

Memorandum 2001-53

Mechanic's Liens: General Statutory Revision

The scope of the mechanic's lien study was discussed at the May meeting, in connection with Memorandum 2001-41 and its supplements. As reported in the Minutes:

The Commission will consider the extent to which the statute should be generally revised after further review, but the general view was that the staff should start with the existing statute and make proposed revisions to simplify and clarify the law, rather than starting from a blank slate and building a new statute. If a general revision can be prepared in time for a bill in 2002, it will necessarily be a more limited project than would be possible in a multi-year project. In view of other mandated projects and pending studies, Commissioners generally expressed the view that it would not be productive to get involved in a lengthy overall revision of the mechanic's lien statute, particularly if a consensus could not be reached, resulting in eventual abandonment of the project.

In the process of drafting the double payment proposal attached to Memorandum 2001-52, it became even clearer to the staff that the mechanic's lien statute needs to be cleaned up, even if no major substantive revisions are undertaken. It can be difficult to determine where an amendment should go because of the frequently-patched nature of the statute. As more and more patches have been added over the years, the law becomes more confusing and convoluted at an ever-increasing pace. From the 1969 revision moving the statute from the Code of Civil Procedure into the Civil Code, the mechanic's lien law has been subject to amendment 64 times.

Attached to this memorandum is a staff draft containing several provisions selected to illustrate the need for a basic law revision project. Also attached in the Exhibit are the following materials:

	<i>Exhibit p.</i>
1. Letter from Assembly Judiciary Committee (June 28, 1999)	1
2. Assembly Judiciary Committee Staff Analysis of SB 938, as amended May 22, 2001	2

Development of Study

The staff has been working on the assumption that the mechanic's lien study would proceed along the normal course for this kind of statute, although the initiation of the study by a request from a legislative committee is rare, if not unique. (For reference purposes, the original letter from Assembly Members Sheila James Kuehl (Chair) and Rod Pacheco (Vice Chair) is reproduced at Exhibit p. 1.) The letter refers to a comprehensive review, which we have taken to mean the usual overall revision process the Commission traditionally undertakes.

The status was characterized as follows in the first memorandum on this subject, forwarding part 1 of Gordon Hunt's background report (Memorandum 99-85):

Pursuant to a request from the Assembly Judiciary Committee, the Commission has agreed to conduct a comprehensive review of the mechanic's lien law on a priority basis. (A copy of the letter from the Committee Chair and Vice Chair is attached.) At the November 30 Commission meeting, we intend to have a general discussion of the scope of the study and to hear the comments of persons interested in this subject.

....

In late August, the Executive Secretary wrote the Assembly Judiciary Committee to explain that, due to the size of this project, the number of interested stakeholders, and the methodical and thorough process followed by the Commission, we would not expect to have a comprehensive proposal ready before the 2001 session. Even this may be optimistic. It is too early, however, to know how fast we can proceed, since we do not yet have a good idea of the scope of the study, what issues the Commission will decide to consider, how controversial even relatively minor revisions might be, or what alternative approaches there may be in the legal literature or other state statutes.

Following a preliminary review of the statutes (principally, Civil Code Section 3082 *et seq.*) and other materials at hand, the staff believes that the statutes are ripe for revision, at least from a technical standpoint. Mr. Hunt's report indicates quite a few technical problems with the statute, and issues have also been presented in recent and pending bills (see, e.g., AB 171 (Margett), currently before the Assembly Judiciary Committee). Also before the Committee this session are ACA 5 and AB 742 (Honda), which together would restrict mechanic's liens on single-family, owner-occupied dwellings and establish a default recovery fund for payment of certain unsatisfied obligations to subcontractors.

The Commission traditionally has been reluctant to get involved in areas that are under active legislative review. It is wasteful of Commission resources to duplicate legislative efforts, and if the matters are highly controversial, common sense suggests that the Commission's opinion is unlikely to advance law reform. The Commission does not take positions on bills; it speaks to the Legislature through its own recommendations and bills. This subject, however, has been referred to the Commission by one of the policy committees that regularly sees bills concerning mechanics liens, and it is the judgment of the Committee that the subject needs a comprehensive review. This is a function the Commission is designed to perform. However, a consequence may be that action on bills currently before the Legislature may be deferred while the Committee waits for the Commission's recommendations. As yet, we do not know how the issues will be resolved, but we think it needs to be clear that the Commission is not departing from its practice of not taking positions on pending bills, even though we will necessarily be considering the issues raised in pending bills and the various alternatives to address problems in the law.

The Minutes of the November 1999 meeting reported as follows:

The Commission received the report prepared by Mr. Gordon Hunt and heard the comments of interested persons relating to the scope and direction of the study. Several speakers urged the Commission to "go back to square one" and conduct a thorough review and revision of the mechanics lien law and related provisions, which are confusing, complicated, and out of step with modern conditions; others argued that, while there are some improvements that could be made, the statute is basically sound and represents the accumulated improvements from many years' work.

Daniel Pone, Consultant to the Assembly Judiciary Committee, and Mark Redmond, from the Assembly Republican Caucus, recognized that the Commission's process can be lengthy and that the Commission customarily does not take positions on pending legislation. Mr. Pone also noted that the referral from the Assembly Judiciary Committee is not intended to impede development of the law.

There are a number of other references to the working understanding in staff memorandums produced in this study, but the Commission has not formally decided how it wants to finish up the comprehensive study. At the last meeting, the Commission decided not to undertake a "clean slate" rewrite of the

mechanic's lien statute, although opinion was divided. In any event, a complete overhaul would not be possible with the time pressures to prepare a comprehensive review.

Recent Developments

Three bills have now been held up pending completion of the Commission's comprehensive review.

In Memorandum 2001-41, considered at the May meeting, the staff reported on two bills before the Assembly Judiciary Committee earlier this year that 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.

Both of these bills have passed the Assembly and are pending in the Senate.

Now comes Senator Margett's SB 938 concerning giving notice of completion, upon which various lien enforcement deadlines depend. This bill was pulled off calendar in the Assembly Judiciary Committee on June 19th. SB 938 passed the Senate by a 38-0 vote. The situation is fully described in the attached committee analysis of SB 938, which the staff highly recommends that you read, since it presumably outlines the current understanding of the Assembly Committee leadership of the Committee's expectations from the Commission. See Exhibit pp. 2-6.

Staff Recommendation

The staff remains optimistic, with some reservations, that progress can be made on both fronts: (1) addressing the "hot button" issue of double payment in home improvement contracts and (2) making some important level of revisions of the statute as a whole. We hope that the Commission will not find itself conducting mini-projects other special issues in a way that would fragment the attempt to make a comprehensive recommendation. If the Commission can approve a final recommendation on the double payment issue in the next few months, then we can focus on the comprehensive review, including a variety of substantive revisions that have come to our attention.

Since the Assembly Judiciary Committee is holding off on mechanic's lien bills that it considers within the scope of the Commission's comprehensive

review, the staff believes it will be necessary for the final stage of the mechanic's lien project to include a review of any legislative proposals that have been stalled. The consequence of this unusual role for the Commission is that the substance of a bill may come to the Commission as a proposal for inclusion in the report to the Assembly Judiciary Committee and, perhaps, in some form, as part of the Commission's overall recommendation for revision of the mechanic's lien law.

With these considerations in mind, the staff thinks the following schedule should be feasible:

(1) Double Payment Issue:

A tentative recommendation can be approved for distribution after the September 20-21 meeting, with a comment return date before the November 30 meeting.

A final recommendation can be approved not later than the January 17-18, 2002, meeting.

(2) Report to Assembly Judiciary Committee:

A report on the Commission's investigations into various alternatives to address the double payment issue should be formally prepared and provided to the Assembly Judiciary Committee. This should be a separate item, rather than bulking up the Commission's recommendation on this issue.

(3) Comprehensive Review:

With the time available, the staff should prepare a comprehensive draft that eliminates obsolete and duplicative provisions, modernizes language, improves organization, and addresses the issues raised by SB 938 and other bills, and in correspondence to the Commission, including Gordon Hunt's original study.

A draft tentative recommendation, scaled to the time available, could be ready by the September 20-21 or November 15-16 meeting. If approved, it could be circulated for comment, with final recommendation approved at the January 17-18, 2002, meeting.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

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Law Revision Commission
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File: H-820

June 28, 1999

Mr. Nat Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4731

Dear Mr. Sterling:

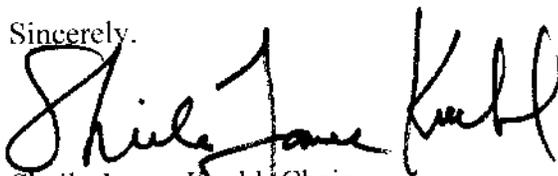
As has been the case in the past, the Judiciary Committee has heard a number of bills this year relating to the state's Mechanics Lien laws (see, e.g., AB 171 (Margett) and AB 742 (Honda)). Many previous bills have been enacted into law and, as a result, the Mechanics Lien laws have been amended dozens of times since lien rights were added to the state Constitution.

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

We understand that the Commission may prioritize this issue under its ongoing grant of legislative authority to review the state's lien laws generally and would appreciate your conveying this request to the Commission. Should you have any questions about this request, please do not hesitate to contact either Drew Liebert, the Committee's chief counsel, at 916-319-2334, or Mark Redmond, minority counsel, at 916-319-2739.

Thank you for your consideration.

Sincerely,


Sheila James Kuehl, Chair
Assembly Judiciary Committee


Rod Pacheco, Vice Chair
Assembly Judiciary Committee

cc: Honorable Dick Ackerman
Honorable Mike Honda
Honorable Bob Margett

Date of Hearing: June 19, 2001

ASSEMBLY COMMITTEE ON JUDICIARY
Darrell Steinberg, Chair
SB 938 (Margett) – As Amended: May 22, 2001

SENATE VOTE: 38-0

SUBJECT: WORKS OF IMPROVEMENT: MECHANIC'S LIENS

KEY ISSUES:

1. DOES THIS BILL NOT FALL WITHIN THE COMMITTEE'S CRITERION FOR HOLDING OFF ON PIECEMEAL AMENDMENT OF THE MECHANIC'S LIEN LAW WHILE THE CALIFORNIA LAW REVISION COMMISSION IS CONDUCTING A COMPREHENSIVE REVIEW OF THE SUBJECT AT THE SPECIFIC REQUEST OF THE COMMITTEE?
2. SHOULD AN OWNER, IN ADDITION TO THE COUNTY RECORDER, BE REQUIRED TO NOTIFY ALL SUBCONTRACTORS WHEN A NOTICE OF PROJECT COMPLETION IS FILED, EVEN THOUGH CURRENT LAW PROVIDES THAT THEY MAY RECEIVE THE SAME INFORMATION FROM THE COUNTY RECORDER?

SYNOPSIS

This bill is substantially similar to a bill last session that died in this Committee but prompted a study, now being conducted, by the California Law Revision Commission (CLRC). Specifically, the bill requires an owner of a private work of improvement to notify contractors and subcontractors when the owner records a notice of completion or cessation of the project, in addition to the notice already provided by county recorders. Because this bill falls within the Committee's criterion for deferring piecemeal reform of the mechanic's lien law, the Committee may choose to amend the bill similarly to AB 568 (Dutra) and AB 543 (Vargas) such that it is limited to intent language pending the receipt of the CLRC study.

SUMMARY: Requires owners of private works of improvement, in addition to county recorders, to advise subcontractors that a notice of completion or cessation has been recorded. Specifically, this bill requires owners of private works of improvement to provide notice by registered or certified mail to the original (general) contractor, as well as all subcontractors who have provided the owner with a preliminary lien notice, within 10 days after recording a notice of completion or cessation of the project. If the owner fails to do so, the lien-filing period would be extended to 90 days (from 60 for general contractors and 30 for subcontractors).

EXISTING LAW:

- 1) Provides that certain persons have a mechanic's lien upon property upon which they have bestowed labor or furnished materials, in the amount of the value of the labor done and materials furnished. (Calif. Const., Art. 14, Section 3.)

- 2) Requires potential lien claimants to file a preliminary lien notice with the owner of a construction project within 20 days after providing the labor or furnishing the materials in order to be eligible to file a notice of lien at a later time. (Civil Code section 3097. All further references are to the Civil Code unless otherwise noted.)
- 3) Provides that any person who has filed a preliminary 20-day notice may, but need not, file such notice with the county recorder in the county in which the property is located, and that the county recorder shall mail to those persons notification that a notice of completion or notice of cessation has been recorded on the property. (Section 3097(o)(1).)
- 4) Provides that the county recorder shall make a good faith effort to mail such notification within five days after the recording of a notice of completion of the project or notice of cessation of labor. (Section 3097(o)(2).) However, the failure of the county recorder to mail the notification to a person who has filed a preliminary 20-day notice, or the failure of those persons to receive the notification, shall not affect the time period within which a claim of lien is required to be recorded. (Section 3097(o)(3).)
- 5) Provides that when a property owner records a valid notice of completion or notice of cessation, an original (general) contractor in direct contract with the owner must record his or her lien and/or serve a stop notice within 60 days of the recording of the notice of completion or notice of cessation. (Section 3115.) All other claimants (e.g., subcontractors) must record their liens and/or serve stop notices within 30 days of the date of the notice of completion or notice of cessation. (Section 3116.)
- 6) Provides that where no notice of completion or notice of cessation has been recorded by the property owner, but the project has actually been completed, all claimants must record their liens and/or serve stop notices within 90 days from the date of actual completion. (Sections 3115, 3116.)

FISCAL EFFECT: This bill as currently in print is keyed non-fiscal.

COMMENTS: The author states that this bill is necessary because subcontractors often do not know that a job has been completed and that the prescribed period by which they are required to file a lien notice has commenced.

Related Legislation Has Been Deferred. As discussed below, rather than amend the law in this area before the CLRC's report is submitted, two Assembly bills addressing the issue of mechanic's liens were recently revised in this committee to state only an intention to reform the law pursuant to the CLRC's upcoming report. To be consistent, the Committee may therefore choose to amend this bill similarly.

This Proposal Died in Committee Last Session. This proposal came before this committee last session in the form of AB 171 (Margett). Rather than take action on this and other proposals to repeatedly amend the mechanic's lien laws, the committee requested via letter from the Committee dated June 28, 1999 that the CLRC provide the Legislature with a comprehensive review of mechanic's lien laws. Pursuant to that request, the CLRC agreed to conduct this review on a priority basis. (See California Law Revision Commission, Staff Memorandum, Study H-820 (November 16, 1999).) The CLRC advises that this review is not yet complete, and is not likely to be complete before next year, although it expects shortly to have completed its

review of the sub-issue of homeowner double payment problems. As the CLRC acknowledged when it undertook the comprehensive review, it was understood that a consequence of the study may be that action on bills before the Legislature may be deferred while the committee waits for the CLRC's recommendations. (*Id.*)

In opposition to the bill, the California Land Title Association states that it is premature to address this issue until the CLRC's review is completed.

Current Law Provides the Requested Notice. County recorders are currently required to give notice of completion or cessation within five (5) days to those subcontractors who have provided the recorder with the same preliminary lien notice that the subcontractor is required to provide to the owner of the project. However, this process is apparently unsatisfactory, presumably because some subcontractors fail to file the requisite forms with the recorders, or because the recorders do not inform the eligible subcontractors with sufficient reliability.

Proponents of the bill state that these notices are frequently not received by the claimants in a timely fashion because of the failures of county recorders statewide, or because of unspecified problems with delivery of the mail by the Postal Service. According to the sponsor, the American Subcontractor's Association California, Inc., the notification process is subject to "significant communications problems, such as incorrect names on documents, abbreviations and cross referencing documents indexes." In opposition to the earlier incarnation of this measure (see prior legislation below), others have commented that the primary reason subcontractors do not receive notice is that most subcontractors do not provide the recorder's office with the proper information (*i.e.*, a copy of the preliminary lien notice document that subcontractors file with the owner) to trigger the recorder's obligation to notify them when the owner's notice of completion is received.

This Bill Provides Duplicate Notice. Under the bill, county recorders would continue to be responsible for providing notice of completion to those subcontractors who have provided the recorder with their preliminary lien notification information. The bill would simply require owners, as well as the recorder's office, to advise subcontractors when they file their notice of completion or cessation. Owners would be allowed 10 days after recording their notice of completion or cessation with the county to send the required notice; delivery of the owner's notice would be required by certified or registered mail. The bill exempts owners who occupy the improved property as a residence, as well as a person who may have a security interest in the property.

Because owners are already in possession of the preliminary lien notices filed by the subcontractors for whom notice of completion is required from the owner under this bill, proponents argue that the owner will not be unduly burdened by the notification requirement. Proponents also assert that responsible owners who have paid the general contractor have an incentive to provide notice to the eligible subcontractors because failure to do so can result in a lien against the property if the general contractor has not paid the subcontractors.

In opposition to the bill, the California Land Title Association responds that it is unfair to impose this new and onerous burden on the property owner who often has no idea who the subcontractors are and whether they have been paid. They also state that the owner's notice to the subcontractors would be an "off-record" act at odds with the rationale behind recording the

owner's notice of completion or cessation, which is to give constructive notice to all interested parties.

Subcontractors May Still Lose Lien Rights Because They Lack Knowledge of Completion.

Despite the stated reason for the bill, it should be noted that this bill would not prevent the problem of subcontractors losing their lien rights because they fail to learn of completion of the project. Under this bill, as under current law, subcontractors lose the right to assert a mechanic's lien if they miss the deadline. Under this bill, as under current law, there is no obligation on the part of the owner to file a notice of completion with the recorder's office. Under this bill, as under current law, if the owner does not record a notice of completion, the commencement date for the period during which a subcontractor may assert a lien is the completion of the project. Under this bill, as under current law, the deadline by which a subcontractor must assert a lien is 90 days from completion of the project if the owner does not record a notice of completion. Thus, under this bill as under current law, if an owner elects not to file a notice of completion with the recorder, a subcontractor may lose the right to assert a lien because he or she does not know that the project is complete and therefore fails to file the lien within the 90-day deadline.

Prior/Pending Related Legislation.

AB 171 (Margett) died during the 1999-2000 session in this committee pending a review of this area of the law by the CLRC. That bill was substantially identical to the current measure, except that it would have covered public in addition to private works of improvement.

AB 568 (Dutra) passed the Assembly 74-1 on May 24, 2001 and is currently pending in the Senate. This bill currently states the Legislature's intent to revise and reorganize the mechanic's lien laws and related provisions for the purpose of modernization and simplification in anticipation of recommendations later this session from the California Law Revision Commission, particularly with regard to home improvement. It is believed that this bill will not be moved until the CLRC report has been submitted.

AB 543 (Vargas) passed the Assembly 74-0 on May 24, 2001 and is currently pending in the Senate. Similar to the foregoing measure by Mr. Dutra, this bill currently states the Legislature's intent to revise and reorganize the mechanic's lien laws and related provisions for the purpose of modernization and simplification in anticipation of recommendations later this session from the California Law Revision Commission. As with the related bill by Mr. Dutra, it is believed that this bill will await receipt of the CLRC study.

REGISTERED SUPPORT / OPPOSITION:

Support

American Subcontractor's Association – California (sponsor)
American Fence Contractor's Association, California Chapter
Building Industry Credit and Supply Coalition
California Fence Contractor's Association
California Landscape Contractor's Association
California Legislative Conference – Plumbing, Heating and Piping Industry
Construction Industry Legislative Council
Engineering Contractor's Association

Flasher/Barricade Association
Institute of Heating and Air Conditioning Industries, Inc.
Marin Builder's Exchange
National Electrical Contractor's Association, California chapters
Roofing Contractor's Association of California
Approximately 50 individuals

Opposition

California Land Title Association

Analysis Prepared by: Kevin G. Baker / JUD. / (916) 319-2334

A General Revision Sampler

Civ. Code § 3082 (amended). Application of definitions	1
Civ. Code § 3083 (amended). Bonded stop notice	2
Civ. Code § 3090 (amended). Material supplier	3
Civ. Code § 3091 (added). Mechanic’s lien	3
Civ. Code § 3092 [needs revision]. Notice of cessation	3
Civ. Code § 3093 [needs revision]. Notice of completion	4
Civ. Code § 3095 (repealed). Original contractor	5
Civ. Code § 3096 [needs revision]. Payment bond	5
Civ. Code § 3097 [needs revision and relocation]. Preliminary 20-day notice (private work)	6
Civ. Code § 3098.5 (added). Prime contractor	6
Civ. Code § 3103 [needs revision and relocation]. Stop notice	6
Civ. Code § 3105.5 (added). Supplier	7
Civ. Code § 3106 (amended). Work of improvement	7
Civ. Code § 3158 (amended). Stop notice given to owner, failure to serve notice after demand	8
Civ. Code § 3159 (amended). Stop notice given to construction lender	8
Civ. Code § 3162 (amended). Withholding by lenders	10
Civ. Code § 3167 (amended). Pro rata distribution of funds	11

1 **TITLE 15. WORKS OF IMPROVEMENT**

2 ☞ **Staff Note.** This partial draft provides a sample of general drafting improvements that could,
3 and should, be made to improve the mechanic’s lien statute. Much of the language is internally
4 inconsistent, and frequently archaic. Definitional sections have been amended many times and
5 inflated into major treatises on substantive law. Section 3097 purporting to define the term
6 “preliminary 20-day notice (private work)” is the worst offender in Title 15, but there are many
7 others, such as Section 3083 (“bonded stop notice”), which contains delivery requirements in the
8 course of defining the contents of the paper, and Section 3092 (“notice of cessation”), which
9 includes recording requirements and rules on effectiveness in the course of defining the nature of
10 the notice. From a law revision standpoint, this statute is ripe for revision, even if no substantive
11 reforms are undertaken.

12 For now, we have not proposed renaming this title or naming it with a “short title,” as is
13 commonly done for convenience of reference. “Works of Improvement” is not an ideal title
14 heading or short title, but “Mechanic’s Liens” is too limited and is inaccurate in the public works
15 area where there are no mechanic’s liens. This statute also includes the stop notice remedy and
16 payment bonds, but listing “Mechanic’s Liens, Stop Notices, and Payment Bonds” is not much
17 better as a title.

18 Even though common parlance uses “mechanic’s liens,” the statute tends to refer, somewhat
19 awkwardly, to “the liens provided for in this chapter.” See, e.g., Sections 3123, 3128, 3134, 3136,
20 3144, 3151. A definition of “mechanic’s lien” or “construction lien” would be preferable and one
21 is proposed in Section 3091 *infra*.

22 **Civ. Code § 3082 (amended). Application of definitions**

23 SEC. _____. Section 3082 of the Civil Code is amended to read:

24 3082. Unless the provision or context otherwise requires, the ~~provisions~~
25 definitions in this chapter govern the construction of this title.

26 **Comment.** Section 3082 is amended for conformity with the usual form of this type of
27 provision. See, e.g., Code Civ. Proc. §§ 680.110, 1235.010; Fam. Code §§ 6, 50; Prob. Code §§
28 20, 4603.

1 ☞ **Staff Note.** There is not always a clear path to determining what should be defined and what
2 should be included in the definition. The Commission's approach can be seen by examining some
3 of the larger statutes enacted on Commission recommendation. For example, the Attachment Law
4 (Code Civ. Proc. § 481.010 *et seq.*) does not define a writ of attachment, a notice of attachment, a
5 claim of exemption, or an undertaking to release an attachment. These papers cannot be simply
6 and usefully defined in a way that is helpful to understanding and applying the law. Their
7 meaning is clear from the sections that govern their contents, issuance, and effect without the
8 need to provide an exemption.

9 **Civ. Code § 3083 (amended). Bonded stop notice**

10 SEC. _____. Section 3083 of the Civil Code is amended to read:

11 3083. “Bonded stop notice” means a stop notice, ~~given to any construction~~
12 ~~lender, accompanied by a bond with good and sufficient sureties in a penal sum~~
13 ~~equal to 1-1/4 times the amount of such claim conditioned that if the defendant~~
14 ~~recovers judgment in an action brought on such verified claim or on the lien filed~~
15 ~~by the claimant, the claimant will pay all costs that may be awarded against the~~
16 ~~owner, original contractor, construction lender, or any of them, and all damages~~
17 ~~that such owner, original contractor, or construction lender may sustain by reason~~
18 ~~of the equitable garnishment effected by the claim or by reason of the lien, not~~
19 ~~exceeding the sum specified in the bond. To be effective such bonded stop notice~~
20 ~~shall be delivered to the manager or other responsible officer or person at the~~
21 ~~office of the construction lender or must be sent to such office by registered or~~
22 ~~certified mail. If such notice is delivered or sent to any institution or organization~~
23 ~~maintaining branch offices, it shall not be effective unless delivered or sent to the~~
24 ~~office or branch administering or holding such construction funds. that satisfies the~~
25 ~~requirements of Chapter 3 (commencing with Section 3156) or Chapter 4~~
26 ~~(commencing with Section 3179).~~

27 **Comment.** Section 3083 is amended to remove the substantive rules that overlap with
28 provisions in Chapter 3 (commencing with Section 3156) and Chapter 4 (commencing with
29 Section. The provisions removed from the first sentence concerning the amount and terms of the
30 bond are continued in Section [_____] without substantive change. The provisions in the former
31 second and third sentences concerning the manner and effect of service are continued in Section
32 [_____] without substantive change.

33 See also Section 3103 (“stop notice” defined).

34 ☞ **Staff Note.** Section 3083 is not really a definition. It is a substantive provision concerning the
35 contents and effect, and procedure for implementing this remedy. It should be with the other bond
36 provisions, e.g., in the current organization, Chapter 6 (commencing with Section 3225) on
37 General Provisions Relating to Bonds. We have continued the “pointer” definition here, but it
38 could be eliminated.

39 This definition is also misleading in that it defines bonded stop notice as one given to a
40 construction lender. But a bonded stop notice may also be given to the owner. See, e.g., Section
41 3158.

42 A better approach would probably be to delete this definition and provide in the definition of
43 “stop notice” that it may be bonded or unbonded, with appropriate references to the governing
44 substantive provisions.

* * * * *

1 **Civ. Code § 3090 (amended). Material supplier**

2 SEC. _____. Section 3090 of the Civil Code is amended to read:

3 3090. “Materialman” Material supplier means any a person who furnishes
4 materials or supplies to be used or consumed in any a work of improvement.

5 **Comment.** Section 3090 is amended for consistency with modern usage. See also Cal. Const.
6 art. XIV, § 3 (“persons furnishing materials”).

7 See also Section 3106 (“work of improvement” defined).

8 ☞ **Staff Note.** From time to time, commentators mention equipment suppliers, but the usage is
9 not consistent. It might make sense to define the term “supplier” to include suppliers of materials
10 or equipment, if there are no distinctions for the purposes of Title 15. But see the staff note
11 following Section 3162 *infra*.

12 **Civ. Code § 3091 (added). Mechanic’s lien**

13 SEC. _____. Section 3091 is added to the Civil Code, to read:

14 3091. “Mechanic’s lien” means the lien provided by this title.

15 **Comment.** Section 3087.5 is a new provision intended for drafting convenience. This section
16 recognizes the common usage of the term “mechanic’s lien” even though the word “mechanic” is
17 archaic in the construction industry and the lien is available to very broad class, including
18 suppliers of materials and equipment. See, e.g., Sections 3110 (persons entitled to lien), 3111
19 (lien rights of laborers’ trust fund), 3112 (site improvement lien).

20 ☞ **Staff Note.** The term “mechanic’s lien” is used in six sections (3097, 3110, 3152, 3158,
21 3260.2, 3262) and the heading for Chapter 2 (commencing with Section 3109). The staff has
22 earlier proposed replacing “mechanic’s lien” with “construction lien,” but the older term appears
23 to be too ingrained to be dislodged by a mere statute. The Uniform Construction Lien Act (1987)
24 favored the newer term because it is more descriptive than mechanic’s lien.

25 **Civ. Code § 3092 [needs revision]. Notice of cessation**

26 3092. “Notice of cessation” means a written notice, signed and verified by the
27 owner or his agent, containing all of the following:

28 (a) The date on or about when the cessation of labor commenced.

29 (b) A statement that such cessation has continued until the recording of the
30 notice of cessation.

31 (c) The name and address of the owner.

32 (d) The nature of the interest or estate of the owner.

33 (e) A description of the site sufficient for identification, containing the street
34 address of the site, if any. If a sufficient legal description of the site is given, the
35 validity of the notice shall not, however, be affected by the fact that the street
36 address is erroneous or is omitted.

37 (f) The name of the original contractor, if any, for the work of improvement as a
38 whole.

39 (g) For the purpose of this section, “owner” means the owner who causes a
40 building, improvement, or structure, to be constructed, altered, or repaired (or his
41 successor in interest at the date of a notice of cessation from labor is filed for
42 record) whether the interest or estate of such owner be in fee, as vendee under a
43 contract of purchase, as lessee, or other interest or estate less than the fee. Where

1 such interest or estate is held by two or more persons as joint tenants or tenants in
2 common, any one or more of the cotenants may be deemed to be the “owner”
3 within the meaning of this section. Any notice of cessation signed by less than all
4 of such cotenants shall recite the names and addresses of all such cotenants.

5 The notice of cessation shall be recorded in the office of the county recorder of
6 the county in which the site is located and shall be effective only if there has been
7 a continuous cessation of labor for at least 30 days prior to such recording.

8 ☞ **Staff Note.** This is not really a definition and should be moved to the relevant part of the
9 statute. The phrase “when cessation of labor commenced” is awkward. The need for a specialized
10 definition of “owner” is not clear.

11 **Civ. Code § 3093 [needs revision]. Notice of completion**

12 3093. “Notice of completion” means a written notice, signed and verified by the
13 owner or his agent, containing all of the following:

14 (a) The date of completion (other than a cessation of labor). The recital of an
15 erroneous date of completion shall not, however, affect the validity of the notice if
16 the true date of completion is within 10 days preceding the date of recording of
17 such notice.

18 (b) The name and address of the owner.

19 (c) The nature of the interest or estate of the owner.

20 (d) A description of the site sufficient for identification, containing the street
21 address of the site, if any. If a sufficient legal description of the site is given, the
22 validity of the notice shall not, however, be affected by the fact that the street
23 address recited is erroneous or that such street address is omitted.

24 (e) The name of the original contractor, if any, or if the notice is given only of
25 completion of a contract for a particular portion of such work of improvement, as
26 provided in Section 3117, then the name of the original contractor under such
27 contract, and a general statement of the kind of work done or materials furnished
28 pursuant to such contract.

29 The notice of completion shall be recorded in the office of the county recorder of
30 the county in which the site is located, within 10 days after such completion. A
31 notice of completion in otherwise proper form, verified and containing the
32 information required by this section shall be accepted by the recorder for recording
33 and shall be deemed duly recorded without acknowledgment.

34 If there is more than one owner, any notice of completion signed by less than all
35 of such co-owners shall recite the names and addresses of all of such co-owners;
36 and provided further, that any notice of completion signed by a successor in
37 interest shall recite the names and addresses of his transferor or transferors.

38 For the purpose of this section, owner is defined as set forth in subdivision (g) of
39 Section 3092.

40 ☞ **Staff Note.** This is not really a definition and should be moved to the relevant part of the
41 statute.

* * * * *

1 **Civ. Code § 3095 (repealed). Original contractor**

2 SEC. _____. Section 3095 of the Civil Code is repealed.

3 ~~3095. "Original contractor" means any contractor who has a direct contractual~~
4 ~~relationship with the owner.~~

5 **Comment.** The definition of "original contractor" is replaced by the definition of "prime
6 contractor" in Section 3098.5.

7 ☞ **Staff Note.** Gordon Hunt has proposed making a number of references to "original
8 contractor" and related terms consistent:

9 Chapter 1 of Title 15 (Works of Improvement), Civil Code Sections 3082-3106, sets forth
10 numerous definitions relating to the Mechanic's Lien law. Specifically, Section 3095 defines
11 an "original contractor" as any contractor who has a direct contractual relationship with the
12 owner. The remainder of the sections relating to the Mechanic's Lien law are inconsistent in
13 terms of following the definition set forth in Section 3095.

14 In Section 3097(a), the Preliminary Notice is required to be given to the "original contractor
15 or reputed contractor." Section 3097(b) provides that persons "except the contractor" having a
16 direct contractual relationship with the owner must give a Preliminary Notice to the
17 construction lender. (More will be said about the Preliminary Notice subsequently in this
18 report.) Furthermore, in subdivision (b) of Section 3097, under the "Notice to Property
19 Owner," the property owner is informed that it can protect itself by requiring your
20 "contractor" to furnish signed releases before making payment to your "contractor." In
21 subdivision (k) of Section 3097, it is provided that every "contractor" who is required to pay
22 fringe benefits must include certain information in the Preliminary Notice. In other parts of
23 Section 3097, there is appropriate reference to the term "original contractor."

24 The term "contractor" is likewise used in Section 3098. In Section 3110, it is stated that for
25 the purpose of the Mechanic's Lien law, every "contractor" or other person having charge of
26 a work of improvement or portion thereof shall be held to be the agent of the owner. In
27 Section 3112, in referring to payment, there is a reference to "contractor." In Section 3123(c),
28 it is provided that the owner shall notify the "prime contractor" of any changes in the
29 contract. In Section 3124, the statute refers to a claimant being employed by a "contractor."
30 There are other examples of these discrepancies throughout the statutes.

31 All sections dealing with the Mechanic's Lien law should be consistent and the word
32 "original contractor" should be substituted wherever the term "contractor" or "prime
33 contractor" is used.

34 See Hunt Report #1, at 4 & Exhibit at 1-2.

35 Mr. Hunt's proposal to replace "prime contractor" with "original contractor" would affect one
36 section (3123), but the main point is to use one term and use it consistently. The Commission has
37 tentatively decided to use "prime contractor" — revisions in the following sections should be
38 made to use the term consistently.

39 **Civ. Code § 3096 [needs revision]. Payment bond**

40 3096. "Payment bond" means a bond with good and sufficient sureties that is
41 conditioned for the payment in full of the claims of all claimants and that also by
42 its terms is made to inure to the benefit of all claimants so as to give these persons
43 a right of action to recover upon this bond in any suit brought to foreclose the liens
44 provided for in this title or in a separate suit brought on the bond. An owner,

1 original contractor, or a subcontractor may be the principal upon any payment
2 bond.

3 ☞ **Staff Note.** Most of this language is substantive and needs to be moved, if a definition is
4 retained. It appears that a limited definition would be useful, since the term is used in a number of
5 substantive provisions. See Sections 3138, 3139, 3159, 3161, 3162, 3196, 3235, 3236, 3237,
6 3239, 3240, 3242, 3247, 3248, 3249, 3250, 3251, 3252, 3258, 3262, 3267. But no bond definition
7 needs to refer to “good and sufficient sureties” or other standard qualifications. The Bond and
8 Undertaking Law should be relied on for general provisions. See Code Civ. Proc. § 995.010 *et*
9 *seq.*

10 **Civ. Code § 3097 [needs revision and relocation]. Preliminary 20-day notice (private work)**

11

12 ☞ **Staff Note.** This section has been commented on numerous times in staff materials and
13 Commission meetings. It is not set out here, because it is included in the conforming revisions
14 part of the staff draft tentative recommendation attached to Memorandum 2001-52, pp. 15-21.
15 The staff believes that the need for general revision of the mechanic's lien is conclusively
16 illustrated by Section 3097. *Res ipsa loquitur.*

* * * * *

17 **Civ. Code § 3098.5 (added). Prime contractor**

18 SEC. _____. Section 3098.5 is added to the Civil Code, to read:

19 3098.5. “Prime contractor” means a contractor who has a direct contractual
20 relationship with the owner, regardless of whether there are any subcontractors on
21 the work of improvement.

22 **Comment.** Section 3098.5 replaces former Section 3095 defining “original contractor.” This
23 definition conforms the law to the more common usage in the construction industry. The final
24 clause makes clear that there can be a prime contractor even if there are no subcontractors. “Prime
25 contractor” is broader than “general building contractor” as defined under the Contractors’ State
26 License Law in Business and Professions Code Section 7157, and can include a “specialty
27 contractor” as defined in Business and Professions Code Section 7158, or any other type of
28 contractor who contracts directly with the owner.

29 See also Sections 3088 (“contract” defined), 3104 (“subcontractor” defined), 3106 (“work of
30 improvement” defined).

* * * * *

31 **Civ. Code § 3103 [needs revision and relocation]. Stop notice**

32 3103. “Stop notice” means a written notice, signed and verified by the claimant
33 or his or her agent, stating in general terms all of the following:

34 (a) The kind of labor, services, equipment, or materials furnished or agreed to be
35 furnished by such claimant.

36 (b) The name of the person to or for whom the same was done or furnished.

37 (c) The amount in value, as near as may be, of that already done or furnished and
38 of the whole agreed to be done or furnished.

39 (d) The name and address of the claimant.

1 The notice, in the case of any work of improvement other than a public work,
2 shall be delivered to the owner personally or left at his or her residence or place of
3 business with some person in charge, or delivered to his or her architect, if any, if
4 the notice is served upon a construction lender, holding construction funds and
5 maintaining branch offices, it shall not be effective as against the construction
6 lender unless given to or served upon the manager or other responsible officer or
7 person at the office or branch thereof administering or holding the construction
8 funds. The notice, in the case of any public work for the state, shall be filed with
9 the director of the department which let the contract and, in the case of any other
10 public work, shall be filed in the office of the controller, auditor, or other public
11 disbursing officer whose duty it is to make payments under the provisions of the
12 contract, or with the commissioners, managers, trustees, officers, board of
13 supervisors, board of trustees, common council, or other body by whom the
14 contract was awarded. No stop notice shall be invalid by reason of any defect in
15 form if it is sufficient to substantially inform the owner of the information
16 required.

17 Any stop notice may be served by registered or certified mail with the same
18 effect as by personal service.

19 ☞ **Staff Note.** Like so many other provisions in the definitional chapter, Section 3103, if it is
20 defined at all, should be brief, with the rules concerning proper parties for service, manner of
21 service, and effect of service , as well as the contents of the notice, moved to the stop notice
22 provisions in Sections 3156-3214.

23 “Stop notice,” as defined here, is a general term including a “bonded stop notice” as defined by
24 Section 3083. But most of the substantive provisions are drafted on the assumption that “stop
25 notice” means an unbonded stop notice, as evidenced by the phrase “stop notice [and/or] bonded
26 stop notice” in the article headings in Chapter 3 (commencing with Section 3156) and in Sections
27 3159, 3160, 3162, 3166, 3167, 3168, 3171, 3172, 3174, and 3175. “Stop notice” in these sections
28 means an *unbonded* stop notice, but in Section 3158, it presumably means both:

29 3158. Any of the persons named in Sections 3110, 3111, and 3112, other than the original
30 contractor, may give to the owner a stop notice. Any person who shall fail to serve such a
31 stop notice after a written demand therefor from the owner shall forfeit his right to a
32 mechanic's lien.

* * * * *

33 **Civ. Code § 3105.5 (added). Supplier**

34 SEC. _____. Section 3105.5 is added to the Civil Code, to read:

35 3105.5. “Supplier” includes material suppliers and equipment suppliers.

36 **Comment.** Section 3105.5 is a new provision, added for drafting convenience.

37 See also Section 3090 (“material supplier” defined).

38 **Civ. Code § 3106 (amended). Work of improvement**

39 3106. (a) “Work of improvement” includes, but is not ~~restricted~~ limited to, the
40 following:

1 ~~(1) construction~~ Construction, alteration, addition to, or repair, in whole or in
2 part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence,
3 machinery, railroad, or road, ~~the~~.

4 ~~(2) seeding~~ Seeding, sodding, or planting of any a lot or tract of land for
5 landscaping purposes, ~~the~~.

6 ~~(3) filling~~ Filling, leveling, or grading of any a lot or tract of land, ~~the~~.

7 ~~(4) demolition of buildings,~~ Demolition and the removal of buildings.

8 ~~(b)~~ Except as otherwise provided in this title, “work of improvement” means the
9 entire structure or scheme of improvement as a whole.

10 **Comment.** Section 3106 is revised to tabulate the different types of works falling within the
11 definition. This is a technical, nonsubstantive revision.

12 ☞ **Staff Note.** This definition should be modernized and further redrafted. For example, is the
13 demolition or removal of an aqueduct or wharf a “work of improvement.” Demolition of
14 buildings is covered in subdivision (a)(4), but buildings are distinguished from wharves et al. in
15 subdivision (a)(1). In subdivision (a)(1), “addition to” does not fit grammatically; the phrase “in
16 whole or in part” in subdivision (a)(1) is out of place and, if needed, should apply to all of the
17 listed work, not just things listed in subdivision (a)(1).

* * * * *

18 **Civ. Code § 3158 (amended). Stop notice given to owner, failure to serve notice after**
19 **demand**

20 SEC. _____. Section 3158 of the Civil Code is amended to read:

21 ~~3158. Any of the persons named in Sections 3110, 3111, and 3112 (a) A~~
22 claimant, other than the ~~original~~ prime contractor, may give to the owner a stop
23 notice to the owner.

24 ~~(b) Any~~ A person who ~~shall fail~~ fails to serve such a stop notice after a written
25 demand ~~therefor~~ from the owner ~~shall forfeit his~~ forfeits the right to a mechanic’s
26 lien.

27 **Comment.** The other revisions are technical, nonsubstantive changes intended to improve
28 clarity and modernize language.

29 See also Sections 3085 (“claimant” defined), 3091 (“mechanic’s lien” defined), 3098.5 (“prime
30 contractor” defined), 3103 (“stop notice” defined).

31 ☞ **Staff Note.** Compare Section 3158 to Section 3159. Why is a time limit specified in Section
32 3159(a) but not in Section 3158? Note also that Section 3158 uses “stop notice” in the general
33 sense, whereas Section 3159 implicitly limits the term to an *unbonded* stop notice. The staff
34 proposes to use “stop notice” as the general term and only distinguish only when necessary.

35 **Civ. Code § 3159 (amended). Stop notice given to construction lender**

36 SEC. _____. Section 3159 of the Civil Code is amended to read:

37 ~~3159. (a) Any of the persons named in Sections 3110, 3111, and 3112 may, prior~~
38 Prior to the expiration of the period within which ~~his or her~~ a claim of lien ~~must be~~
39 recorded under Chapter 2 (commencing with Section 3109), a claimant may give
40 ~~to a construction lender a stop notice or a bonded stop notice. The~~ to a construction

1 lender shall be subject to the following: for materials, equipment, or services
2 furnished, or labor performed.

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

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

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

25 (b) ~~In the case of a stop notice or bonded stop notice filed by the original~~
26 ~~contractor or by a subcontractor, the original contractor or subcontractor shall only~~
27 ~~be entitled to recover on his or her stop notice or bonded stop notice the net~~
28 ~~amount due the original contractor or subcontractor after deducting the stop notice~~
29 ~~claims of all subcontractors or material suppliers who have filed bonded stop~~
30 ~~notices on account of work done on behalf of the original contractor or the~~
31 ~~subcontractor.~~

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

37 **Comment.** Section 3159 is amended to delete surplus language. This is a technical,
38 nonsubstantive revision. The provisions deleted from this section appear in Section 3162. The
39 substance of the last sentence of former subdivision (a)(3) (“materials, equipment, or services
40 furnished, or labor performed”) is continued in Section 3159 as revised. The other revisions are
41 intended to improve clarity and modernize language.

42 See also Sections 3084 (“claim of lien” defined), 3085 (“claimant” defined), 3087
43 (“construction lender” defined), 3098.5 (“prime contractor” defined), 3103 (“stop notice”
44 defined).

1 ☞ **Staff Note.** Section 3159 and 3162 are identical, except for the first sentence of subdivision
2 (a), and the last sentence of subdivision (a)(3) which does not appear in Section 3162.

* * * * *

3 **Civ. Code § 3162 (amended). Withholding by lenders**

4 SEC. _____. Section 3162 of the Civil Code is amended to read:

5 3162. (a) ~~Upon~~ Except as otherwise provided in this section, upon receipt of a an
6 unbonded stop notice pursuant to Section 3159, the construction lender may, and
7 upon receipt of a bonded stop notice the construction lender shall, ~~except as~~
8 ~~provided in this section,~~ withhold from the borrower or other person to whom it
9 the construction lender or the owner may be obligated to make payments or
10 advancement out of the construction fund, sufficient money to answer the claim
11 [and any claim of lien that may be recorded therefor].

12 **(b)** The construction lender ~~shall be~~ is subject to the following duties:

13 (1) The construction lender shall withhold funds pursuant to a bonded stop
14 notice filed by ~~an original~~ a prime contractor, regardless of whether a payment
15 bond has previously been recorded ~~in the office of the county recorder where the~~
16 ~~site is located~~ in accordance with Section 3235 [*Staff Note: This language is also*
17 *the subject of proposed revisions in Memorandum 2001-52 relating to mandatory*
18 *bonds in home improvement contracts.*].

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

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

37 **(b)**

38 **(c)** In the case of a stop notice ~~or bonded stop notice~~ filed by the ~~original~~ prime
39 contractor or by a subcontractor, the ~~original~~ prime contractor or subcontractor
40 shall is only be entitled to recover on his ~~or her~~ stop notice ~~or bonded~~ the stop

1 notice the net amount due the original prime contractor or subcontractor after
2 deducting the stop notice claims of all subcontractors or material suppliers who
3 have filed bonded stop notices on account of work done on behalf of the original
4 prime contractor or the subcontractor.

5 (e)

6 ~~(d) In no event shall the~~ The construction lender be is not required to withhold,
7 pursuant to a bonded stop notice, more than the net amount identified described in
8 subdivision (b) ~~(c)~~. Notwithstanding any other provision, ~~no a~~ construction lender
9 shall ~~have any liability~~ is not liable for the failure to withhold more than this net
10 amount upon receipt of a bonded stop notice.

11 **Comment.** Section 3162 is amended to conform to new terminology. These are technical,
12 nonsubstantive revisions. This section also supersedes the identical provisions formerly found in
13 Section 3159. References to “bonded stop notice” have been eliminated as surplus, since the
14 defined term “stop notice” includes both bonded and unbonded stop notices. See Section 3103.
15 The other revisions are intended to improve clarity and modernize language.

16 See also Sections 3083 (“bonded stop notice” defined), 3085 (“claimant” defined), 3087
17 (“construction lender” defined), 3090 (“material supplier” defined), 3096 (“payment bond”
18 defined), 3098.5 (“prime contractor” defined), 3103 (“stop notice” defined), 3104
19 (“subcontractor” defined),

20 ☞ **Staff Note.** Why are equipment suppliers left out of subdivision (c)? What about other
21 claimants, such as laborers?

22 **Civ. Code § 3167 (amended). Pro rata distribution of funds**

23 SEC. _____. Section 3167 of the Civil Code is amended to read:

24 3167. (a) If the money withheld or required to be withheld pursuant to any
25 bonded a stop notice shall be is insufficient to pay in full the valid claims of all
26 persons by whom such were given claimants who gave stop notices, the same
27 money shall be distributed among such persons the claimants in the same ratio that
28 their respective claims bear to the aggregate of all such valid claims. ~~Such~~ The pro
29 rata distribution shall be made among the persons ~~entitled to share therein~~
30 claimants without regard to the order of time in which their respective stop notices
31 may have been were given or their respective actions, if any, were commenced.

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

39 **Comment.** Section 3167 is amended to delete surplus language. The term “stop notice”
40 includes both bonded and unbonded stop notices, making the duplication between former
41 subdivision (a) and former subdivision (b) unnecessary. This is not a substantive change. The
42 other revisions are technical, nonsubstantive changes intended to improve clarity and modernize
43 language.

44 See also Sections 3085 (“claimant” defined), 3103 (“stop notice” defined).

- 1 ☞ **Staff Note.** Subdivisions (a) and (b) are completely identical, except for the word “bonded” in
2 the first clause in subdivision (a).

* * * * *
