this section or with Section 45070 is a necessary prerequisite to the validity of a claim against a payment bond under this part.

Comment. Section 43010 restates part of the introductory clause and subdivisions (a) and (c) of former Civil Code Section 3098. Repetitive detail is omitted, in reliance on defined terms and other substantive provisions. For a statutory exception to the preliminary notice requirement, see Section 45070 (notice of claim against payment bond).

The transitional provision of former Civil Code Section 3098(e) is not continued due to lapse of time.

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41080 (“payment bond”), 41100 (“preliminary notice”), 41110 (“public entity”), 41140 (“stop payment notice”).

§ 43040. Giving preliminary notice

43040. (a) Except as provided in subdivision (b), preliminary notice shall be given in compliance with the requirements of Article 2 (commencing with Section 42110) of Chapter 2.

(b) If the public works contract is for work constructed by the Department of Transportation or the Department of General Services of the state, preliminary notice to the public entity shall be given to the disbursing officer of the department constructing the work.

Comment. Section 43040 restates the second and fourth sentences of former Civil Code Section 3098(a).

The reference in former Civil Code Section 3098(a) to the Department of Public Works is obsolete, and is revised pursuant to Government Code Section 14001.

See also Sections 41100 (“preliminary notice”), 41110 (“public entity”), 41120 (“public works contract”), 41160 (“work”).

§ 43050. Effect of preliminary notice

43050. A claimant may give a stop payment notice or assert a claim against a payment bond only for work provided within 20 days before giving preliminary notice and at any time thereafter.

Comment. Section 43050 restates parts of former Civil Code Sections 3098(a) and 3098(d).

See also Section 42050 (calculation of time).

See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41100 (“preliminary notice”), 41140 (“stop payment notice”), 41160 (“work”).

CHAPTER 4. STOP PAYMENT NOTICE

Article 1. General Provisions

§ 44110. Stop payment notice exclusive remedy to reach construction funds

44110. The rights of all persons furnishing work pursuant to a public works contract, with respect to any fund for payment of construction costs, are governed exclusively by this chapter, and no person may assert any legal or equitable right with respect to such fund, other than a right created by direct written contract between such person and the person holding the fund, except pursuant to the provisions of this chapter.

Comment. Section 44110 restates former Civil Code Section 3264, to the extent it applied to a public works contract. For a comparable provision applicable to a private work, see Civil Code Section 8500.

There may be specific statutory provisions that authorize payment by a public entity from a fund designated for a public work, notwithstanding the provisions of Section 44110. See, e.g., Code Civ. Proc. § 708.760 (satisfaction of judgment against direct contractor on public work), Labor Code § 1727 (public entity to withhold amounts needed to satisfy prevailing wage violations from funds due direct contractor on public work). This section is not intended to change existing law with respect to such provisions.

The term “fund” has a meaning distinct from the term “funds” as defined in Section 41050. Consistent with former Civil Code Section

3264, “fund” refers to the source for payment of construction costs, not the form of payment itself.

See also Sections 41090 (“person”), 41120 (“public works contract”), 41160 (“work”).

§ 44120. Contents of stop payment notice

44120. (a) A stop payment notice shall comply with the requirements of Section 42120, and shall be signed and verified by the claimant.

(b) The notice shall include a general description of work to be provided, and an estimate of the total amount in value of the work to be provided.

(c) The amount claimed in the notice may include only the amount due the claimant for work provided through the date of the notice.

(d) The claimant may include in a stop payment notice an amount due for work performed as a result of rescission, abandonment, or breach of the contract. If there is a rescission, abandonment, or breach of the contract, the amount of the stop payment notice may not exceed the reasonable value of the work provided by the claimant.

Comment. Subdivisions (a) through (c) of Section 44120 supersede former Civil Code Section 3103(a)-(d). Subdivision (c) provides a special rule that supplements the general requirement of Section 42120(a)(5)(C) (demand of claimant).

Subdivision (d) is similar to former Civil Code Section 3123(b).

A stop payment notice may be executed by the claimant’s agent. See Section 42060 (agency).

See also Sections 42110-42190 (notice).

See also Sections 41020 (“claimant”), 41140 (“stop payment notice”), 41160 (“work”).

§ 44130. Giving of stop payment notice

44130. (a) Except as provided in subdivision (b), a stop payment notice shall be given in compliance with the requirements of Article 2 (commencing with Section 42110) of Chapter 2.

(b) A stop payment notice shall be given to the public entity by giving the notice to the following person:

(1) In the case of a public works contract of the state, the director of the department that awarded the contract.

(2) In the case of a public works contract of a public entity other than the state, the office of the controller, auditor, or other public disbursing officer whose duty it is to make payment pursuant to the contract, or the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by which the contract was awarded.

Comment. Section 44130 restates the first unnumbered paragraph of former Civil Code Section 3103.

A claimant wishing to receive return notice of the time within which payment of the claim stated in a stop payment notice must be enforced must pay the public entity ten dollars (\$10) at the time of giving the stop payment notice. See Section 44170.

See also Sections 41110 (“public entity”), 41120 (“public works contract”), 41140 (“stop payment notice”).

§ 44140. Time for giving notice

44140. A stop payment notice is not effective unless given before the earlier of the following times:

(a) Ninety days after cessation or completion.

(b) Thirty days after recordation of a notice of cessation or completion.

Comment. Section 44140 restates former Civil Code Section 3184. See also Sections 42050 (calculation of time), 42210 (completion), 42220 (notice of cessation), 42230 (notice of completion), 42240 (notice of completion of contract for portion of work of improvement), 42250 (recordation of notice), Civ. Code § 1170 (recordation).

See also Section 41140 (“stop payment notice”).

§ 44150. Duty to withhold funds

44150. (a) The public entity shall, on receipt of a stop payment notice, withhold from the direct contractor sufficient funds due or to become due to the direct contractor to pay the

claim stated in the stop payment notice and to provide for the public entity's reasonable cost of any litigation pursuant to the stop payment notice.

(b) The public entity may satisfy its duty under this section by refusing to release funds held in escrow under Section 10263 or 22300.

Comment. Section 44150 restates former Civil Code Section 3186. See also Section 42060 (agency).

See also Sections 41040 ("direct contractor"), 41050 ("funds"), 41110 ("public entity"), 41140 ("stop payment notice").

§ 44160. Payment notwithstanding stop payment notice

44160. (a) This chapter does not prohibit payment of funds to a direct contractor if a stop payment notice is not received before the disbursing officer actually surrenders possession of the funds.

(b) This chapter does not prohibit payment of any amount due to a direct contractor in excess of the amount necessary to pay the total amount of all claims stated in stop payment notices received by the public entity at the time of payment plus any interest and court costs that might reasonably be anticipated in connection with the claims.

Comment. Section 44160 restates former Civil Code Section 3187. Authority in this section for payment of funds to a direct contractor includes authority for payment of funds to the direct contractor's assignee. See Section 41040 ("direct contractor").

See also Sections 41050 ("funds"), 41110 ("public entity"), 41140 ("stop payment notice").

§ 44170. Notice to claimant

44170. (a) Not later than 10 days after each of the following events, the public entity shall give notice to a claimant that has given a stop payment notice of the time within which an action to enforce payment of the claim stated in the stop payment notice must be commenced:

(1) Completion of a public works contract, whether by acceptance or cessation.

(2) Recordation of a notice of cessation or completion.

(b) The notice shall comply with the requirements of Article 2 (commencing with Section 42110) of Chapter 2.

(c) A public entity need not give notice under this section unless the claimant has paid the public entity ten dollars (\$10) at the time of giving the stop payment notice.

Comment. Section 44170 restates former Civil Code Section 3185. The \$2 fee is increased to \$10 in recognition of the change in the value of the dollar since the fee's enactment.

See also Sections 42050 (calculation of time), 42210 (completion), 42220 (notice of cessation), 42230 (notice of completion), 42240 (notice of completion of contract for portion of work of improvement), 42250 (recordation of notice), 44420 (time for enforcement of payment of claim stated in stop payment notice), Civ. Code § 1170 (recordation).

See also Sections 41020 ("claimant"), 41110 ("public entity"), 41120 ("public works contract"), 41140 ("stop payment notice").

§ 44180. Release bond

44180. (a) A public entity may, in its discretion, permit the direct contractor to give the public entity a release bond. The bond shall be executed by an admitted surety insurer, in an amount equal to 125 percent of the claim stated in the stop payment notice, conditioned for the payment of any amount the claimant recovers in an action on the claim, together with court costs if the claimant prevails.

(b) On receipt of a release bond, the public entity shall not withhold funds from the direct contractor pursuant to the stop payment notice.

(c) The surety on a release bond is jointly and severally liable to the claimant with the sureties on any payment bond given under Chapter 5 (commencing with Section 45010).

Comment. Section 44180 restates former Civil Code Section 3196.

See also Sections 41020 ("claimant"), 41040 ("direct contractor"), 41050 ("funds"), 41110 ("public entity"), 41140 ("stop payment notice"), Code Civ. Proc. § 995.120 ("admitted surety insurer").

Article 2. Summary Proceeding for Release of Funds

§ 44210. Grounds for summary proceeding

44210. A direct contractor may obtain release of funds withheld pursuant to a stop payment notice under the summary proceeding provided in this article on any of the following grounds:

(a) The claim on which the notice is based is not a type for which a stop payment notice is authorized under this chapter.

(b) The claimant is not a person authorized under Section 42030 to give a stop payment notice.

(c) The amount of the claim stated in the stop payment notice is excessive.

(d) There is no basis for the claim stated in the stop payment notice.

Comment. Section 44210 restates former Civil Code Section 3197.

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41090 (“person”), 41140 (“stop payment notice”).

§ 44220. Contractor’s affidavit and demand for release

44220. The direct contractor shall serve on the public entity an affidavit, together with a copy of the affidavit, in compliance with the requirements of Article 2 (commencing with Section 42110) of Chapter 2, that includes all of the following information:

(a) An allegation of the grounds for release of the funds and a statement of the facts supporting the allegation.

(b) A demand for the release of all or the portion of the funds that are alleged to be withheld improperly or in an excessive amount.

(c) A statement of the address of the contractor within the state for the purpose of permitting service by mail on the contractor of any notice or document.

Comment. Section 44220 restates former Civil Code Section 3198. The grounds for release are provided in Section 44210.

See also Sections 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”).

§ 44230. Notice to claimant

44230. The public entity shall serve on the claimant a copy of the direct contractor’s affidavit, together with a notice stating that the public entity will release the funds withheld, or the portion of the funds demanded, unless the claimant serves on the public entity a counteraffidavit on or before the time stated in the notice. The time stated in the notice shall be not less than 10 days nor more than 20 days after service on the claimant of the copy of the affidavit. The notice shall comply with the requirements of Article 2 (commencing with Section 42110) of Chapter 2.

Comment. Section 44230 restates former Civil Code Section 3199.

See also Section 42050 (calculation of time).

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”).

§ 44240. Claimant’s counteraffidavit

44240. (a) A claimant that contests the direct contractor’s affidavit shall serve on the public entity a counteraffidavit alleging the details of the claim and describing the specific basis on which the claimant contests or rebuts the allegations of the contractor’s affidavit. The counteraffidavit shall be served within the time stated in the public entity’s notice, together with proof of service of a copy of the counteraffidavit on the direct contractor. The service of the counteraffidavit on the public entity and the copy of the affidavit on the direct contractor shall comply with the requirements of Article 2 (commencing with Section 42110).

(b) If no counteraffidavit with proof of service is served on the public entity within the time stated in the public entity’s notice, the public entity shall immediately release the funds, or the portion of the funds demanded by the affidavit, without

further notice to the claimant, and the public entity is not liable in any manner for their release.

(c) The public entity is not responsible for the validity of an affidavit or counteraffidavit under this article.

Comment. Section 44240 restates former Civil Code Section 3200.

See also Section 42050 (calculation of time).

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”).

§ 44250. Commencement of action

44250. (a) If a counteraffidavit, together with proof of service, is served under Section 44240, either the direct contractor or the claimant may commence an action for a declaration of the rights of the parties.

(b) After commencement of the action, either the direct contractor or the claimant may move the court for a determination of rights under the affidavit and counteraffidavit. The party making the motion shall give not less than five days’ notice of the hearing to the public entity and to the other party.

(c) The notice of hearing shall comply with the requirements of Article 2 (commencing with Section 42110). Notwithstanding Section 42180, when notice of the hearing is made by mail, the notice is complete on the fifth day following deposit of the notice in the mail.

(d) The court shall hear the motion within 15 days after the date of the motion, unless the court continues the hearing for good cause.

Comment. Section 44250 restates former Civil Code Section 3201, and provides that notice of the hearing by mail is complete five days after mailing.

See also Sections 42040 (rules of practice), 42050 (calculation of time).

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41110 (“public entity”).

§ 44260. Pleadings and burden of proof

44260. (a) The affidavit and counteraffidavit shall be filed with the court by the public entity and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interest of justice. The affidavit of the direct contractor shall be deemed controverted by the counteraffidavit of the claimant, and both shall be received in evidence.

(b) At the hearing, the direct contractor has the burden of proof.

Comment. Section 44260 restates former Civil Code Section 3202.

See also Section 42040 (rules of practice).

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41110 (“public entity”).

§ 44270. Court determination

44270. (a) No findings are required in a summary proceeding under this article.

(b) If at the hearing no evidence other than the affidavit and counteraffidavit is offered, the court may, if satisfied that sufficient facts are shown, make a determination on the basis of the affidavit and counteraffidavit. If the court is not satisfied that sufficient facts are shown, the court shall order the hearing continued for production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits.

(c) At the conclusion of the hearing, the court shall make an order determining whether the demand for release is allowed. The court’s order is determinative of the right of the claimant to have funds further withheld by the public entity.

(d) The direct contractor shall serve a copy of the court’s order on the public entity in compliance with the requirements of Article 2 (commencing with Section 42110).

Comment. Section 44270 restates former Civil Code Section 3203. Former Civil Code Section 3204 relating to jury trial is not continued; proceedings under this article are tried to the judge, not to a jury.

See also Section 42040 (rules of practice).

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”).

§ 44280. Summary determination not res judicata

44280. A determination in a summary proceeding under this article is not res judicata with respect to a right of action by the claimant against either the principal or surety on a payment bond or with respect to a right of action against a party personally liable to the claimant.

Comment. Section 44280 restates former Civil Code Section 3205. The former reference to a “labor or material bond” is replaced by a reference to a payment bond.

See also Sections 41020 (“claimant”), 41080 (“payment bond”).

Article 3. Distribution of Funds Withheld

§ 44310. Distribution of funds withheld pursuant to stop payment notice

44310. If funds withheld pursuant to a stop payment notice are insufficient to pay in full the claims of all persons that have given a stop payment notice, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a stop payment notice is given, without regard to the order in which the notices were given or enforcement actions were commenced.

Comment. Section 44310 restates former Civil Code Section 3190.

Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. *Cf. Idaho Lumber Co. v. Northwestern S. & L. Ass’n*, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968).

The amount of the claim for which payment is required is determined under Article 4 (commencing with Section 44410) (enforcement of payment of claim stated in stop payment notice).

See also Sections 41020 (“claimant”), 41050 (“funds”), 41090 (“person”), 41140 (“stop payment notice”).

§ 44320. Stop payment notice remedy not exclusive

44320. Nothing in this chapter impairs the right of a claimant to recover from the direct contractor or the contractor’s sureties in an action on a payment bond under Chapter 5 (commencing with Section 45010) any deficit that remains unpaid after the distribution under Section 44310.

Comment. Section 44320 restates former Civil Code Section 3191.

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41080 (“payment bond”).

§ 44330. Forfeiture for false notice

44330. A person that willfully gives a false stop payment notice to the public entity or that willfully includes in the notice work not provided for the public works contract for which the stop payment notice is given, forfeits all right to participate in the distribution under Section 44310.

Comment. Section 44330 restates former Civil Code Section 3192.

See also Sections 41090 (“person”), 41110 (“public entity”), 41120 (“public works contract”), 41140 (“stop payment notice”), 41160 (“work”).

§ 44340. Effect of assignment or garnishment

44340. (a) A stop payment notice takes priority over an assignment by a direct contractor of any amount due or to become due pursuant to a public works contract, including contract changes, whether made before or after the giving of a stop payment notice, and the assignment has no effect on the rights of the claimant.

(b) Any garnishment of an amount due or to become due pursuant to a public works contract by a creditor of a direct contractor under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the

Code of Civil Procedure and any statutory lien on that amount is subordinate to the rights of a claimant.

Comment. Section 44340 restates former Civil Code Section 3193.

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41120 (“public works contract”), 41140 (“stop payment notice”).

Article 4. Enforcement of Payment of Claim Stated in Stop Payment Notice

§ 44410. Prerequisites for enforcement of notice

44410. (a) A claimant may not enforce payment of the claim stated in a stop payment notice unless the claimant has complied with all of the following conditions:

(1) The claimant has given preliminary notice to the extent required by Chapter 3 (commencing with Section 43010).

(2) The claimant has given the stop payment notice within the time provided in Section 44140.

(b) The claim filing procedures of Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code do not apply to an action under this article.

Comment. Subdivision (a) of Section 44410 restates former Civil Code Section 3183.

Subdivision (b) restates former Civil Code Section 3265.

See also Sections 41020 (“claimant”), 41100 (“preliminary notice”), 41140 (“stop payment notice”).

§ 44420. Time for enforcement of payment of claim stated in stop payment notice

44420. (a) The claimant shall commence an action against the public entity and the direct contractor to enforce payment of the claim stated in a stop payment notice not earlier than 10 days after the date the claimant gives the stop payment notice.

(b) The claimant shall commence an action against the public entity and the direct contractor to enforce payment of the claim stated in a stop payment notice not later than 90

days after expiration of the time within which a stop payment notice must be given.

(c) An action under this section may not be brought to trial or judgment entered before expiration of the time provided in subdivision (b).

(d) If a claimant does not commence an action to enforce payment of the claim stated in a stop payment notice within the time provided in subdivision (b), the notice ceases to be effective and the public entity shall release funds withheld pursuant to the notice.

Comment. Section 44420 restates former Civil Code Section 3210.

See also Sections 42050 (calculation of time), 44140 (time within which stop payment notice must be given).

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41050 (“funds”), 41110 (“public entity”), 41140 (“stop payment notice”).

§ 44430. Notice of action

44430. Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice of commencement of the action to the public entity in the same manner that a stop payment notice is given.

Comment. Section 44430 restates former Civil Code Section 3211. See Sections 42050 (calculation of time), 42110-42190 (notice), 44130 (giving of stop payment notice).

See also Sections 41020 (“claimant”), 41110 (“public entity”), 41140 (“stop payment notice”).

§ 44440. Joinder, consolidation, and interpleader

44440. If more than one claimant has given a stop payment notice:

(a) Any number of claimants may join in the same enforcement action.

(b) If claimants commence separate actions, the court that first acquires jurisdiction may order the actions consolidated.

(c) On request of the public entity the court shall require that all claimants be impleaded in one action and shall adjudicate the rights of all parties in the action.

Comment. Section 44440 restates former Civil Code Section 3214. See also Section 42040 (rules of practice).

See also Sections 41020 (“claimant”), 41110 (“public entity”), 41140 (“stop payment notice”).

§ 44450. Dismissal of enforcement action for lack of prosecution

44450. Notwithstanding Section 583.420 of the Code of Civil Procedure, the court may dismiss an action to enforce payment of the claim stated in a stop payment notice that is not brought to trial within two years after commencement of the action.

Comment. Section 44450 restates former Civil Code Section 3212. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. *Cf.* Section 42040 (rules of practice).

See also Section 41140 (“stop payment notice”).

§ 44460. Dismissal of action or judgment against claimant

44460. A stop payment notice ceases to be effective, and the public entity shall release funds withheld, in either of the following circumstances:

(a) An action to enforce payment of the claim stated in the stop payment notice is dismissed, unless expressly stated to be without prejudice.

(b) Judgment in an action to enforce payment of the claim stated in the stop payment notice is against the claimant.

Comment. Section 44460 restates former Civil Code Section 3213.

See also Sections 41020 (“claimant”), 41050 (“funds”), 41110 (“public entity”), 41140 (“stop payment notice”).

CHAPTER 5. PAYMENT BOND

§ 45010. Payment bond requirement

45010. (a) A direct contractor that is awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before commencement of work, give a payment bond to and approved by the public entity.

(b) A public entity shall state in its call for bids that a payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000).

(c) A payment bond given and approved under this section will permit performance of and provide coverage for work pursuant to a public works contract that supplements the contract for which the bond is given, if the requirement of a new bond is waived by the public entity.

(d) For the purpose of this section, a design professional is not deemed a direct contractor and is not required to give a payment bond.

(e) This section does not apply to a public works contract with a “state entity” as defined in subdivision (d) of Section 7103.

Comment. Section 45010 restates former Civil Code Section 3247. The transitional provisions of the former section are omitted due to lapse of time.

Subdivision (c) is an exception to the rule stated in *Electrical Electronic Control, Inc. v. Los Angeles Unified*, 126 Cal. App. 4th 601, 24 Cal. Rptr. 3d 316 (2005), holding that a payment bond under former Civil Code Section 3247, unless otherwise stated or agreed upon, provides coverage only for work performed pursuant to the contract for which the bond was given.

See also Sections 41030 (“design professional”), 41040 (“direct contractor”), 41080 (“payment bond”), 41110 (“public entity”), 41120 (“public works contract”), 41160 (“work”).

§ 45020. Consequences of failure to give bond

45020. If a payment bond is not given and approved as required by Section 45010:

(a) The public entity awarding the public works contract shall not audit, allow, or pay a claim of the direct contractor pursuant to the contract.

(b) A claimant shall receive payment of a claim pursuant to a stop payment notice in the manner provided by Chapter 4 (commencing with Section 44110).

Comment. Section 45020 restates former Civil Code Section 3251. The former operative date provision is deleted due to lapse of time.

See also Sections 41020 (“claimant”), 41040 (“direct contractor”), 41080 (“payment bond”), 41110 (“public entity”), 41140 (“stop payment notice”).

§ 45030. Bond requirements

45030. (a) A payment bond shall be in an amount not less than 100 percent of the total amount payable pursuant to the public works contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer.

(b) The payment bond shall provide that if the direct contractor or a subcontractor fails to pay any of the following, the surety will pay the obligation and, if an action is brought to enforce the liability on the bond, a reasonable attorney’s fee, to be fixed by the court:

(1) A person authorized under Section 42030 to assert a claim against a payment bond.

(2) Amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the public works contract.

(3) Amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors

under Section 13020 of the Unemployment Insurance Code with respect to the work and labor.

(c) The payment bond shall by its terms inure to the benefit of any person authorized under Section 42030 to assert a claim against a payment bond so as to give a right of action to that person or that person's assigns in an action to enforce the liability on the bond.

(d) The direct contractor may require that a subcontractor give a bond to indemnify the direct contractor for any loss sustained by the direct contractor because of any default of the subcontractor under this section.

Comment. Section 45030 restates former Civil Code Section 3248, and supersedes former Civil Code Section 3096.

Subdivision (a) of Section 45030 also restates a part of Code of Civil Procedure Section 995.311(a), which provides that a payment bond required on a public works contract shall be executed by an admitted surety insurer.

See also Sections 41040 ("direct contractor"), 41080 ("payment bond"), 41090 ("person"), Code Civ. Proc. § 995.120 ("admitted surety insurer").

§ 45040. Construction of bond

45040. (a) A payment bond shall be construed most strongly against the surety and in favor of the beneficiary.

(b) A surety is not released from liability to the beneficiary by reason of a breach of the public works contract between the public entity and the direct contractor or on the part of the beneficiary.

(c) Except as otherwise provided by statute, the sole conditions of recovery on the bond are that the beneficiary is a person authorized under Section 42030 to assert a claim against a payment bond and the beneficiary has not been paid the full amount of the claim.

Comment. Section 45040 restates former Civil Code Section 3226.

See also Sections 41040 ("direct contractor"), 41080 ("payment bond"), 41090 ("person"), 41110 ("public entity"), 41120 ("public works contract"), Code Civ. Proc. § 995.130 ("beneficiary").

§ 45050. Statute of limitations

45050. A claimant may commence an action to enforce the liability on a payment bond at any time after the claimant ceases to provide work, but not later than six months after the period in which a stop payment notice may be given under Section 44140.

Comment. Section 45050 restates former Civil Code Section 3249, and broadens it to cover enforcement of any liability on the bond, not limited to the liability of the surety. *Cf.* Code Civ. Proc. § 996.440 (judgment on bond against principal and sureties).

See also Sections 42050 (calculation of time), 42210 (completion), 42220 (notice of cessation), 42230 (notice of completion), 42240 (notice of completion of contract for portion of work of improvement), 42250 (recordation of notice).

See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41140 (“stop payment notice”), 41160 (“work”).

§ 45060. Notice required

45060. (a) In order to enforce a claim against a payment bond, a claimant shall give the preliminary notice provided in Chapter 3 (commencing with Section 43010).

(b) If preliminary notice was not given as provided in Chapter 3 (commencing with Section 43010), a claimant may enforce a claim by giving written notice to the surety and the bond principal within 15 days after recordation of a notice of completion. If no notice of completion has been recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement.

Comment. Section 45060 restates former Civil Code Section 3252(a). The former limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

See also Sections 42050 (calculation of time), 42210 (completion), 42230 (notice of completion), 42240 (notice of completion of contract for portion of work of improvement), 42250 (recordation of notice), Civ. Code § 1170 (recordation).

See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41100 (“preliminary notice”).

§ 45070. Notice to principal and surety

45070. Notice to the principal and surety under Section 45060 shall comply with the requirements of Article 2 (commencing with Section 42110) of Chapter 2.

Comment. Section 45070 restates former Civil Code Section 3227. Cf. Code Civ. Proc. §§ 995.170 (“principal”), 995.185 (“surety”).

§ 45080. Action on bond

45080. (a) A claimant may maintain an action to enforce the liability of a surety on a payment bond whether or not the claimant has given the public entity a stop payment notice.

(b) A claimant may maintain an action to enforce the liability on the bond separately from and without commencement of an action against the public entity.

(c) In an action to enforce the liability on the bond, the court shall award the prevailing party a reasonable attorney’s fee.

Comment. Section 45080 restates former Civil Code Section 3250. The provision that a reasonable attorney’s fee is “to be taxed as costs” is deleted as surplus. See Code Civ. Proc. § 1033.5(a)(10)(B) (attorney’s fee allowable as costs). See also Section 42040 (rules of practice).

See also Sections 41020 (“claimant”), 41080 (“payment bond”), 41110 (“public entity”), 41140 (“stop payment notice”).

§ 45090. Limitation on chapter

45090. (a) A claimant does not have a right to recover on a payment bond unless the claimant provided work to the direct contractor either directly or through one or more subcontractors pursuant to a public works contract.

(b) Nothing in this section affects the stop payment notice rights of, and relative priorities among, design professionals.

Comment. Section 45090 restates former Civil Code Section 3267, clarifying that claimants providing work to subcontractors at every level have a right to recover against a direct contractor’s payment bond as provided in this section. See *Union Asphalt, Inc. v. Planet Ins. Co.*, 21 Cal. App. 4th 1762, 27 Cal. Rptr. 2d 371 (1994).

This section omits the reference in former law to holders of secured interests in the land; although the relevance of that provision to a public works contract is limited, this section is not intended to affect priorities among those interests to the extent they may exist.

See also Sections 41020 (“claimant”), 41030 (“design professional”), 41040 (“direct contractor”), 41080 (“payment bond”), 41120 (“public works contract”), 41140 (“stop payment notice”), 41160 (“work”).

Operative Date and Transitional Provision

SEC. _____. (a) This act is operative on January 1, 2010.

(b) Except as otherwise provided in this section, this act applies to a contract for a work of improvement executed before, on, or after the operative date.

(c) The effectiveness of a notice given, or other action taken, before the operative date is governed by the applicable law in effect before the operative date and not by this act.

CONFORMING REVISIONS

BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 7034 (amended). Prohibited contract clauses

SEC. _____. Section 7034 of the Business and Professions Code is amended to read:

7034. (a) No contractor who is required to be licensed under this chapter shall insert in any contract, or be a party, with a subcontractor who is licensed under this chapter to any contract which contains, a provision, clause, covenant, or agreement which is void or unenforceable under Section 2782 of the Civil Code.

(b) No contractor who is required to be licensed under this chapter shall require a waiver of lien rights from any subcontractor, employee, or supplier in violation of Section ~~3262~~ 8160 of the Civil Code or Section 42310 of the Public Contract Code.

Comment. Section 7034 is amended to correct a cross-reference.

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

SEC. _____. Section 7071.5 of the Business and Professions Code is amended to read:

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 the execution or performance of a construction contract.

(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~~ a laborer described in subdivision (b) of Section 3111 8020 of the Civil Code or subdivision (b) of Section 41070 of the Public Contract 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 a person or entity under this subdivision 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 delete an obsolete reference to former Civil Code Section 3111. The substance of former Civil Code Section 3111 is continued in Civil Code Section 8020 and Public Contract Code Section 41070.

Bus. & Prof. Code § 7071.10 (amended). Qualifying individual's bond

SEC. _____. Section 7071.10 of the Business and Professions Code is amended to read:

7071.10. (a) The qualifying individual's bond required by this article shall be executed by an admitted surety insurer in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the qualifying individual. The qualifying individual's bond shall be for the benefit of the following persons:

(1) 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.

(2) 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 the execution or performance of a construction contract.

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

(4) Any person or entity, including ~~an express trust fund~~ a laborer described in subdivision (b) of Section 3111 8020 of the Civil Code or subdivision (b) of Section 41070 of the Public Contract 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, that is 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 adopted thereunder (without regard to whether the work was performed on a public or private work). Damage to an express trust fund a person or entity under this subdivision is limited to 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.

(b) The qualifying individual's bond shall not be required in addition to the contractor's bond when the qualifying individual is himself or herself the proprietor under subdivision (a) or a general partner under subdivision (b) of Section 7068.

Comment. Section 7071.10 is amended to delete an obsolete reference to former Civil Code Section 3111. The substance of former Civil Code Section 3111 is continued in Civil Code Section 8020 and Public Contract Code Section 41070.

Bus. & Prof. Code § 7159 (amended). Home improvement contract

SEC. _____. Section 7159 of the Business and Professions Code is amended to read:

7159. (a)(1) This section identifies the projects for which a home improvement contract is required, outlines the contract requirements, and lists the items that shall be included in the contract, or may be provided as an attachment.

(2) This section does not apply to service and repair contracts that are subject to Section 7159.10, provided the contract for the applicable services complies with Sections 7159.10 to 7159.14, inclusive.

(3) This section does not apply to the sale, installation, and servicing of a fire alarm sold in conjunction with an alarm system, as defined in subdivision (n) of Section 7590.1, provided all costs attributable to making the fire alarm system operable, including sale and installation costs, do not exceed five hundred dollars (\$500), and the licensee complies with the requirements set forth in Section 7159.9.

(4) This section does not apply to any costs associated with monitoring a burglar or fire alarm system.

(5) Failure by the licensee, his or her agent or salesperson, or by a person subject to be licensed under this chapter, to provide the specified information, notices, and disclosures in the contract, or to otherwise fail to comply with any provision of this section, is cause for discipline.

(b) For purposes of this section, “home improvement contract” means an agreement, whether oral or written, or contained in one or more documents, between a contractor and an owner or between a contractor and a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, if the work is to be performed in, to, or upon the residence or dwelling unit of the tenant, for the performance of a home improvement, as defined in Section 7151, and includes all labor, services, and

materials to be furnished and performed thereunder, if the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars (\$500). “Home improvement contract” also means an agreement, whether oral or written, or contained in one or more documents, between a salesperson, whether or not he or she is a home improvement salesperson, and an owner or a tenant, regardless of the number of residence or dwelling units contained in the building in which the tenant resides, which provides for the sale, installation, or furnishing of home improvement goods or services.

(c) In addition to the specific requirements listed under this section, every home improvement contract and any person subject to licensure under this chapter or his or her agent or salesperson shall comply with all of the following:

(1) The writing shall be legible.

(2) Any printed form shall be readable. Unless a larger typeface is specified in this article, text in any printed form shall be in at least 10-point typeface and the headings shall be in at least 10-point boldface type.

(3)(A) Before any work is started, the contractor shall give the buyer a copy of the contract signed and dated by both the contractor and the buyer. The buyer’s receipt of the copy of the contract initiates the buyer’s rights to cancel the contract pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

(B) The contract shall contain on the first page, in a typeface no smaller than that generally used in the body of the document, both of the following:

(i) The date the buyer signed the contract.

(ii) The name and address of the contractor to which the applicable “Notice of Cancellation” is to be mailed, immediately preceded by a statement advising the buyer that

the “Notice of Cancellation” may be sent to the contractor at the address noted on the contract.

(4) A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool work a full and unconditional release from any claim or mechanic’s lien pursuant to Section ~~3114~~ 8410 of the Civil Code for that portion of the work for which payment has been made.

(5) A change-order form for changes or extra work shall be incorporated into the contract and shall become part of the contract only if it is in writing and signed by the parties prior to the commencement of any work covered by a change order.

(6) The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(7) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

(8) The provisions of this section are not exclusive and do not relieve the contractor from compliance with any other applicable provision of law.

(d) A home improvement contract and any changes to the contract shall be in writing and signed by the parties to the contract prior to the commencement of any work covered by the contract or applicable change order and, except as provided in paragraph (8) of subdivision (a) of Section 7159.5, shall include or comply with all of the following:

(1) The name, business address, and license number of the contractor.

(2) If applicable, the name and registration number of the home improvement salesperson that solicited or negotiated the contract.

(3) The following heading on the contract form that identifies the type of contract in at least 10-point boldface type: "Home Improvement."

(4) The following statement in at least 12-point boldface type: "You are entitled to a completely filled in copy of this agreement, signed by both you and the contractor, before any work may be started."

(5) The heading: "Contract Price," followed by the amount of the contract in dollars and cents.

(6) If a finance charge will be charged, the heading: "Finance Charge," followed by the amount in dollars and cents. The finance charge is to be set out separately from the contract amount.

(7) The heading: "Description of the Project and Description of the Significant Materials to be Used and Equipment to be Installed," followed by a description of the project and a description of the significant materials to be used and equipment to be installed. For swimming pools, the project description required under this paragraph also shall include a plan and scale drawing showing the shape, size, dimensions, and the construction and equipment specifications.

(8) If a downpayment will be charged, the details of the downpayment shall be expressed in substantially the following form, and shall include the text of the notice as specified in subparagraph (C):

(A) The heading: "Down Payment."

(B) A space where the actual downpayment appears.

(C) The following statement in at least 12-point boldface type:

“THE DOWN PAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

(9) If any payments, other than the downpayment, are to be made before the project is completed, the details of these payments, known as progress payments, shall be expressed in substantially the following form, and shall include the text of the statement as specified in subparagraph (C):

(A) A schedule of progress payments shall be preceded by the heading: “Schedule of Progress Payments.”

(B) Each progress payment shall be stated in dollars and cents and specifically reference the amount of work or services to be performed and any materials and equipment to be supplied.

(C) The section of the contract reserved for the progress payments shall include the following statement in at least 12-point boldface type:

“The schedule of progress payments must specifically describe each phase of work, including the type and amount of work or services scheduled to be supplied in each phase, along with the amount of each proposed progress payment. IT IS AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A DOWNPAYMENT.”

(10) The contract shall address the commencement of work to be performed in substantially the following form:

(A) A statement that describes what constitutes substantial commencement of work under the contract.

(B) The heading: “Approximate Start Date.”

(C) The approximate date on which work will be commenced.

(11) The estimated completion date of the work shall be referenced in the contract in substantially the following form:

(A) The heading: "Approximate Completion Date."

(B) The approximate date of completion.

(12) If applicable, the heading: "List of Documents to be Incorporated into the Contract," followed by the list of documents incorporated into the contract.

(13) The heading: "Note about Extra Work and Change Orders," followed by the following statement:

"Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties prior to the commencement of any work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments."

(e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all of the following notices shall be provided to the owner as part of the contract form as specified or, if otherwise authorized under this subdivision, may be provided as an attachment to the contract:

(1) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the following statement: "A notice concerning commercial general liability insurance is attached to this contract." The notice shall include the heading "Commercial General Liability Insurance (CGL)," followed by whichever of the following statements is both relevant and correct:

(A) "(The name on the license or 'This contractor') does not carry commercial general liability insurance."

(B) "(The name on the license or 'This contractor') carries commercial general liability insurance written by (the

insurance company). You may call the (insurance company) at _____ to check the contractor's insurance coverage."

(C) "(The name on the license or 'This contractor') is self-insured."

(2) A notice concerning workers' compensation insurance. This notice may be provided as an attachment to the contract if the contract includes the statement: "A notice concerning workers' compensation insurance is attached to this contract." The notice shall include the heading "Workers' Compensation Insurance" followed by whichever of the following statements is correct:

(A) "(The name on the license or 'This contractor') has no employees and is exempt from workers' compensation requirements."

(B) "(The name on the license or 'This contractor') carries workers' compensation insurance for all employees."

(3) A notice that provides the buyer with the following information about the performance of extra or change-order work:

(A) A statement that the buyer may not require a contractor to perform extra or change-order work without providing written authorization prior to the commencement of any work covered by the new change order.

(B) A statement informing the buyer that extra work or a change order is not enforceable against a buyer unless the change order also identifies all of the following in writing prior to the commencement of any work covered by the new change order:

(i) The scope of work encompassed by the order.

(ii) The amount to be added or subtracted from the contract.

(iii) The effect the order will make in the progress payments or the completion date.

(C) A statement informing the buyer that the contractor's failure to comply with the requirements of this paragraph

does not preclude the recovery of compensation for work performed based upon legal or equitable remedies designed to prevent unjust enrichment.

(4) A notice with the heading “Mechanics’ Lien Warning” written as follows:

“MECHANICS LIEN WARNING:

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics’ lien on your property. A mechanics’ lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics’ liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a ‘~~20-day~~ Preliminary Notice.’ This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or from laborers who work on your project. The law assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of

all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe.”

(5) The following notice shall be provided in at least 12-point typeface: “Information about the Contractors’ State License Board (CSLB): CSLB is the state consumer protection agency that licenses and regulates construction contractors.

Contact CSLB for information about the licensed contractor you are considering, including information about disclosable complaints, disciplinary actions and civil judgments that are reported to CSLB.

Use only licensed contractors. If you file a complaint against a licensed contractor within the legal deadline (usually four years), CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be in civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor’s employees.

For more information:

Visit CSLB's Web site at www.cslb.ca.gov

Call CSLB at 800-321-CSLB (2752)

Write CSLB at P.O. Box 26000, Sacramento, CA 95826."

(6)(A) The notice set forth in subparagraph (B) and entitled "Three-Day Right to Cancel," shall be provided to the buyer unless the contract is:

(i) Negotiated at the contractor's place of business.

(ii) Subject to the "Seven-Day Right to Cancel," as set forth in paragraph (8).

(iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(B) "Three-Day Right to Cancel

"You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor's place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor's instructions on how to return the goods at the contractor's expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further

obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(C) The “Three-Day Right to Cancel” notice required by this paragraph shall comply with all of the following:

(i) The text of the notice is at least 12-point boldface type.

(ii) The notice is in immediate proximity to a space reserved for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Three-Day Right to Cancel.’”

(vi) The notice shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” which shall also be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable

instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.” To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,

/name of seller/

at _____

/address of seller’s place of business/

not later than midnight of _____.

(Date)

I hereby cancel this transaction. _____

(Date)

(Buyer’s signature)

(7)(A) The following notice entitled “Seven-Day Right to Cancel” shall be provided to the buyer for any contract that is written for the repair or restoration of residential premises damaged by any sudden or catastrophic event for which a

state of emergency has been declared by the President of the United States or the Governor, or for which a local emergency has been declared by the executive officer or governing body of any city, county, or city and county:

“Seven-Day Right to Cancel

You, the buyer, have the right to cancel this contract within seven business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the seventh business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

If you cancel, the contractor must return to you anything you paid within 10 days of receiving the notice of cancellation. For your part, you must make available to the contractor at your residence, in substantially as good condition as you received it, any goods delivered to you under this contract or sale. Or, you may, if you wish, comply with the contractor’s instructions on how to return the goods at the contractor’s expense and risk. If you do make the goods available to the contractor and the contractor does not pick them up within 20 days of the date of your notice of cancellation, you may keep them without any further obligation. If you fail to make the goods available to the contractor, or if you agree to return the goods to the contractor and fail to do so, then you remain liable for performance of all obligations under the contract.”

(B) The “Seven-Day Right to Cancel” notice required by this subdivision shall comply with all of the following:

- (i) The text of the notice is at least 12-point boldface type.
- (ii) The notice is in immediate proximity to a space reserved for the owner’s signature.

(iii) The owner acknowledges receipt of the notice by signing and dating the notice form in the signature space.

(iv) The notice is written in the same language, e.g., Spanish, as that principally used in any oral sales presentation.

(v) The notice may be attached to the contract if the contract includes, in at least 12-point boldface type, a checkbox with the following statement: “The law requires that the contractor give you a notice explaining your right to cancel. Initial the checkbox if the contractor has given you a ‘Notice of the Seven-Day Right to Cancel.’”

(vi) The notice shall be accompanied by a completed form in duplicate, captioned “Notice of Cancellation,” which shall also be attached to the agreement or offer to purchase and be easily detachable, and which shall contain the following statement written in the same language, e.g., Spanish, as used in the contract:

“Notice of Cancellation”

/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within seven business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of

the seller regarding the return shipment of the goods at the seller’s expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.” To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram

to _____,

/name of seller/

at _____

/address of seller’s place of business/

not later than midnight of _____.

(Date)

I hereby cancel this transaction.

(Date)

(Buyer’s signature)

Comment. Paragraph (4) of subdivision (c) of Section 7159 is amended to correct a cross-reference.

Paragraph (4) of subdivision (e) is amended to add a non-substantive clarification. See Civ. Code § 8034 (“preliminary notice”).

Bus. & Prof. Code § 7159.1 (amended). Notice to buyer

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.”

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.

(b) 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) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 of the Civil Code.

~~(c) (3)~~ Any contract that is subject to subdivision (a) of Section 7159.2.

Comment. Section 7159.1 is amended to correct a cross-reference, and make a stylistic revision.

Bus. & Prof. Code § 7159.5 (amended). Home improvement contract violation

SEC. _____. Section 7159.5 of the Business and Professions Code is amended to read:

7159.5. This section applies to all home improvement contracts, as defined in Section 7151.2, between an owner or tenant and a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction.

(a) Failure by the licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, to comply with the following provisions is cause for discipline:

(1) The contract shall be in writing and shall include the agreed contract amount in dollars and cents. The contract amount shall include the entire cost of the contract, including profit, labor, and materials, but excluding finance charges.

(2) If there is a separate finance charge between the contractor and the person contracting for home improvement, the finance charge shall be set out separately from the contract amount.

(3) If a downpayment will be charged, the downpayment may not exceed one thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

(4) If, in addition to a downpayment, the contract provides for payments to be made prior to completion of the work, the contract shall include a schedule of payments in dollars and cents specifically referencing the amount of work or services to be performed and any materials and equipment to be supplied.

(5) Except for a downpayment, the contractor may neither request nor accept payment that exceeds the value of the work performed or material delivered.

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made,

the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to Section 3114 8410 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

(7) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to the contractor by the disbursing party in accordance with paragraph (4).

(8) A contractor furnishing a performance and payment bond, lien and completion bond, or a bond equivalent or joint control approved by the registrar covering full performance and payment is exempt from paragraphs (3), (4), and (5), and need not include, as part of the contract, the statement regarding the downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of Section 7159, the details and statement regarding progress payments specified in paragraph (9) of subdivision (d) of Section 7159, or the Mechanics' Lien Warning specified in paragraph (4) of subdivision (e) of Section 7159. A contractor furnishing these bonds, bond equivalents, or a joint control approved by the registrar may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

(b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars

(\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (4) of subdivision (d) of Section 802 of the Penal Code, within four years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the Penal Code, within two years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor

pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

Comment. Paragraph (6) of subdivision (a) of Section 7159.5 is amended to correct a cross-reference.

Bus. & Prof. Code § 7159.14 (amended). Service and repair contract

SEC. _____. Section 7159.14 of the Business and Professions Code is amended to read:

7159.14. (a) This section applies to a service and repair contract as defined in Section 7159.10. A violation of this section by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is cause for discipline.

(1) The contract may not exceed seven hundred fifty dollars (\$750).

(2) The contract shall be in writing and shall state the agreed contract amount, which may be stated as either a fixed contract amount in dollars and cents or, if a time and materials formula is used, as an estimated contract amount in dollars and cents.

(3) The contract amount shall include the entire cost of the contract including profit, labor, and materials, but excluding finance charges.

(4) The actual contract amount of a time and materials contract may not exceed the estimated contract amount without written authorization from the buyer.

(5) The prospective buyer must have initiated contact with the contractor to request work.

(6) The contractor may not sell the buyer goods or services beyond those reasonably necessary to take care of the particular problem that caused the buyer to contact the contractor.

(7) No payment may be due before the project is completed.

(8) A service and repair contractor may charge only one service charge. For purposes of this chapter, a service charge includes such charges as a service or trip charge, or an inspection fee.

(9) A service and repair contractor charging a service charge must disclose in all advertisements that there is a service charge and, when the customer initiates the call for service, must disclose the amount of the service charge.

(10) The service and repair contractor must offer to the customer any parts that were replaced.

(11) Upon any payment by the buyer, the contractor shall, if requested, obtain and furnish to the buyer a full and unconditional release from any potential lien claimant claim or mechanic's lien pursuant to Section ~~3114~~ 8410 of the Civil Code for any portion of the work for which payment has been made.

(b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of subdivision (a) by a licensee or a person subject to be licensed under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance with paragraph (4) of subdivision (d) of Section 802 of the Penal Code, within four years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section, in accordance

with paragraph (2) of subdivision (d) of Section 802 of the Penal Code, within two years from the date of the contract or, if the contract is not reduced to writing, from the date the buyer makes the first payment to the contractor.

(3) The limitations on actions in this subdivision shall not apply to any administrative action filed against a licensed contractor.

(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

Comment. Section 7159.14 is amended to correct a cross-reference.

Bus. & Prof. Code § 7164 (amended). Contract for construction of single-family dwelling

SEC. _____. Section 7164 of the Business and Professions Code is amended to read:

7164. (a) Notwithstanding Section 7044, every contract and any changes in a contract, between an owner and a contractor, for the construction of a single-family dwelling to be retained by the owner for at least one year shall be evidenced in writing signed by both parties.

(b) The writing shall contain the following:

(1) The name, address, and license number of the contractor.

(2) The approximate dates when the work will begin and be substantially completed.

(3) A legal description of the location where the work will be done.

(4) A statement with the heading “Mechanics’ Lien Warning” as follows:

“MECHANICS LIEN WARNING:

Anyone who helps improve your property, but who is not paid, may record what is called a mechanics’ lien on your property. A mechanics’ lien is a claim, like a mortgage or home equity loan, made against your property and recorded with the county recorder.

Even if you pay your contractor in full, unpaid subcontractors, suppliers, and laborers who helped to improve your property may record mechanics’ liens and sue you in court to foreclose the lien. If a court finds the lien is valid, you could be forced to pay twice or have a court officer sell your home to pay the lien. Liens can also affect your credit.

To preserve their right to record a lien, each subcontractor and material supplier must provide you with a document called a ‘~~20-day~~ Preliminary Notice.’ This notice is not a lien. The purpose of the notice is to let you know that the person who sends you the notice has the right to record a lien on your property if he or she is not paid.

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.

You will not get Preliminary Notices from your prime contractor or other persons you contract with directly or from

laborers who work on your project. The law assumes that you already know they are improving your property.

PROTECT YOURSELF FROM LIENS. You can protect yourself from liens by getting a list from your contractor of all the subcontractors and material suppliers that work on your project. Find out from your contractor when these subcontractors started work and when these suppliers delivered goods or materials. Then wait 20 days, paying attention to the Preliminary Notices you receive.

PAY WITH JOINT CHECKS. One way to protect yourself is to pay with a joint check. When your contractor tells you it is time to pay for the work of a subcontractor or supplier who has provided you with a Preliminary Notice, write a joint check payable to both the contractor and the subcontractor or material supplier.

For other ways to prevent liens, visit CSLB's Web site at www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN PLACED ON YOUR HOME. This can mean that you may have to pay twice, or face the forced sale of your home to pay what you owe.”

(5) (A) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner to verify the contractor's insurance coverage and status.

(B) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(c) The writing may also contain other matters agreed to by the parties to the contract. The writing shall be legible and shall clearly describe any other document which is to be incorporated into the contract. Prior to commencement of any work, the owner shall be furnished a copy of the written agreement, signed by the contractor. The provisions of this

section are not exclusive and do not relieve the contractor from compliance with all other applicable provisions of law.

(d) Every contract subject to the provisions of this section shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point bold type or in all capital letters, stating that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner.

(e) The requirements in paragraph (5) of subdivision (b) shall become operative three months after the board adopts the regulations referenced in subparagraph (A) of paragraph (5) of subdivision (b).

(f) This section shall become operative on January 1, 2006.

Comment. Paragraph (4) of subdivision (a) of Section 7164 is amended to correct terminology and to add a non-substantive clarification. See Civ. Code § 8034 (“preliminary notice”).

Bus. & Prof. Code § 8513 (amended). Notice to owner by pest control company

SEC. _____. Section 8513 of the Business and Professions Code is amended to read:

8513. (a) The board shall prescribe a form entitled “Notice to Owner” that shall describe, in nontechnical language and in a clear and coherent manner using words with common and everyday meaning, the pertinent provisions of this state’s mechanics’ lien laws and the rights and responsibilities of an owner of property and a registered pest control company thereunder. Each company registered under this chapter, prior to entering into a contract with an owner for work for which a company registration is required, shall give a copy of this “Notice to Owner” to the owner, his or her agent, or the payer.

(b) No company that is required to be registered under this chapter shall require or request a waiver of lien rights from any subcontractor, employee, or supplier.

(c) Each company registered under this chapter that acts as a subcontractor for another company registered under this chapter shall, within 20 days of commencement of any work for which a company registration is required, give the preliminary ~~20-day notice (private work) in accordance with the provisions of Section 3097~~ notice in accordance with Chapter 2 (commencing with Section 8200) of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent, or the payer.

(d) Each company registered under this chapter that acts as a prime contractor for work for which a company registration is required shall, prior to accepting payment for the work, furnish to the owner, his or her agent, or the payer a full and unconditional release from any claim of mechanics' lien by any subcontractor entitled to enforce a mechanics' lien pursuant to Section ~~3114~~ 8172 of the Civil Code.

(e) Each company registered under this chapter that subcontracts to another company registered under this chapter work for which a company registration is required shall furnish to the subcontractor the name of the owner, his or her agent, or the payer.

(f) The provisions of this section shall be applicable only to those registered companies, as defined in Section 8506.1, operating pursuant to a Branch 1 or Branch 3 registration.

(g) A violation of the provisions of this section is a ground for disciplinary action.

Comment. Section 8513 is amended to correct cross-references and terminology.

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) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 of the Civil Code.

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

CIVIL CODE

Civ. Code §§ 1749.70-1749.76 (added). Automatic checkout system

SEC. _____. Title 1.4C (commencing with Section 1749.70) is added to Part 4 of Division 3 of the Civil Code, to read:

Title 1.4C. Automatic Checkout System

Civ. Code § 1749.70. Name of title

1749.70. This title shall be known and may be cited as the Rosenthal-Roberti Item Pricing Act.

Comment. Section 1749.70 continues former Section 7105 without substantive change.

Civ. Code § 1749.71. Clearly readable price on commodities

1749.71. (a) Every retail grocery store or grocery department within a general retail merchandise store which uses a point-of-sale system shall cause to have a clearly readable price indicated on 85 percent of the total number of packaged consumer commodities offered for sale which are not exempt pursuant to subdivision (b).

The management of any such retail grocery store or grocery department shall determine the number of consumer commodities normally offered for sale on a daily basis, shall determine the consumer commodities to be exempted

pursuant to this subdivision, and shall maintain a list of those consumer commodities exempt pursuant to this subdivision. The list shall be made available to a designated representative of the appropriate local union, the members of which are responsible for item pricing, in those stores or departments that have collective bargaining agreements, seven days prior to an item or items being exempted pursuant to this subdivision. In addition, the list shall be available and posted in a prominent place in the store seven days prior to an item or items being exempted pursuant to this subdivision.

(b) The provisions of this section shall not apply to any of the following:

(1) Any consumer commodity which was not generally item-priced on January 1, 1977, as determined by the Department of Food and Agriculture pursuant to subdivision (c) of Section 12604.5 of the Business and Professions Code, as in effect July 8, 1977.

(2) Any unpackaged fresh food produce, or to consumer commodities which are under three cubic inches in size, weigh less than three ounces, and are priced under forty cents (\$0.40).

(3) Any consumer commodity offered as a sale item or as a special.

(4) Any business which has as its only regular employees the owner thereof, or the parent, spouse, or child of such owner, or, in addition thereto, not more than two other regular employees.

(5) Identical items within a multi-item package.

(6) Items sold through a vending machine.

(c) For the purposes of this section:

(1) "Point-of-sale system" means any computer or electronic system used by a retail establishment such as, but not limited to, Universal Product Code scanners, price lookup codes, or an electronic price lookup system as a means for

determining the price of the item being purchased by a consumer.

(2) "Consumer commodity" includes:

(A) Food, including all material whether solid, liquid, or mixed, and whether simple or compound, which is used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or ingredients added to any such material for any purpose. This definition shall not apply to individual packages of cigarettes or individual cigars.

(B) Napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, and disposable plates and cups.

(C) Detergents, soaps, and other cleaning agents.

(D) Pharmaceuticals, including nonprescription drugs, bandages, female hygiene products, and toiletries.

(3) "Grocery department" means an area within a general retail merchandise store which is engaged primarily in the retail sale of packaged food, rather than food prepared for immediate consumption on or off the premises.

(4) "Grocery store" means a store engaged primarily in the retail sale of packaged food, rather than food prepared for consumption on the premises.

(5) "Sale item or special" means any consumer commodity offered in good faith for a period of 14 days or less, on sale at a price below the normal price that item is usually sold for in that store. The Department of Food and Agriculture shall determine the normal length of a sale held for consumer commodities generally item priced on January 1, 1977, in stores regulated pursuant to this chapter, and that period shall be used for the purposes of this subdivision. The department's determination as to the normal length of a sale shall be binding for the purposes of this section, but each such determination shall not exceed seven days.

Comment. Section 1749.71 continues former Section 7100 without substantive change. The former provision was ambiguous in its reference to “this chapter”; the new provision corrects the reference to “this title.”

Civ. Code § 1749.72. Violations and penalty

1749.72. (a) The intentional violation of Section 1749.71 is punishable by a civil penalty of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

(b) Failure to have a clearly readable price indicated on 12 units of the same item required to be item-priced of the same commodity shall constitute a presumption of intent to violate Section 1749.71.

(c) Every additional 12 units of the same item required to be item-priced that fail to have a price indicated on them shall constitute a presumption of intent to violate Section 1749.71.

(d) Each day that a violation continues shall also constitute a separate violation after notification thereof to the manager or assistant manager of the retail grocery store or the grocery department of the general retail merchandise store and shall constitute a presumption of intent to violate Section 1749.71.

(e) Notwithstanding any other provision of law, any person may bring an action to enjoin a violation of Section 1749.71.

Comment. Section 1749.72 continues former Section 7101 without substantive change.

Civ. Code § 1749.73. Cause of action

1749.73. Any person, firm, corporation, or association who violates Sections 1749.71 and 1749.72 shall be liable to any person injured for any losses and expenses thereby incurred, and for the sum of fifty dollars (\$50) in addition thereto. The remedy set forth herein is applicable only to actions brought in the name of, and on behalf of, a single plaintiff and shall not be applicable in multiple plaintiff or class actions.

Comment. Section 1749.73 continues former Section 7102 without substantive change.

Civ. Code § 1749.74. Unintentional error

1749.74. Improper pricing on the shelf or on the item due to unintentional error shall not constitute a violation of this title.

Comment. Section 1749.74 continues former Section 7103 without substantive change. The former provision was ambiguous in its reference to “this division”; the new provision corrects the reference to “this title”.

Civ. Code § 1749.75. Exclusive remedies

1749.75. The remedies set forth in Sections 1749.72 and 1749.73 are the exclusive remedies available to any person, state or local agency, or law enforcement official.

Comment. Section 1749.75 continues former Section 7104 without substantive change.

Civ. Code § 1749.76. Preemption

1749.76. It is the intention of the Legislature that this title shall occupy the field with regard to item pricing and shall preempt all local ordinances, rules, or regulations concerning item pricing.

Comment. Section 1749.76 continues former Section 7106 without substantive change.

Civ. Code § 1917.166 (amended). Priority of lien

SEC. _____. Section 1917.166 of the Civil Code is amended to read:

1917.166. The lien of a shared appreciation loan, including the principal amount and all interest, whether accrued or to be accrued, and all amounts of contingent deferred interest, shall attach from the time of the recordation of the deed of trust securing the loan, and the lien, including the lien of the interest accrued or to be accrued and of the contingent deferred interest, shall have priority over any other lien or encumbrance affecting the property secured by the shared appreciation instrument, recorded after the time of recordation of the shared appreciation instrument. However, nothing in this section or Section 1917.165 shall preclude a

junior lien or encumbrance subordinate to the obligation of the shared appreciation loan. In no case may a junior lien achieve priority over the lien securing the obligation of the shared appreciation loan, provided that nothing in this section shall be construed to supersede ~~Section 3134 of the Civil Code~~ 8450.

Comment. Section 1917.166 is amended to correct a cross-reference.

Civ. Code § 1917.615 (amended). Priority of lien

SEC. _____. Section 1917.615 of the Civil Code is amended to read:

1917.615. The lien of a shared appreciation loan for seniors, including the total loan obligation, shall attach from the time of the recordation of the deed of trust securing the loan, and the lien, including the lien of the total loan obligation accrued or to be accrued, shall have priority over any other lien or encumbrance affecting the property secured by the shared appreciation instrument and recorded after the time of recordation of the shared appreciation instrument. However, nothing in this section or Section 1917.614 shall preclude a junior lien or encumbrance subordinate to the total loan obligation of the shared appreciation loan for seniors. In no case may a junior lien achieve priority over the lien securing the total loan obligation of the shared appreciation loan, provided that nothing in this section shall be construed to supersede ~~Section 3134~~ 8450.

Comment. Section 1917.615 is amended to correct a cross-reference.

Civ. Code § 3059 (amended). Mechanics lien

SEC. _____. Section 3059 of the Civil Code is amended to read:

3059. The liens of mechanics, for materials and services upon real property, are regulated by ~~Chapter 2 (commencing with Section 3109) of Title 15 of this part~~ Chapter 4 (commencing with Section 8400) of Part 6 of Division 4.

Comment. Section 3059 is amended to correct a cross-reference.

Civ. Code § 3060 (amended). Lien on mine

SEC. _____. Section 3060 of the Civil Code is amended to read:

3060. (a) As used in this section, “mine” means a mining claim or real property worked as a mine.

~~(b) Any person who performs labor in any mining claim or claims, or in or upon any real property worked as a mine, either in the development thereof~~ its development or in working ~~thereon~~ on it by the subtractive process, or furnishes materials to be used or consumed ~~therein~~ in it, has a lien upon the ~~same~~ mine and the works owned and used by the owners for milling or reducing the ores from the ~~same~~ mine, for the value of the work or labor done or materials furnished by each ~~respectively~~, whether done or furnished at the instance of the owner of ~~such mining claim or claims or real property worked as a~~ the mine, or ~~his~~ the owner’s agent, and every contractor, subcontractor, superintendent, or other person having charge of any mining or work or labor performed in and about ~~such mining claim or claims or real property worked as a~~ the mine, either as lessee or under a working bond or contract thereon shall be held to be the agent of the owner for the purposes of this section. The liens provided for by this section shall be enforced in the same manner as those provided for by ~~Title 15 (commencing with Section 3082), Part 4, Division 3~~ Part 6 (commencing with Section 8000) of Division 4.

Comment. Section 3060 is amended to correct a cross-reference. The other changes are technical.

Civ. Code § 3319 (amended). Design professional private work contract

SEC. _____. Section 3319 of the Civil Code is amended to read:

3319. (a) In each written contract for private works of improvement entered into on or after January 1, 1996, the contracting party and the design professional may agree to contractual provisions that include a late payment penalty, in lieu of any interest otherwise due. The terms of the late payment penalty shall be specifically set forth in the written contract.

(b) The penalty authorized pursuant to subdivision (a) shall be separate from, and in addition to, the design ~~professionals'~~ professionals' liens provided by ~~Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3~~ Chapter 3 (commencing with Section 8300) of Part 6 of Division 4, ~~mechanics'~~ mechanics' liens provided by ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of Division 4, and ~~stop notices for private works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3~~ stop payment notices provided by Chapter 5 (commencing with Section 8500) of Part 6 of Division 4.

(c) None of the rights or obligations created or permitted by this section between design professionals and contracting parties shall apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(d) For purposes of this section, the following definitions apply:

(1) "Contracting party" means any person or entity entering into a written contract with a design professional for professional design services for a private work of improvement.

(2) "Design professional" means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7

(commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

Comment. Section 3319 is amended to correct cross-references and make stylistic revisions.

Civ. Code § 3320 (amended). Payment to design professional on public work contract

SEC. _____. Section 3320 of the Civil Code is amended to read:

3320. (a) In each contract for public works of improvement, entered into on or after January 1, 1996, the public agency shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment in accordance with the contract, and the final retention payment within 45 days of receipt of a written demand for payment in accordance with the contract. If the public agency disputes in good faith any portion of the amount due, it may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld is not subject to any penalty authorized by this section.

(b) If any amount is wrongfully withheld or is not timely paid in violation of this section, the prime design professional shall be entitled to a penalty of 1 1/2 percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made. In any action for the collection of amounts withheld in violation of this section, the prevailing party is entitled to his or her reasonable attorney's fees and costs.

(c) The penalty described in subdivision (b) is separate from, and in addition to, the design professionals' ~~liens provided by Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided by~~

~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop notices for public works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3 remedies for a public works contract provided in Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code.~~

(d) This section does not apply to state agency contracts subject to Section 927.6 of the Government Code.

(e) None of the rights or obligations created by this section between prime design professionals and public agencies apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(f) For purposes of this section:

(1) “Public agency” means the state, any county, any city, any city and county, any district, any public authority, any public agency, any municipal corporation or other political subdivision or political corporation of the state.

(2) “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

(3) “Prime design professional” means a design professional with a written contract directly with the public agency.

Comment. Section 3320 is amended to correct a cross-reference. The references to liens are not continued; the lien remedy is unavailable on a public works contract.

Civ. Code § 3321 (amended). Payment by design professional on public work contract

SEC. _____. Section 3321 of the Civil Code is amended to read:

3321. (a) In each contract for public works of improvement, a prime design professional shall pay to each subconsultant design professional the amount due him or her from the payment received, not later than 15 days after receipt of each progress payment or final retention payment. If the prime design professional disputes in good faith any portion of the amount due, he or she may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld shall not be subject to any penalty authorized by this section.

(b) If any amount is wrongfully withheld or is not timely paid in violation of this section, the subconsultant design professional shall be entitled to a penalty of 1 1/2 percent of the improperly withheld amount, in lieu of any interest otherwise due, per month, for each month that payment is not made. In any action for the collection of amounts withheld in violation of this section, the prevailing party shall be entitled to his or her reasonable attorney's fees and costs.

(c) The penalty described in subdivision (b) shall be separate from, and in addition to, the design professionals' ~~liens provided by Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics' liens provided by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop notices for public works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3~~ remedies for a public works contract provided in Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code.

(d) None of the rights or obligations created by this section between prime design professionals and subconsultant design

professionals shall apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(e) For purposes of this section:

(1) “Public agency” means the state, any county, any city, any city and county, any district, any public authority, any public agency, any municipal corporation or other political subdivision or political corporation of the state.

(2) “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

(3) “Prime design professional” means a design professional having a written contract directly with the public agency.

(4) “Subconsultant design professional” means a design professional having a written contract with a prime design professional.

Comment. Section 3321 is amended to correct a cross-reference. The references to liens are not continued; the lien remedy is unavailable on a public works contract.

CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 86 (amended). Classification of 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:

(1) ~~Cases~~ A case at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars (\$25,000) or less. This

paragraph does not apply to ~~eases a case that involve~~ involves the legality of any tax, impost, assessment, toll, or municipal fine, except ~~actions~~ an action to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) ~~Actions~~ An action for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars (\$25,000); ~~actions~~ an action of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars (\$25,000).

(3) ~~Actions~~ An action to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars (\$25,000) or property of a value not exceeding twenty-five thousand dollars (\$25,000), paid or delivered under, or in consideration of, the contract; ~~actions~~ an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) ~~Proceedings~~ A proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less.

(5) ~~Actions~~ An action to enforce and foreclose ~~liens~~ a lien on personal property where the amount of the ~~liens~~ lien is twenty-five thousand dollars (\$25,000) or less.

(6) ~~Actions~~ An action to enforce and foreclose, or ~~petitions~~ a petition to release, ~~liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given~~ a lien arising under the provisions of ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 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.

(7) ~~Actions~~ An action for declaratory relief when brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars (\$25,000) or less.

(8) ~~Actions~~ An action to issue a temporary restraining orders and preliminary injunctions, and order or preliminary injunction; to take ~~accounts~~ an account, where necessary to preserve the property or rights of any party to a limited civil case; to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil case; to determine title to personal property seized in a limited civil case.

(9) ~~Actions~~ An action under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars (\$25,000) or the debt denied does not exceed twenty-five thousand dollars (\$25,000).

(10) ~~Arbitration-related petitions~~ An arbitration-related petition filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars (\$25,000) or less.

(b) The following cases in equity are limited civil cases:

(1) ~~Cases~~ A case to try title to personal property when the amount involved is not more than twenty-five thousand dollars (\$25,000).

(2) ~~Cases~~ A case when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.

(3) ~~Cases~~ A case to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

Comment. Paragraph (6) of subdivision (a) of Section 86 is amended to correct a cross-reference and eliminate obsolete terminology.

The section is also amended to make stylistic revisions.

Code Civ. Proc. § 410.42 (amended). Dispute resolution provisions in construction contract

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~~ 8050 of the Civil Code, and for which a lien may be claimed pursuant to Section ~~3110~~ 8400 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~~ 8052 of the Civil Code.

Comment. Section 410.42 is amended to correct cross-references and technical stylistic revisions.

Code Civ. Proc. § 708.760 (amended). Judgment debtor a public work contractor

SEC. _____. Section 708.760 of the Code of Civil Procedure is amended to read:

708.760. (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the

terms of the contractor's contract, upon the completion thereof, after deducting sums due and to become due to persons described in ~~Section 3181 of the Civil Code~~ Section 42030 of the Public Contract Code. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with ~~the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 4 (commencing with Section 44110) of Part 6 of Division 2 of the Public Contract Code shall be considered.

(b) The Controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount is retained for the satisfaction of the claims of persons described in ~~Section 3181 of the Civil Code~~ Section 42030 of the Public Contract Code.

Comment. Section 708.760 is amended to correct cross-references.

Code Civ. Proc. § 1203.61 (amended). Oil and gas lien

SEC. _____. Section 1203.61 of the Code of Civil Procedure is amended to read:

1203.61. (a) Any lien provided for by this chapter shall be enforced in the same manner as provided in ~~Title 15 (commencing with Section 3082), Part 4, Division 3, Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 of the Civil Code.~~ Such The action shall be filed within 180 days from the time of the recording of the lien ~~provided for herein.~~ If a credit ~~be is~~ is given and notice of the fact and terms of ~~such credit be the credit~~ are filed in the office of the county recorder subsequent to the filing of ~~such~~ the lien and prior to

the expiration of ~~said~~ the 180-day period, then ~~such~~ the lien continues in force until 180 days after the expiration of ~~such~~ the credit, but no lien continues in force by reason of any agreement to give credit for a longer time than one year from the time the work is completed. If the proceedings to enforce the lien ~~be~~ are not prosecuted to trial within two years after ~~the~~ commencement ~~thereof~~, the court may in its discretion dismiss the ~~same~~ action for want of prosecution, and in all cases the dismissal of ~~such~~ the action (unless it ~~be~~ is expressly stated that ~~the same~~ it is without prejudice) or a judgment ~~rendered therein~~ in the action that no lien exists ~~shall be~~ is equivalent to the cancellation and removal from the record of ~~such~~ the lien.

(b) As against any purchaser or encumbrancer for value and in good faith whose rights are acquired subsequent to the expiration of the 180-day period following the filing of ~~such~~ the lien, no giving of credit or extension of the lien or time to enforce the ~~same~~ lien shall be effective unless evidenced by a notice or agreement filed for record in the office of the county recorder prior to the acquisition of the rights of ~~such~~ the purchaser or encumbrancer.

Comment. Section 1203.61 is amended to correct a cross-reference and make stylistic revisions.

Code Civ. Proc. § 1281.5 (amended). Arbitration

SEC. _____. Section 1281.5 of the Code of Civil Procedure is amended to read:

1281.5. (a) Any person who proceeds to record and enforce a claim of lien by commencement of an action pursuant to ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 Chapter 4 (commencing with Section 8400) of Part 6 of Division 4~~ of the Civil Code, does not thereby waive any right of arbitration the person may have pursuant to a written agreement to arbitrate, if, in filing an action to enforce the claim of lien, the claimant does either of the following:

(1) Includes an allegation in the complaint that the claimant does not intend to waive any right of arbitration, and intends to move the court, within 30 days after service of the summons and complaint, for an order to stay further proceedings in the action.

(2) At the same time that the complaint is filed, the claimant files an application that the action be stayed pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien.

(b) Within 30 days after service of the summons and complaint, the claimant shall file and serve a motion and notice of motion pursuant to Section 1281.4 to stay the action pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien. The failure of a claimant to comply with this subdivision is a waiver of the claimant's right to compel arbitration.

(c) The failure of a defendant to file a petition pursuant to Section 1281.2 at or before the time the defendant answers the complaint filed pursuant to subdivision (a) is a waiver of the defendant's right to compel arbitration.

Comment. Section 1281.5 is amended to correct a cross-reference.

Code Civ. Proc. § 1800 (amended). Assignment for benefit of creditors

SEC. _____. Section 1800 of the Code of Civil Procedure is amended to read:

1800. (a) In this section:

(1) The term "insolvent" means:

(A) With reference to a person other than a partnership, a financial condition such that the sum of the person's debts is greater than all of the person's property, at a fair valuation, exclusive of both of the following:

(i) Property transferred, concealed, or removed with intent to hinder, delay, or defraud the person's creditors.

(ii) Property that is exempt from property of the estate pursuant to the election of the person made pursuant to Section 1801.

(B) With reference to a partnership, financial condition such that the sum of the partnership's debts are greater than the aggregate of, at a fair valuation, both of the following:

(i) All of the partnership's property, exclusive of property of the kind specified in clause (i) subparagraph (A).

(ii) The sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in clause (ii) of subparagraph (A), over the partner's separate debts.

(2) The term "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease.

(3) The term "insider" means:

(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.

(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:

(i) A director of the assignor.

(ii) An officer of the assignor.

(iii) A person in control of the assignor.

(iv) A partnership in which the assignor is a general partner.

(v) A general partner of the assignor.

(vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:

(i) A general partner in the assignor.

(ii) A relative of a general partner in, general partner of, or person in control of the assignor.

(iii) A partnership in which the assignor is a general partner.

(iv) A general partner of the assignor.

(v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, “relative” means an individual related by affinity or consanguinity with the third degree as determined by the common law, or an individual in a step or adoptive relationship within the third degree; and an “affiliate” means a person that directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the assignor or 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the assignor (excluding securities held in a fiduciary or agency capacity without sole discretionary power to vote, or held solely to secure a debt if the holder has not in fact exercised the power to vote), or a person who operates the business of the assignor under a lease or operating agreement or whose business is operated by the assignor under a lease or operating agreement.

(4) The term “judicial lien” means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(5) The term “new value” means money or money’s worth in goods, services, or new credit, or release by a transferee of

property previously transferred to the transferee in a transaction that is neither void nor voidable by the assignor or the assignee under any applicable law, but does not include an obligation substituted for an existing obligation.

(6) The term “receivable” means a right to payment, whether or not the right has been earned by performance.

(7) The term “security agreement” means an agreement that creates or provides for a security interest.

(8) The term “security interest” means a lien created by an agreement.

(9) The term “statutory lien” means a lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not the interest or lien is provided by or is dependent on a statute and whether or not the interest or lien is made fully effective by statute.

(10) The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(b) Except as provided in subdivision (c), the assignee of any general assignment for the benefit of creditors (as defined in Section 493.010) may recover any transfer of property of the assignor:

(1) To or for the benefit of a creditor;

(2) For or on account of an antecedent debt owed by the assignor before the transfer was made;

(3) Made while the assignor was insolvent;

(4) Made on or within 90 days before the date of the making of the assignment or made between 90 days and one year before the date of making the assignment if the creditor, at the time of the transfer, was an insider and had reasonable

cause to believe the debtor was insolvent at the time of the transfer; and

(5) That enables the creditor to receive more than another creditor of the same class.

(c) The assignee may not recover under this section a transfer:

(1) To the extent that the transfer was:

(A) Intended by the assignor and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the assignor; and

(B) In fact a substantially contemporaneous exchange;

(2) To the extent that the transfer was:

(A) In payment of a debt incurred in the ordinary course of business or financial affairs of the assignor and the transferee;

(B) Made in the ordinary course of business or financial affairs of the assignor and the transferee; and

(C) Made according to ordinary business terms;

(3) Of a security interest in property acquired by the assignor:

(A) To the extent the security interest secures new value that was:

(i) Given at or after the signing of a security agreement that contains a description of the property as collateral;

(ii) Given by or on behalf of the secured party under the agreement;

(iii) Given to enable the assignor to acquire the property; and

(iv) In fact used by the assignor to acquire the property; and

(B) That is perfected within 20 days after the security interest attaches;

(4) To or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the assignor:

(A) Not secured by an otherwise unavoidable security interest; and

(B) On account of which new value the assignor did not make an otherwise unavoidable transfer to or for the benefit of the creditor;

(5) Of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all the transfers to the transferee caused a reduction, as of the date of the making of the assignment and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by the security interest exceeded the value of all security interest for the debt on the later of:

(A) Ninety days before the date of the making of the assignment.

(B) The date on which new value was first given under the security agreement creating the security interest; or

(6) That is the fixing of a statutory lien.

(7) That is payment to a claimant, as defined in Section ~~3085~~ 8002 of the Civil Code or Section 41020 of the Public Contract Code, in exchange for the claimant's waiver or release of any potential or asserted claim of lien, stop payment notice, or right to recover on a payment bond, or any combination thereof.

(8) To the extent that the transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of, the spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or a determination made in accordance with state or territorial law by a governmental unit, or property settlement agreement; but not to the extent that either of the following occurs:

(A) The debt is assigned to another entity voluntarily, by operation of law or otherwise, in which case, the assignee

may not recover that portion of the transfer that is assigned to the state or any political subdivision of the state pursuant to Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 601, et. seq.) and passed on to the spouse, former spouse, or child of the debtor.

(B) The debt includes a liability designated as alimony, maintenance, or support, unless the liability is actually in the nature of alimony, maintenance, or support.

(d) An assignee of any general assignment for the benefit of creditors (as defined in Section 493.010), may avoid a transfer of property of the assignor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the assignee under subdivision (b) of this section. The liability of the surety under the bond or obligation shall be discharged to the extent of the value of the property recovered by the assignee or the amount paid to the assignee.

(e) (1) For the purposes of this section:

(A) A transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of the property from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest that is superior to the interest of the transferee.

(B) A transfer of a fixture or property other than real property is perfected when a creditor on a simple contract cannot acquire a judicial lien that is superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3), a transfer is made at any of the following times:

(A) At the time the transfer takes effect between the transferor and the transferee, if the transfer is perfected at, or within 10 days after, the time, except as provided in subparagraph (B) of paragraph (3) of subdivision (c).

(B) At the time the transfer is perfected, if the transfer is perfected after the 10 days.

(C) Immediately before the date of the making of the assignment if the transfer is not perfected at the later of:

(i) The making of the assignment.

(ii) Ten days after the transfer takes effect between the transferor and the transferee.

(3) For the purposes of this section, a transfer is not made until the assignor has acquired rights in the property transferred.

(f) For the purposes of this section, the assignor is presumed to have been insolvent on and during the 90 days immediately preceding the date of the making of the assignment.

(g) An action by an assignee under this section must be commenced within one year after the making of the assignment.

Comment. Section 1800 is amended to correct a cross-reference and terminology.

EDUCATION CODE

Educ. Code § 17307.5 (amended). Stop work order on public school construction

SEC. _____. Section 17307.5 of the Education Code is amended to read:

17307.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code, the Department of General Services may issue

a stop work order when construction work on a public school is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety. The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A school district, county superintendent of schools, county board of education, or other public board, body, or officer whose construction work on a public school is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is the basis for the issuance of the stop work order.

Comment. Section 17307.5 is amended to correct a cross-reference.

Educ. Code § 81133.5 (amended). Stop work order on community college construction

SEC. _____. Section 81133.5 of the Education Code is amended to read:

81133.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code, the Department of General Services may issue a stop work order when construction work on a community college is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety. The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A community college district or other public board, body, or officer whose construction work on a community college is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is that basis for the issuance of the stop work order.

Comment. Section 81133.5 is amended to correct a cross-reference.

GOVERNMENT CODE

Gov't Code § 7480 (amended). Disclosure of financial records

SEC. _____. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff's department or district attorney may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:

(1) Authorization of the disclosure for the period specified in subdivision (c).

(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.

(3) A description of the financial records that are authorized to be disclosed.

(e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county

welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section

31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(h) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(k) The disclosure by a construction lender, as defined in Section ~~3087~~ 8006 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(l) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent

available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

- (A) Any of the following, dated within the last three years:
 - (i) Form 599.
 - (ii) Form 1099.
 - (iii) A bank statement.
 - (iv) A check.
 - (v) A bank passbook.
 - (vi) A deposit slip.
 - (vii) A copy of a federal or state income tax return.
 - (viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The

sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(p) When the governing board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.

(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of

the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

(r) This section shall become operative on January 1, 2013.

Comment. Section 7480 is amended to correct a cross-reference.

Gov't Code § 14975 (amended). Payment bond

SEC. _____. Section 14975 of the Government Code is amended to read:

14975. Notwithstanding the provisions of Section ~~3247 of the Civil Code~~ 45010 of the Public Contract Code, the contractor under any contract made under this chapter need not provide a payment bond before the commencement of the work but must provide a payment bond as otherwise required by law prior to payment under the contract.

Comment. Section 14975 is amended to correct a cross-reference.

Gov't Code § 15820.105 (amended). Other requirements

SEC. _____. Section 15820.105 of the Government Code is amended to read:

15820.105. (a) All plans and specifications for the project shall comply with all applicable building codes.

(b) The project is hereby deemed a "public work" project for purposes of Sections ~~3082 to 3267~~ 41010 to 45090, inclusive, of the ~~Civil~~ Public Contract Code.

(c) The provisions of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code shall apply to all public works contracts entered into for the project.

(d) Other than as provided in this section and Sections 15820.101, 15820.102, 15820.103, and 15820.104, private sector methods may be used to deliver the project.

Specifically, the procurement and contracting for the delivery of the project is not subject to the State Contract Act or any other provision of California law governing public procurement or public works projects.

Comment. Subdivision (b) of Section 15820.105 is amended to correct two cross-references.

Gov't Code § 27287 (amended). Recordation of instrument

SEC. _____. Section 27287 of the Government Code is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is ~~a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code~~ an instrument provided for in Section 8058 of the Civil Code or Section 42250 of the Public Contract Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any quitclaim deed or grant deed other than a trustee's deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

Comment. Section 27287 is amended for conformity with the principles governing remedies for a private work of improvement or a public work. An instrument filed for record in conjunction with such remedies is deemed duly recorded without acknowledgment. See Civ. Code § 8058(b) (private work); Pub. Cont. Code § 42250(a) (public work).

Gov't Code § 27361.9 (repealed). Filing fee for preliminary notice

SEC. _____. Section 27361.9 of the Government Code is repealed.

~~27361.9 The board of supervisors of any county may provide for an additional fee for filing every preliminary 20-day notice pursuant to paragraph (1) of subdivision (e) of Section 3097 of the Civil Code for the exclusive purpose of defraying the cost of implementing and maintaining a system to facilitate compliance with paragraph (2) of subdivision (e) of Section 3097 of the Civil Code.~~

Comment. Section 27361.9 is not continued. Preliminary notice may no longer be filed with the county recorder. See Civ. Code § 8214.

Gov't Code § 66499.2 (amended). Form of surety bond

SEC. _____. Section 66499.2 of the Government Code is amended to read:

66499.2. A bond or bonds by one or more duly authorized corporate sureties for the security of laborers and ~~materialmen~~ material suppliers shall be in substantially the following form:

Whereas, The Board of Supervisors of the County of _____ (or City Council of the City of _____), State of California, and _____ (hereinafter designated as "the principal") have entered into an agreement whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20__, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, Under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the County of _____ (or the City of _____) to secure the claims to which reference is made in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil~~ Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, are held firmly bound unto the County of ____ (or the City of ____) and all contractors, subcontractors, laborers, ~~materialmen~~, material suppliers and other persons employed in the performance of the agreement and referred to in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil~~ Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code in the sum of ____ dollars (\$____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by county (or city) in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil~~ Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does

hereby waive notice of any such change, extension, alteration, or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named, on _____, 20__.

Comment. Section 66499.2 is amended to correct cross-references and obsolete terminology.

Gov't Code § 66499.7 (amended). Release of improvement security

SEC. _____. Section 66499.7 of the Government Code is amended to read:

66499.7. The security furnished by the subdivider shall be released in whole or in part in the following manner:

(a) Security given for faithful performance of any act or agreement shall be released upon the performance of the act or final completion and acceptance of the required work. The legislative body may provide for the partial release of the security upon the partial performance of the act or the acceptance of the work as it progresses, consistent with the provisions of this section. The security may be a surety bond, a cash deposit, a letter of credit, escrow account, or other form of performance guarantee required as security by the legislative body that meets the requirements as acceptable security pursuant to law. If the security furnished by the subdivider is a documentary evidence of security such as a surety bond or a letter of credit, the legislative body shall release the documentary evidence and return the original to the issuer upon performance of the act or final completion and acceptance of the required work. In the event that the legislative body is unable to return the original documentary evidence to the issuer, the security shall be released by written notice sent by certified mail to the subdivider and issuer of the documentary evidence within 30 days of the acceptance of the work. The written notice shall contain a statement that the work for which the security was furnished has been performed or completed and accepted by the

legislative body, a description of the project subject to the documentary evidence and the notarized signature of the authorized representative of the legislative body.

(b) At such time that the subdivider believes that the obligation to perform the work for which security was required is complete, the subdivider may notify the public entity in writing of the completed work, including a list of work completed. Upon receipt of the written notice, the public entity shall have 45 days to review and comment or approve the completion of the required work. If the public entity does not agree that all work has been completed in accordance with the plans and specifications for the improvements, it shall supply a list of all remaining work to be completed.

(c) Within 45 days of receipt of the list of remaining work from the public entity, the subdivider may then provide cost estimates for all remaining work for review and approval by the public entity. Upon receipt of the cost estimates, the public entity shall then have 45 days to review, comment, and approve, modify, or disapprove those cost estimates. No public entity shall be required to engage in this process of partial release more than once between the start of work and completion and acceptance of all work; however, nothing in this section prohibits a public entity from allowing for a partial release as it otherwise deems appropriate.

(d) If the public entity approves the cost estimate, the public entity shall release all performance security except for security in an amount up to 200 percent of the cost estimate of the remaining work. The process allowing for a partial release of performance security shall occur when the cost estimate of the remaining work does not exceed 20 percent of the total original performance security unless the public entity allows for a release at an earlier time. Substitute bonds or other security may be used as a replacement for the

performance security, subject to the approval of the public entity. If substitute bonds or other security is used as a replacement for the performance security released, the release shall not be effective unless and until the public entity receives and approves that form of replacement security. A reduction in the performance security, authorized under this section, is not, and shall not be deemed to be, an acceptance by the public entity of the completed improvements, and the risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the subdivider until all required public improvements have been accepted by the public entity and all other required improvements have been fully completed in accordance with the plans and specifications for the improvements.

(e) The subdivider shall complete the works of improvement until all remaining items are accepted by the public entity.

(f) Upon the completion of the improvements, the subdivider, or his or her assigns, shall be notified in writing by the public entity within 45 days.

(g) Within 45 days of the issuance of the notification by the public entity, the release of any remaining performance security shall be placed upon the agenda of the legislative body of the public entity for approval of the release of any remaining performance security. If the public entity delegates authority for the release of performance security to a public official or other employee, any remaining performance security shall be released within 60 days of the issuance of the written statement of completion.

(h) Security securing the payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, after passage of the time within which claims of lien are required to be recorded pursuant to Article

~~3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3~~ Article 2 (commencing with Section 8410) of Chapter 4 of Part 6 of Division 4 of the Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the legislative body, and if no claims have been recorded, the security shall be released in full.

(i) The release shall not apply to any required guarantee and warranty period required by Section 66499.9 for the guarantee or warranty nor to the amount of the security deemed necessary by the local agency for the guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorneys' fees.

(j) The legislative body may authorize any of its public officers or employees to authorize release or reduction of the security in accordance with the conditions hereinabove set forth and in accordance with any rules that it may prescribe.

(k) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2011, deletes or extends that date.

Comment. Section 66499.7 is amended to correct a cross-reference.

HEALTH AND SAFETY CODE

Health & Safety Code § 5463 (amended). Sewer system construction

SEC. _____. Section 5463 of the Health and Safety Code is amended to read:

5463. Any health officer or governing board of any city, county, sanitary district, or other district having the power to operate and maintain a sewerage system, having served written notice upon the owner or reputed owner of land upon which there is a dwelling house, and such owner or reputed owner, after 30 days, having refused, neglected, or failed to

connect such dwelling house, together with all toilets, sinks, and other plumbing therein, properly vented, and in a sanitary manner, with the adjoining street sewer, may construct the same at a reasonable cost, and the person doing said work at the request of such health officer or governing board has a lien upon said real estate for his work done and materials furnished, and such work done and materials furnished shall be held to have been done and furnished at the instance of such owner or reputed owner, or person claiming or having any interest therein. Such governing board may pay all or any part of the cost or price of such connection to the person or persons who furnished labor, materials, or equipment for the same, and, to the extent such governing board pays the cost or price of said connection, it shall succeed to and have all the rights, including the lien provided for above, of such person or persons against the real estate and against the owner or reputed owner thereof.

As an alternative power to the enforcement of the lien provided for in this section, the governing body of the public agency performing the work of connection to the public sewer may, by order entered upon its minutes, declare that the amount of the costs of such work and the administrative expenses incurred by the governing body incident to the proceedings, together with other charges uniformly applicable within the jurisdiction of the governing body for the connection of the premises to the public sewer, shall be transmitted to the assessor and tax collector of the public agency, whereupon it shall be the duty of those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land.

The liens provided for by this section shall be enforced in the same manner as those provided for by ~~Title 15 (commencing with Section 3082), Part 4, Division 3, Part 6~~

(commencing with Section 8000) of Division 4 of the Civil Code.

The governing board may also use the procedures in Section 5474 for levying the costs incurred for the construction of the improvements for the connection of the premises to the public sewer.

Comment. Section 5463 is amended to correct a cross-reference.

Health & Safety Code § 16017.5 (amended). Stop work order

SEC. _____. Section 16017.5 of the Health and Safety Code is amended to read:

16017.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, ~~Title 15 (commencing with Section 3082) of Part 4~~ Part 6 (commencing with Section 8000) of Division 4 of the Civil Code, the Department of General Services may issue a stop work order when construction work on an essential services facility is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety. The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A public board, body, or officer whose construction work on an essential services facility is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is the basis for the issuance of the stop work order.

Comment. Section 16017.5 is amended to correct a cross-reference.

Health & Safety Code § 19825 (amended). Building permit

SEC. _____. Section 19825 of the Health and Safety Code is amended to read:

19825. Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

BUILDING PROJECT IDENTIFICATION

Applicant’s Mailing Address _____

Address of Building _____

Owner’s Name if known _____

Telephone No. _____

Contractor’s Name _____

Contractor’s Mailing Address _____

Lic. No. _____

Architect or Engineer _____

Architect’s or Engineer’s Address _____

Lic. No. _____

In addition the city or county may require that there be included, in the building project identification portion of a building permit, the following:

Assessor’s Parcel Number* _____

Permit Date _____

Permit Number _____

Description of Work _____

Building Permit Valuation _____

*To be entered by issuing agency.

LICENSED CONTRACTOR’S DECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class _____ Lic. No. _____

Date _____ Contractor _____

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors’ State License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors’ State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars (\$500).):

() I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044,

Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors' State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors' State License Law.).

I am exempt under Sec. _____, B.& P.C. for this reason

 Date _____ Owner _____

WORKERS' COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations:

I have and will maintain a certificate of consent to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers' compensation insurance carrier and policy number are:

Carrier _____

Policy Number _____

___ I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date:_____ Applicant:_____

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. ~~3097~~ 8132, Civ. C.).

Lender's Name _____

Branch Designation _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

Signature of Applicant or Agent

Date

Comment. Section 19825 is amended to correct a cross-reference and conform the provision to Civil Code Section 8132 (designation of construction lender on building permit).

Health & Safety Code § 34218 (amended). Comprehensive improvement assistance program housing projects

SEC. _____. Section 34218 of the Health and Safety Code is amended to read:

34218. ~~Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 of the Public Contract Code~~ applies to any housing project constructed under this chapter. Notwithstanding the provisions of this section, a housing authority may require a 20 percent cash escrow or a 25 percent irrevocable letter of credit or the payment bond required by this section if the contract is for work undertaken pursuant to the Comprehensive Improvement Assistance Program established by Section 14 of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l), or the Public Housing Modernization Act established by Section 5(c)(3)(C) of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l).

Comment. Section 34218 is amended to correct a cross-reference.

INSURANCE CODE

Ins. Code § 11751.82 (amended). Wrap-up insurance policy

SEC. _____. Section 11751.82 of the Insurance Code is amended to read:

11751.82. (a) An insurer under a wrap-up insurance policy shall report workers' compensation losses and payroll information for each contractor and subcontractor to its rating organization on a timely basis and in accordance with the uniform statistical plan. Within 10 days, upon request, the

insurer shall provide to each contractor and subcontractor copies of the report covering workers' compensation losses and payroll information for that contractor or subcontractor.

(b) For the purposes of this section, a "wrap-up insurance policy" is an insurance policy, or series of policies, written to cover risks associated with a work of improvement, as defined in Section ~~3106~~ 8050 of the Civil Code, and covering two or more of the contractors or subcontractors that work on that work of improvement.

Comment. Section 11751.82 is amended to correct a cross-reference.

LABOR CODE

Lab. Code § 218.5 (amended). Nonpayment action

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

218.5. 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 action brought by the Labor Commissioner. This section shall not apply to 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 action to enforce a mechanics lien brought under ~~Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3~~ Chapter 4 (commencing with Section 8400) of Part 6 of Division 4 of the Civil Code.

This section does not apply to any action for which attorney's fees are recoverable under Section 1194.

Comment. Section 218.5 is amended to correct a cross-reference.

PUBLIC CONTRACT CODE

Pub. Cont. Code § 4107.7 (amended). Hazardous waste contract

SEC. _____. Section 4107.7 of the Public Contract Code is amended to read:

4107.7. If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or presence of a hazardous material or hazardous waste fails to pay a subcontractor registered as a hazardous waste hauler pursuant to Section 25163 of the Health and Safety Code within 10 days after the investigation, removal or remedial action, or disposal is completed, the subcontractor may serve a stop payment notice upon the public entity in accordance with ~~Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 4 (commencing with Section 44110) of Part 6 of Division 2 of this code.

Comment. Section 4107.7 is amended to correct a cross-reference and terminology.

Pub. Cont. Code § 7103 (amended). Payment bond on state contract

SEC. _____. Section 7103 of the Public Contract Code is amended to read:

7103. (a) Every original contractor ~~to who~~ that is awarded a contract by a state entity, as defined in subdivision (d), involving an expenditure in excess of five thousand dollars (\$5,000) for any public work shall, before entering ~~up~~ upon the performance of the work, file a payment bond with and approved by the officer or state entity ~~by who~~ that awarded the contract ~~was awarded~~. The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract.

The state entity shall state in its call for bids for any contract that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized contract which supplements the contract for which the payment bond was filed if the requirement of a new bond is waived by the state entity.

(c) For purposes of this section, providers of architectural, engineering and land surveying services pursuant to a contract with a state entity for a public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b).

(d) For purposes of this section, “state entity” means every state office department, division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by the provisions of ~~Section 3247 of the Civil Code~~ Section 45010.

(e) For purposes of this section, “public work” includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind.

Comment. Section 7103 is amended to correct a cross-reference and grammatical errors.

Pub. Cont. Code § 10222 (amended). Amount of payment bond

SEC. _____. Section 10222 of the Public Contract Code is amended to read:

10222. (a) Each bond shall equal at least one-half of the contract price, except as otherwise provided in ~~Section 3248 of the Civil Code~~ Section 45030, in the California Toll Bridge Authority Act (Chapter 1 (commencing with Section 30000) of Division 7 of the Streets and Highways Code), or in subdivision (b).

(b) Notwithstanding subdivision (a), for projects with a contract price greater than two hundred fifty million dollars (\$250,000,000), the Department of Transportation shall have the discretion to specify that the payment bond shall equal not less than one-half of the contract price or five hundred million dollars (\$500,000,000), whichever is less.

Comment. Section 10222 is amended to correct a cross-reference.

Pub. Cont. Code § 10822 (amended). Amount of bond

SEC. _____. Section 10822 of the Public Contract Code is amended to read:

10822. Each bond shall be in a sum equal to at least one-half of the contract price, except as otherwise provided in ~~Section 3248 of the Civil Code~~ Section 45030.

Comment. Section 10822 is amended to correct a cross-reference.

Pub. Cont. Code § 20104 (amended). Resolution of construction claims

SEC. _____. Section 20104 of the Public Contract Code is amended to read:

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) “Public work” ~~has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that “public work”~~ means “public works contract” as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) “Claim” means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages

arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

Comment. Section 20104 is amended to correct cross-references.

Pub. Cont. Code § 20134 (amended). Emergency repairs

SEC. _____. Section 20134 of the Public Contract Code is amended to read:

20134. (a) In cases of emergency, when repair or replacements are necessary to permit the continued conduct of county operations or services, the board of supervisors, by majority consent, may proceed at once to replace or repair any and all structures without adopting the plans, specifications, strain sheets, or working details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice for bids to let contracts. If notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The work may be done by day labor under the direction of the board, by contract, or by a combination of the two. If the work is done wholly or in part by contract, the contractor shall be paid the actual cost of the use of machinery and tools and of material, and labor and of workers' compensation insurance expended by him or her in doing the work, plus not more than 15 percent to cover all profits and administration. No more than the lowest current market prices shall be paid for materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court order to relieve jail overcrowding or in

which the sheriff certifies that the inmate capacity of the county jail system is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of jail facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bid, it shall make a finding stating the reasons that the lowest bid was not selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole violators under Section 2910 or 2910.5 of the Penal Code or of wards under Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may contract for the construction or expansion of the facilities to

be used for that purpose without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) ~~The board of supervisors may waive the requirements of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 for work performed pursuant to subdivision (b) or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board. If the board does not select the lowest bidder, it shall make a finding stating the reasons that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to accommodate all authorized judicial positions or in which the board of supervisors certifies that there is a significant need to expeditiously construct new court and court support facilities, the board of supervisors may contract for the construction or expansion of court and court support facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected. This subdivision shall remain in effect until December 31, 1994.

Comment. Section 20134 is amended to correct a cross-reference.

Pub. Cont. Code § 20461 (amended). Assignment by contractor

SEC. _____. Section 20461 of the Public Contract Code is amended to read:

20461. No assignment by the contractor of the whole or any part of the money, assessment, partial assessment, any reassessment and any bonds which may be issued to represent any assessment or reassessment, due ~~him~~ or to be due ~~him~~ under the contract, or for “extras” in connection therewith, whether made before or after a verified claim is filed pursuant to this chapter, shall take priority over ~~such~~ the claims, and ~~such~~ the assignment shall have no binding force insofar as the rights of the claimants, or their assigns, are concerned. None of the provisions of ~~Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code, Part 6 (commencing with Section 41010) of Division 2~~ shall be applicable to any assessment, partial assessment, reassessment, bonds, moneys or funds payable to the contractor or ~~his~~ assignee under this division or to any matter contained in this chapter.

Comment. Section 20461 is amended to correct a cross-reference. The other changes are technical.

Pub. Cont. Code § 20496 (amended). Municipal Improvement Act of 1913

SEC. _____. Section 20496 of the Public Contract Code is amended to read:

20496. The provisions of ~~Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code Part 6 (commencing with Section 41010) of Division 2~~ are hereby expressly made applicable to the construction of works and improvements under this article.

Comment. Section 20496 is amended to correct a cross-reference.

Pub. Cont. Code § 20682.5 (amended). Bids for contract

SEC. _____. Section 20682.5 of the Public Contract Code is amended to read:

20682.5. (a) A district may construct or complete any building, structure, or improvement with its own forces or by

contract without bidding when the cost does not exceed twenty-five thousand dollars (\$25,000).

(b) All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars (\$25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(c) The district shall publish a notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least 10 days before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the work to be done.

(d) If the general manager recommends and the board of directors determines that the publication of advertisements of the notice in trade journals and papers in lieu of publication pursuant to subdivision (c) will increase the number of business enterprises receiving that notice, the board of directors may by resolution declare that those notices shall be published in trade journals and papers at least 10 days prior to the time specified for receiving bids.

(e) If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.

(f) At its discretion, the board of directors may reject any bids presented and readvertise.

(g) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(h) The board of directors may, subject to ~~Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of~~

~~Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2~~, require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.

(i) The district shall keep cost records of the work in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

(j) As an alternate to the procedures required by this section, a district may rely on the Uniform Public Construction Cost Accounting Act, Chapter 2 (commencing with Section 22000) of Part 3 of Division 2.

Comment. Section 20682.5 is amended to correct a cross-reference.

Pub. Cont. Code § 20688.4 (amended). Redevelopment agencies

SEC. _____. Section 20688.4 of the Public Contract Code is amended to read:

20688.4 An agency shall require each successful bidder to file with it good and sufficient bonds, to be approved by it. The bonds shall be conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in ~~Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2~~ and are subject to the provisions of that chapter.

Comment. Section 20688.4 is amended to correct a cross-reference.

Pub. Cont. Code § 20813 (amended). Fire protection districts

SEC. _____. Section 20813 of the Public Contract Code is amended to read:

20813. (a) All contracts for the construction or completion of any building, structure, or improvement, when the expenditure required for the work exceeds ten thousand dollars (\$10,000), shall be contracted for and let to the lowest

responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(b) The notice inviting bids shall set a date for the opening of bids. The first publication or posting of the notice shall be at least 10 days before the date of opening the bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation in the district, or if there is none, it shall be posted in at least three public places in the district. The notice shall distinctly state the work to be done.

(c) In its discretion, the district board may reject any bids presented and readvertise.

(d) In the case of an emergency, the district board may act pursuant to Chapter 2.5 (commencing with Section 22050).

(e) ~~The district board may, subject to the provisions of Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 41010) of Part 6 of Division 2,~~ require the posting of those bonds it deems desirable as a condition to the filing of a bid or the letting of a contract.

(f) Cost records of the work shall be kept in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

Comment. Section 20813 is amended to correct a cross-reference.

Pub. Cont. Code § 20815.3 (amended). Recreation and park districts

SEC. _____. Section 20815.3 of the Public Contract Code is amended to read:

20815.3. (a) A district shall publish notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least one week before the time specified for receiving bids. The notice shall distinctly state the work to be done.

(b) In its discretion, the board of directors may do any of the following:

(1) Reject all bids and readvertise.

(2) By a four-fifths vote, elect to purchase the materials or supplies in the open market.

(3) By a four-fifths vote, elect to construct the building, structure, or improvement by force account.

(c) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(d) ~~The board of directors may, subject to the provisions of Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2, require the posting of those bonds it deems as a condition to the filing of a bid or the letting of a contract.

(e) The district shall keep cost records of the work pursuant to Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

Comment. Section 20815.3 is amended to correct a cross-reference.

Pub. Cont. Code § 20991 (amended). Los Angeles County Flood Control District

SEC. _____. Section 20991 of the Public Contract Code is amended to read:

20991. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars (\$25,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the

faithful performance of the contract and upon the payment of all claims for labor and material. The bonds shall contain the terms and conditions set forth in ~~Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 41010) of Part 6 of Division 2 and shall be subject to the provisions of that chapter. The board shall have the right to reject any bid not suitable to the best interests of the district. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of channel protection, dam protection, temporary work, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. Emergency work may also be done by negotiated contract without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

Comment. Section 20991 is amended to correct a cross-reference.

Pub. Cont. Code § 21061 (amended). San Bernardino County Flood Control District

SEC. _____. Section 21061 of the Public Contract Code is amended to read:

21061. (a) All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars (\$25,000), shall be let to the lowest responsible bidder in the manner provided in this article.

(b) The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the

improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 and to be subject to that chapter.

(c) The board may also reject any bid not suitable to the best interests of the district. If all proposals are rejected or no proposals are received pursuant to advertisement therefor, or the work consists of channel protection, dam protection, temporary work, maintenance work, or of emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. Emergency work may also be done by negotiated contract without advertising for bids or requiring bonds. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(d) The board of supervisors, acting as the board of the district, may, by ordinance, resolution, or board order, authorize the flood control engineer or other county officer to order changes or additions in work being performed under a construction contract. When so authorized, any change or addition in the work shall be ordered in writing by the flood control engineer, or other designated officer, and the extra cost for any change or addition to the work so ordered shall not exceed five thousand dollars (\$5,000) when the total amount of the original contract does not exceed fifty thousand dollars (\$50,000), nor 10 percent of the amount of any original contract that exceeds fifty thousand dollars (\$50,000), but does not exceed two hundred fifty thousand dollars (\$250,000). For contracts whose original cost exceeds

two hundred fifty thousand dollars (\$250,000), the extra cost for any change or addition to the work so ordered shall not exceed twenty-five thousand dollars (\$25,000), plus 5 percent of the amount of the original contract costs in excess of two hundred fifty thousand dollars (\$250,000). In no event shall any such change or alteration exceed one hundred fifty thousand dollars (\$150,000).

Comment. Section 21061 is amended to correct a cross-reference.

Pub. Cont. Code § 21071 (amended). Ventura County Watershed Protection District

SEC. _____. Section 21071 of the Public Contract Code is amended to read:

21071. (a) All contracts for any improvement or unit of work except as hereinafter provided estimated to cost in excess of ten thousand dollars (\$10,000) shall be let to the lowest responsible bidder in the manner hereinafter provided. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of, the improvement or work before any contract shall be made therefor, and may let by contract separately any part of the work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection therewith, such bonds to contain the terms and conditions set forth in ~~Chapter 7 (commencing with Section 3247) of Title 5 of Part 4 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 and to be subject to the provisions of that chapter. The board shall also have the right to reject any and all bids. In the event all proposals are rejected or no proposals are received pursuant to

advertisement therefor, or where the estimated cost of such work does not exceed the sum of ten thousand dollars (\$10,000), or the work consists of channel protection, or maintenance work, or emergency work when necessary in order to protect life and property from impending flood damage, the board of supervisors may, without advertising for bids therefor, have the work done by force account or negotiated contract.

(b) The district shall have the power to purchase in the open market without advertising for bids therefor, materials, supplies, equipment, and other personal property for use in any work therewith either under contract or by force account where the costs thereof do not exceed ten thousand dollars (\$10,000). It shall be the duty of the purchasing agent of Ventura County, as the ex officio purchasing agent of the Ventura County Watershed Protection District, unless otherwise ordered by the board of supervisors, to purchase for the district all materials, supplies, equipment, and other personal property necessary to carry out the purposes of this act, and to engage independent contractors to perform sundry services for the district, where the aggregate cost of such work, exclusive of materials to be furnished by the district, does not exceed ten thousand dollars (\$10,000).

(c) The purchasing agent shall make all such purchases and contracts upon proper requisition therefor, signed by the engineer-manager of the district, or his or her authorized representative.

(d) If the work consists of the maintenance or alteration of existing facilities, including electrical, painting, and roofing in connection therewith, and if the cost of labor and materials for such work according to the engineer's estimate will exceed five thousand dollars (\$5,000), and if the work is not of the type of work referred to in this section, such maintenance and alteration work shall be performed under a

contract or contracts that shall be let to the lowest responsible bidder or bidders in the manner described in this section.

Comment. Section 21071 is amended to correct a cross-reference.

Pub. Cont. Code § 21081 (amended). Humboldt County Flood Control District

SEC. _____. Section 21081 of the Public Contract Code is amended to read:

21081. All contracts for any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole or it may divide such work into severable parts by separate contracts, as stated in such call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part.~~

The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of such work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21081 is amended to correct a cross-reference.

Pub. Cont. Code § 21091 (amended). Riverside County Flood Control and Water Conservation District

SEC. _____. Section 21091 of the Public Contract Code is amended to read:

21091. All contracts for any improvement or unit of work, except as otherwise provided in this act, estimated to cost in excess of fifteen thousand dollars (\$15,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract is made, and may let by contract separately any part of the work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall contain the terms and conditions set forth in Sections ~~10223 and 10224 of the Public Contract Code and Section 3248 of the Civil Code~~ 10223, 10224, and 45030 and be subject to those sections. The board shall also have the right to reject any bid.

If all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed fifteen thousand dollars (\$15,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any improvement or unit of work either under contract or by force account.

Comment. Section 21091 is amended to correct a cross-reference.

Pub. Cont. Code § 21101 (amended). San Luis Obispo County Flood Control and Water Conservation District

SEC. _____. Section 21101 of the Public Contract Code is amended to read:

21101. All contracts for any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract shall be made. The call for bids shall state whether the work is to be performed as a unit or is to be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole as a unit or it may

divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district shall have the power to purchase in the open market without advertising for bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21101 is amended to correct a cross-reference.

Pub. Cont. Code § 21111 (amended). Santa Barbara County Water Agency

SEC. _____. Section 21111 of the Public Contract Code is amended to read:

21111. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of ten thousand dollars (\$10,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise by three insertions in a daily newspaper of general circulation or

two insertions in a weekly newspaper of general circulation published in the agency's jurisdiction inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material. The faithful performance bond shall contain terms and conditions as the board may specify, and the payment bond shall be subject to the provisions of, and shall contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2, as applicable. The board shall also have the right to reject any bid, in which case the board may advertise for new bids. In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of emergency work, the board of directors by unanimous vote of all members present may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, and may authorize the Purchasing Agent of the County of Santa Barbara to purchase, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) If the work to be performed by or on behalf of the agency does not involve an expenditure of ten thousand dollars (\$10,000) or more, or if the work consists of emergency work, the agency may require a faithful performance bond. The agency may require a payment bond

on work performed on behalf of the agency which does not involve an expenditure of more than ten thousand dollars (\$10,000).

Comment. Section 21111 is amended to correct a cross-reference.

Pub. Cont. Code § 21121 (amended). Monterey County Flood Control and Water Conservation District

SEC. _____. Section 21121 of the Public Contract Code is amended to read:

21121. (a) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer, exceeds five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders.

(b) The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the agency.

(c) The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the territory of the agency inviting sealed proposals for the construction or performance of the improvement or work before any contract is entered into. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the agency.

(d) The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in

~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and are subject to the provisions of that ~~title part~~.

(e) The board may reject any bid. The board of supervisors may, without advertising for bids, have the work done by force account if any of the following requirements are met:

(1) All the projects are rejected.

(2) No proposals are received in response to the advertisement.

(3) The estimated cost of the work does not exceed five thousand dollars (\$5,000).

(4) The work consists of channel protection, maintenance work, or emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(f) The agency may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(g) The Monterey County Board of Supervisors may grant to the board of directors, appointed pursuant to Section 49 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), any of the powers or duties granted to the Monterey County Board of Supervisors by this section.

Comment. Section 21121 is amended to correct a cross-reference.

Pub. Cont. Code § 21131 (amended). Sonoma County Flood Control and Water Conservation District

SEC. _____. Section 21131 of the Public Contract Code is amended to read:

21131. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars (\$2,500) shall be let to the lowest responsible bidder in the manner provided in

this article. The board shall advertise by three placements in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material in connection therewith, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2~~ and to be subject to the provisions of that ~~title part~~. The board may reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor, or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work authorized and required under circumstances referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) This section does not apply to a contract entered into with the United States or the State of California or other governmental agency under the authority of Section 3 of Chapter 2126 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

(e) The district may rent or otherwise contract for equipment with or without an operator and use it on works of the district, if the contract is approved by the board.

Comment. Section 21131 is amended to correct a cross-reference.

Pub. Cont. Code § 21141 (amended). Mendocino County Flood Control and Water Conservation District

SEC. _____. Section 21141 of the Public Contract Code is amended to read:

21141. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed the sum of two thousand dollars (\$2,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract therefor to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21141 is amended to correct a cross-reference.

Pub. Cont. Code § 21151 (amended). Alameda County Flood Control and Water Conservation District

SEC. _____. Section 21151 of the Public Contract Code is amended to read:

21151. All contracts for any improvement or unit of work when the cost according to the estimate of the engineer will exceed twenty-five thousand dollars (\$25,000), with or without the furnishing of materials or supplies, shall be let to the lowest responsible bidder or bidders in the manner provided in this article.

Construction of improvements or works shall not be staged to avoid the bidding process. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The board shall invite the bids by publishing a notice of the call for bids pursuant to Section 6062 or 6066 of the Government Code in a newspaper of general circulation in the county. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part~~ part. The board shall also have the right to reject any bid. In the event the engineer's estimate is twenty-five thousand dollars (\$25,000) or less, or in the event no proposals are received pursuant to advertisement therefor, or in the event the work consists of channel protection or maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be

given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may acquire in the open market without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose.

Comment. Section 21151 is amended to correct a cross-reference.

Pub. Cont. Code § 21161 (amended). Santa Clara Valley Water District

SEC. _____. Section 21161 of the Public Contract Code is amended to read:

21161. (a) Any improvement or unit of work not performed by district personnel and estimated by the engineer to cost in excess of twenty-five thousand dollars (\$25,000) shall be done by contract. All contracts shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set

forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section requiring competitive bidding and the award of contracts to the lowest responsible bidder are inapplicable to the extent the improvement or unit of work is to be performed on its own facilities by a public utility subject to the jurisdiction of the California Public Utilities Commission.

Comment. Section 21161 is amended to correct a cross-reference.

Pub. Cont. Code § 21171 (amended). Napa County Flood Control and Water Conservation District

SEC. _____. Section 21171 of the Public Contract Code is amended to read:

21171. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to

the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the right to reject any bid.

(b) In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account; provided,

however, that materials and supplies for use in any new construction work or improvements, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21171 is amended to correct a cross-reference.

Pub. Cont. Code § 21181 (amended). Lake County Flood Control and Water Conservation District

SEC. _____. Section 21181 of the Public Contract Code is amended to read:

21181. All contracts for any improvement or unit of work when the cost according to the estimate of the engineer, will exceed four thousand dollars (\$4,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call in the district pursuant to Section 6066 of the Government Code inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6

(commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement or the estimated cost of the work does not exceed four thousand dollars (\$4,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by the combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21181 is amended to correct a cross-reference.

Pub. Cont. Code § 21196 (amended). Solano County Water Agency

SEC. _____. Section 21196 of the Public Contract Code is amended to read:

21196. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars (\$2,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the district shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work

before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of ~~this title~~ that part. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed two thousand five hundred dollars (\$2,500), or the work consists of emergency work, the board of directors by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(c) The provisions of this section have no application to a contract entered into with the United States under the authority of the Solano County Flood Control and Water Conservation District Act, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21196 is amended to correct a cross-reference.

Pub. Cont. Code § 21212 (amended). Sacramento County Water Agency

SEC. _____. Section 21212 of the Public Contract Code is amended to read:

21212. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of three thousand dollars (\$3,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise pursuant to Section 6066 of the Government Code in a newspaper of general circulation published in the agency's jurisdiction inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of any claims for labor and material and containing the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part~~ part. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed three thousand dollars (\$3,000), or the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(d) The provisions of this section have no application to a contract entered into with the United States under the

authority of Section 6 of Chapter 10 of the Statutes of the 1952 First Extraordinary Session, or to a contract authorized by a vote of the electorate of the agency.

Comment. Section 21212 is amended to correct a cross-reference.

Pub. Cont. Code § 21231 (amended). Marin County Flood Control and Water Conservation District

SEC. _____. Section 21231 of the Public Contract Code is amended to read:

21231. Any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be done by contract let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract will be let as a single unit, or will be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district, inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into separate specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bid. In the

event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may acquire in the open market without advertising for bids, materials, equipment and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21231 is amended to correct a cross-reference.

Pub. Cont. Code § 21241 (amended). Contra Costa County

SEC. _____. Section 21241 of the Public Contract Code is amended to read:

21241. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the zone. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be

performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bid. In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21241 is amended to correct a cross-reference.

Pub. Cont. Code § 21251 (amended). San Benito County Water Conservation and Flood Control District

SEC. _____. Section 21251 of the Public Contract Code is amended to read:

21251. (a) (1) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer will exceed thirty thousand dollars (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts, or both.

(2) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer is thirty thousand dollars (\$30,000) or less, may be let without advertising for bids in accordance with procedures adopted by the board.

(b) The board shall call for bids and advertise the call pursuant to Section 6063 of the Government Code in the district, inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as one unit or divided into severable specific parts.

(c) The work may be let under a single contract or several contracts, or both, as stated in the call. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid.

(d) If all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five

thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(e) The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21251 is amended to correct a cross-reference.

Pub. Cont. Code § 21261 (amended). Del Norte County Flood Control District

SEC. _____. Section 21261 of the Public Contract Code is amended to read:

21261. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the

contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21261 is amended to correct a cross-reference.

Pub. Cont. Code § 21271 (amended). Santa Barbara County Flood Control and Water Conservation District

SEC. _____. Section 21271 of the Public Contract Code is amended to read:

21271. All improvement and units of work to be performed by or for the district shall be performed in accordance with the following procedures and requirements:

(a) If the work consists of the protection or maintenance of channels, storm drains, dams or other flood control works, or emergency work, the board of directors may, without advertising for bids therefor, have the work done by day labor under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(b) If the work consists of the construction of new flood control channels, storm drains, dams, or other unit or units of work, and if the cost of the work, according to the estimate of the engineer, will exceed ten thousand dollars (\$10,000), and if the work is not the type of work referred to in subdivision (a) or (c) of this section, the new construction shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(c) If the work consists of the maintenance or alteration of existing facilities, including electrical, painting, and roofing work, and if the cost of labor and materials for the work according to the engineer's estimate, will exceed three thousand five hundred dollars (\$3,500), and if the work is not the type of work referred to in subdivision (a) or (b) of this section, the maintenance and alteration work shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(d) The board shall first determine whether the work shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable, specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bond to be approved by the board conditioned upon the faithful performance of the

contract and upon the payment of the claims for labor and material. The faithful performance bond shall contain the terms and conditions as the board may specify, and the payment bond shall contain the terms and conditions set forth in, and shall be subject to, the provisions of ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. If the work to be performed on behalf of the district does not involve an expenditure of fifteen thousand dollars (\$15,000) or more, the district may require a faithful performance bond or a payment bond. The board shall also have the right to reject any bid.

(e) If no proposals are received pursuant to advertisement, or if the estimated cost of work of the type referred to in subdivision (b) of this section does not exceed ten thousand dollars (\$10,000), or if the estimated cost of work of the type referred to in subdivision (c) of this section does not exceed three thousand five hundred dollars (\$3,500), the board of directors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by combination of the two. If any change or alteration in a contract awarded under the provisions of this section for work of the type referred to in subdivision (b) or (c) is deemed necessary and the cost does not exceed 10 percent of the original contract price, the board may authorize the contractor to proceed with the change or alteration without the formality of obtaining bids.

(f) Notwithstanding the foregoing provisions, the district shall have the power to acquire in the open market, and may authorize the Purchasing Agents of the County of Santa Barbara to acquire in the open market, without advertising for bids, materials, equipment and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or

improvement, except work referred to in subdivision (a) of this section, may not be purchased without advertising for bids and awarding the contract to the lowest responsible bidder if the cost exceeds two thousand five hundred dollars (\$2,500), unless the purchase is made by the county purchasing agent at the request of the district, in which case the cost shall not exceed six thousand five hundred dollars (\$6,500).

Comment. Section 21271 is amended to correct a cross-reference.

Pub. Cont. Code § 21311 (amended). San Joaquin County Flood Control and Water Conservation District

SEC. _____. Section 21311 of the Public Contract Code is amended to read:

21311. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars (\$2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board

conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars (\$2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), shall not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21311 is amended to correct a cross-reference.

Pub. Cont. Code § 21321 (amended). Placer County Water Agency

SEC. _____. Section 21321 of the Public Contract Code is amended to read:

21321. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed thirty thousand dollars (\$30,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract

shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2.

(b) The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In the event that no proposals are received, or if only one responsive proposal is received, the board may negotiate a contract for construction or performance of the work or improvement or substantially similar work or improvement. However, if only one responsive proposal is received, the contract must be negotiated with the bidder.

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

(d) Sections 4300 to 4305, inclusive, of the Government Code do not apply to the agency's Middle Fork American River Project.

(e) This section applies to all proposals or contracts whether or not received or entered into prior to the effective date of the amendment of this provision made at the 1963 Regular Session of the Legislature.

Comment. Section 21321 is amended to correct a cross-reference.

Pub. Cont. Code § 21331 (amended). Tehama County Flood Control and Water Conservation District

SEC. _____. Section 21331 of the Public Contract Code is amended to read:

21331. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of three thousand five hundred dollars (\$3,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2~~ and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not

exceed five thousand dollars (\$5,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 1280 of the Statutes of 1957, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21331 is amended to correct a cross-reference.

Pub. Cont. Code § 21341 (amended). Shasta County Water Agency

SEC. _____. Section 21341 of the Public Contract Code is amended to read:

21341. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars (\$5,000) shall be let to the lowest responsible bidder. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published by the agency inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board

good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2~~ and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bid, in which case the board may advertise for new bids. In the event no proposals are received pursuant to advertisement or where the estimated cost of the work does not exceed five thousand dollars (\$5,000), or where the work consists of emergency work, the board, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 59 of Chapter 1512 of the Statutes of 1957, or to a contract authorized by a vote of the electorate of the agency.

Comment. Section 21341 is amended to correct a cross-reference.

Pub. Cont. Code § 21351 (amended). Yuba County Water Agency

SEC. _____. Section 21351 of the Public Contract Code is amended to read:

21351. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract

shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published by the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids.

In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. In awarding any contract or authorizing any work, the board shall comply with the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

Comment. Section 21351 is amended to correct a cross-reference.

Pub. Cont. Code § 21361 (amended). Mariposa County Water Agency

SEC. _____. Section 21361 of the Public Contract Code is amended to read:

21361. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section

22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21361 is amended to correct a cross-reference.

Pub. Cont. Code § 21371 (amended). Sutter County Water Agency

SEC. _____. Section 21371 of the Public Contract Code is amended to read:

21371. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency,

if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21371 is amended to correct a cross-reference.

Pub. Cont. Code § 21381 (amended). San Mateo County Flood Control District

SEC. _____. Section 21381 of the Public Contract Code is amended to read:

21381. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars (\$5,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract shall be made, and may let by contract separately any part of said work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that title part. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or

emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21381 is amended to correct a cross-reference.

Pub. Cont. Code § 21391 (amended). Plumas County Flood Control and Water Conservation District

SEC. _____. Section 21391 of the Public Contract Code is amended to read:

21391. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2~~ and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any and all bids, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor, where the estimated cost of the work does not exceed two thousand dollars (\$2,000), or where the work consists of emergency work necessary in order to protect life and property, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2114 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21391 is amended to correct a cross-reference.

Pub. Cont. Code § 21401 (amended). Siskiyou County Flood Control and Water Conservation District

SEC. _____. Section 21401 of the Public Contract Code is amended to read:

21401. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily

newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2~~ and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any bids, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars (\$2,000), or where work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2121 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21401 is amended to correct a cross-reference.

Pub. Cont. Code § 21411 (amended). Nevada County Water Agency

SEC. _____. Section 21411 of the Public Contract Code is amended to read:

21411. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency's jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of

channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In that event a majority vote of all board members shall be required. The board may purchase in the open market, without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21411 is amended to correct a cross-reference.

Pub. Cont. Code § 21421 (amended). Sierra County Flood Control and Water Conservation District

SEC. _____. Section 21421 of the Public Contract Code is amended to read:

21421. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that title part. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars (\$2,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2123 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21421 is amended to correct a cross-reference.

Pub. Cont. Code § 21431 (amended). Lassen-Modoc County Flood Control and Water Conservation District

SEC. _____. Section 21431 of the Public Contract Code is amended to read:

21431. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars (\$2,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly

newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars (\$2,000), the board of directors, by unanimous vote of all members present, may without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars (\$2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2127 of the Statutes of

1959, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21431 is amended to correct a cross-reference.

**Pub. Cont. Code § 21441 (amended). Yuba-Bear River Basins
Authority**

SEC. _____. Section 21441 of the Public Contract Code is amended to read:

21441. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the authority, inviting sealed proposals for the construction or performance of the improvement work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The authority may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21441 is amended to correct a cross-reference. The other changes are technical.

Pub. Cont. Code § 21451 (amended). Amador County Water Agency

SEC. _____. Section 21451 of the Public Contract Code is amended to read:

21451. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed twelve thousand five hundred dollars (\$12,500), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The payment bonds shall comply with ~~Chapter 7 (commencing with Section 3247) of Division 3 of Title 15 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2. The board may reject any bid. If all proposals are rejected or no proposals are received, or the estimated cost of

the work does not exceed twelve thousand five hundred dollars (\$12,500), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21451 is amended to correct a cross-reference.

Pub. Cont. Code § 21461 (amended). El Dorado County Water Agency

SEC. _____. Section 21461 of the Public Contract Code is amended to read:

21461. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section~~

~~3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) of Division 2.~~ The board may reject any and all bids. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21461 is amended to correct a cross-reference.

Pub. Cont. Code § 21491 (amended). Kern County Water Agency

SEC. _____. Section 21491 of the Public Contract Code is amended to read:

21491. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed ten thousand dollars (\$10,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and

upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds ten thousand dollars (\$10,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21491 is amended to correct a cross-reference.

Pub. Cont. Code § 21501 (amended). Desert Water Agency

SEC. _____. Section 21501 of the Public Contract Code is amended to read:

21501. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed fifteen thousand dollars (\$15,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and

published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2. The board may reject any and all bids.

(b) The board may have work done by force account without advertising for bids or by informal bidding procedures in any of the following situations:

(1) All proposals are rejected.

(2) No proposals are received.

(3) The estimated cost of the work does not exceed fifteen thousand dollars (\$15,000) until January 1, 1989. After January 1, 1989, the estimated cost of the work shall not exceed ten thousand dollars (\$10,000).

(4) The work consists of channel protection.

(5) The work consists of maintenance work, except that informal bidding procedures may be used only where the estimated cost does not exceed twenty-five thousand dollars (\$25,000).

(6) The work consists of emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account, except that,

materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased, if the cost exceeds fifteen thousand dollars (\$15,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) As used in this section, “informal bidding procedures” means that the board shall, at a minimum, award a contract to the lowest responsible bidder after publishing a notice which generally describes the work to be performed and invites written bids in a newspaper of general circulation in the agency once a week for two successive weeks. The board shall obtain a minimum of three written bids.

Comment. Section 21501 is amended to correct a cross-reference.

Pub. Cont. Code § 21511 (amended). San Geronio Pass Water Agency

SEC. _____. Section 21511 of the Public Contract Code is amended to read:

21511. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed fifty thousand dollars (\$50,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and

upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any and all bids.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed ten thousand dollars (\$10,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased, if the cost exceeds fifty thousand dollars (\$50,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21511 is amended to correct a cross-reference.

Pub. Cont. Code § 21521 (amended). Alpine County Water Agency

SEC. _____. Section 21521 of the Public Contract Code is amended to read:

21521. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and

published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids.

In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In that event a majority vote of all board members shall be required. The board may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21521 is amended to correct a cross-reference.

Pub. Cont. Code § 21531 (amended). Castaic Lake Water Agency

SEC. _____. Section 21531 of the Public Contract Code is amended to read:

21531. (a) The Castaic Lake Water Agency shall have power to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for

carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property; provided, that all contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation published in the agency or by two insertions in a nondaily newspaper of general circulation published in the agency or, if no newspaper is published in the agency, in any newspaper of general circulation distributed in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given. The board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21531 is amended to correct a cross-reference.

Pub. Cont. Code § 21541 (amended). Crestline-Lake Arrowhead Water Agency

SEC. _____. Section 21541 of the Public Contract Code is amended to read:

21541. (a) The Crestline-Lake Arrowhead Water Agency shall have power to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property. However, all contracts for the construction of any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed twenty-five thousand dollars (\$25,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided

into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds twenty-five thousand dollars (\$25,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21541 is amended to correct a cross-reference.

Pub. Cont. Code § 21572 (amended). Madera County Flood Control and Water Conservation Agency

SEC. _____. Section 21572 of the Public Contract Code is amended to read:

21572. Any improvement or unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars (\$5,000), shall be done by contract and let to

the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the agency, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board, conditioned upon the faithful performance of the contract, and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) of Division 2~~ and to be subject to the provisions of that ~~title part~~. The board shall also have the right to reject any and all bids, and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account. In the event no proposals are received pursuant to advertisement, or where the estimated cost of such work does not exceed five thousand dollars (\$5,000), the board of directors by unanimous vote of all members present may without advertising for bids have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21572 is amended to correct a cross-reference.

Pub. Cont. Code § 21581 (amended). Tulare County Flood Control District

SEC. _____. Section 21581 of the Public Contract Code is amended to read:

21581. (a) Any improvement or unit of work when the cost according to the estimate of the engineer will exceed five thousand dollars (\$5,000), shall be done by contract and shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board a good and sufficient bond to be approved by the board conditioned upon the payment of their claims for labor and material, the bond to contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2 and to be subject to the provisions of that ~~title~~ part. The board shall also have the right to reject any and all bids and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account.

(b) In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work,

the board of supervisors may, without advertising for bids, have the work done by employees of the district, by day labor, under the direction of the board, by contract, or by any combination of those methods. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars (\$5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21581 is amended to correct a cross-reference.

Pub. Cont. Code § 21591 (amended). Bighorn Mountains Water Agency

SEC. _____. Section 21591 of the Public Contract Code is amended to read:

21591. (a) Any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed twenty-five thousand dollars (\$25,000), shall be done by contract and shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, if there is a newspaper printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided

into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any and all bids and readvertise, or by a two-thirds vote may elect to undertake work by force account.

(b) If no proposals are received, or the estimated cost of the work does not exceed twenty-five thousand dollars (\$25,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds twenty-five thousand dollars (\$25,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21591 is amended to correct a cross-reference.

Pub. Cont. Code § 21601 (amended). Tuolumne County Water Agency

SEC. _____. Section 21601 of the Public Contract Code is amended to read:

21601. Any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars (\$5,000), shall be done by contract and let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon payment of their claims for labor and material. The bonds shall comply with ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2. The board may reject any and all bids and readvertise, or, by a two-thirds vote, may elect to undertake the work by force account. In the event no proposals are received, or the estimated cost of the work does not exceed five thousand dollars (\$5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials, and supplies for use in any work, either under contract or by force account.

Comment. Section 21601 is amended to correct a cross-reference.

Pub. Cont. Code § 21622 (amended). Monterey Peninsula Water Management District

SEC. _____. Section 21622 of the Public Contract Code is amended to read:

21622. The board shall require the successful bidder or bidders to file with the board, good and sufficient bonds, to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection therewith. Such contracts shall be subject to the provisions of ~~Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code~~ Part 6 (commencing with Section 41010) of Division 2.

Comment. Section 21622 is amended to correct a cross-reference.

Pub. Cont. Code § 21631 (amended). Merced County Flood Control District

SEC. _____. Section 21631 of the Public Contract Code is amended to read:

21631. (a) Any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed six thousand five hundred dollars (\$6,500), shall be done by contract and shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable parts, or both, as stated in the call. The board may let the work by

single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board a good and sufficient bond, to be approved by the board, conditioned upon the payment of their claims for labor and material. The bond shall contain the terms and conditions set forth in ~~Title 15 (commencing with Section 3082)~~ of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) of Division 2 and be subject to the provisions of that ~~title~~ part. The board may reject any and all bids and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account.

(b) If no proposals are received pursuant to advertisement or the estimated cost of the work does not exceed six thousand five hundred dollars (\$6,500), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by employees of the district, by day labor, under the direction of the board, by contract, or by a combination of those methods. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except that work referred to in subdivision (b), may not be purchased if the cost exceeds six thousand five hundred dollars (\$6,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21631 is amended to correct a cross-reference and make a technical change.

STREETS AND HIGHWAYS CODE

Sts. & Hy. Code § 136.5 (amended). Competitive bidding and payment bonds

SEC. _____. Section 136.5 of the Streets and Highways Code is amended to read:

136.5. (a) The contracts referred to in Sections 135, 136, and 136.1 are not subject to the State Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code). Except for emergency work of the type described in subdivision (b), whenever the estimated amount of a contract exceeds two thousand five hundred dollars (\$2,500), it shall be awarded to the lowest responsible bidder, after competitive bidding on any reasonable notice that the department may prescribe. Posting of notice for five days in a public place in the district office within which the work is to be done, or the equipment used, is sufficient. Those contracts shall be subject to the applicable payment bond provisions of ~~Chapter 7 (commencing with Section 3247) of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 of the Public Contract Code. The department may require faithful performance bonds when considered necessary. The advertisement for each contract shall state whether or not a bond shall be required.

(b) In cases of emergency work necessitated by the imminence or occurrence of a landslide, flood, storm damage, accident, or other casualty, tools or equipment may be rented for a period of not to exceed 60 days without competitive bidding, and the department may waive the requirements of ~~Chapter 7 (commencing with Section 3247) of Part 4 of Division 3 of the Civil Code~~ Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 of the Public Contract Code to the extent that a contractor may commence performance of the work under the contract for the rental of

tools or equipment prior to filing a payment bond with the department. In that case, no payment shall be made to the contractor until a payment bond covering all work of the contract is filed with the department.

Comment. Section 136.5 is amended to correct cross-references.

DISPOSITION OF EXISTING LAW

The table below shows the disposition of sections of existing law that would be repealed by the proposed law. Unless otherwise indicated, all sections listed in the table are from the Civil Code. For further detail, see the Comment to the appropriate proposed new provision in the draft of Proposed Legislation, *supra*.

Existing Provision	Proposed New Provision(s)
3081.1.....	8012
3081.2.....	8302
3081.3.....	8304
3081.4.....	8306
3081.5.....	8308
3081.6.....	8310
3081.7.....	8312
3081.8.....	8314
3081.9.....	8316
3081.10.....	8318
3082	8000, Pub. Cont. Code § 41010
3083	8506, 8532
3084	8058, 8416, Pub. Cont. Code § 42250
3085	8002, Pub. Cont. Code § 41020
3086	8150, Pub. Cont. Code § 42210
3087	8006
3088	8008, 8013
3089	8020, Pub. Cont. Code § 41070
3090	8026
3092	8028, 8062, 8100, 8102, 8155, Pub. Cont. Code §§ 42110, 42120, 42220
3093	8058, 8062, 8100, 8102, 8152, Pub. Cont. Code §§ 42110, 42120, 42230, 42250
3094	8100, 8114, 8444
3095	8014, Pub. Cont. Code § 41040
3096	8030, 8606, Pub. Cont. Code §§ 41080, 45030

Existing Provision	Proposed New Provision(s)
3097	8034, 8052, 8100, 8102, 8106, 8118, 8200, 8202
3097(d)	8204
3097(e)	8212
3097(f)	8116
3097(g)	8206
3097(h)	not continued
3097(i)	8132
3097(j)	8134
3097(k)	8104, Pub. Cont. Code § 42130
3097(l)-(m)	8130, 8208
3097(n)	8210
3097(o)	8214
3098	Pub. Cont. Code §§ 41100, 42110, 42120, 42140, 43010, 43040, 43050
3099	8036, Pub. Cont. Code § 41110
3100	Pub. Cont. Code §§ 41120, 42010
3101	8040, Pub. Cont. Code § 41130
3102	8042
3103	8044, 8100, 8102, 8106, 8502, 8506, Pub. Cont. Code §§ 41140, 42060, 42110, 42120, 42140, 44120, 44130
3104	8046, Pub. Cont. Code § 41150
3105	not continued
3106	8050, Pub. Cont. Code § 41170
3109	not continued
3110	8400, 8404, 8430, Pub. Cont. Code § 42030
3110.5(a)	8710
3110.5(a)(1)	8700
3110.5(a)(2)	8700
3110.5(b)	8710, 8720
3110.5(b)(1)	8722
3110.5(b)(2)	8724
3110.5(b)(3)	8726, 8728
3110.5(c)	8712, 8730
3110.5(d)	8716

Existing Provision	Proposed New Provision(s)
3110.5(e)	8702
3110.5(f).....	8704
3110.5(g).....	8714
3111	8020, Pub. Cont. Code §§ 41070, 42030
3112	8402, 8404, 8440, Pub. Cont. Code § 42030
3114	8410
3115	8412
3116	8414
3117	8154, Pub. Cont. Code § 42230
3118	8422
3123	8008, 8010, 8012, 8430
3124	8432
3128	8440, 8442
3129	8442
3130	8446
3131	8448
3134	8450
3135	8454
3136	8456
3137	8458
3138	8452
3139	8458
3140	8434
3143	8424
3144	8460
3144.5.....	8106, 8424
3145	8460
3146	8460
3147	8462
3148	8490
3149	not continued
3150	8464
3151	8466
3152	8468
3153	8470

Existing Provision	Proposed New Provision(s)
3154(a)	8480(a)(1)
3154(b)	8484, 8488
3154(c)	8486
3154(d)	8486
3154(e)	8486, 8488
3154(f)	8488, 8490
3154(g)	8488
3154(h)	8480
3154(i)	8480
3156	8152
3158	8520
3159	8508, 8530
3159(a)	8530, 8536, 8538
3159(b)	8542
3159(c)	8542
3160	8508
3161	8522
3162(a)	8536, 8538
3162(b)	8542
3162(c)	8542
3163	8534
3166	8544
3167	8540
3168	8504
3171	8510
3172	8550
3173	8554
3174	8556
3175	8552
3176	8558
3176.5.....	8560
3179	Pub. Cont. Code § 42010
3181	Pub. Cont. Code § 42030
3183	Pub. Cont. Code § 44410
3184	Pub. Cont. Code § 44140

Existing Provision	Proposed New Provision(s)
3185	Pub. Cont. Code §§ 42140, 44170
3186	Pub. Cont. Code §§ 41050, 44150
3187	Pub. Cont. Code §§41040, 41050, 44160
3190	Pub. Cont. Code § 44310
3191	Pub. Cont. Code § 44320
3192	Pub. Cont. Code § 44330
3193	Pub. Cont. Code § 44340
3196	Pub. Cont. Code §§ 41050, 44180
3197	Pub. Cont. Code § 44210
3198	Pub. Cont. Code § 44220
3199	Pub. Cont. Code §§ 42140, 44230
3200	Pub. Cont. Code § 44240
3201	Pub. Cont. Code § 44250
3202	Pub. Cont. Code § 44260
3203	Pub. Cont. Code § 44270
3204	not continued
3205	Pub. Cont. Code § 44280
3210	Pub. Cont. Code § 44420
3211	Pub. Cont. Code § 44430
3212	Pub. Cont. Code § 44450
3213	Pub. Cont. Code § 44460
3214	Pub. Cont. Code § 44440
3225	8142, Pub. Cont. Code § 42070
3226	8144, Pub. Cont. Code § 45040
3227	8106, Pub. Cont. Code §§ 42140, 45070
3235	8052, 8602
3236	8600, 8602
3237	8022, 8604
3239	8610
3240	8610
3242	8612
3247	Pub. Cont. Code §§ 41030, 45010
3248	Pub. Cont. Code § 45030
3249	Pub. Cont. Code § 45050
3250	Pub. Cont. Code § 45080

Existing Provision

Proposed New Provision(s)

3251	Pub. Cont. Code § 45020
3252	Pub. Cont. Code §§ 42120, 45060
3258	8058, Pub. Cont. Code § 42250
3259	8054, Pub. Cont. Code § 42040
3259.5.....	8106, 8156
3260	8810 through 8822
3260.1.....	8052, 8800
3260.2.....	8106, 8114, 8118, 8830 through 8848
3261	8422
3262(a)	8160 through 8176, Pub. Cont. Code §§ 42310 through 42390
3262.5.....	8802
3263	8060
3264	8500, Pub. Cont. Code § 44110
3265	Pub. Cont. Code § 44410
3266	8066, Pub. Cont. Code § 42010
3267	8608, Pub. Cont. Code §§ 41030, 45090
7100	1749.71
7101	1749.72
7102	1749.73
7103	1749.74
7104	1749.75
7105	1749.70
7106	1749.76

