

Study H-820

February 7, 2000

First Supplement to Memorandum 2000-9**Mechanic's Liens: Update on HIPP Project**

Attached to this supplement is a revised version of the Contractors State Licensing Board Home Improvement Protection Plan (HIPP 2000), which was considered by the Board at its January 18, 2000, meeting, and part of an ongoing CSLB project. We want to keep the Commission and interested persons apprised of the status of the HIPP 2000 proposals because they have been suggested by some commentators as the best way to address many of the mechanic's lien issues. (See, e.g., Gordon Hunt's Report Part 2, attached to Memorandum 2000-9, at pp. 10-11; the revised version of HIPP 2000 supersedes the earlier version in the exhibit attached to Mr. Hunt's Report.)

As work proceeds on the mechanic's lien study, the Commission will need to take account of the CSLB's work and we hope to have a profitable working relationship with the CSLB and its staff. Ellen Gallagher, from the CSLB staff, plans to attend the February meeting and will be able to update the Commission on the status of the CSLB's HIPP 2000 project and provide other information concerning mechanic's lien reform.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

HIPP 2000: Amendments to B&P Code/ Notices ¹

1 The single underlined changes are proposed changes to existing law. The double
2 underlined sections and cross outs are changes made to the version provided to the public
3 as published in the Contractors State License Board packet for its January 18, 2000
4 meeting.

5
6 This proposal:

- 7
- 8 • Renames the current Notice to Owner to become a “Mechanics’ Lien Warning”
9 and revises the text
- 10
- 11 • Changes the Notice provisions required in the Home Improvement Contract itself,
12 adds a “Checklist for Homeowners,” and adds a Progress Payment Checklist.
- 13
- 14 • Creates penalties for contractors who fail to give required notices
- 15

16 I. Notice to owner to become “Mechanics’ Lien Warning”

17
18 This bill would revise the present “Notice to Owner” found in Business & Professions
19 Code section 7018.5. The revisions would rename the notice as “Mechanics’ Lien
20 Warning” to better describe the function of the notice and to avoid confusion with the
21 “Notice to Property Owner,” another notice contractors are required by law to provide
22 to owners. The new notice better explains the danger of mechanics’ liens and
23 emphasizes the value of Conditional and Unconditional Releases. The bill also proposes
24 to assign to the Contractors State License Board responsibility to make future changes
25 to the notice by regulation. This bill also requires that a contractor obtain a written
26 receipt from the homeowner indicating that the mechanics’ lien warning was received.

27 28 **Text**

29
30 The Legislature finds and declares that mechanics’ liens resulting from a failure of a
31 licensed contractor to pay his or her obligations to subcontractors, material suppliers,
32 laborers, and other individuals contributing to a work of home improvement, including
33 repairing, remodeling and adding to a residence, or contributing to swimming pool
34 construction can be a significant problem for California homeowners. The legislature
35 recognizes that one way to assist homeowners to avoid these mechanics’ liens is to
36 provide homeowners with information about mechanics’ liens prior to the homeowner
37 entering into a contract for home improvement with a licensed contractor. The purpose
38 of this information is to warn the homeowner about mechanics’ liens and describe ways
39 to avoid them.
40

1. Law Revision Commission Staff Note: This material is reformatted from a document provided by Ellen Gallagher, Contractors State License Board.

1 The Legislature also recognizes that this kind of notice is best created and maintained
2 through a regulatory process which enables the Contractors State License Board,
3 industry and consumers to join together to create usable warnings. Therefore, the
4 Legislature instructs the Contractors State License Board to consult with representatives
5 of the construction industry, with consumer groups and with other parties who have
6 demonstrated an interest in the issue of mechanics' liens and, as soon as is practicable,
7 develop and promulgate by administrative regulation a new warning to homeowners
8 concerning mechanics' liens and ways to avoid them. Upon adoption of the regulations
9 creating a new "Mechanics' Lien Warning," the interim warning will become
10 inoperative.

11
12 **Text of Mechanics' Lien Warning**

13
14 7018.5. (a) The board shall, by regulation, prescribe a form entitled "Mechanics'
15 Lien Warning." "Notice to Owner" which shall state:

16 ~~"Under the California Mechanics' Lien Law, any...~~
17 ~~....etc.- (Replace present notice with the following notice:)~~

18
19 Until the board adopts a regulation describing mechanics' liens and ways to avoid them,
20 the following notice, with headings in 16 point type, and text in 11 point type with
21 emphasis as written, shall be used:

22
23 **Mechanics' Lien Warning:**

24
25 **To Avoid Liens on Your Home**
26 **Please Read This Warning Carefully**

27
28 You probably realize that, if you don't pay your contractor, the contractor has a right to
29 place what is called a "mechanics' lien" on the home, land, or property where the work
30 was performed, and the contractor may sue you in court to obtain payment. This means
31 that, after a court hearing, your home, land, and property could be sold by a court
32 officer and the proceeds of the sale could be used to satisfy what you owe.

33
34 You may not realize, however, that subcontractors, laborers, material suppliers and
35 other parties that contribute to your home improvement project also can place a lien on
36 your home, land, or property. **This can happen even if you have paid your**
37 **contractor in full.** Each year, a number of California homeowners have to pay twice
38 for the same work because the contractor fails to pay the subcontractors, laborers and
39 material suppliers. **You may even lose your home.**

40
41 **HOW TO PROTECT YOURSELF**

42
43 **Inform yourself about liens and ways to prevent them.** The Contractors State
44 License Board (CSLB) can provide you with a pamphlet describing liens and how they
45 work. You can get a copy of the pamphlet, "Don't Lien on Me -- Mechanics' Liens,"

1 by calling the CSLB information number 800-321-CSLB (2752) or by accessing the
2 CSLB website (www.cslb.ca.gov).

3
4 **Watch for Preliminary Notices.** Subcontractors, material suppliers, and some other
5 claimants are required to provide you with a document called a “Preliminary Notice” if
6 they want to preserve their rights to file a lien against your property. This notice must
7 be given to you within 20 days of the date the possible lien claimant provides goods or
8 services. The Preliminary Notice informs you of your obligation to make sure that you
9 or your contractor pays the claimant. Be aware that, when jobs are completed quickly,
10 the Preliminary Notice may not be sent until after the job is complete.

11
12 **Obtain a list of potential claimants.** Ask your contractor for a list of proposed
13 subcontractors and material suppliers. If, as the project continues, the contractor
14 changes or adds subcontractors or material suppliers, require your contractor to update
15 this list. If you don't know whether the contractor has arranged for subcontractors,
16 laborers, and material suppliers to provide material or services to your project, ask
17 your contractor for a list. A prudent consumer will match this list with the scheduled
18 payments described in the contract to determine when payment is due to each
19 subcontractor, material supplier, etc., contributing to your work of home improvement.
20 You may also want to compare this list with the possible potential lien claimants who
21 send Preliminary Notices to make sure all potential lien claimants are accounted for.

22
23 **Ways to make sure that potential lien claimants are paid include:**

24
25 **1. Get an Unconditional Waiver and Release.** No matter what method you use to
26 make sure payment is made, a smart consumer will always get a **signed** “Unconditional
27 Waiver and Release” from each potential claimant. This is usually a two-step process.
28 First, you should exercise your right to require your contractor to provide you with a
29 signed Conditional Release from each potential lien claimant. Along with In each
30 Request for Payment (bill) presented to you that includes a payment or partial payment
31 for a potential lien claimant, your contractor should give you a this signed Conditional
32 Release from that potential lien claimant. The Conditional Release refers only to the
33 part of the lien claimant's work covered by the bill. A signed Conditional Release tells
34 you that the lien claimant has agreed to release his or her right to a lien once her or she
35 the lien claimant is paid. After you pay the contractor and before you make any more
36 payments to your contractor, you should insist that the contractor provide you with an
37 Unconditional Release signed by each lien claimant for the part of the work for which
38 payment has been made you have made payment. If your contractor is slow to provide
39 unconditional releases, you can call the potential lien claimant to verify that the
40 contractor has made the payment.

41
42 **Three things to remember:** First, an Unconditional Release waiver signed by from your
43 contractor covers only the your contractor's claim, not the subcontractors, material

1 suppliers and laborers. Second, no matter how many separate progress payments are
2 made in your project, the subcontractors and material suppliers are required to send you
3 only one there may be only one Preliminary Notice per potential claimant. Preliminary
4 Notice. Third, Second, each Unconditional Release covers only the subcontractor,
5 material supplier or laborer who signs it and covers only the portion of work for which
6 payment is made.

7
8 The exact language of a lien release is set forth in Section 3262 of the Civil Code. Most
9 stationery stores will sell “Waiver and Release” forms if your contractor does not have
10 them.

11
12 **Beware: an unconditional release waiver from your contractor covers only the**
13 **contractor’s claim, not the subcontractors, material suppliers and laborers.**

14
15 **2. Hire a joint control service.** Joint control companies, licensed by the Department of
16 Corporations, are available throughout the state. Under this plan, you pay the joint
17 control company and the joint control company pays the contractor, subcontractor,
18 material supplier etc. Make sure that any joint control agreement includes CSLB
19 approved procedures.

20
21 **3. Issue joint checks.** Under the joint check plan, you issue checks for payments made
22 out to both the contractor and the subcontractor or material supplier involved in the
23 project. This will help to ensure, although it does not guarantee, that all persons due
24 payment are actually paid. You will still want to get Unconditional Releases.

25
26 **3. Require payment and performance bonds (not a license bond).** Under this plan,
27 the contractor purchases payment and performance bonds. These bonds require the
28 issuing company to complete the project and/or pay damages up to the amount of the
29 bond. The contractor may pass the cost of this bond (1% to 5%) on to you, the
30 homeowner.

31
32 **Finally, understand that license bonds have limitations.** Although your contractor
33 must post some form of financial security with CSLB, usually in the form of a
34 contractor’s license bond, this \$7,500 (\$10,000 for a residential swimming pool
35 contractor) bond may be the only financial security available to cover all damages
36 caused by a contractor’s violation of the contractors’ license law. Some consumers
37 make the mistake of believing the entire bond amount will be available if they are
38 injured. Be careful. In some cases, the bond may not cover your loss at all. In other
39 instances, you may be competing with other consumers for a payment from this same
40 bond. Consequently, relying on the contractor’s license bond to cover your loss may be
41 a mistake.

42
43 (b) Each contractor licensed under this chapter, pPrior to entering into a contract with
44 an owner or other person contracting for more than \$500 of work specified as home
45 improvement or residential swimming pool construction pursuant to Section 7159, the

1 contractor shall give a copy of “Notice to Owner” the “Mechanics’ Lien Warning”
2 described in section (a) to the owner, the owner’s agent, or the payer as part of the bid
3 package or, as part of the contract if the bid and contract are completed in one
4 transaction, and shall obtain from that person a written receipt which states that the
5 person has received and read the warning. The contractor is required to treat the copy
6 of the “Mechanics’ Lien Warning” as a written record pursuant to Section 7111. The
7 failure to provide this notice as required shall constitute grounds for disciplinary action.

8 (c) A violation of this section by a licensee, or a person subject to be licensed as part
9 of a scheme to defraud a consumer is a misdemeanor punishable by a fine of not less
10 than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by
11 imprisonment in the county jail not exceeding one year, or by both that fine and
12 imprisonment.

13
14 **II. Changes are made to Contract (B&P Code section 7159) including “Checklist for**
15 **Homeowners”**

16
17 This bill would revise Business & Professions Code section 7159 to clarify existing
18 notices and add additional notices to each home improvement contract. The bill also
19 splits 7159 into two sections. One section, 7159, describes the elements and notices
20 required within the contract itself. The other section 7159.1 includes sections to be
21 removed from 7159 and describes a new “Checklist” each contractor would be required
22 to provide to homeowners seeking home improvement work and services. This bill also
23 would renumber the present 7159.1 and 7159.2 as 7159.5 and 7159.6, respectively.

24
25 **Text**

26
27 7159. This section applies only to home improvement contracts, as defined in Section
28 7151.2, between a contractor, whether a general contractor or a specialty contractor,
29 who is licensed or subject to be licensed pursuant to this chapter with regard to the
30 transaction and who contracts with an owner or tenant for work upon a residential
31 building or structure, or upon land adjacent thereto, for proposed repairing,
32 remodeling, altering, converting, modernizing, or adding to the residential building or
33 structure or land adjacent thereto, and where the aggregate contract price specified in
34 one or more improvement contracts, including all labor, services, and materials to be
35 furnished by the contractor, exceeds five hundred dollars (\$500).

36 Every home improvement contract and every contract, the primary purpose of which
37 is the construction of a residential swimming pool, is subject to the notice requirements
38 in this section. Every contract and any changes in the contract subject to this section
39 shall be evidenced by a writing and shall be signed by all the parties to the contract
40 prior to any work being performed.. The writing shall contain
41 all of the following information in at least 11 point type::
42

1 (a) The statement:

2 **A Message from the**
3 **Contractors State License Board (CSLB)**

4 The home improvement contract is the agreement between you, the person contracting
5 for a home improvement or residential swimming pool project, and the contractor.
6 Having a written contract helps to make sure that you and your contractor agree on the
7 work to be performed, including how it will be done, when it will be done, what
8 materials will be used and how much it will cost. If your contract doesn't address these
9 points answer these questions, you may not be sufficiently protected in a later dispute.

10
11 Your contractor should also give you information about subcontractors, material
12 suppliers and equipment renters who, if not paid by your contractor, can file what is
13 called a mechanics' lien on your property.

14
15 For more information on home improvement contracting, consult the Contractor's State
16 License Board's CSLB's Checklist for Homeowners and contact the Contractors State
17 License Board at 800-321-CSLB (2752) or www.cslb.ca.gov.

18
19 (a) (b) The name, address, and license number of the contractor, and the name and
20 registration number of any salesperson who solicited or negotiated the contract.

21 (b) (c) The approximate dates when the work will begin, labeled "Approximate Start
22 Date," and on which all construction is to be completed, labeled "Approximate
23 Completion Date" and a notice appearing in close proximity thereto stating that:
24 "Failure by the contractor without lawful excuse to substantially commence work within
25 20 days from the approximate date specified in the contract when work will begin is a
26 violation of the Contractors State License Law." The contract shall also describe what
27 constitutes substantial commencement of work.

28 (c) (d) For a contract to construct a residential swimming pool: a A plan and scale
29 drawing showing the shape, size, dimensions, and construction and equipment
30 specifications, and the amount the parties agree will be paid for the project. for a
31 residential swimming pool and. For for a contract for other home improvements: a
32 description of the work to be done and description of the installed, and the amount the
33 parties agree will be paid for the project agreed consideration for the work.

34 (d) (e) If the payment schedule contained in the contract provides for a downpayment
35 to be paid to the contractor by the owner or the tenant before the commencement of
36 work, the amount of the downpayment should be clearly labeled "Downpayment" and
37 placed in direct proximity to the relevant statement. For swimming pools: "The
38 downpayment may not exceed whichever is less -- two hundred dollars (\$200) or 2
39 percent of the contract price." excluding finance charges." or "The downpayment may
40 not exceed whichever is less -- one thousand dollars (\$1,000) or 10 percent of the
41 contract price, for other home improvements, excluding finance charges."

1 (e) (f) A schedule of proposed progress payments, labeled “**Proposed Schedule of**
2 **Progress Payments**,” and showing the amount of each payment as a sum in dollars and
3 cents and a statement immediately preceding the schedule of payments that states: “The
4 proposed schedule of progress payments must specifically reference the describe the
5 type and amount of work or services to be performed and any materials and equipment
6 to be supplied. When progress of the project is delayed, payment should be delayed.
7 **Remember, it is against the law for a contractor to collect payment for work not**
8 **yet completed or material not yet delivered** for an equivalent time period.

9 After the project has begun, all Requests for Progress Payment (bills) must be
10 accompanied by a “Request for Payment Checklist” prepared by the board.” In no
11 event may the payment schedule provide for the contractor to receive, nor may the
12 contractor actually receive, payments in excess of 100 percent of the value of the work
13 performed on the project at any time, excluding finance charges, except that the
14 contractor may receive an initial downpayment authorized by subdivision (d). With
15 respect to a swimming pool contract, the final payment may be made at the completion
16 of the final plastering phase of construction, provided that any installation or
17 construction of equipment, decking, or fencing required by the contract is also
18 completed. A failure by the contractor without lawful excuse to substantially commence
19 work within 20 days of the approximate date specified in the contract when work will
20 begin shall postpone the next succeeding payment to the contractor for that period of
21 time equivalent to the time between when substantial commencement was to have
22 occurred and when it did occur. The schedule of payments shall be stated in dollars and
23 cents, and shall be specifically referenced to the amount of work or services to be
24 performed and to any materials and equipment to be supplied. With respect to a
25 contract that provides for a schedule of monthly payments to be made by the owner or
26 tenant and for a schedule of payments to be disbursed to the contractor by a person or
27 entity to whom the contractor intends to assign the right to receive the owner’s or
28 tenant’s monthly payments, the payments referred to in this subdivision mean the
29 payments to be disbursed by the assignee and not those payments to be made by the
30 owner or tenant.

31 (f) (g) A statement labeled “**Protecting Yourself From Mechanics’ Liens**” that
32 states: “Any Request for Payment (bill) demand for payment made pursuant to the
33 schedule of progress payments should include a list of the subcontractors, material
34 suppliers, equipment renters who the contractor intends to pay out of that payment as
35 well as a description of the amount of work the payment covers.contributing to the
36 work of improvement unless this provision is specifically waived by the person
37 contracting for home improvement services. Upon satisfactory payment being made for
38 any portion of the work performed, the contractor shall, prior to any further payment
39 being made, furnish to the person contracting for the home improvement or residential
40 swimming pool a full and unconditional release from any claim or mechanic’s lien
41 pursuant to Section 3114 of the Civil Code for that portion of the work for which
42 payment has been made including full and unconditional releases from any
43 subcontractors, material suppliers and other potential lien claimants hired by the
44 contractor or by subcontractors. Upon request, a contractor must provide a list of all

1 potential lien claimants including claimants whose mechanics' lien rights arise out of a
2 subcontractor's action in hiring labor and/or other subcontractors, or purchasing
3 material. or or other or purchase. Consumers should contact the CSLB for brochures
4 about liens and lien releases or seek advice from an attorney."

5 (g) (h) The notice requirements set forth in subdivisions (d), (e), (f), and (g) do not
6 apply when the contract provides for the contractor to furnish a performance and
7 payment bond, lien and completion bond, bond equivalent, or joint control agreement
8 approved by the registrar covering full performance and completion of the contract and
9 the bonds or joint control is or are furnished by the contractor. The notice requirements
10 set forth in subdivisions (e) and (f) do not apply or when the parties agree for full
11 payment to be made upon or for a schedule of payments to commence after satisfactory
12 completion of the project. If one of these options is chosen, the option must be
13 identified in the contract.

14 (i) The contract shall contain, in close proximity to the signatures of the owner and
15 contractor, a notice in at least 10-11 point type stating that the "The owner or tenant has
16 the right to require the contractor to have a performance and payment bond. The
17 contractor may pass the cost of these bonds on to the owner or tenant."

18 (h) (j) The contract shall also contain the statement labeled "Extra Work or Change-
19 orders" that states: "Extras or change-orders should always be in writing so as to be
20 made part of the contract and should be signed prior to the start of the extra or change
21 work." No extra or change-order work may be required to be performed without prior
22 written authorization of the person contracting for the construction of the home
23 improvement or swimming pool. No change-order is enforceable against the person
24 contracting for home improvement work or swimming pool construction unless it
25 clearly sets forth the scope of work encompassed by the change-order and the price to
26 be charged for the changes. Any change-order forms for changes or extra work shall be
27 incorporated in, and become a part of, the contract. Failure to comply with the
28 requirements of this subdivision does not preclude the recovery of compensation for
29 work performed based upon quasi-contract, quantum meruit, restitution, or other
30 similar legal or equitable remedies designed to prevent unjust enrichment.

31 (i) ~~If the contract provides for a payment of a salesperson's commission out of the~~
32 ~~contract price, that payment shall be made on a pro rata basis in proportion to the~~
33 ~~schedule of payments made to the contractor by the disbursing party in accordance with~~
34 ~~subdivision (e).~~

35 (j) ~~The language of the notice required pursuant to Section 7018.5.~~

36 (k) ~~What constitutes substantial commencement of work pursuant to the contract.~~

37 (l) ~~A notice that failure by the contractor without lawful excuse to substantially~~
38 ~~commence work within 20 days from the approximate date specified in the contract~~
39 ~~when work will begin is a violation of the Contractors State License Law.~~

40 (m) (k) The statement: "Before any work is started, the contractor shall provide a
41 copy of the written agreement, signed by the contractor to the person contracting for
42 home improvement work."

43 (l) The statement: "The contractor or home improvement salesperson is required to
44 give the person contracting for home improvement work or services a copy of the

1 **“CSLB’s Contractors State License Board’s Checklist for Homeowners” as part of**
2 **the bid package or along with the contract, if the bid and contract are provided at the**
3 **same time.**

4 ~~(m) If the contract provides for a contractor to furnish joint control, the contractor~~
5 ~~shall not have any financial or other interest in the joint control.~~

6 ~~A failure by the contractor without lawful excuse to substantially commence work~~
7 ~~within 20 days from the approximate date specified in the contract when work will~~
8 ~~begin is a violation of this section.~~

9 (m) This section does not prohibit the parties to a home improvement contract from
10 agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801)
11 of Title 2 of Part 4 of Division 3 of the Civil Code.

12 The writing may also contain other matters agreed to by the parties to the contract.

13 ~~The writing shall be legible and shall be in a form that clearly describes any other~~
14 ~~document that is to be incorporated into the contract. Before any work is done, the~~
15 ~~owner shall be furnished a copy of the written agreement, signed by the contractor.~~

16 For purposes of this section and 7159.1, the board shall, by regulation, determine
17 what constitutes “without lawful excuse.”

18 The provisions of this section and 7159.1 are not exclusive and do not relieve the
19 contractor or any contract subject to it from compliance with all other applicable
20 provisions of law.

21 ~~(n) A In addition to constituting a violation of section 7115, violation of this section~~
22 ~~by a licensee, or a person subject to be licensed, under this chapter, or by his or her~~
23 ~~agent or salesperson, is a cause for disciplinary action.~~

24 ~~(o) A violation of this section by a licensee, or a person subject to be licensed as part~~
25 ~~of a scheme to defraud a consumer is a misdemeanor punishable by a fine of not less~~
26 ~~than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by~~
27 ~~imprisonment in the county jail not exceeding one year, or by both that fine and~~
28 ~~imprisonment.~~

29 ~~(p) Any person who violates this section as part of a plan or scheme to defraud an~~
30 ~~owner of a residential or nonresidential structure, including a mobilehome or~~
31 ~~manufactured home, in connection with the offer or performance of repairs to the~~
32 ~~structure for damage caused by a natural disaster, shall be ordered by the court to make~~
33 ~~full restitution to the victim based on the person’s ability to pay, as defined in~~
34 ~~subdivision (e) of Section 1203.1b of the Penal Code.~~

35 In addition to full restitution, and imprisonment authorized by this section, the court
36 may impose a fine of not less than five hundred dollars (\$500) nor more than twenty-
37 five thousand dollars (\$25,000), based upon the defendant’s ability to pay. This
38 subdivision applies to natural disasters for which a state of emergency is proclaimed by
39 the Governor pursuant to Section 8625 of the Government Code or for which an
40 emergency or major disaster is declared by the President of the United States.

41
42 ~~7159. 1 This section applies only to home improvement contracts, as defined in~~
43 ~~Section 7151.2 and 7159, between a contractor, whether a general contractor or a~~
44 ~~specialty contractor, who is licensed or subject to be licensed pursuant to this chapter~~

1 with regard to the transaction and who contracts with an owner or tenant for work upon
2 a residential building or structure, or upon land adjacent thereto, for proposed
3 repairing, remodeling, altering, converting, modernizing, or adding to the residential
4 building or structure or land adjacent thereto, and where the aggregate contract price
5 specified in one or more improvement contracts, including all labor, services, and
6 materials to be furnished by the contractor, exceeds five hundred dollars (\$500).
7 Every home improvement contract and every contract, the primary purpose of which
8 is the construction of a residential swimming pool, is subject to this section.

9 (a) If the payment schedule contained in the contract provides for a downpayment to
10 be paid to the contractor by the owner or the tenant before the commencement of work,
11 the downpayment may not exceed two hundred dollars (\$200) or 2 percent of the
12 contract price for residential swimming pools, or one thousand dollars (\$1,000) or 10
13 percent of the contract price, whichever is less, for other home improvements,
14 excluding finance charges.

15 (b) The schedule of payments showing the amount of each payment as a sum in
16 dollars and cents must specifically reference the type and amount of work or services to
17 be performed and any materials and equipment to be supplied. In no event may the
18 payment schedule provide for the contractor to receive, nor may the contractor actually
19 receive, payments in excess of 100 percent of the value of the work performed on the
20 project at any time, excluding finance charges, except that the contractor may receive
21 an initial downpayment authorized by subdivision (a). With respect to a residential
22 swimming pool contract, the final payment may be made at the completion of the final
23 plastering phase of construction, provided that any installation or construction of
24 equipment, decking, or fencing required by the contract is also completed. A failure by
25 the contractor without lawful excuse to substantially commence work within 20 days of
26 the approximate date specified in the contract when work will begin shall postpone the
27 next succeeding payment to the contractor for that period of time equivalent to the time
28 between when substantial commencement was to have occurred and when it did occur.
29 The schedule of payments shall be stated in dollars and cents, and shall be specifically
30 referenced to the amount of work or services to be performed and to any materials and
31 equipment to be supplied. With respect to a contract that provides for a schedule of
32 monthly payments to be made by the owner or tenant and for a schedule of payments to
33 be disbursed to the contractor by a person or entity to whom the contractor intends to
34 assign the right to receive the owner's or tenant's monthly payments, the payments
35 referred to in this subdivision mean the payments to be disbursed by the assignee and
36 not those payments to be made by the owner or tenant.

37 (c) Upon satisfactory payment being made for any portion of the work performed, the
38 contractor shall, prior to any further payment being made, furnish to the person
39 contracting for the home improvement or residential swimming pool a full and
40 unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the
41 Civil Code for that portion of the work for which payment has been made including full
42 and unconditional releases from the contractor, subcontractors, material suppliers and
43 other potential lien claimants hired by the contractor or subcontractor.

44 (d) The requirements set forth in subdivisions (a), (b), and (c) do not apply when the
45 contract specifically provides for the contractor to furnish a performance and payment

1 bond, lien and completion bond, bond equivalent, or joint control approved by the
2 registrar covering full performance and completion of the contract and the bond or joint
3 control agreement is furnished by the contractor. The requirements set forth in
4 subdivision (a) and (b) do not apply when the parties agree for full payment to be made
5 upon or for a schedule of payments to commence after satisfactory completion of the
6 project. If one of these options is chosen, the option must be identified in the contract.

7 (e) No extra or change-order work may be required to be performed without prior
8 written authorization of the person contracting for the construction of the home
9 improvement or residential swimming pool. No change-order is enforceable against the
10 person contracting for home improvement work or residential swimming pool
11 construction unless it clearly sets forth the scope of work encompassed by the change-
12 order and the price to be charged for the changes. Any change-order forms for changes
13 or extra work shall be incorporated in, and become a part of, the contract. Failure to
14 comply with the requirements of this subdivision does not preclude the recovery of
15 compensation for work performed based upon quasi-contract, quantum meruit,
16 restitution, or
17 other similar legal or equitable remedies designed to prevent unjust enrichment.

18 (f) If the contract provides for a payment of a salesperson's commission out of the
19 contract price, that payment shall be made on a pro rata basis in proportion to the
20 schedule of payments made to the contractor by the disbursing party in accordance with
21 subdivision (e).

22 (g) Failure by the contractor without lawful excuse to substantially commence work
23 within 20 days from the approximate date specified in the contract when work will
24 begin is a violation of the Contractors' State License Law.

25 (h) If the contract provides for a contractor to furnish joint control, the contractor
26 shall not have any financial or other interest in the joint control.

27 A failure by the contractor without lawful excuse to substantially commence work
28 within 20 days from the approximate date specified in the contract when work will
29 begin is a violation of this section.

30 This section does not prohibit the parties to a home improvement contract from
31 agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801)
32 of Title 2 of Part 4 of Division 3 of the Civil Code.

33 The writing may also contain other matters agreed to by the parties to the contract.

34 The writing shall be legible and shall be in a form that clearly describes any other
35 document that is to be incorporated into the contract. Before any work is done, the
36 owner shall be furnished a copy of the written agreement, signed by the contractor.

37 For purposes of this section and section 7159, the board shall, by regulation,
38 determine what constitutes "without lawful excuse."

39 The provisions of this section are not exclusive and do not relieve the contractor or
40 any contract subject to it from compliance with all other applicable provisions of law.

41 A violation of this section by a licensee, or a person subject to be licensed, under this
42 chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of
43 not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000),
44 or by imprisonment in the county jail not exceeding one year, or by both that fine and
45 imprisonment.

1 (i) As part of the bid, Each each contractor, except those exempt pursuant to section
2 (d), is required to provide a homeowner with a copy of the notice: “Checklist for
3 Homeowners.”

4 (j) The board shall, by regulation, prescribe a form entitled “ “Checklist for
5 Homeowners.” Until the board adopts a regulation creating a “Checklist for
6 Homeowners,”the following notice, with headings in 16 point type, and text in 11 point
7 type with emphasis as written, shall be used:
8

9 “Checklist for Homeowners”

- 10
- 11 • Have you checked out your contractor to make sure he or she has the background
12 and experience to handle your project?
- 13
- 14 • Have you requested and thoroughly check references for this contractor?
15
- 16 • Have you considered running a credit check on this contractor to evaluate the
17 contractor’s financial standing?
18

19 Does your home improvement contract include?

- 20
- 21 • The name, address, and license number of the contractor, and, if a salesperson
22 negotiated the contract, the name and registration number of the salesperson?
23
- 24 • The approximate dates when the work will begin and the construction will be
25 completed?
26
- 27 • A plan and scale drawing showing the shape, size, dimensions, and construction
28 and equipment specifications for residential swimming pool or other home
29 improvement?
30
- 31 • A detailed description of the work to be done?
32
- 33 • A description of the materials to be used and the equipment to be used or
34 installed?
35
- 36 • If a down payment is charged, is the down payment the lesser of \$1,000 or 10
37 percent of the contract price, excluding finance charges (or \$200 or 2 percent of
38 the contract price for residential swimming pools)?
39
- 40 • A proposed schedule of progress payments showing the amount of each progress
41 payment as a sum in dollars and cents?
42

43 The proposed schedule of progress payments should be tied to the amount of
44 work to be performed and to any materials and equipment to be supplied, i.e.,

1 payment is for progress. A prudent homeowner pays only as work is completed,
2 not before. Exception: You may safely pay a contractor all or most of the
3 money up-front if the contractor provides you with payment and performance
4 bonds. These payment and performance bonds protect you in case the contractor
5 is unable to perform. These bonds are not the same as the contractor's license
6 bond.

- 7
- 8 • Did your contractor give you a copy of the Mechanics' Lien Warning?
- 9

10 A person or business contributing to your home improvement project may file a
11 lien on your home to insure that he or she is paid. Until "unconditionally
12 released," the lien interferes with your property title. In fact, your home could
13 be sold to satisfy a lien even if you have paid your contractor in full. You
14 should have gotten information about liens from your contractor in the form of a
15 Mechanics' Lien Warning. You can get more information by accessing CSLB's
16 web site at www.ca.cslb.gov or by requesting information from CSLB at 800-
17 -321-CSLB (2752). Ask for a copy of the CSLB pamphlet, "Don't Lien on
18 Me!"

- 19
- 20 • Have you arranged for your contractor to provide you with a list of all potential
21 lien claimants and have you arranged for conditional releases signed by each
22 potential lien claimant to be given to you at the time you make your progress
23 payments? Likewise, is your contractor prepared to give you unconditional
24 releases for the work covering the last progress payment before you make another
25 payment?
- 26

27 See the Mechanics' Lien Warning and/or the pamphlet, "Don't Lien on Me."

- 28
- 29 • Finally, if you plan to make any changes or additions to the contract, did you
30 know that these changes should all be in writing? Placing changes in writing
31 reduces the possibility of a later dispute."
- 32

33 (k) As part of each request for payment, each contractor, except those exempt
34 pursuant to section (g), is required to provide a homeowner with a copy of the notice:
35 "Progress Payment Checklist for Homeowners."

36 Checklist for Homeowners." Until the board adopts a regulation creating a "Progress
37 Payment Checklist for Homeowners," the following notice, with headings in 16 point
38 type, and text in 11 point type with emphasis as written, shall be used:

39

40 **"Progress Payment Checklist for Homeowners"**

41

42 Contractor's Name:

43 Address:

44 License Number:

45

1 A prudent homeowner pays only as work is completed, not before. The schedule of
2 progress payments set out in your contract should have been tied to the amount of work
3 to be performed and to any materials and equipment to be supplied. Except for the
4 downpayment, your payments to the contractor should be for progress only. By paying
5 only as work is completed, you maintain more control over your home improvement
6 contract.

7
8 • **Request for Progress Payment**

9
10 The Request for Payment should correspond to the Progress Payment schedule
11 in the contract. By providing this Request for Payment, the contractor certifies
12 that this work is substantially complete and that payment is now due.

13
14 • **Lien Prevention**

15
16 By law, your contractor is required to give you a copy of the Mechanics' Lien
17 Warning, a notice created by the Contractors State License Board to inform you
18 of ways to prevent liens. A copy of that notice appears on the back of this sheet.

19
20 As described in the Mechanics' Lien Warning, a person or business contributing
21 to your home improvement project may file a lien on your home to insure that
22 he or she is paid. Until "released," the lien interferes with your property title. In
23 fact, your home could be sold to satisfy a lien even if you have paid your
24 contractor in full. Unless you and your contractor have specifically agreed in the
25 contract on some other lien prevention plan, such as a payment and performance
26 bond or a joint control agreement as approved by the Registrar, you should
27 make sure you get releases from each potential lien claimant.

28
29 • **Conditional Releases**

30
31 When your contractor requests a Progress Payment, he or she should also
32 provide you with Conditional Releases signed by any subcontractors, material
33 suppliers, etc. who provided work and equipment and contributed to the
34 completion of the progress described in the corresponding Progress Payments. A
35 Conditional Release affirms that the subcontractor, material supplier, etc. has
36 agreed to waive all lien rights once he or she has been paid.

37
38 • **Unconditional Releases**

39
40 Once you gotten Conditional Releases signed by each potential lien claimant and
41 you have made the progress payment to your contractor, your contractor should
42 pay those potential lien claimants and get Unconditional Releases from them.
43 Your contractor should then provide those releases to you for your records. The
44 most effective way a homeowner can manage payments is to require
45 Unconditional Releases from the last Progress Payment before paying the next

1 Progress Payment. In fact, Business & Professions Code section 7159.1 requires
2 a contractor to provide you with unconditional releases from the last payment or
3 be subject to discipline. You can get more information by accessing CSLB’s web
4 site at www.ca.cslb.gov or by requesting information from CSLB at 800- 321-
5 CSLB (2752). Ask for a copy of the CSLB pamphlet, “Don’t Lien on Me!”
6

7 ~~7159.1.~~ 7159.6 In any contract for the sale of home improvement goods or services
8 offered by door-to-door sale that contains or is secured by
9 a lien on real property, the contract shall be accompanied by the following notice in 18-
10 point boldfaced type:

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

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

25 This section shall not apply to any of the following:

26 (a) Any contract that is subject to Chapter 1 (commencing with Section 1801) of Title
27 2 of Part 4 of Division 3 of the Civil Code.

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

30 (c) Any contract that is subject to subdivision (a) of Section 7159.2.
31

32 ~~7159.2.~~ 7159.7 (a) No home improvement goods or services contract of a value of
33 five thousand dollars (\$5,000) or less shall provide for a security interest in real
34 property, except for a mechanic’s lien or other interest in property that arises by
35 operation of law. Any lien in violation of this subdivision is void and unenforceable.

36 (b) When the proceeds of a loan secured by a mortgage on real property are used to
37 fund goods or services pursuant to a home improvement goods or services contract of
38 more than five thousand dollars (\$5,000), the person or entity making the loan shall
39 only pay a contractor under the home improvement goods or services contract from the
40 proceeds of the loan by either of the following methods:

41 (1) By an instrument payable to the borrower or jointly to the borrower and the
42 contractor.

43 (2) At the election of the borrower, through a third-party escrow agent pursuant to
44 the terms of a written agreement signed by the borrower, the person or entity making
45 the loan, and the contractor prior to the disbursement.
46

1 **III. Penalties for contractor who fails to give required notices**

2
3 **Text**

4
5 **New B&P Section 7159.3**

6
7 This bill would create a presumption that where a notice was required but not given and
8 the harm the notice was designed to prevent occurs, the harm will be presumed to have
9 been willful and deliberate.

10
11 **Proposed Text**

12
13 7159.3 (a)Where the legislature requires that a notice or warning be given, and that
14 notice or warning is not given and the harm the notice or warning was designed to
15 prevent occurs, the licensee will be presumed to have acted willfully and deliberately.

16 (b) If the contract is written so as to obscure the notices or warnings or other
17 information the legislature has determined must be provided to the consumer, and the
18 harm the notice, warning or other information was designed to prevent or mitigate
19 occurs, the licensee will be presumed to have acted willfully and deliberately.

20