

Memorandum 2001-41

Mechanic's Liens: General Revision

This memorandum discusses general approaches to revision of the general mechanic's lien law. Since commencing work on the mechanic's lien study, the Commission has focused almost exclusively on the potential for double payment by homeowners. At the February meeting, the Commission decided to defer further consideration of that issue until the June meeting (next after this meeting), and to open consideration of the general reform of the mechanic's lien statute and related matters at this meeting.

The following exhibits are attached:

	<i>Exhibit p.</i>
1. James Acret, Draft of Simplified Mechanic's Lien Statute	1
2. Parallel Table: Comparing Private and Public Stop Notice Statutes	8
3. Prompt Payment Statute Matrix (James Acret)	15

ORGANIZATIONAL IDEAS

Simplified Statute

James Acret, a Commission consultant, has provided a draft approach to simplifying the mechanic's lien statute. (See Exhibit pp. 1-7.) His draft leaves out language and provisions that he considers unnecessary or overly confusing. In our conversations, Mr. Acret has expressed the hope that a simpler, shorter statute would appeal to the various stakeholders, who would see the virtue of clarity and not cling to the old language. He has attempted to be even-handed in leaving some provisions out of his draft proposal, but preserving the balance of existing rights and remedies. His draft does not attempt any major new reforms, nor does it address the homeowner double payment issue.

An example of an omitted provision is the requirement in Civil Code Section 3097(a) and (b) that the 20-day preliminary notice be served on the construction lender by certain claimants:

- (a) Except one under direct contract with the owner or one performing actual labor for wages as described in subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer's

compensation is paid as described in subdivision (b) of Section 3089, every person who furnishes labor, service, equipment, or material for which a lien or payment bond otherwise can be claimed under this title, or for which a notice to withhold can otherwise be given under this title, shall, as a necessary prerequisite to the validity of any claim of lien, payment bond, and of a notice to withhold, cause to be given to the owner or reputed owner, to the original contractor, or reputed contractor, *and to the construction lender, if any, or to the reputed construction lender, if any,* a written preliminary notice as prescribed by this section.

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

[Emphasis added.] Mr. Acret argues that this notice to the lender is unnecessary, since the lender can find out from the owner (borrower) who can provide the information or relevant copies of notices as needed. Accordingly, the Acret draft has a simpler preliminary notice requirement:

The lien, stop notice, and payment bond rights of a claimant who does not have a direct contractual or sales relationship with the owner of a work of improvement shall be subject to the preliminary notice requirement. The preliminary notice shall be served on the owner....

(See Exhibit p. 4, § 21.) This is a dramatic illustration of the Acret draft's statutory simplification.

Gordon Hunt has also argued for the elimination of Section 3097(b), but finds that Section 3097(a) "works well in the industry and should not be changed." Hunt, *Report to Law Revision Commission Regarding Recommendations for Changes to the Mechanic's Lien Law [Part 1]*, at 5. Mr. Hunt suggests that the lender has the same need as the owner to get preliminary notices from subcontractors and suppliers:

This provides the owner and the construction lender with knowledge of who the potential lien, Stop Notice, and bond claimants are on the project. This, in turn, enables the owner, lender, and original contractor the opportunity to obtain releases pursuant to Section 3262 as progress payments are processed during the progress of the job, to pay the potential claimants by joint check, or to pay the potential claimants directly so that Mechanic's Liens, Stop Notices, and bond claims can be avoided.

The Acret draft is included here for purposes of discussion, and to assist the Commission in deciding what level of general statutory revision it would prefer to explore. We hope that interested persons (some of whom have already received the draft from Mr. Acret) will give the Commission their thoughts on his simplified draft and on this type of approach to a general reform of the mechanic's lien statute.

The staff has not analyzed the Acret draft in detail and has not come to any conclusion as to whether or not it would be a good vehicle for the Commission's general revision. It would be possible to simplify the language even more, such as by removing general provisions like Section 7 (service and proof of service) and combining related provisions like Sections 11 (other remedies) and 14 (claims against construction funds). And the staff anticipates that the draft could be improved and adjusted to address concerns of stakeholders without returning us to the complications in existing law or undermining the simplification effort.

The Acret draft is a refreshing approach — start with a blank slate and build a new, relatively brief statute without all the baggage of past drafting and the many major rewrites and additions over the years. This differs from our typical approach of starting with a “cluttered slate” and repeatedly combing through, pruning out dead wood, updating language, reorganizing for clarity and logical order, combining and generalizing. The staff has started that process again in this project, but has not yet made much progress on the general revision. (The staff working draft is not attached to this memorandum because it does not include enough revision progress to justify the reproduction of that many pages — it is substantially longer than the Acret draft.)

Of course, an alternative would be to start from the Uniform Construction Lien Act of 1987. This would provide a different perspective on the law and involve the Commission, the staff, and interested persons in serious reevaluation of what the mechanic's lien law should be. The possibility of using the UCLA has been mentioned in earlier materials (see, e.g., Memorandum 2000-26, Exhibit pp.

17-23) and at prior meetings. Little, if any, interest has been shown in taking this route. Consequently, the staff has not devoted any more time to analyzing the uniform act as a possible reform vehicle.

Public Contracts

There is no mechanic's lien right in public works. See, e.g., Civ. Code § 3109 ("This chapter does not apply to any public work."). Mandatory bonding and the stop notice remedy provide protection for contractors, laborers, and suppliers on public construction projects. A general body of law concerning stop notices and payment bonds in public works is contained within the mechanic's lien law in the Civil Code. See, e.g., Sections 3179-3214 (stop notices for public works — 25 sections), 3247-3252 (payment bonds for public works — six sections).

The staff tentatively proposes separating the public and private construction provisions by removing the public works sections from the Civil Code mechanic's lien statute. In 1982, the Public Contract Code was created. The new code pulled sections together from a number of other codes, including the Education Code, Government Code, Streets and Highways Code, and Water Code. Public Contract Code Section 100 reads, in part: "The Legislature finds and declares that placing all public contract law in one code will make that law clearer and easier to find." Contractor and supplier remedies relating to public construction contracts go hand in hand with the provisions governing the contract terms and bidding process. Under the existing scheme, the stop notice procedure seems to be consolidated in the Civil Code, but there are many other bond provisions in the Public Contract Code and probably elsewhere. See, e.g., Pub. Cont. Code §§ 4100 *et seq.* (Subletting and Subcontracting Fair Practices Act), 7103 (most state entity works over \$5,000; others under Civ. Code § 3247), 10100 *et seq.* (State Contract Act), 10700 *et seq.* (Cal. State Univ. Contract Law), 20100, 20104, etc. (Local Agency Public Construction Act).

Generally speaking, contractors who bid on public projects, and their legal counsel, may be presumed to be familiar with the Public Contract Code and would not be disadvantaged to find the relevant bond and stop notice provisions there. Subcontractors and suppliers also can be expected to know whether they are working on a public project, and to look to the statutes for the relevant procedures for protecting their rights to payment from their customer. In other words, while it might be ideal to have one statute governing all payment bonds, whether on public or private construction projects, that possibility evaporated

many years ago with the proliferation of special rules applicable to different types of public works. Even if the public works bonding rules cannot be conformed and simplified to any great extent, it would be beneficial to have the relevant payment bond rules from the Civil Code included in the general provisions of the Public Contract Code. This will result in some duplication, but there are only three “general” provisions relating to bonds in the mechanic’s lien statute (Civ. Code §§ 3225-3227) and some relevant definitions. These can be duplicated, if needed, or applied through cross-reference between the codes.

In the current statute, the stop notice provisions are not drafted with a chapter of general rules followed by chapters containing the special rules and exceptions applicable respectively to private and public works. As can be seen from the attached parallel table (Exhibit pp. 8-14), there is a significant amount of overlap, with some unnecessary and/or confusing variation. Compare Sections 3160 & 3183 (who gives notice), 3161 & 3186 (withholding by owner), 3166 & 3193 (priority of assignment), 3168 & 3192 (false notice), 3171 & 3196 (release bond). An alternative to moving the public works provisions out of the Civil Code would be to extract the common rules and eliminate unneeded differences. This would shorten the statute, but would still result in a significant number of special rules applicable only to public works, which are predominately governed by provisions in the Public Contract Code. The parallel table shows five sections applicable only to private works and 12 sections applicable only to public works. Counting sections does not give the whole picture. Aspects of these two stop notice chapters are quite different because of the role of the construction lender in the context of a private project and, on the other hand, the detailed summary claim proceedings applicable to public works.

Prompt Payment Statutes

James Acret suggests that the Commission should review the various statutes that govern prompt payment from prime contractors to subcontractors, or owners to prime contractors. These statutes contain presumably unnecessary differences that make life in the construction industry and the law needlessly complicated. A list of these statutes, summarizing their variations, is set out in Exhibit pages 15-16. There are variations in the permissible period for making payments (ranging from seven to 60 days), the trigger event (receipt, completion, request), the interest penalties, and the availability of costs and attorney’s fees.

The staff thinks this would be a worthwhile project. Some of the variations probably serve unshakable public policies, but we assume that other differences are simply the result of piecemeal amendments to the different statutes over the years. It would be best to include this work in the general statutory revision, but in light of time pressures and other demands on Commission and staff time, it may need to be considered as a separate module of the overall mechanic's lien reform project.

Other Related Statutes

There are some special construction lien provisions outside the Title 15 mechanic's lien law. For example, design professionals (architects, surveyors, engineers) have lien rights under Civil Code Sections 3081.1-3081.10, covering claims arising before construction. After work commences, design professionals have rights under the mechanic's lien law.

There is also a largely self-contained "Oil and Gas Lien Act" in Code of Civil Procedure Sections 1203.50-1203.66, which was enacted in 1959 to "eliminate difficulties encountered in applying existing mechanic's and materialmen's liens to oil and gas leaseholds." See 1959 Cal. Stat. ch. 2020; *Selected 1959 Code Legislation*, 34 Cal. St. B.J. 581, 623, 677 (cited in *Coates v. Shell Western E & P, Inc.*, 5 Cal. App. 4th 904, 914, 7 Cal. Rptr 2d 187, 193 (1992)). This act was placed right after the mechanic's lien statute, then located in Code of Civil Procedure Sections 1181-1203.1. It was left behind when the mechanic's lien statute was moved to the Civil Code in 1969. See 1969 Cal. Stat. ch. 1362.

To the law reviser's eye, the Oil and Gas Lien Act looks like a candidate for review or relocation. The statute has been amended only twice since it was enacted, and both amendments were purely technical conforming revisions relating to other bills. **For the time being, in light of other more significant reforms needed in the mechanic's lien area, the staff does not propose revising the Oil and Gas Lien Act,** but it probably could be better coordinated with the main mechanic's lien statute, particularly in the course of an overall rewrite of the law.

RECENT LEGISLATIVE DEVELOPMENTS

Two bills before the Assembly Judiciary Committee earlier this year addressed aspects of the double payment problem. See AB 568 (Dutra), as introduced and as amended March 27; AB 543 (Vargas), as amended April 16.

Both bills were amended on May 2 to remove the substantive provisions and add the following intent language:

It is the intent of the Legislature to revise and reorganize the mechanics' lien and stop notice provisions in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, and related provisions, with the purpose of modernizing and simplifying the statutes and addressing problems, such as the potential for double payment by homeowners.

The Assembly Committee staff analysis of AB 568, as amended March 27, includes the following commentary:

This bill, as proposed to be amended, sets forth a statement of legislative intent regarding the need for revisions of the law governing mechanic's liens and related provisions. As discussed below, the author agreed to amend the bill into legislative intent language at this time in order to create a potential vehicle for related *recommendations that are expected to come later this session from the California Law Revision Commission (CLRC or Commission)*.

Procedural History. The introduced version of this bill contained various provisions designed to address problems with mechanic's liens in the home improvement area, and included a homeowner's relief recovery fund. On March 27, 2001, the bill was amended to delete those provisions and replace them with a joint check approach to the problem.

At the request of the Chair, the author agreed to delete the current contents of the bill and replace them with the legislative intent language set out above, in order to serve as a vehicle for *recommendations on the subject that are expected to be issued later this year by CLRC*. The author also agreed to bring the bill back to this Committee for further hearing at such time that substantive provisions are added to the measure.

Pending CLRC Study of Mechanic's Lien Laws. On June 28, 1999, the then chair and vice-chair of this Committee sent a letter to CLRC requesting the Commission to undertake a "comprehensive review of [the law in the area of mechanic's liens and related provisions], including making suggestions for possible areas of reform and aiding the review of such proposals in future legislative sessions." The Commission is currently conducting this study. While its initial focus has been mechanic's liens in the home improvement area, given the particular interest in this subject during the last legislative session, the study is not limited to home improvement contracts. As CLRC has indicated, the entire mechanic's lien statute is ripe for revision and reorganization. (See

CLRC Staff Memorandum 2001-18, "Mechanic's Liens: Overview of Reform Proposals," at p. 2 (Jan. 24, 2001.)

[*Italic emphasis added.*] The analysis of AB 543 contains similar language.

The staff has been in contact with Assembly Member Dutra's office for several months, and has initiated contact with Assembly Member Vargas's office. We plan to work with the members to coordinate the Commission's mechanic's lien study with the legislative schedule. It may be tricky to finalize Commission recommendations in time to meet legislative deadlines and match the interests of the potential authors. The legislative intent language in the bills permits them to move their bills out of the Assembly, with the possibility of amending substantive provisions into the bills in the Senate next year. That would best fit the pace of the Commission's procedure, which usually involves circulation of a tentative recommendation and approval of a final recommendation after review of comments of interested persons. It will be a challenge to complete this process by next January, because as yet there is not a full staff draft of a statute addressing the homeowner double-payment problem or the general revision of the mechanic's lien statute.

The staff is optimistic that the Commission can have recommendations ready for consideration by the Legislature in 2002 concerning the double-payment issue and the general statutory revision (perhaps in a limited form, without some related revisions such as prompt payment).

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

DRAFT OF PROPOSED
CALIFORNIA MECHANICS LIEN STATUTE

JAMES ACRET

☞ **Staff Note.** This material has been reformatted from a computer file supplied by James Acret, and a few stylistic revisions have been made.

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TITLE 15. MECHANICS LIENS, STOP NOTICES,
AND PAYMENT BONDS

CHAPTER 1. DEFINITIONS

1
2 **§ 1. "Record"**

3 "Record" means to file for record in the office of the county recorder of the
4 county where the land, or some of it, is located.

5 **§ 2. "Construction fund"**

6 A construction fund is money held by the owner of a work of improvement, a
7 construction lender, an escrow, a joint control, or any other person for the purpose
8 of paying the costs of performing a work of improvement.

9 **§ 3. "Charge"**

10 "Charge" means mechanics lien claim and stop notice claim, singly or in
11 combination, as required by the context.

12 **§ 4. "Assert"**

13 "Assert means to record a mechanics lien claim or to serve a stop notice claim.

14 **§ 5. "Assets"**

15 "Assets" are work, labor, materials, supplies, equipment, appliances,
16 transportation, power, surveying, construction plans, and construction
17 management furnished to a work of improvement.

18 **§ 6. "Claimant"**

19 "Claimant" is a person who has furnished assets that have not been paid for.

20 CHAPTER 2. GENERAL PROVISIONS

21 **§ 7. Service and proof of service**

22 Service shall be by certified mail with return receipt requested. Service shall be
23 deemed complete when the document, properly addressed, is deposited in the mail
24 with postage prepaid. Proof of service shall be by declaration showing when and
25 where the declarant deposited a copy of the notice in the United States mail and
26 the name and address of the person to which the notice was directed, accompanied
27 by the return receipt and, in the event of non-delivery, the returned envelope.

28 **§ 8. Agency**

29 Any action to be taken or document to be verified or signed under this statute
30 may be taken, verified or signed by an authorized agent.

31 **§ 9. Release**

32 A release of, or agreement not to enforce, mechanics lien, stop notice, or
33 payment bond rights that is contained in the text of a construction contract or sales

1 agreement is void. A release of mechanics lien, stop notice, or payment bond
2 rights for assets that have not yet been furnished is void except to the extent that
3 the assets have actually been paid for, and except that such a release is enforceable
4 by a party who has reasonably relied upon such a release to its detriment without
5 knowledge of nonpayment.

6 **§ 10. Willful overstatement**

7 No charges shall be valid if it is willfully overstated by the claimant.

8 **§ 11. Other remedies**

9 Nothing in this title affects the right of a claimant to pursue other remedies.

10 **§ 12. Effect of bonds**

11 A private statute of limitations and any other condition to recovery included in a
12 release bond or a payment bond shall be void. All claimants have the right to
13 pursue a direct cause of action against the principal and surety on such bonds. The
14 sureties on such bonds shall not be exonerated or released by any change to or
15 rescission of any construction or sales contract, and the claim against the surety
16 shall not be released or exonerated by a modification to or a release of the
17 obligation of the principal.

18 **§ 13. Recording**

19 The county recorder shall record mechanics lien charges, notices of completion,
20 notices of cessation, and payment bonds that comply with the requirements of this
21 title without acknowledgment or other formality.

22 **§ 14. Claims against construction funds**

23 Claims against construction funds must be pursued under this title. No claimant
24 may assert any other legal or equitable rights against such funds except by direct
25 written contract with the holder of the fund.

26 **§ 15. Claim requirements**

27 The claim-filing procedures contained in Part 3 (commencing with Section 900)
28 of Division 3.6 of Title 1 of the Government Code do not apply to claims under
29 this title.

30 **§ 16. Priorities**

31 Charges, regardless of when they are asserted, have the same priority and shall
32 be satisfied pro rata.

33 **§ 17. Public works**

34 The stop notice and bond provisions of this title apply both to public and private
35 works. The mechanics lien provisions apply only to private works.

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CHAPTER 3. CLAIMS

§ 18. Stop notice, payment bond, and mechanics lien rights

Persons who furnish assets intended for and used in the permanent physical improvement of specific real property shall have a mechanics lien on the structures and land that they have improved, and surrounding land for reasonable access thereto. The same persons also have stop notice and payment bond rights.

§ 19. Contents of charge

A stop notice or mechanics lien charge must be verified by the claimant and must include the name and address of the claimant, a general description of the assets furnished, a description of the land sufficient for identification, the name of the person who contracted for or purchased the assets from the claimant, the name of the owner or reputed owner of the land and a statement of the amount of the charge.

§ 20. Payment bond

A land owner, construction lender, contractor, or other interested party, which party shall be the principal on the bond, may protect a work of improvement against charges by recording a payment bond. The protection of the payment bond shall extend only to charges that were not asserted before the payment bond was recorded. The bond shall be issued by a surety admitted to do surety business in California, and shall name the owner of the work of improvement and include a description of the land. The amount of the bond shall be the amount of the prime contract price as modified by changes or, if there is no prime contract price, the amount of the cost of the construction of work of improvement as reasonably estimated by the principal. The bond shall provide that all persons who have mechanics lien or stop notice rights may recover from the principal and surety on the bond the amount that they could have obtained in a judgment enforcing the charges, and all such claimants shall have a direct right of action against the principal and surety. The right of a claimant to assert a claim on the bond shall be subject to the preliminary notice requirement. Upon proof that a good and sufficient payment bond has been timely recorded, the court shall implead the principal and surety and dismiss mechanics lien and stop notice causes of action.

§ 21. Preliminary notice

The lien, stop notice, and payment bond rights of a claimant who does not have a direct contractual or sales relationship with the owner of a work of improvement shall be subject to the preliminary notice requirement. The preliminary notice shall be served on the owner. In a case of joint ownership, service on any owner shall be sufficient. The preliminary notice shall contain a general description of the assets supplied and to be supplied by the claimant and the name of the person or firm that purchased or contracted for assets from the claimant. Service shall be sufficient if addressed to the owner named on the building permit at the owner's address

1 shown on the building permit. Actual notice is not a substitute for the notice
2 required by this section. Neither mechanics lien, stop notice, nor payment bond
3 rights may be enforced for any assets supplied more than 20 days before the
4 service date of the preliminary notice.

5 The preliminary notice shall contain the following inscription:

6 This notice is required by law in order to give you, the owner, notice of the
7 identities of persons and firms that are supplying work, equipment, and
8 materials to your project who have the right, if they are not paid, to assert
9 mechanics lien claims against your property, stop notice claims against
10 construction funds, and payment bond claims. A basic measure that an
11 owner can take to protect against claims is to make certain that all potential
12 claimants are paid for their work, materials, or equipment. One method to
13 insure such payment is to prepare a roster of all persons who have given
14 preliminary notices and to require your contractor to supply releases signed
15 by those persons before making payments to your contractor. A more
16 complete explanation of measures that may be taken by owners to protect
17 themselves may be obtained from the Contractors State License Board at
18 www.cslb.ca.gov or by calling (800) 321-CSLB.

19 **§ 22. Service of stop notice**

20 When a stop notice is served on a financial institution it shall be served at the
21 branch administering the construction fund.

22 **§ 23. Amount of claim**

23 Mechanics lien, stop notice, and payment bond claims are for the reasonable
24 value, after deducting all just credits and offsets, of the assets furnished or the
25 contract price thereof, whichever is less. The amount of the claim shall include
26 interest at the legal rate and exclude consequential damages. Stop notice and
27 payment bond claims include reasonable attorneys fees to the prevailing party.

28 **§ 24. Responsibility of general contractors, trade contractors, and employers**

29 Every general contractor, trade contractor, and employer shall, at the request of
30 the land owner or fund holder, protect the land owner or fund holder against
31 charges of persons of whatever tier acting under their direct or indirect authority
32 and shall, at the request of the land owner or fund holder, indemnify the land
33 owner or fund holder against such claims.

34 **§ 25. Asserting a charge**

35 A claimant shall not assert a charge until it has finished providing assets to the
36 work of improvement. The time for asserting a charge shall expire 90 days from
37 the completion of a work of improvement as a whole, and shall be reduced when
38 the owner timely records a notice of completion. A total cessation of labor for a
39 period of 30 days shall be deemed to be the equivalent of completion. When a
40 work of improvement is subject to inspection by a public agency the date of

1 completion shall be deemed to be the date when the agency signs off the final
2 inspection. A general contractor or trade contractor who has a direct contract with
3 the owner shall assert its charges no later than 60 days after the timely recording of
4 a notice of completion or a notice of cessation and all other claimants shall assert
5 their charges no later than 30 days after the timely recording of a notice of
6 completion or a notice of cessation. Each lot in a subdivision shall be considered a
7 separate work of improvement.

8 **§ 26. Notice of completion**

9 A notice of completion shall be verified by the owner and shall include a
10 description of the land sufficient for identification, the name or names of the
11 owner or owners of the work of improvement, and a statement of the date when
12 the work of improvement was completed. It shall be recorded within 10 days after
13 the completion of the project.

14 **§ 27. Notice of cessation**

15 A notice of cessation shall be verified by the owner and shall include a
16 description of the land sufficient for identification, the name or names of the
17 owner or owners of the work of improvement, and a statement of the date when
18 the cessation of labor occurred. It may be recorded any time after there has been a
19 30-day cessation of labor and has the same effect on the time for asserting charges
20 as the timely recording of a notice of completion.

21 **§ 28. Foreclosure, arbitration**

22 A charge expires unless the claimant files enforcement suit in a proper court
23 within 90 days after the date when the charge was asserted. After filing suit, a
24 claimant shall prosecute the action with due diligence. The filing of suit shall not
25 waive the right of a claimant to pursue arbitration provided that the claimant,
26 within 20 days after filing suit, files and serves an application to stay proceedings
27 pending arbitration. The failure to timely file and serve such an application shall
28 constitute a waiver of the right to pursue arbitration.

29 **§ 29. Priority of mechanics liens**

30 All mechanics lien claims take their priority from the date of the visible
31 commencement of the work of improvement. If a mechanics lien claim is for
32 assets supplied to a building on a lot in a subdivision, each lot shall be deemed to
33 be a separate work of improvement. Survey work and soils testing shall not be the
34 commencement of a work of improvement.

35 **§ 30. Site improvement**

36 "Site improvement" is the preparation of a site for installation upon it of
37 buildings or other structures, and includes the demolition or removal of
38 improvements, landscaping, clearing, brushing, soil testing, excavation, grading,
39 filling and construction of streets, sidewalks, sewers, and utilities. If site

1 improvement is performed under a contract that is separate from the contract for
2 the installation of buildings and other structures, then the commencement of site
3 improvement shall not constitute the commencement of buildings and other
4 structures, which shall be deemed to be separate works of improvement.

5 **§ 31. Site improvement lien claims**

6 Mechanics lien claimants who provide assets for the performance of site
7 improvement shall have a lien on the land and structures served by the site
8 improvement. Such charges take their priority from the commencement of site
9 improvement. When site improvement serves more than one lot or tract of land,
10 then the amount of the site improvement charge shall be equitably divided among
11 the lots or tracts, and the claimant shall specify an equitable division in the charge.

12 **§ 32. Improvements procured by tenant**

13 The leasehold interest of a tenant is subject to mechanics lien charges for assets
14 supplied to a work of improvement procured by the tenant. The interest of a land
15 owner is not subject to mechanics lien charges for assets supplied to a work of
16 improvement procured by a tenant unless the work of improvement was required,
17 paid for or otherwise procured by the owner and except to the extent that
18 enforcement of the charge will prevent the unjust enrichment of the owner.

19 **§ 33. Release bond**

20 A land owner, contractor, construction lender, or other interested party may
21 remove the effect of a charge by furnishing, as principal, a release bond executed
22 by a surety company authorized to do surety business in California. The bond shall
23 be for 1-1/4 times the principal amount of the charge. To be effective, the bond
24 shall be recorded and shall state the name of the land owner and shall include or be
25 accompanied by a declaration that the bond has been served upon the claimant at
26 the address given for the claimant on the charge. Upon proper recording and
27 service, the charge is transferred from the land or construction fund to the release
28 bond. The claimant shall recover from the principal and surety the amount for
29 which it could have obtained a judgment to enforce the charge. If an enforcement
30 action has been filed, the court shall, upon the application of any interested party,
31 implead the principal and surety as parties to the action and order the land, or
32 construction fund released from the charge.

Private-Public Stop Notice Parallel Table

☞ **Staff Note.** This table compares the stop notice provisions applicable to private works (column 1) and public works (column 2). See, respectively, Civ. Code §§ 3156-3179.5, 3179-3214. (To save space, the columns zig-zag where there is no parallel provision.)

CHAPTER 3. STOP NOTICES FOR PRIVATE WORKS OF IMPROVEMENT	CHAPTER 4. STOP NOTICE FOR PUBLIC WORK
Article 1. Application of Chapter	Article 1. Application of Chapter
<p>§ 3156. Scope of chapter 3156. The provisions of this chapter do not apply to any public work.</p>	<p>§ 3179. Scope of chapter 3179. The provisions of this chapter apply only to a public work.</p>
Article 2. Who Is Entitled to Serve a Stop Notice and Bonded Stop Notice	Article 2. Who Is Entitled to Serve a Stop Notice
<p>§ 3158. Who may give notice, failure to serve notice after demand 3158. Any of the persons named in Sections 3110, 3111, and 3112, other than the original contractor, may give to the owner a stop notice. 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.</p>	<p>§ 3181. Who may give notice 3181. Except for an original contractor, any person mentioned in Section 3110, 3111, or 3112, or in Section 4107.7 of the Public Contract Code, or furnishing provisions, provender, or other supplies, may serve a stop notice upon the public entity responsible for the public work in accordance with this chapter.</p>
<p>§ 3159. Duties of construction lender 3159. (a) Any of the persons named in Sections 3110, 3111, and 3112 may, prior to the expiration of the period within which his or her claim of lien must be recorded under Chapter 2 (commencing with Section 3109), give to a construction lender a stop notice or a bonded stop notice. The construction lender shall be subject to the following:</p> <p>(1) The construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor, regardless of whether a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235.</p> <p>(2) The construction lender shall withhold funds pursuant to a bonded stop notice filed by any other person named in Sections 3110, 3111, and 3112, unless a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235. If a payment bond has previously been recorded, the construction lender may, at its option, withhold funds pursuant to the bonded stop notice or stop notice, or may elect not to withhold pursuant to the bonded stop notice or stop notice given by anyone other than an original contractor.</p> <p>(3) If, when giving the construction lender the stop notice or bonded stop notice, the claimant makes a written request for notice of the election, accompanied by a preaddressed, stamped envelope, the construction lender shall furnish the claimant a copy of the bond within 30 days after making the election. A lender shall not be liable for a failure to furnish a copy of the bond if the failure was not intentional and resulted from a bona fide error, if the lender maintains reasonable procedures to avoid such an error, and if the error was corrected not later than 20 days from the date on which the violation was discovered. The payment bond may be recorded at any time prior to the serving of the first stop notice. The notice may only be given for materials, equipment, or services furnished, or labor performed.</p> <p>(b) In the case of a stop notice or bonded stop notice filed by the original contractor or by a subcontractor, the original contractor or subcontractor shall only be entitled to recover on his or her stop notice or bonded stop notice 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.</p> <p>(c) In no event shall the construction lender be required to withhold, pursuant to a bonded stop notice, more than the net amount identified in subdivision (b). Notwithstanding any other provision, no construction lender shall have any liability for the failure to withhold more than this net amount upon receipt of a bonded stop notice.</p>	

Private-Public Stop Notice Parallel Table

Article 3. Conditions to Valid Service of Stop Notice and Bonded Stop Notice	Article 3. Conditions to Service of Stop Notice
<p>§ 3160. Effective service</p> <p>3160. Service of a stop notice or a bonded stop notice shall be effective only if the claimant:</p> <p>(a) Gave the preliminary 20-day notice (private work) in accordance with the provisions of Section 3097 if required by that section; and</p> <p>(b) Served his stop notice as defined in Section 3103 or his bonded stop notice as defined in Section 3083 prior to the expiration of the period within which his claim of lien must be recorded under Section 3115, 3116, or 3117.</p>	<p>§ 3183. Prerequisites to enforcement</p> <p>3183. A claimant shall be entitled to enforce a stop notice only if he has complied with each of the following conditions:</p> <p>(a) He shall have given the preliminary 20-day notice (public work) in accordance with Section 3098 if required by that section.</p> <p>(b) He shall have filed his stop notice as defined in Section 3103 and in accordance with Section 3184.</p> <p>§ 3184. Time for service of stop notice</p> <p>3184. To be effective, any stop notice pursuant to this chapter must be served before the expiration of:</p> <p>(a) Thirty days after the recording of a notice of completion (sometimes referred to in public works as a notice of acceptance) or notice of cessation, if such notice is recorded.</p> <p>(b) If no notice of completion or notice of cessation is recorded, 90 days after completion or cessation.</p>
	<p>§ 3185. Notice of completion or cessation of labor</p> <p>3185. No later than 10 days after the filing of a notice of completion or after the cessation of labor has been deemed a completion of the public work or after the acceptance of completion, whichever is later, the public entity shall give notice of the expiration of such period to each stop notice claimant by personal service, or registered or certified mail. When service is by registered or certified mail, service is complete at the time of the deposit of the registered or certified mail in a United States post office, addressed to the claimant at the address shown upon his stop notice claim. No such notice need be given unless the claimant shall have paid to the public entity the sum of two dollars (\$2) at the time of filing his stop notice.</p>
Article 4. Effect of Stop Notice and Bonded Stop Notice	
<p>§ 3161. Withholding by owner</p> <p>3161. It shall be the duty of the owner upon receipt of a stop notice pursuant to Section 3158 to 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 therefor, unless a payment bond has been recorded pursuant to the provisions of Section 3235, in which case the owner may, but is not obligated to, withhold such money.</p> <p>If the owner elects not to withhold pursuant to a stop notice by reason of a payment bond having been previously recorded, then the owner shall, within 30 days after receipt of the stop notice, give a written notice to the claimant at the address shown in the stop notice that the bond has been recorded and furnish to the claimant a copy of that bond.</p>	<p>§ 3186. Withholding by public entity</p> <p>3186. It shall be the duty of the public entity, upon receipt of a stop notice pursuant to this chapter, to withhold from the original contractor, or from any person acting under his or her authority, money or bonds (where bonds are to be issued in payment for the work of improvement) due or to become due to that contractor in an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation thereunder. The public entity may satisfy this duty by refusing to release money held in escrow pursuant to Section 10263 or 22300 of the Public Contract Code.</p>
<p>§ 3162. Withholding by lenders</p> <p>3162. (a) Upon receipt of a stop notice pursuant to Section 3159, the construction lender may, and upon receipt of a bonded stop notice the construction lender shall, except as provided in this section, withhold from the borrower or other person to whom it or the owner may be obligated to make payments or advancement out of the construction fund, sufficient money to answer the claim and any claim of lien that may be recorded therefor. The construction lender shall be subject to the following:</p>	

Private-Public Stop Notice Parallel Table

(1) The construction lender shall withhold funds pursuant to a bonded stop notice filed by an original contractor, regardless of whether a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235.

(2) The construction lender shall withhold funds pursuant to a bonded stop notice filed by any other person named in Sections 3110, 3111, and 3112, unless a payment bond has previously been recorded in the office of the county recorder where the site is located in accordance with Section 3235. If a payment bond has previously been recorded, the construction lender may, at its option, withhold funds pursuant to the bonded stop notice or stop notice, or may elect not to withhold pursuant to the bonded stop notice or stop notice given by anyone other than an original contractor.

(3) If, when giving the construction lender the stop notice or bonded stop notice, the claimant makes a written request for notice of the election, accompanied by a preaddressed, stamped envelope, the construction lender shall furnish the claimant a copy of the bond within 30 days after making the election. A lender shall not be liable for a failure to furnish a copy of the bond if the failure was not intentional and resulted from a bona fide error, if the lender maintains reasonable procedures to avoid such an error, and if the error was corrected not later than 20 days from the date on which the violation was discovered. The payment bond may be recorded at any time prior to the serving of the first stop notice.

(b) In the case of a stop notice or bonded stop notice filed by the original contractor or by a subcontractor, the original contractor or subcontractor shall only be entitled to recover on his or her stop notice or bonded stop notice 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.

(c) In no event shall the construction lender be required to withhold, pursuant to a bonded stop notice, more than the net amount identified in subdivision (b). Notwithstanding any other provision, no construction lender shall have any liability for the failure to withhold more than this net amount upon receipt of a bonded stop notice.

§ 3163. Objection to sufficiency of sureties

3163. If the construction lender objects to the sufficiency of the sureties on the bond accompanying the bonded stop notice, he must give notice in writing of such objection to the claimant within 20 days after the service of the bonded stop notice. The claimant may within 10 days after the receipt of such written objection substitute for the initial bond a bond in like amount executed by a corporate surety licensed to write such bonds in the State of California. If the claimant fails to do so, the construction lender may disregard the bonded stop notice and release all funds withheld in response thereto.

§ 3187. Permissible payments

3187. This chapter does not prohibit (a) the payment of any money or bonds to the original contractor or his assignee unless a stop notice is on file before the disbursing officer has actually surrendered possession of either the warrant, check, bonds, or money, or (b) the payment to the original contractor or his assignee of any money due him in excess of an amount sufficient to answer the total amount of the claims stated in stop notices on file at the time of such payment plus such interest and court costs as might be reasonably anticipated in connection with the claims.

Article 5. Priorities

§ 3166. Priority of assignment

3166. No assignment by the owner or contractor of construction loan funds, whether made before or after a stop notice or bonded stop notice is given to a construction lender, shall be held to take priority over the stop notice or bonded stop notice, and such assignment shall have no effect insofar as the rights of claimants who give the stop notice or bonded stop notice are concerned.

Article 4. Priorities

§ 3193. Priority of assignment

3193. No assignment by the original contractor of any of the money due or to become due to the original contractor under the contract, or for "extras" in connection therewith whether made before or after the service of a stop notice, takes priority over a stop notice under this chapter and such assignment has no effect on the rights of the stop notice claimants. Any garnishment of such money by any creditor of the original contractor pursuant to 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 thereon are subordinate to the rights of all stop notice claimants.

Private-Public Stop Notice Parallel Table

§ 3167. Pro rata distribution of funds

3167. (a) If the money withheld or required to be withheld pursuant to any bonded stop notice shall be insufficient to pay in full the valid claims of all persons by whom such notices were given, the same shall be distributed among such persons in the same ratio that their respective claims bear to the aggregate of all such valid claims. Such pro rata distribution shall be made among the persons entitled to share therein without regard to the order of time in which their respective notices may have been given or their respective actions, if any, commenced.

(b) If the money withheld or required to be withheld pursuant to any stop notice shall be insufficient to pay in full the valid claims of all persons by whom such notices were given, the same shall be distributed among such persons in the same ratio that their respective claims bear to the aggregate of all such valid claims. Such pro rata distribution shall be made among the persons entitled to share therein without regard to the order of time in which their respective notices may have been given or their respective actions, if any, commenced.

§ 3190. Pro rata distribution of funds

3190. If the money withheld pursuant to stop notices shall be insufficient to pay in full all of the valid claims stated in such notices, the same shall be distributed among the stop notice claimants in the same ratio that their respective claims bear to the aggregate of such valid claims, without regard to the order of time in which their respective notices may have been served or their respective actions, if any, commenced.

§ 3191. Right to recover unpaid amounts

3191. Nothing in this article shall impair the right of any stop notice claimant to recover from the contractor or his sureties any deficit that may remain unpaid after such pro rata distribution in an action upon the bond provided for by Chapter 7 (commencing with Section 3247).

§ 3168. Consequence of false notice or claim

3168. Any person who willfully gives a false stop notice or bonded stop notice or who willfully includes in his notice labor, services, equipment, or materials not furnished for the property described in such notice forfeits all right to participate in the pro rata distribution of such money and all right to any lien under Chapter 2 (commencing with Section 3109).

§ 3192. Consequence of false notice or claim

3192. Any person who willfully gives a false stop notice to the public entity or who willfully includes in his notice labor, services, equipment, or materials not furnished for the work of improvement with respect to which such notice is given, forfeits all right to participate in the pro rata distribution of money or bonds withheld.

Article 6. Release of Stop Notice or Bonded Stop Notice

Article 5. Release of Stop Notice

§ 3171. Release bond

3171. If the owner, construction lender or any original contractor or subcontractor disputes the correctness or validity of any stop notice or bonded stop notice, he may file with the person upon whom such notice was served a bond executed by good and sufficient sureties in a penal sum equal to 1-1/4 times the amount stated in such notice, conditioned for the payment of any sum not exceeding the penal obligation of the bond which the claimant may recover on the claim, together with his costs of suit in the action, if he recovers therein. Upon the filing of such bond, the funds withheld to respond to the stop notice or bonded stop notice shall forthwith be released.

§ 3196. Release bond

3196. If the original contractor or subcontractor disputes the correctness or validity or enforceability of any stop notice, the public entity may, in its discretion, permit the original contractor to file with the public entity a bond executed by a corporate surety, in an amount equal to 125 percent of the claim stated in the stop notice conditioned for the payment of any sum which the stop notice claimant may recover on the claim together with his costs of suit in the action, if he recovers therein. Upon the filing of such bond with the public entity, the public entity shall not withhold any money or bonds (where bonds are to be issued in payment for the work of improvement) from the original contractor on account of the stop notice. The surety or sureties upon such bond shall be jointly and severally liable to the stop notice claimant with the surety or sureties upon any payment bond furnished pursuant to Chapter 7 (commencing with Section 3247).

Private-Public Stop Notice Parallel Table

	<p>§ 3197. Summary proceedings</p> <p>3197. If the original contractor asserts (1) that the claim upon which the stop notice is based is not included within the types or classifications of claims referred to in this article, or (2) that the claimant is not one of the persons named in Section 3181, or (3) that the amount of the claim as specified in the stop notice is excessive, or (4) that there is no basis in law for the claim as referred to and set out in the stop notice, he may have the question determined in a summary proceedings in accordance with the provisions of Sections 3198 to 3205, inclusive.</p>
	<p>§ 3198. Original contractor's demand for release of funds</p> <p>3198. The original contractor shall serve upon the public entity an affidavit and a copy thereof alleging the legal grounds upon which he bases his claim and the facts in support thereof, and demanding the release of all or such portion of such money or bonds as is alleged to be withheld improperly or in an excessive amount. Such affidavit shall also state the address of the original contractor within this state for the purpose of permitting service by mail upon him of any notice or legal document.</p>
	<p>§ 3199. Service of demand</p> <p>3199. The public entity shall serve upon the claimant, either personally or by registered or certified mail, addressed to the last known address of the claimant, a copy of the affidavit and the demand for release together with a written notice stating that the public entity will release such money or bonds, or such portion of either as has been demanded, unless the claimant files with the public entity a counteraffidavit on or before a time designated in the notice, which shall not be less than 10, nor more than 20 days, after service upon the claimant of the copy of such affidavit. Proof of service shall be made by an affidavit.</p>
	<p>§ 3200. Contest of demand</p> <p>3200. If the claimant desires to contest the original contractor's affidavit and demand for release, he shall, within the time allowed, serve upon the public entity a counteraffidavit alleging the details of his claim and shall also set forth in detail the specific basis upon which he contests or rebuts the allegations of the original contractor's affidavit, together with proof of service of a copy of such counteraffidavit upon the original contractor. If no such counteraffidavit with proof of service is served upon the public entity within the time allowed, then the public entity shall forthwith release the money or bonds, or such portion thereof as has been demanded by such affidavit, without further notice to the claimant, and the public entity shall not be liable in any manner for making such release. The public entity shall not be responsible for the validity of the affidavit or counteraffidavit.</p>
	<p>§ 3201. Declaratory action</p> <p>3201. If such counteraffidavit, together with proof of service, is so filed, either the original contractor or the claimant may file an action in the appropriate superior court for a declaration of the respective rights of the parties. After the filing of such action, either the original contractor or the claimant shall be entitled to a hearing by the court for the purpose of determining his rights under the affidavit and demand for release and the counteraffidavit. Such hearing must be granted by the court within 15 days from the date of making of such motion, unless continued by the court for good cause. The party making the motion for hearing must give not less than five days' notice in writing of such hearing to the public entity and to the other party.</p>
	<p>§ 3202. Pleadings, evidence</p> <p>3202. At such hearing, the original contractor shall have the burden of proof. The affidavit and counteraffidavit shall be filed with the court by the public entity and they shall constitute the pleadings, subject to the power of the court to permit an amendment in the interest of justice. The affidavit of the original contractor shall be deemed controverted by the counteraffidavit, and both shall be received in evidence.</p>

Private-Public Stop Notice Parallel Table

	<p>§ 3203. Hearing, order</p> <p>3203. No findings shall be required in a summary proceeding under this article. When the hearing is before the court sitting without a jury and no evidence other than the affidavit and counteraffidavit is offered, if the court is satisfied that sufficient facts are shown thereby, it may make its determination thereon; otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall make and enter its order determining whether the demand for release shall be allowed or not, which order shall be determinative as to the right of the claimant to have the money or bonds further withheld by the public entity. The original contractor shall serve a copy of such order on the public entity.</p>
	<p>§ 3204. Jury trial</p> <p>3204. Nothing contained 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.</p>
	<p>§ 3205. Effect of determinations</p> <p>3205. No determination in the summary proceedings under this article shall be res judicata with respect to any right of action by the claimant against either principal or surety on any labor and material bond or with respect to any right of action against any party personally liable to the claimant.</p>
<p>Article 7. Enforcement of Rights Arising from Stop Notice and Bonded Stop Notice</p>	<p>Article 6. Enforcement of Rights Arising From Stop Notice</p>
<p>§ 3172. Time for bringing action</p> <p>3172. An action against the owner or construction lender to enforce payment of the claim stated in the stop notice or bonded stop notice may be commenced at any time after 10 days from the date of the service of the stop notice upon either the owner or construction lender and shall be commenced not later than 90 days following the expiration of the period within which claims of lien must be recorded as prescribed in Chapter 2 (commencing with Section 3109). No such action shall be brought to trial or judgment entered until the expiration of said 90-day period. No money shall be withheld by reason of any such notice longer than the expiration of such 90-day period unless such action is commenced. If no such action is commenced, such notice shall cease to be effective and such moneys shall be paid or delivered to the contractor or other person to whom they are due. Notice of commencement of any such action shall be given within five days after commencement thereof to the same persons and in the same manner as provided for service of a stop notice or bonded stop notice.</p>	<p>§ 3210. Time for bringing action</p> <p>3210. An action against the original contractor and the public entity to enforce payment of the claim stated in the stop notice may be commenced at any time after 10 days from the date of the service of the stop notice upon the public entity and shall be commenced not later than 90 days following the expiration of the period within which stop notices must be filed as provided in Section 3184. No such action shall be brought to trial or judgment entered until the expiration of said 90-day period. No money or bond shall be withheld by reason of any such notice longer than the expiration of such 90-day period unless proceedings be commenced in a proper court within that time by the claimant to enforce his claim, and if such proceedings have not been commenced such notice shall cease to be effective and the moneys or bonds withheld shall be paid or delivered to the contractor or other person to whom they are due.</p> <p>§ 3211. Notice</p> <p>3211. Notice of the commencement of any such action shall be given to the public entity within five days after commencement of the action described in Section 3210 in the same manner as provided in Section 3103.</p>
<p>§ 3173. Dismissal for lack of prosecution</p> <p>3173. In case such action is commenced as provided in Section 3172 but is not brought to trial within two years after the commencement thereof, the court may in its discretion dismiss the action for want of prosecution.</p>	<p>§ 3212. Dismissal for lack of prosecution</p> <p>3212. In case such action is commenced as provided in Section 3210 but is not brought to trial within two years after the commencement thereof, the court may in its discretion dismiss the same for want of prosecution.</p>

Private-Public Stop Notice Parallel Table

<p>§ 3174. Effect of dismissal</p> <p>3174. Upon the dismissal of an action to enforce a stop notice or bonded stop notice, unless expressly stated to be without prejudice, or upon a judgment rendered therein against the claimant, the stop notice or bonded stop notice shall cease to be effective and the moneys withheld shall be paid or delivered to the person to whom they are due.</p>	<p>§ 3213. Effect of dismissal</p> <p>3213. In all cases upon the dismissal of an action commenced as provided in Section 3210, unless expressly stated to be without prejudice, or upon a judgment rendered therein against the claimant, the stop notice shall cease to be effective and the moneys or bonds withheld shall be paid or delivered to the person to whom they are due.</p>
<p>§ 3175. Consolidation of actions</p> <p>3175. Any number of persons who have given stop notices or bonded stop notices may join in the same action and when separate actions are commenced the court first acquiring jurisdiction may consolidate them. Upon the motion of the owner or construction lender the court shall require all claimants to the moneys withheld pursuant to stop notices and bonded stop notices to be impleaded in one action, to the end that the respective rights of all parties may be adjudicated therein.</p>	<p>§ 3214. Consolidation of actions</p> <p>3214. Any number of persons who have given stop notices may join the same action and when separate actions are commenced the court first acquiring jurisdiction may consolidate them. Upon the request of the public entity the court shall require all claimants to the moneys withheld pursuant to stop notices to be impleaded in one action, to the end that the respective rights of all parties may be adjudicated therein.</p>
<p>§ 3176. Attorney's fees</p> <p>3176. In any action against an owner or construction lender to enforce payment of a claim stated in a bonded stop notice, the prevailing party shall be entitled to collect from the party held liable by the court for payment of the claim, reasonable attorney's fees in addition to other costs and in addition to any liability for damages.</p> <p>The court, upon notice and motion by a party, shall determine who is the prevailing party for purposes of this section, whether or not the suit proceeds to final judgment. Except as otherwise provided by this section, the prevailing party shall be the party who recovered a greater relief in the action. The court may also determine that there is no prevailing party. Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.</p> <p>Where the defendant alleges in his or her answer that he or she tendered to the plaintiff the full amount to which he or she was entitled, and thereupon deposits in court for the plaintiff, the amount so tendered, and the allegation is found to be true, then the defendant is deemed to be a prevailing party.</p>	
<p>§ 3176.5. Interest</p> <p>3176.5. If the plaintiff is the prevailing party in any action against an owner or construction lender to enforce payment of a claim stated in a bonded stop notice, any amount awarded on the claim shall include interest at the legal rate calculated from the date the bonded stop notice is served upon the owner or construction lender pursuant to Section 3172.</p>	

PROMPT PAYMENT STATUTE MATRIX by James Acret

SCOPE	<u>PAYOR</u> <u>PAYEE</u>	TYPE OF PAYMENT	TIME FOR PAYMENT	PENALTY & LEGAL FEES	EFFECTIVE DATE
Private and Public Works Bus. & Prof. Code §7108.5	Any Prime Contractor or Subcontractor	Amount allowed contractor for work performed by subcontractor	10 days from receipt of funds by contractor+	2% per month in addition to interest; attorneys fees and costs	January 1, 1991
	Subcontractor (All tiers)				
Public Works Pub. Cont. Code §10262.5	Any Prime Contractor or Subcontractor	Amount allowed contractor for work performed by subcontractor	10 days from receipt	2% per month in addition to interest; attorneys fees and costs	January 1, 1991
	Subcontractor				
Public Utility Contracts Civ. Code §3262.5	Any Prime Contractor	Amount allowed contractor for work performed by subcontractor	15 working days from receipt	2% per month in addition to interest; attorneys fees and costs	January 1, 1992
	Subcontractor				
Public and Private Works Bus. & Prof. Code §7108.6	Licensed Contractor	Progress payments	20th of the month following services	2% per month; attorneys fees and costs	January 1, 1996
	Dumptruck Operator				
Public Works (Federal) 31 USC §3905	Prime Contractor	Progress payments	7 days from receipt (mandatory sub-contract provision)	7% annual interest	October 17, 1988
	Subcontractor				
Private Works Civ. Code §3260	Original Contractor	Retention received by contractor	10 days after receipt*	2% per month in lieu of interest; attorneys fees and costs	Contracts entered into after July 1, 1991
	Subcontractor				
Public Works Pub. Cont. Code §7107	Original Contractor	Retention received by contractor	7 days from receipt	2% per month in lieu of interest; attorneys fees and costs	Contracts entered into after January 1, 1993
	Subcontractor				
Private Works Civ. Code §3260.1	Owner	Progress payments	30 days after request for payment+	2% per month in lieu of interest; attorneys fees and costs	Contracts entered into after January 1, 1992
	Prime Contractor				
Private Works Civ. Code §3260	Owner	Retention	45 days after Date of Completion*	2% per month in lieu of interest; attorneys fees and costs	Contracts entered into after January 1, 1993
	Original Contractor				
Public Works Pub. Cont. Code §7107	Public Entity	Retention	60 days after Date of Completion	2% per month in lieu of interest; attorneys fees and costs	Contracts entered into after January 1, 1993
	Original Contractor				

Acret, Prompt Payment Statute Matrix

Public Works Pub. Cont. Code §22300	Prime Contractor	Interest on escrowed retention funds net of costs	Within 20 days of receipt	Unspecified. Unwaivable.	Contracts entered into on or after January 1, 1999
	Subcontractor				
Public Works Pub. Cont. Code §10261.5	State Agency	Progress payments	30 days	10% annual interest	January 1, 1991
	Contractor				
Public Works Gov. Code §926.19, §927.4	State Agency	Any undisputed payment	31 days after notice undisputed payment is due	Interest in the Pooled Money Investment Account minus 1% with costs and legal fees to plaintiff	January 1, 1997
	Any Person				
Public Works Pub. Cont. Code §10853	California State University	Progress payments	39 days after payment request	10% annual interest after payment is due	January 1, 1993
	Prime Contractor				
Public Works Pub. Cont. Code §20104.50	Local Agency	Progress payments	30 days after payment request	10% annual interest	January 1, 1993
	Contractor				
Public Works Civ. Code §3320	Public Agency	Progress payments and retentions	30 days (progress payment) or 45 days (retention) after written demand	1.5% per month in lieu of interest, attorneys fees and costs	Contracts entered into after January 1, 1996
	Architect, Engineer, and Land Surveyor				
Public Works Civ. Code §3321	Prime Design Professional	Progress payments and final payments	15 days after receipt of payment from agency	1.5% per month in lieu of interest, attorneys fees and costs	January 1, 1996
	Sub-Consultant Design Professional				

*10 days after notice as required by statute for contracts entered into after January 1, 1994.
+Unless otherwise agreed to in writing.

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