

**First Supplement to Memorandum 2001-53****Mechanic's Liens: General Statutory Revision (Commentary)**

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This supplement forwards some comments relating to the general revision of the mechanic's lien law. Both of these letters are follow-ups to the discussion of James Acret's new mechanic's lien law draft at the May meeting, but bear also on the overriding issues concerning the scope and nature of a general revision of the mechanic's lien law.

*Exhibit p.*

1. James Acret, Pacific Palisades (May 17, 2001) . . . . . 1
2. Rodney Moss, Los Angeles (May 18, 2001) . . . . . 3

We will discuss these comments in connection with consideration of Memorandum 2001-53.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

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May 17, 2001

Law Revision Commission  
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MAY 21 2001

Stan Ulrich  
California Law Revision Commission  
4000 Middlefield Road, Room D-1  
Palo Alto, California 94303-4739

File: \_\_\_\_\_

Unfortunately I won't be able to attend a commission meeting until September 20, and the letters submitted by Mr. Hunt and Mr. Abdulaziz should be dealt with before that date.

Their comments are welcome. I agree with some and believe that others will be easily resolved.

In defense of the current draft:

The construction industry should welcome service on the owner by certified mail return receipt requested in place of service by certified mail without the return receipt on owner, contractor, and construction lender. This will add certainty and reduce expense and paperwork. As a matter of course owners will provide their prime contractors with copies of the preliminary notices and will provide copies to construction lenders if requested to do so.

Where a subject is adequately covered by general law it should not be duplicated or modified in the mechanics lien statute. This principle applies to "release."

It is not necessary to duplicate in the mechanics lien statute existing legislation dealing with consolidation, joinder, lis pendens, or motions to release, nor should we deal in the mechanics lien statute with the insolvency of sureties.

Statutes of limitations on payment bonds and release bonds should be controlled by general law rather than special provisions. This insures that claims will not be unexpectedly cut off by a short statute of limitations.

The amount of a mechanics lien claim should be the reasonable value of the work and materials supplied or the contract price,

Stan Ulrich  
May 17, 2001  
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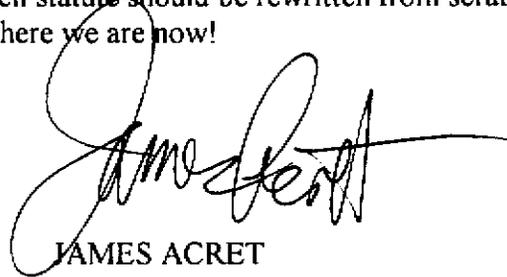
whichever is less. Further explication is confusing and unnecessary.

As a simple matter of due diligence claimants should determine whether a payment bond has been recorded and it would not be difficult to obtain such information either from the recorder's office or from the owner.

To the best of my knowledge, the present draft removes ERISA problems for trust funds. I will solicit input from lawyers who represent trust funds.

No argument is needed to show that the California mechanics lien statute is long, complicated, and hard to understand. Only one whose professional life has been devoted to working with this statute could advocate leaving it as it is!

The present statute is an unruly beast that cannot easily be beaten into submission. This writer believes that the mechanics lien statute should be rewritten from scratch rather than redlined. That approach got us to where we are now!



JAMES ACRET

JA:ll  
c: Sam Abdulaziz  
Gordon Hunt

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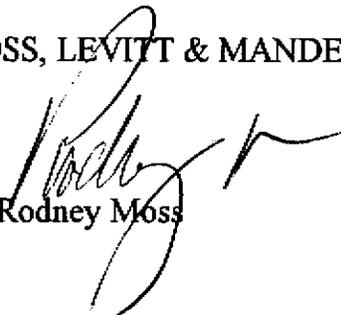
Re: Law Revision Commission

Dear Stan:

I have been receiving copies of all of the documentation related to the possible revision of the mechanic's lien law and, as you know, I have been practicing in that area and have written extensively over a period of 40 years. I believe the comments of Gordon Hunt in his letter of May 11, 2001 to Jim Acret (both of whom I have personal relations with) set forth valid questions and considerations. I do not believe the Acret proposed revision, admirable though it may be in terms of its intent to simply and shorten the mechanic's lien law, can be made operative without dealing with each of the questions raised by Gordon and perhaps many more. The problem is that an enormous case law has developed over the years based upon the mechanic's lien law as drafted and those clarifications have become part of the lien law. I do not believe the history of the lien law can be disregarded in any attempt to update and refine the lien law.

Very truly yours,

MOSS, LEVITT & MANDELL

  
By Rodney Moss

RM:ll

cc: Gordon Hunt, Esq.  
Jim Acret, Esq.