

Memorandum 2001-92

Mechanic's Liens: General Revision

Attached to this memorandum is a staff draft of Chapters 1 and 2 of a new mechanic's lien statute. This general revision is not intended as a substantive overhaul of the statute, but it intended to simplify language, resolve contradictions, improve organization and clarity, eliminate redundant provisions, rectify definitions and use them consistently, and accomplish other goals inherent in a general revision project. At the meeting, to the extent time permits, we would like to proceed through the draft section by section, discuss and resolve any issues that arise, and deal with the staff notes following a number of sections.

This project is intended to be "scaled to the time available for its completion," taking into account the desire of the Assembly Judiciary Committee to have the Commission's reports on mechanic's lien law revisions for the upcoming session of the Legislature. We will continue to work toward that goal, but it necessarily restricts the degree of reform that can be accomplished and the number of technical and minor substantive issues that can be discovered and fixed.

We have not had sufficient time to implement the completion issues, as we had intended. Before this draft is wrapped up, we will address the proposal currently pending in Senator Margett's SB 938, which was discussed at the September meeting. The staff's current intention is to incorporate that proposal into the draft because our preliminary analysis suggests it is a sound approach.

Respectfully submitted,

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Assistant Executive Secretary

GENERAL REVISION OF THE MECHANIC'S LIEN STATUTE

STAFF DRAFT OF CHAPTERS 1 & 2

☞ **Staff Note.** Work on this draft is in progress. Most of Chapter 1 (Definitions and General Provisions) and Chapter 2 (Mechanic's Liens) is included. Numerous staff notes are embedded in this material. The following table of contents lists sections included in this partial draft and indicates the overall structure of the general revision.

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1 STAFF DRAFT — PROPOSED LEGISLATION (PART 1)

2 ☞ **Staff Note.** Set out below is a part of a general revision of Title 15 (commencing with Section
3 3082) of Part 4 of Division 3 of the Civil Code, commonly known as the mechanic’s lien law.
4 Provisions on bonds and stop notices are not included in this draft, but will be added as work
5 proceeds

6 **Civ. Code §§ 3082-3267 (repealed). Works of Improvement**

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

9 **Comment.** Former Title 15 (former Sections 3082-3267), commonly referred to as the
10 mechanic’s lien law, is replaced by a new Title 15 (new Sections 3082-____). For the disposition
11 of the provisions of former Title 15, see Comments to Repealed Sections *infra*. The source of
12 each section in the new law is indicated in its Comment.

13 ☞ **Staff Note.** This draft also includes the relevant text of the existing Title 15 for reference
14 purposes. See Comments to Conforming Revisions *infra*

15 **Civ. Code §§ 3082-_____ (added). Works of Improvement**

16 SEC. _____. Title 15 (commencing with Section 3082) is added to Part 4 of
17 Division 3 of the Civil Code, to read:

18 TITLE 15. WORKS OF IMPROVEMENT

19 **Comment.** New Title 15 (Sections 3082-____) replaces former Title 15 (former Sections 3082-
20 3267), commonly referred to as the mechanic’s lien law. The source of each section in the new
21 law is indicated in its Comment. For the disposition of the provisions of former Title 15, see
22 Comments to Repealed Sections *infra*.

23 ☞ **Staff Note.** We are not proposing to rename this title or give it a “short title,” as is commonly
24 done for convenience of reference. The title covering “Works of Improvement” is located in Part
25 4 (“Obligations Arising from Particular Transactions”) of Division 3 (“Obligations”) of the Civil
26 Code. The mechanic’s lien law was moved to its present location in 1969 from its earlier location
27 in a title of the Code of Civil Procedure on enforcement of liens (see former Code Civ. Proc. §
28 1181 *et seq.*), where it been from its first codification in 1872. The staff does not propose to
29 reevaluate the location of the mechanic’s lien statute, although we have suggested moving the
30 public works provisions to the relatively new Public Contract Code (enacted in 1982).

31 “Works of Improvement” is not an ideal title heading or short title, but “Mechanic’s Liens” is
32 too limited (since the scope of the title is broader, including stop notices, payment and release
33 bonds, and related matters) and is inaccurate with regard to public works provisions where there
34 are no mechanic’s liens. Naming the title “Mechanic’s Liens, Stop Notices, and Bonds” would be
35 more accurate, but is cumbersome.

1 CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

2 Article 1. Definitions

3 **§ 3082. Application of definitions**

4 3082. Unless the provision or context otherwise requires, the definitions in this
5 article govern the construction of this title.

6 **Comment.** Section 3082 continues former Section 3082 without substantive change. This
7 section is consistent with the usual form of this type of provision. See, e.g., Code Civ. Proc. §§
8 680.110, 1235.010; Fam. Code §§ 6, 50; Prob. Code §§ 20, 4603.

9 **§ 3083. Claim of lien**

10 3083. “Claim of lien” means a claim satisfying the requirements of Section
11 3149.

12 **Comment.** Section 3083 provides a cross-reference to the substantive requirements for a claim
13 of lien.

14 **§ 3084. Claimant**

15 3084. “Claimant” means a person authorized to use the mechanic’s lien, stop
16 notice, and payment bond remedies provided in this title.

17 **Comment.** Section 3084 restates former Section 3085 without substantive change. Unlike the
18 former provision, this section refers to the available remedies in general terms and without
19 reference to recording liens, giving stop notices, or recovering on bonds.

20 See also Sections 3089 (“mechanic’s lien” defined), 3093 (“payment bond” defined), 3101
21 (“stop notice” defined).

22 **§ 3084.5. Completion**

23 3084.5. (a) In the case of a private work of improvement, “completion” means
24 any of the following:

25 (1) Actual completion of the work of improvement.

26 (2) Occupation or use of a work of improvement by the owner or the owner’s
27 agent, accompanied by cessation of labor on the work of improvement.

28 (3) Acceptance of the work of improvement by the owner or the owner’s agent,

29 (4) Cessation of labor on a work of improvement for a continuous period of 60
30 days, or for a continuous period of 30 days or more if the owner files for record a
31 notice of cessation.

32 (b) If the work of improvement is [subject to acceptance by a public entity], the
33 completion of the work of improvement shall be deemed to be the date of
34 acceptance; provided, however, that, except as to contracts awarded under the
35 State Contract Act, Chapter 3 (commencing with Section 14250) of Part 5 of
36 Division 3 of, Title 2 of the Government Code, a cessation of labor on any public
37 work for a continuous period of 30 days is a completion of the public work.

38 **Comment.** Section 3084.5 continues former Section 3086 without substantive change. The
39 language has been simplified and tabulated to separate provisions applicable to private and public
40 works respectively.

1 See also Sections 3092 (“owner” defined), 3096 (“private work” defined), 3097 (“public entity”
2 defined), 3098 (“public work” defined), 3103 (“work of improvement” defined).

3 ☞ **Staff Note.** This section is not really a definition — it provides substantive rules. The staff is
4 looking for a better location. If none can be found, it will remain here.

5 References to the owner’s agent in this section illustrate situations where the statutory
6 “deeming” of contractors and subcontractors to be agents of the owner (see draft Section 3110,
7 last sentence would lead to an unintended result.

8 Why does subdivision (b) refer to “acceptance by a public entity” instead of a public work? Are
9 some public works not within the class of works subject to “acceptance”? Or are there non-public
10 works that are “subject to acceptance”? Subdivision (b) needs further drafting to avoid the
11 “provided, however” construction.

12 § 3085. Construction lender

13 3085. “Construction lender” means any of the following:

14 (a) A mortgagee or beneficiary under a deed of trust lending funds [with which
15 the cost of the work of improvement is wholly or partially to be defrayed] [to pay
16 construction costs].

17 (b) An assignee or successor in interest of a mortgagee or beneficiary described
18 in subdivision (a).

19 (c) An escrow holder or other person holding funds furnished or to be furnished
20 [by the owner or construction lender, or any other person], as a fund from which to
21 pay [construction costs].

22 **Comment.** Section 3085 continues former Section 3087 without substantive change. The
23 section is revised to tabulate the persons included in the definition and to make other wording
24 revisions. These are technical, nonsubstantive changes.

25 ☞ **Staff Note.** The language in this section is inconsistent with the “works of improvement”
26 language. This is a problem throughout the statute. Are “construction costs” coextensive with “the
27 costs of the work of improvement”? Why does (a) say “defrayed” and (c) says “pay”? Why does
28 subdivision (a) refer to lending funds, while subdivision (c) refers to furnishing funds? Why does
29 subdivision (c) refer to funds “to be furnished” while subdivision (a) does not? Is it really
30 possible to hold funds “to be furnished”? Can an escrow or other person under subdivision (c)
31 have an assignee or successor in interest? If so, then there needs to be a subdivision (d) parallel to
32 subdivision (b).

33 § 3086. Contract

34 3086. “Contract” means an agreement between an owner and a prime contractor
35 that provides for all or part of a work of improvement.

36 **Comment.** Section 3086 continues former Section 3088 without substantive change.

37 See also Sections 3092 (“owner” defined), 3095 (“prime contractor” defined), 3103 (“work of
38 improvement” defined).

39 ☞ **Staff Note.** Should this definition include a reference to changes as part of the contract?

40 § 3087. Laborer

41 3087. (a) “Laborer” means any person who, acting as an employee, performs
42 labor on or bestows skill or other necessary services on any work of improvement.

1 (b) Laborer” also includes any person [or entity], including an express trust fund
2 described in Section 3142, to whom a portion of the compensation of a laborer as
3 defined in subdivision (a) is paid by agreement with the laborer or the laborer’s
4 collective bargaining agent. To the extent that a person [or entity] described in this
5 subdivision has standing under applicable law to maintain a direct legal action, in
6 its own name or as an assignee, to collect any portion of compensation owed for a
7 laborer, the person [or entity] has standing to enforce rights under this title to the
8 same extent as the laborer. This subdivision is intended to give effect to the long-
9 standing public policy of this state to protect the entire compensation of laborers
10 on works of improvement, regardless of the form in which the compensation is to
11 be paid.

12 **Comment.** Section 3087 continues former Section 3089 without substantive change. See
13 Comment to former Section 3089.

14 ☞ **Staff Note.** The references to “person or entity” should not be required, but the Civil Code
15 does not have a very useful general definition of person. Section 14 provides “the word person
16 includes a corporation as well as a natural person.” Modern codes typically contain broad general
17 definitions. See, e.g., Prob. Code § 56. See also Evid. Code § 175; Fam. Code § 105; Gov’t Code
18 § 17. In older codes like the Civil Code, it has been necessary to provide definitions applicable to
19 particular laws. E.g., Civ. Code §§ 2985.7(b) (Vehicle Leasing Act), 3439.01(g) (Uniform
20 Fraudulent Transfer Act); Code Civ. Proc. §§ 481.170 (Attachment Law), 680.280 (Enforcement
21 of Judgments Law). *The Commission should consider adding a definition of “person” to Title 15.*

22 The material in subdivision (b) is substantive and ideally should be located elsewhere.
23 Furthermore, even though the section (like existing Section 3089) defines laborer to include a
24 recipient of benefits, the relevant sections routinely ignore that convenience and refer specifically
25 to laborers (workers) and the type of “laborer” described in subdivision (b). Subdivision (b) itself
26 refers to laborers under subdivision (a) while purporting to define “laborer” to include employee
27 trust funds and the like.

28 § 3088. Material supplier

29 3088. “Material supplier” means a person who furnishes materials or supplies to
30 be used or consumed in a work of improvement.

31 **Comment.** Section 3088 continues former Section 3090 (defining “materialman”) without
32 substantive change. See also Cal. Const. art. XIV, § 3 (“persons furnishing materials”).

33 See also Section 3103 (“work of improvement” defined).

34 ☞ **Staff Note.** This definition could probably be omitted without much loss to the statute. Its
35 main function may be to treat “supplies” in the same way as “materials.”

36 “Materialman,” the currently defined term, is not even used in Title 15. “Material supplier(s)”
37 is used in a handful of sections. See existing §§ 3159, 3162, 3260.2. There is no parallel
38 definition of “equipment lessor.” A more serious problem is the omission of references to persons
39 furnishing (leasing) equipment in several sections. A stock phrase appearing in Title 15 refers to
40 those performing or furnishing “labor, service, equipment, or materials.” See existing §§ 3084,
41 3097, 3098, 3103, 3110, 3116, 3118, 3123, 3124, 3138, 3140, 3153, 3159, 3168, 3192, 3227,
42 3262, 3264. But in some cases, there may not a reference to equipment. See existing §§ 3129,
43 3130, 3161. References to “services” are also missing in a number of sections, but “laborer” is
44 probably defined broadly enough to cover provision of services. This hodge-podge is further
45 illustration of the need for a basic rewrite of the mechanic’s lien statute.

1 **§ 3089. Mechanic’s lien**

2 3089. “Mechanic’s lien” means the lien provided by this title.

3 **Comment.** Section 3089 is a new definition added for drafting convenience. This section
4 recognizes the common usage of the term “mechanic’s lien” even though the word “mechanic” is
5 archaic in the construction industry and the lien is available to a broad class of claimants,
6 including material suppliers and equipment lessors. See, e.g., Sections 3110 (persons entitled to
7 lien), 3111 (lien rights of laborers’ trust fund), 3112 (site improvement lien).

8 ☞ **Staff Note.** The term “mechanic’s lien” is currently used in six sections (3097, 3110, 3152,
9 3158, 3260.2, 3262) and the heading for Chapter 2 (commencing with Section 3109). The staff
10 earlier proposed replacing “mechanic’s lien” with “construction lien,” but the older term appears
11 to be too ingrained to be dislodged by a mere statute. The Uniform Construction Lien Act (1987)
12 uses the newer term because it is “more descriptive” than “mechanic’s lien.”

13 **§ 3090. Notice of cessation**

14 3090. “Notice of cessation” means a notice satisfying the requirements of
15 Section ____.

16 **Comment.** Section 3090 provides a cross-reference to the substantive requirements for a notice
17 of cessation.

18 ☞ **Staff Note.** The current technical provisions concerning the form and contents of a notice of
19 completion, how it is executed, and recording duties should not be set out in a definition. This
20 section could be omitted, but is included here for those who expect to find the defined term. The
21 staff would prefer to omit the section entirely.

22 **§ 3091. Notice of completion**

23 3091. “Notice of completion” means a notice satisfying the requirements of
24 Section ____.

25 **Comment.** Section 3091 provides a cross-reference to the substantive requirements for a notice
26 of completion.

27 ☞ **Staff Note.** The current technical provisions concerning the form and contents of a notice of
28 completion, how it is executed, and recording duties should not be set out in a definition. This
29 section could be omitted, but is included here for those who expect to find the defined term. The
30 staff would prefer to omit the section entirely.

31 We have not included as much as a tentative cross-reference to the “notice of
32 nonresponsibility” (existing Section 3095), because it is used in only one other section. See draft
33 Section 3148.

34 **§ 3092. Owner**

35 3092. “Owner” means the person who owns the real property that is the subject
36 of a work of improvement.

37 **Comment.** Section 3092 is a new definition added for drafting convenience.

38 ☞ **Staff Note.** Reputed ownership is not dealt with consistently. See existing §§ 3084, 3097
39 (reputed owner), 3105, 3130 (reputed to be owner). It might work to refer to reputed owner
40 generally in this section and avoid the apparently inconsistent usage throughout the statute.

41 “Owner” used in existing §§ 3083, 3084, 3086, 3087, 3088, 3092, 3093, 3095, 3096, 3097,
42 3103, 3104, 3110, 3112, 3117, 3123, 3124, 3129, 3130, 3139, 3143, 3153, 3154, 3158, 3161,
43 3162, 3166, 3171, 3172, 3175, 3176, 3176.5, 3226, 3235, 3236, 3260, 3260.1, 3260.2, 3261,
44 3262, 3263, 3267.

1 “Owner of property” used in existing §§ 3143, 3154, 3261.

2 “Property owner” used in existing § 3097.

3 New complications relating to the concept of “owner” are raised by a 2001 enactment. Section
4 3110.5 (set out in Comments on Repealed Sections *infra*) places great emphasis on owners
5 holding a “fee simple absolute interest.” The specificity of this language raises concerns about the
6 general language used elsewhere in Title 15, although the existing language is not consistent
7 either. See existing Sections 3092 (“whether the interest or estate of such owner be in fee, as
8 vendee under a contract of purchase, as lessee, or other interest or estate less than the fee”), 3128
9 (“owned less than a fee simple estate in such land”).

10 **§ 3093. Payment bond**

11 3093. “Payment bond” means a bond for the payment of claimants under
12 Chapter 5 (commencing with Section 3231).

13 **Comment.** Section 3093 provides a cross-reference to the substantive provisions governing
14 payment bonds.

15 ☞ **Staff Note.** Most of the language of existing Section 3096 is substantive and has been moved
16 to the bond provisions. This cross-reference may not be needed.

17 **§ 3094. Preliminary 20-day notice**

18 3094. (a) “Preliminary 20-day notice” means a written notice from a claimant
19 that is given prior to recording a mechanic’s lien, prior to [filing] a stop notice, or
20 prior to asserting a claim against a payment bond.

21 (b) If a preliminary 20-day notice relates to a private work of improvement, it
22 may be denominated as a “preliminary 20-day notice (private work).” If a
23 preliminary 20-day notice relates to a public work, it may be denominated as a
24 “preliminary 20-day notice (public work).”

25 **Comment.** Section 3094 provides a general definition of the preliminary 20-day notice. This
26 section replaces the initial clauses of former Sections 3097 (preliminary 20-day notice (private
27 work)) and 3098 (preliminary 20-day notice (public work)). The substantive rules governing the
28 content and function of preliminary 20-day notices are provided elsewhere in this title. See., e.g.,
29 Sections ____.

30 See also Sections 3089 (“mechanic’s lien” defined), 3093 (“payment bond” defined), 3101
31 (“stop notice” defined).

32 **§ 3095. Prime contractor**

33 3095. “Prime contractor” means a contractor who has a direct contractual
34 relationship with the owner, regardless of whether there are any subcontractors on
35 the work of improvement.

36 **Comment.** Section 3095 provides a new definition and replaces former Section 3095 defining
37 “original contractor.” This definition conforms the law to the more common usage in the
38 construction industry. The final clause makes clear that there can be a prime contractor even if
39 there are no subcontractors. There may also be more than one prime contractor involved in a work
40 of improvement. “Prime contractor” as used in this title is broader than “general building
41 contractor” as defined by the Contractors’ State License Law. See Bus. & Prof. Code § 7157. The
42 term can include a “specialty contractor,” as defined in Business and Professions Code Section
43 7158, or any other type of contractor who contracts directly with the owner.

44 See also Sections 3086 (“contract” defined), 3092 (“owner” defined), 3102 (“subcontractor”
45 defined), 3103 (“work of improvement” defined).

1 **§ 3096. Private work**

2 3096. “Private work” means a work of improvement that is not a public work.

3 **Comment.** Section 3096 is a new definition added for drafting convenience. See also Sections
4 3098 (“public work” defined), 3103 (“work of improvement” defined).

5 **§ 3097. Public entity**

6 3097. “Public entity” means the state, Regents of the University of California,
7 county, city, district, public authority, public agency, or other political subdivision
8 or public corporation in this state.

9 **Comment.** Section 3097 continues former Section 3099 without substantive change.

10 **§ 3098. Public work**

11 3098. “Public work” means a work of improvement contracted for by a public
12 entity.

13 **Comment.** Section 3098 continues former Section 3100 without substantive change. See also
14 Pub. Cont. Code § 1101 (“public works contract” defined).

15 **§ 3099. Site**

16 3099. “Site” means the real property on which the work of improvement is being
17 constructed or performed.

18 **Comment.** Section 3099 continues former Section 3101 without substantive change. See also
19 Section 3103 (“work of improvement” defined)

20 ☞ **Staff Note.** This term could be useful, but is rarely used. Usually, the statute refers to the real
21 property or the land where the work of improvement is taking place. The term “jobsite” is also
22 used.

23 **§ 3100. Site improvement**

24 3100. “Site improvement” means the following activities relating to a site:

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

26 (b) Drilling test holes.

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

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

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

31 (f) Making any other improvements.

32 **Comment.** Section 3100 continues former Section 3102 without substantive change. The
33 language of the former section has been tabulated to make the section clearer. The defined term
34 “site” has been substituted for the references to a “lot or tract of land” for consistency with the
35 defined term.

36 See also Sections 3099 (“site” defined), 3103 (“work of improvement” defined).

37 ☞ **Staff Note.** What is involved in construction of an “area”? In subdivision (d), are the areas,
38 vaults, and cellars under the sidewalk, too? Or just the rooms? Is all this detail needed?

1 **§ 3101. Stop notice**

2 3101. “Stop notice” means a written notice that satisfies the requirements of
3 Chapter 3 (commencing with Section 3181) or Chapter 4 (commencing with
4 Section 3201). Except as otherwise provided, references to stop notices include
5 both bonded and unbonded stop notices.

6 **Comment.** Section 3101 provides a general definition of “stop notice” that supersedes parts of
7 former Sections 3083 (bonded stop notice) and 3103 (stop notice). The substantive rules
8 governing the content and handling of stop notices are provided elsewhere in this title. See., e.g.,
9 Sections 3181-____ (stop notices in private works), 3201-____ (stop notices in public works).
10 Section 3101 recognizes that stop notices may or may not be bonded. See, e.g., Sections _____,
11 _____. When the term “stop notice” is used without qualification, it includes both bonded
12 and unbonded stop notices.

13 ☞ **Staff Note.** In an earlier draft, the staff included a definition of “bonded stop notice” as under
14 existing statute. However, the better approach is to combine the definitions, since there is little
15 substantive distinction between the two types of stop notices. Where special rules apply, it will be
16 obvious without the need for a definition.

17 **§ 3102. Subcontractor**

18 3102. “Subcontractor” means a contractor who does not have a direct contractual
19 relationship with the owner.

20 **Comment.** Section 3102 continues former Section 3104 without substantive change. This
21 section is worded for consistency with the new definition of “prime contractor” in Section 3095.
22 This is a technical, nonsubstantive change.

23 See also 3092 (“owner” defined), 3095 (“prime contractor” defined).

24 ☞ **Staff Note.** Several definitions depend on the meaning of “contractor.” which is not defined.

25 **§ 3103. Work of improvement**

26 3103. (a) “Work of improvement” includes, but is not limited to, the following:

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

30 (2) Seeding, sodding, or planting of a lot or tract of land for landscaping
31 purposes.

32 (3) Filling, leveling, or grading of a lot or tract of land.

33 (4) Demolition and removal of buildings.

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

36 **Comment.** Section 3103 continues former Section 3106 without substantive change. The
37 section is revised to tabulate the different types of works falling within the definition and to make
38 other technical, nonsubstantive revisions.

39 ☞ **Staff Note.** Some of the language in this section seems archaic or needlessly specialized, e.g.,
40 “flume.” The original mechanic’s lien act in 1850 referred only to buildings and wharves. Flumes
41 were added in 1862, along with the rest of the terms apparently related to mining. James Acret’s
42 proposed draft provided for liens for work and supplies used in the “permanent physical
43 improvement of specific real property.”

1 The reference to “machinery” in subdivision (a)(1) seems odd because it is not limited to
2 fixtures. Note that the “in whole or in part” phrase appears only in subdivision (a)(1), but would
3 also be relevant to subdivision (a)(4).

4 This definition should be modernized and further redrafted. For example, is the demolition or
5 removal of an aqueduct or wharf a “work of improvement.” Demolition of buildings is covered in
6 subdivision (a)(4), but buildings are distinguished from wharves etc. in subdivision (a)(1). In
7 subdivision (a)(1), “addition to” does not fit grammatically; the phrase “in whole or in part” in
8 subdivision (a)(1) is out of place and, if needed, should apply to all of the listed work, not just
9 things listed in subdivision (a)(1).

10 Article 2. Relation to Other Law

11 ☞ **Staff Note.** The scope of this article and following articles in Chapter 1 is developing as we
12 work on reorganizing the statute. The “Miscellaneous Provisions” appended to the existing statute
13 as Chapter 8 (commencing with Section 3258) will mostly be relocated to this or other articles in
14 the general provisions, in accordance with standard drafting practice.

15 § 3104. Rules of practice

16 3104. (a) Except as otherwise provided in this title, the provisions of Part 2
17 (commencing with Section 307) of the Code of Civil Procedure constitute the rules
18 of practice in proceedings under this title.

19 (b) The provisions of Part 2 (commencing with Section 307) of the Code of Civil
20 Procedure relative to new trials and appeals, except insofar as they are inconsistent
21 with the provisions of this title or with rules adopted by the Judicial Council, apply
22 to proceedings under this title.

23 **Comment.** Section 3104 continues former Section 3259 without substantive change.

24 ☞ **Staff Note.** Subdivision (a) is probably unnecessary. The purpose of subdivision (b) is
25 unknown; it looks like an example of the rule stated in subdivision (a). The reference to Judicial
26 Council rules is misplaced in this title. If rules govern, they do so without the need for this title to
27 so provide. The language also creates a negative implication that rules do not apply under
28 subdivision (a).

29 § 3105. Oil and Gas Lien Act

30 3105. This title does not apply to transactions governed by the Oil and Gas Lien
31 Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of the
32 Code of Civil Procedure.

33 **Comment.** Section 3105 continues former Section 3266(a) without substantive change. See
34 Comment to former Section 3266.

35 § 3106. Bonds for street work under Public Contract Code

36 3106. This title does not apply transactions governed by Sections 20457 to
37 20464, inclusive, of the Public Contract Code.

38 **Comment.** Section 3106 continues former Section 3266(b) without substantive change. This
39 section updates the former cross-reference to Streets and Highways Code Sections 5290-5297,
40 which were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch.
41 465, § 56. The repealed sections were superseded by Public Contract Code Sections 20457-
42 20464. See 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work”

1 projects under Division 2 (commencing with Section 1600) (general provisions) of the Public
2 Contract Code. See Pub. Cont. Code § 20457.

3 **Article 3. Form of Contracts and Other Papers**

4 **§ 3107. Contract forms**

5 3107. (a) A written contract entered into between an owner and a prime
6 contractor shall provide a space for the owner to enter his or her name and
7 residence address, and place of business if any.

8 (b) A written contract entered into between an owner and a prime contractor,
9 except a home improvement contract or swimming pool contract subject to Article
10 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business
11 and Professions Code, shall provide a space for the owner to enter the name and
12 address of the construction lender.

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

16 **Comment.** Section 3107 continues without substantive change the parts of former Section
17 3097(l)-(m) relating to the content of contracts. The reference to “written” contract has been
18 added to subdivision (c) for consistency with subdivisions (a) and (b). The reference to “lender or
19 lenders” in subdivisions (a) and (b) have been shortened to “lender” for consistency with
20 subdivision (c). See Section 14 (singular includes plural, and plural includes singular). These and
21 other minor wording changes are technical, nonsubstantive revisions. For the prime contractor’s
22 duty to provide information to persons seeking to serve preliminary notices, see Section ____.

23 See also Sections 3085 (“construction lender” defined), 3092 (“owner” defined), 3094
24 (“preliminary 20-day notice” defined), 3095 (“prime contractor” defined), 3102 (“subcontractor”
25 defined).

26 ☞ **Staff Note.** Another possibility would be to move the contract contents rules to the
27 Contractors’ State License Law. The relation to mechanic’s liens is peripheral, tying in to the duty
28 to provide the information to other persons (in subdivisions (a) and (b)). Many other contract
29 requirements are set forth in the Contractors’ State License Law.

30 **§ 3108. Construction trust deeds**

31 3108. (a) A mortgage, deed of trust, or other instrument securing a loan, any of
32 the proceeds of which may be used for the purpose of a work of improvement on
33 real property, shall bear the designation “Construction Trust Deed” prominently on
34 its face and shall state all of the following:

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

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

38 (3) A legal description of the real property securing the loan and, if known, the
39 street address of the property.

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

1 (c) Failure to comply with subdivision (a) does not anyone of a duty to serve a
2 preliminary 20-day notice.

3 **Comment.** Section 3108 continues the first two paragraphs of former Section 3097(j) without
4 substantive change. “Work of improvement” has been substituted for “constructing
5 improvements” for consistency with the defined term. See Section 3103 (“work of improvement”
6 defined). These and other minor wording changes are technical, nonsubstantive revisions.

7 See also Sections 3085 (“construction lender” defined), 3092 (“owner” defined), 3094
8 (“preliminary 20-day notice” defined), 3103 (“work of improvement” defined).

9 **§ 3109. Building permits**

10 3109. (a) A public entity that issues building permits shall, in its application
11 form for a building permit, provide space and a designation for the applicant to
12 enter the construction lender’s name, branch, designation if any, and address, and
13 shall keep the information on file and open for public inspection during the regular
14 business hours of the public entity.

15 (b) If there is no known construction lender, that fact shall be noted in the
16 designated space.

17 (c) A failure to indicate the name and address of the construction lender on a
18 building permit application does not relieve any person from the obligation to give
19 to the construction lender the notice required by Article 4 (commencing with
20 Section 3111).

21 **Comment.** Section 3109 continues former Section 3097(i) without substantive change.

22 See also Sections 3085 (“construction lender” defined), 3094 (“preliminary 20-day notice”
23 defined), 3097 (“public entity” defined).

24 ☞ **Staff Note.** What is a “designation, if any”?

25 **Article 4. Preliminary Notices for Private Works**

26 **§ 3111. Preliminary notice prerequisite for private works**

27 3111. (a) As a [necessary] prerequisite to the validity of a claim of lien, stop
28 notice, or payment bond claim, a claimant furnishing labor, services, equipment, or
29 materials for a private work of improvement shall serve a preliminary 20-day
30 notice (private work) on the owner [or reputed owner] and the prime contractor [or
31 reputed contractor], and on the construction lender [or reputed construction lender]
32 if any, as provided in this article.

33 (b) Subdivision (a) does not apply to the following:

34 (1) Persons under direct contract with the owner.

35 (2) Laborers.

36 (3) Persons [or entities] to whom a portion of laborers’ compensation is to be
37 paid as described in subdivision (b) of Section 3087.

38 **Comment.** Section 3111 restates part of the introductory clause and subdivision (a) of former
39 Section 3097 without substantive change. Some repetitive detail has been omitted, in reliance on
40 defined terms and other substantive provision. See also Section 3094 (“preliminary 20-day
41 notice” defined).

1 See also Sections 3083 (“claim of lien” defined), 3084 (“claimant” defined), 3087 (“laborer”
2 defined), 3092 (“owner” defined), 3093 (“payment bond” defined), 3095 (“prime contractor”
3 defined), 3096 (“private work” defined), 3101 (“stop notice” defined).

4 ☞ **Staff Note.** There is no reference to the reputed contractor in existing Section 3098 relating to
5 public works. Note also that “laborer” is supposedly defined to include the employee trust fund
6 described in subdivision (b)(3). For now, this continues a defect in existing law.

7 It is difficult to find an ideal location for the preliminary notice material. Since it refers to
8 mechanic’s liens, stop notices, and bonds, it shouldn’t be located in Chapter 2 concerning
9 mechanic’s liens. On the other hand, logically one might expect to find these provisions with the
10 other sections in the article on conditions to enforcing a lien (see draft Section 3151 *et seq.*).

11 **§ 3112. Contents of preliminary 20-day notice (private work)**

12 3112. (a) The preliminary 20-day notice (private work) shall contain the
13 following information:

14 (1) A general description of the labor, services, equipment, or materials
15 furnished, or to be furnished, and an estimate of their total price.

16 (2) The name and address of the person furnishing the labor, services,
17 equipment, or materials.

18 (3) The name of the person who contracted for the labor, services, equipment, or
19 materials.

20 (4) [A description of the [jobsite] sufficient for identification.] [street address?]

21 (b) The preliminary 20-day notice (private work) shall also contain the following
22 statement in boldface type:

23 **NOTICE TO PROPERTY OWNER**

24 If bills are not paid in full for the labor, services, equipment, or materials
25 furnished or to be furnished, a mechanic’s lien may be placed on your property
26 where the construction project is taking place. Foreclosure of the mechanic’s
27 lien may lead to the loss of all or part of your property — even though you
28 have paid your contractor in full. You may wish to protect yourself against this
29 consequence by (1) requiring your contractor to furnish a signed release by the
30 person giving you this notice before you pay your contractor, or (2) any other
31 method that is appropriate under the circumstances.

32 (c) If the preliminary 20-day notice (private work) is given by a subcontractor
33 who has failed to pay all compensation due to his or her laborers on the [job], the
34 notice shall also contain the identity and address of any laborer [and any express
35 trust fund] to whom [employer] payments are due.

36 (d) If an invoice for materials [or certified payroll] contains the information
37 required by this section, a copy of the invoice, [transmitted] in the manner
38 prescribed by this section is sufficient notice.

39 **Comment.** Subdivision (a) of Section 3112 continues former Section 3097((c)(1)-(4) without
40 substantive change.

41 Subdivision (b) continues former Section 3097(c)(5) without substantive change.

42 Subdivision (c) continues former Section 3097(c)(6) without substantive change.

1 Subdivision (d) continues the unnumbered paragraph following former Section 3097(c)(6)
2 without substantive change.

3 See also Sections 3089 (“mechanic’s lien” defined), 3087 (“laborer” defined), 3092 (“owner”
4 defined), 3102 (“subcontractor” defined).

5 ☞ **Staff Note.** Why doesn’t the preliminary notice simply call for the street address of other
6 common description if there is no street address? Compare the filed preliminary notice under
7 existing Section 3097(o)(1). Why wouldn’t the requirements be the same for the preliminary
8 notice served on other persons and the type filed with the county recorder (except for the
9 omission of the Notice to Property Owner)?

10 The notice language in subdivision (b) is not very informative, but we do not want to try to
11 draft more informative language in the statute. A better approach would be to provide a default
12 statement, like this or with some more detail, and then provide for use of forms developed by
13 CSLB regulation. Regulatory development and revision of forms is far easier than statutory
14 enactment, and would more effectively take advantage of the expertise of industry and regulatory
15 personnel. Note that the notice language does not refer to stop notice remedies against the
16 owner’s construction funds.

17 The bracketed language in subdivision (c) is an example of where the statute, having defined
18 “laborer” to include the benefit trust fund, refuses to rely on the definition and sets out language
19 referring to both the laborer and the trust fund.

20 “Jobsite” is used in Title 15, but “site” is the defined term. One might ask, “Why not either use
21 ‘site’ consistently, or define ‘jobsite’?”

22 Subdivision (d) isn’t clear. Are there two things — an invoice for materials and a certified
23 payroll? Or is there such a thing as an “invoice for certified payroll”? The second part of the
24 sentence refers only to an invoice. Should it refer to the “certified payroll”?

25 **§ 3113. Time and scope of preliminary 20-day notice (private work)**

26 3113. (a) The preliminary 20-day notice (private work) shall be served not later
27 than 20 days after the claimant has first furnished labor, services, equipment, or
28 materials to the [jobsite].

29 (b) Notwithstanding subdivision (a), if labor, services, equipment, or materials
30 have been furnished to a [jobsite] by a claimant who did not give a preliminary 20-
31 day notice (private work), the claimant may give a preliminary notice at a later
32 time, but the claimant may not enforce claims for labor, services, equipment, or
33 material furnished earlier than 20 days before service of the preliminary notice.

34 (c) A certificated architect, registered engineer, or licensed land surveyor who
35 has furnished services for the design of the work of improvement and who gives a
36 preliminary 20-day notice (private work) not later than 20 days after the work of
37 improvement has commenced [shall be deemed to have complied] with
38 subdivision (a) with respect to architectural, engineering, or surveying services
39 furnished or to be furnished.

40 **Comment.** Subdivisions (a) and (b) of Section 3113 restate former Section 3097(d) without
41 substantive change.

42 Subdivision (c) continues the last paragraph in former Section 3097(c) without substantive
43 change.

44 See also Sections 3083 (“claim of lien” defined), 3084 (“claimant” defined), 3087 (“laborer”
45 defined), 3092 (“owner” defined), 3093 (“payment bond” defined), 3095 (“prime contractor”
46 defined), 3096 (“private work” defined), 3101 (“stop notice” defined).

1 ☞ **Staff Note.** This section, drawing from existing Section 3097, uses the more convenient,
2 informal, and undefined term “jobsite.” The term is used only in Sections 3097 and 3098, the
3 preliminary notice sections. The defined term “site” is used in existing Sections 3084, 3092,
4 3093, 3094, 3101, 3102, 3112, 3134, 3135, 3137, 3138, 3139, 3159, 3162, 3260.2.

5 Existing law confuses the quasi-duty to serve a preliminary notice, and the timing of the notice,
6 with the scope of the notice. The notice is “required” to be given and is made grounds for
7 discipline. At the same time, the statute recognizes that if it isn’t given within the first 20 days, it
8 can be given later and relates back 20 days. Furthermore, in some cases, the law implies that it is
9 perfectly acceptable to give the notice after completion. See existing Section 3242 (claims against
10 payment bonds after 1/1/95).

11 So what does the law mean? How is it explained to nonlawyers — or lawyers? The current
12 preliminary notice grew out of a 1959 enactment under which a 15-day notice was required
13 before a claim of lien could be filed. Piecemeal amendments were made in the next few years and
14 recodified in Section 3097 when the mechanic’s lien statute was moved to the Civil Code in 1969.
15 The result is a confusing set of provisions with no clear statement of the policy and purpose of the
16 preliminary notice.

17 *The statute should be simplified to eliminate the supposed “requirement” of giving a*
18 *preliminary notice and the related disciplinary provision — the preliminary notice is simply a*
19 *prerequisite to enforcement. No Title 15 remedies can be pursued for any labor, services,*
20 *equipment, or materials furnished more than 20 days before a preliminary notice is given. If the*
21 *subcontractor or material supplier doesn’t give the notice, why should anyone care? The election*
22 *not to give the notice means that the person’s claim cannot be enforced. Why should the law*
23 *pretend notice is “required” in any sense other than as a precondition to enforcement? When was*
24 *the last time a licensee under the Contractors’ State License Law was disciplined for not giving a*
25 *preliminary notice? How can anyone tell whether a notice has *not* been given until the job is*
26 *complete and 90 days have passed without a claim being filed? And who would bother to*
27 *discipline a subcontractor, whether paid or not, at that stage?*

28 In short, the statute should provide for the effect of the preliminary notice (prerequisite to
29 enforcement and 20-day reachback) and its minimum contents and other procedural details, and
30 leave the rest alone.

31 **§ 3114. Service of preliminary 20-day notice (private work)**

32 3114. (a) The preliminary 20-day notice (private work) shall be served as
33 follows:

34 (1) If the person to be served resides in this state, by delivering the notice
35 personally, or by leaving it at his or her residence or place of business with some
36 person in charge, or by first-class registered or certified mail, postage prepaid,
37 addressed to the person to whom notice is to be given at his or her residence or
38 place of business or at the address shown by the building permit on file with the
39 authority issuing a building permit for the work of improvement, or at an address
40 recorded pursuant to Section 3108.

41 (2) If the person to be served does not reside in this state, by any method
42 described in paragraph (1). If the person cannot be served by any of these methods,
43 then notice may be served by first-class certified or registered mail, addressed to
44 the construction lender or to the prime contractor.

45 (3) If service is made by first-class certified or registered mail, service is
46 complete at the time of the deposit of the registered or certified mail.

47 (b) Proof that the preliminary notice was served in accordance with subdivision
48 (a) shall be made as follows:

1 (1) If served by mail, by the proof of service affidavit described in paragraph (3)
2 of this subdivision accompanied either by the return receipt of certified or
3 registered mail, or by a photocopy of the record of delivery and receipt maintained
4 by the post office, showing the date of delivery and to whom delivered, or, in the
5 event of nondelivery, by the returned envelope itself.

6 (2) If served by personally delivering the notice to the person to be served, or by
7 leaving it at his or her residence or place of business with some person in charge,
8 by the proof of service affidavit described in paragraph (3).

9 (3) A “proof of service affidavit” is an affidavit of the person making the
10 service, showing the time, place, and manner of service, and facts showing that
11 service was made in accordance with this article. The affidavit shall show the
12 name and address of the person on whom a copy of the preliminary notice was
13 served, and, if appropriate, the title or capacity in which the person was served.

14 **Comment.** Subdivision (a) of Section 3114 continues former Section 3097(f) without
15 substantive change.

16 Subdivision (b) continues former Section 3097.1 without substantive change.

17 See also Sections 3083 (“claim of lien” defined), 3084 (“claimant” defined), 3087 (“laborer”
18 defined), 3092 (“owner” defined), 3093 (“payment bond” defined), 3095 (“prime contractor”
19 defined), 3096 (“private work” defined), 3101 (“stop notice” defined).

20 ☞ **Staff Note.** Standard service provisions could be incorporated for some of this detail.

21 **§ 3115. Coverage of preliminary 20-day notice (private work)**

22 3115. (a) Except as provided in subdivision (b), a preliminary 20-day notice
23 (private work) served under this article covers all claims for labor, services,
24 equipment, or materials furnished or to be furnished that the claimant may make
25 against the person served with respect to the work of improvement described in the
26 notice.

27 (b) If labor, services, equipment, or materials are furnished under contracts with
28 more than one subcontractor, a preliminary notice shall be served as provided in
29 this article with respect to labor, services, equipment, or materials furnished to
30 each subcontractor.

31 (c) If a preliminary notice contains a general description of the labor, services,
32 equipment, or materials furnished before the date of notice, the preliminary notice
33 is not defective because, after that date, the person giving notice furnishes labor,
34 services, equipment, or materials not within the scope of the general description.

35 **Comment.** Subdivisions (a) and (b) of Section 3115 supersede the first paragraph of former
36 Section 3097(g). Surplus language has been omitted, in reliance on defined terms (such as work
37 of improvement) and other substantive provisions. These are technical, nonsubstantive revisions.
38 This continues the substantive rule in former law that only one preliminary notice form need be
39 served on each person required to be served.

40 Subdivision (b) provides a special rule applicable where, for example, a material supplier
41 furnishes materials to more than one subcontractor on a job, or a sub-subcontractor contracts with
42 more than one subcontractor on the same job. This provision facilitates accounting by higher-tier
43 contractors and lenders, and also provides the owner with information needed to write joint
44 checks.

1 Subdivision (c) continues the second paragraph of former Section 3097(g) without substantive
2 change.

3 See also Sections 3084 (“claimant” defined), 3094 (“preliminary 20-day notice” defined), 3102
4 (“subcontractor” defined), 3103 (“work of improvement” defined).

5 ☞ **Staff Note.** Subdivision (c) is puzzling. What if work is done before the date notice is given
6 that is outside the scope of the description? Then the condition would literally not apply. Nor does
7 the language say what happens, other than that the notice isn’t defective. Is there a consequence
8 for doing work, before or after the date of notice, that is outside the general description in the
9 notice? The claimant has a lien for the “reasonable value” of labor, services, equipment, or
10 materials furnished or for the “price agreed upon” between contracting parties, whichever is less.
11 See existing Section 3123 (draft Section 3145).

12 Subdivision (b) seems to assume that there can be only one prime contractor on a work of
13 improvement. But work of improvement is a broad concept that, from the owner’s standpoint,
14 would cover the entire project and could include more than one prime contractor. See draft
15 Section 3103 (“work of improvement” defined). See also draft Section 3086 (“contract” defined
16 with reference to all or part of a work of improvement).

17 § 3116. Prime contractor’s duty to provide information

18 3116. The prime contractor shall make available to any person seeking to serve a
19 preliminary 20-day notice (private work) the following information as shown on
20 the contract with the owner:

21 (a) The name and residence address of the owner.

22 (b) The name and address of the construction lender [or lenders].

23 **Comment.** Section 3116 continues without substantive change the parts of former Section
24 3097(l)-(m) relating to the prime contractor’s duty to provide information. For provisions
25 concerning the content of contracts, see Section 3107.

26 See also Sections 3085 (“construction lender” defined), 3092 (“owner” defined), 3094
27 (“preliminary 20-day notice” defined), 3095 (“prime contractor” defined).

28 ☞ **Staff Note.** What is the consequence if the prime contractor does not comply with this
29 section?

30 § 3117. Owner’s duty to provide information

31 3117 If a construction loan is obtained after commencement of construction, the
32 owner shall provide the name and address of the construction lender or lenders to
33 each person who has given the owner the notice specified in subdivision (c).

34 **Comment.** Section 3117 continues former Section 3097(n) without substantive change. Surplus
35 language is omitted in reliance on defined terms. Plural references are also omitted. See Section
36 14 (singular includes plural). These are technical, nonsubstantive changes.

37 See also Sections 3085 (“construction lender” defined), 3092 (“owner” defined).

38 ☞ **Staff Note.** Why does this section speak of “construction”? Is that the same as
39 commencement of the work of improvement?

40 What is the consequence if an owner does not give the notice provided in this section?

41 § 3118. Disciplinary action

42 3118. (a) If a subcontractor is licensed under the Contractors’ State License Law,
43 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
44 Professions Code, and the contract price to be paid to the subcontractor on a work

1 of improvement exceeds [four hundred dollars (\$400)], the subcontractor's failure
2 to give a preliminary 20-day notice (private work) under this article constitutes
3 grounds for disciplinary action under the Contractors' State License Law.

4 (b) If a preliminary 20-day notice (private work) is required to contain the
5 information described in subdivision (c) of Section 3112, the failure to give a
6 preliminary notice including this information that results in the filing of a
7 mechanic's lien, service of a stop notice, or claim on a payment bond by the
8 [express trust fund] to which payments are due constitutes grounds for disciplinary
9 action under the Contractors' State License Law against the subcontractor if the
10 amount due the [express trust fund] is not paid.

11 **Comment.** Section 3118 continues both paragraphs of former Section 3097(h) without
12 substantive change.

13 See also Sections 3089 ("mechanic's lien" defined), 3093 ("payment bond" defined), 3101
14 ("stop notice" defined), 3102 ("subcontractor" defined),

15 ☞ **Staff Note.** The \$400 amount was set in 1968. See 1968 Cal. Stat. ch. 777, § 4 (doubling the
16 \$200 level first added a year earlier, by 1967 Cal. Stat. ch. 789, § 2). Adjusted for inflation, the
17 \$400 amount would be around \$2,000 today. Is there a good reason not to raise this amount to
18 \$2,000?

19 The reference to the "express trust fund" in subdivision (b) is not coextensive with the coverage
20 of related provisions. See draft Section 3087(b).

21 **§ 3119. Filing preliminary 20-day notice (private work) with country recorder**

22 3119. (a) A person who has served a preliminary 20-day notice (private work)
23 under this article may file the preliminary notice with the county recorder in the
24 county in which any part of the property is located.

25 (b) A preliminary 20-day notice filed pursuant to this section shall contain the
26 information required by paragraphs (2) to (4), inclusive, of subdivision (a) of
27 Section 3112.

28 (c) Upon acceptance for recording of a notice of completion or notice of
29 cessation, the county recorder shall mail to persons who have filed a preliminary
30 20-day notice under this section, notification that a notice of completion or notice
31 of cessation has been recorded on the property, and shall affix the date that the
32 notice of completion or notice of cessation was recorded.

33 (d) The failure of the county recorder to mail the notification to a person who
34 filed a preliminary 20-day notice under this section, or the failure of a person to
35 receive the notification or to receive complete notification, does not affect the
36 period within which a claim of lien is required to be recorded. However, the
37 county recorder shall make a good faith effort to mail notification to those persons
38 who have filed the preliminary 20-day notice under this section and to do so
39 within five days after the recording of a notice of completion or notice of
40 cessation.

41 (e) The county recorder may cause to be destroyed all documents filed pursuant
42 to this section, two years after the date of filing.

1 (f) The preliminary notice filed under this section is for the limited purpose of
2 facilitating the mailing of notice by the county recorder of recorded notices of
3 completion and notices of cessation. The filed preliminary notice is not a
4 recordable document and shall not be entered into the official records of the
5 county which by law impart constructive notice. [Notwithstanding any other
6 provision of law], the index maintained by the recorder of filed preliminary notices
7 shall be separate and distinct from indexes maintained by the county recorder of
8 official records of the county which by law impart constructive notice. The filing
9 of a preliminary notice with the county recorder does not give rise to (1) actual or
10 constructive notice with respect to any party of the existence or contents of the
11 preliminary notice or (2) a duty of inquiry on the part of a party as to the existence
12 or contents of the filed preliminary notice.

13 **Comment.** Section 3119 continues former Section 3097(o) without substantive change. The
14 provision for the contents of the filed preliminary notice in former Section 3097(o)(1)(A)-(B) is
15 superseded by subdivision (b), which incorporates the provision governing the contents of the
16 preliminary notice generally. This is not a substantive change.

17 See also Sections 3090 (“notice of cessation” defined), 3091 (“notice of completion” defined),
18 3094 (“preliminary 20-day notice” defined).

19 ☞ **Staff Note.** Further work needs to be done on this section.

20 § 3120. Waiver void

21 3120. An agreement [made or entered into] by an owner to waive the rights or
22 privileges conferred on the owner by this article is void [and of no effect].

23 **Comment.** Section 3120 continues former Section 3097(e) without substantive change.

24 See also Section 3092 (“owner” defined).

25 ☞ **Staff Note.** The bracketed clauses are surplus. What “rights and privileges” are conferred on
26 an owner by existing Section 3097 (this article)? Should this provision be generalized or
27 clarified? As originally enacted in Code of Civil Procedure Section 1193 (1959 Cal. Stat. ch.
28 2034, § 1), the anti-waiver rule in context probably referred to the restriction on lien enforcement
29 if notice was not given at least 15 days before a claim of lien was filed. However, it was still not
30 clear what “rights or privileges” might have been meant.

31 There is no anti-waiver provision in the preliminary 20-day notice (public work) section. See
32 existing Section 3098, draft Sections 3121-3126.

33 § 3120.5. Transitional provisions

34 3120.5. (a) The change made to the statement described in Section 3112 by the
35 amendment of former Section 3097 by Chapter 974 of the Statutes of 1994 has no
36 effect on the validity of a notice that otherwise meets the requirements of this
37 article. The failure to provide, pursuant to the amendment of former Section 3097
38 by Chapter 974 of the Statutes of 1994, a written preliminary notice to a
39 subcontractor with whom the claimant has contracted does not affect the validity
40 of a preliminary notice provided pursuant to this article.

41 (b) The inclusion of the language added to paragraph (5) of subdivision (c) of
42 former Section 3097 by Chapter 795 of the Statutes of 1999 does not affect the
43 validity of a preliminary notice given on or after January 1, 2000, and prior to the

1 operative date of the amendments of former Section 3097 enacted at the 2000
2 portion of the 1999-2000 Regular Session, that otherwise meets the requirements
3 of Section 3112.

4 (c) A preliminary notice given on or after January 1, 2000, and prior to the
5 operative date of the amendments to former Section 3097 enacted at the 2000
6 portion of the 1999-2000 Regular Session, is not invalid because of the failure to
7 include the language added to paragraph (5) of subdivision (c) of former Section
8 3097 by Chapter 795 of the Statutes of 1999, if the notice otherwise complies with
9 Section 3112.

10 (d) The failure to provide an affidavit form or notice of rights, or both, pursuant
11 to the requirements of Chapter 795 of the Statutes of 1999, does not affect the
12 validity of a preliminary notice pursuant to this article.

13 **Comment.** Section 3120.5 continues former Section 3097(p) without substantive change.
14 References have been revised to reflect the repeal of former Section 3097.

15 See also Sections 3084 (“claimant” defined), 3094 (“preliminary 20-day notice” defined), 3102
16 (“subcontractor” defined).

17 ☞ **Staff Note.** It may be that the 1994 transitional rule in subdivision (a) need not be continued.
18 A new statute would not be operative until 2004, if it is enacted with a one-year deferred
19 operative date, at which time this rule would apply only to notices given more than nine years
20 before. Generally, we would not continue a codified transitional rule under these circumstances.

21 Article 5. Preliminary Notices for Public Works

22 § 3121. Preliminary notice prerequisite for public works

23 3121. (a) As a [necessary] prerequisite to the validity of a stop notice or payment
24 bond claim, a claimant furnishing labor, services, equipment, or materials for a
25 public work shall serve a preliminary 20-day notice (public work) on the public
26 entity and the prime contractor as provided in this article.

27 (b) Subdivision (a) does not apply to any of the following :

28 (1) Persons under direct contract with the public entity.

29 (2) Laborers.

30 (3) Persons [or entities] to whom a portion of laborers’ compensation is to be
31 paid as described in subdivision (b) of Section 3087.

32 **Comment.** Section 3121 restates part of the introductory clause and subdivision (a) of former
33 Section 3098 without substantive change. Repetitive detail has been omitted, in reliance on
34 defined terms and other substantive provisions. A reference to “public entity” has been
35 substituted for the former reference to “public agency.” This is a technical, nonsubstantive
36 change.

37 Subdivision (b) also restates former Section 3098(c) without substantive change.

38 See also Sections 3084 (“claimant” defined), 3087 (“laborer” defined), 3093 (“payment bond”
39 defined), 3095 (“prime contractor” defined), 3097 (“public entity” defined), 3098 (“public work”
40 defined), 3101 (“stop notice” defined).

41 ☞ **Staff Note.** The staff note following draft Section 3111.

1 **§ 3122. Contents of preliminary 20-day notice (public work)**

2 3122. The preliminary 20-day notice (public work) shall contain the information
3 required in a preliminary 20-day notice (private work) by subdivision (a) of
4 Section 3112.

5 **Comment.** Section 3122 supersedes the last part of the first sentence of former Section
6 3098(a). This section conforms the contents of the notice to the preliminary 20-day notice (private
7 work) in the interest of consistency.

8 ☞ **Staff Note.** Existing Section 3098(a) provides for a notice “stating with substantial accuracy a
9 general description of labor, service, equipment, or materials furnished or to be furnished, and the
10 name of the party to whom the same was furnished.”

11 **§ 3123. Time and scope of preliminary 20-day notice (public work)**

12 3123. (a) The preliminary 20-day notice (public work) shall be served not later
13 than 20 days after the claimant has first furnished labor, services, equipment, or
14 materials to the [jobsite].

15 (b) Notwithstanding subdivision (a), if labor, services, equipment, or materials
16 have been furnished to a jobsite by a claimant who did not give a preliminary 20-
17 day notice (public work), the claimant may give a preliminary notice at a later
18 time, but the claimant may not enforce claims for labor, services, equipment, or
19 material furnished earlier than 20 days before service of the preliminary notice.

20 **Comment.** Section 3123 restates former Section 3098(d) without substantive change. This
21 section is revised for consistency with the parallel provision relating to private works. See Section
22 3113.

23 See also Sections 3084 (“claimant” defined), 3094 (“preliminary 20-day notice” defined).

24 **§ 3124. Service of preliminary 20-day notice (public work)**

25 3124. (a) The preliminary 20-day notice (public work) shall be served and proof
26 of service shall be made as provided in Section 3114.

27 (b) In case of public works constructed by the Department of Public Works or
28 the Department of General Services of the state, the preliminary 20-day notice
29 (public work) shall be addressed to the office of the disbursing officer of the
30 department constructing the public work, or by personal service on the officer.

31 **Comment.** Subdivision (a) of Section 3124 restates the second and fourth sentences of former
32 Section 3098(a).

33 Subdivision (b) continues the third sentence of former Section 3098(a) without substantive
34 change.

35 See also Sections 3094 (“preliminary 20-day notice” defined), 3098 (“public work” defined).

36 **§ 3125. Disciplinary action**

37 3125. If a subcontractor is licensed under the Contractors’ State License Law,
38 Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
39 Professions Code, and the contract price to be paid to the subcontractor on a work
40 of improvement exceeds [four hundred dollars (\$400)], the subcontractor’s failure
41 to give a preliminary 20-day notice (public work) under this article constitutes
42 grounds for disciplinary action under the Contractors’ State License Law.

1 within the meaning of this section. Any notice of cessation signed by less than all
2 of such cotenants shall recite the names and addresses of all such cotenants.

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

6 **Comment.** Section 3127 continues former Section 3092 without substantive change.

7 ☞ **Staff Note.** The phrase “when cessation of labor commenced” is awkward. The need for a
8 specialized definition of “owner” is not clear. There may be a better location for this section.

9 **§ 3128. Notice of completion [not yet revised]**

10 3128. “Notice of completion” means a written notice, signed and verified by the
11 owner or his agent, containing all of the following:

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

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

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

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

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

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

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

36 For the purpose of this section, owner is defined as set forth in subdivision (g) of
37 Section [3092].

38 **Comment.** Section 3128 continues former Section 3093 without substantive change.

39 ☞ **Staff Note.** This is not really a definition. There may be a better location for this section.

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Article 7. General Rights and Duties of Parties

§ 3131. Exclusive right of laborers and suppliers to funds

3131. The right of a claimant furnishing labor, services, equipment, or materials for a work of improvement with respect to a fund for payment of [construction costs], are governed exclusively by Chapters 3 (commencing with Section ____) and 4 (commencing with Section ____). A person may not assert a legal or equitable right with respect to a fund for payment of [construction costs], other than a right created by direct written contract between the person and the person holding the fund, except as provided in those chapters.

Comment. Section 3131 continues former Section 3264 without substantive change. A reference to “claimant” has been substituted for “person” for consistency with other sections.

See also Sections 3084 (“claimant” defined), 3103 (“work of improvement” defined).

☞ **Staff Note.** Further research should be done on this section. It appears to have been separated from its original context concerning stop notices. Case law indicates its purpose is to abolish equitable liens. Not also that this section refers to “construction costs,” which is not a standard phrase in Title 15.

§ 3132. Acts of owner in good faith

3132. An act done by an owner in good faith and in compliance with this title may not be held to be a prevention of the performance by a prime contractor of the contract between the owner and prime contractor, or to exonerate the sureties on a payment bond or performance bond.

Comment. Section 3132 restates former Section 3263 without substantive change.

See also Sections 3084 (“claimant” defined), 3086 (“contract” defined), 3092 (“owner” defined), 3093 (“payment bond” defined), 3095 (“prime contractor” defined).

§ 3133. Owner’s duty to give notice of changes

3133. The owner shall notify the prime contractor and construction lenders of any changes in the contract if the change has the effect of increasing the price stated in the contract by 5 percent or more.

Comment. Section 3133 continues former Section 3123(c) without substantive change.

See also Sections 3085 (“construction lender” defined), 3086 (“contract” defined), 3092 (“owner” defined), 3095 (“prime contractor” defined).

§ 3134. County recorder duties and fees

3134 (a) The county recorder shall number, index, and preserve all contracts, plans, bonds, and other papers presented for filing pursuant to this title, and shall number, index, and transcribe into the official records in the same manner as a conveyance of land, all notices, claims of lien, payment bonds, and other papers recorded pursuant to this title.

(b) The county recorder of the county in which a construction deed of trust under Section ____ is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

1 (c) A claim of lien in otherwise proper form, verified and containing the
2 information required by Section 3154, shall be accepted by the recorder for
3 recording and shall be deemed duly recorded without acknowledgment.

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

7 **Comment.** Subdivision (a) of Section 3134 continues the first sentence of former Section 3258
8 without substantive change.

9 Subdivision (b) continues the third paragraph of former Section 3097(j) without substantive
10 change.

11 Subdivision (c) continues former Section 3084(b) without substantive change.

12 Subdivision (d) continues the second sentence of former Section 3258 without substantive
13 change.

14 Article 8. Prompt Payment

15 § 3137. Notice of delinquent payment

16 3137. (a) A prime contractor or subcontractor employing laborers, as defined in
17 subdivision (a) of Section 3087, who has failed to pay them their full
18 compensation when it became due, including any employer payments described in
19 Section 1773.1 of the Labor Code and regulations adopted thereunder, shall,
20 without regard to whether the work was performed on a public or private work,
21 cause to be given to those laborers, their bargaining representatives, if any, and to
22 the construction lender, if any, [or to the reputed construction lender, if any,] not
23 later than the date the compensation became delinquent, a written notice
24 containing all of the following:

25 (1) The name of the owner and the contractor.

26 (2) A description of the [jobsite] sufficient for identification.

27 (3) The identity and address of any express trust fund described in Section 3142
28 to which employer payments are due.

29 (4) The total number of straight time and overtime hours on each job.

30 (5) The amount then past due and owing.

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

35 **Comment.** Section 3137 continues former Section 3097(k) without substantive change. The
36 reference to the Registrar of Contracts in the final sentence of former Section 3097(k) has been
37 revised to refer to the Contractors' State License Law. This is a technical, nonsubstantive change.

38 See also Sections 3085 ("construction lender" defined), 3092 ("owner" defined), 3095 ("prime
39 contractor" defined), 3102 ("subcontractor" defined).

40  **Staff Note.** This section needs further revision.

- 1 (g) Registered engineers
- 2 (h) Licensed land surveyors.

3 **Comment.** Section 3141 restates without substantive change the part of former Section 3110
4 describing the classes of persons with mechanic's lien rights. This section does not continue the
5 former listing of types of contractors, subcontractors, and laborers, such as mechanics, artisans,
6 machinists, builders, teamsters, and draymen. This is not a substantive change because these
7 classes are included in the defined terms used in this section. Similarly, the description of the type
8 of the person's contribution to the work of improvement is limited in this section to the furnishing
9 of labor, services, equipment, and materials, which is the standard description used in former law,
10 as well as in this title. Elimination of the former references to "bestowing skill or other necessary
11 services" or "furnishing appliances, teams, or power" is thus not a substantive change.

12 The limitation in the introductory clause to private works of improvement continues the
13 substance of former Section 3109 which limited the mechanic's lien chapter to private works.

14 See also Sections 3086 ("contract" defined), 3087 ("laborer" defined), 3088 ("material
15 supplier" defined), 3089 ("mechanic's lien" defined), 3095 ("prime contractor" defined), 3096
16 ("private work" defined), 3102 ("subcontractor" defined), 3103 ("work of improvement"
17 defined). For provisions concerning architects, engineers, and surveyors, see Section 3181.1 *et*
18 *seq.*

19 ☞ **Staff Note.** Do we need these details? Compare UCLA § 201 ("person who provides services
20 or materials pursuant to a real estate improvement contract has a construction lien to secure
21 payment of the contract price"); James Acret draft ("persons who furnish assets intended for and
22 used in the permanent physical improvement of specific real property shall have a mechanics
23 lien").

24 Is the lien really limited to "leases" of equipment? What if it is rented? "Teams" is archaic.
25 What are "appliances"? What is a "builder"? Under the Contractors' State License Law, "builder"
26 is synonymous with "contractor." See Bus. & Prof. Code § 7026.

27 § 3142. Lien rights of laborers' trust fund

28 3142. An express trust fund to which a portion of a laborer's total compensation
29 is to be paid pursuant to a employment agreement or a collective bargaining
30 agreement for the provision of benefits, including, but not limited to, employer
31 payments described in Section 1773.1 of the Labor Code and regulations
32 thereunder, may assert the same rights and claims as laborers, to the extent of the
33 compensation agreed to be paid to that express trust fund for labor on that
34 improvement only.

35 **Comment.** Section 3142 continues former Section 3111 without substantive change. The
36 duplicative description of the laborer's mechanic's lien right and other unneeded language is
37 omitted. These are technical, nonsubstantive changes.

38 See also Sections

39 ☞ **Staff Note.** Referred to in Bus. & Prof. Code §§ 7071.5, 7071.10. The reference to an
40 "applicable" employment agreement has been eliminated. If it isn't applicable, it isn't applicable.

41 § 3143. Site improvement lien [not yet revised]

42 3143. A claimant who, at the [instance or request of the owner (or any other
43 person acting by his authority or under him, as contractor or otherwise) of any lot
44 or tract of land], has made a site improvement has a lien on the lot or tract of land
45 for work done or materials furnished.

1 (c) This section does not preclude a claim for labor, services, equipment, or
2 materials furnished based on a written modification of the contract or as a result of
3 the rescission, abandonment, or breach of the contract. However, in the event of
4 rescission, abandonment, or breach of the contract, the amount of the lien may not
5 exceed the reasonable value of the labor, services, equipment, and materials
6 furnished by the claimant.

7 **Comment.** Section 3145 restates former Section 3123(a)-(b) without substantive change.

8 See also Sections 3084 (“claimant” defined), 3086 (“contract” defined), 3089 (“mechanic’s
9 lien” defined), 3092 (“owner” defined), 3095 (“prime contractor” defined).

10 ☞ **Staff Note.** The amount of stop notice and bond claims will be coordinated with this section
11 to make clear that all remedies may claim the same amount. See Memorandum 2001-71, pp. 9.

12 § 3146. Limits on lien where claimant has notice of contract

13 3146. (a) If the claimant was employed by a prime contractor or subcontractor,
14 the mechanic’s lien does not extend to labor, services, equipment, or materials that
15 were not included in the contract between the owner and the prime contractor or a
16 modification of the contract, if the claimant had actual knowledge or constructive
17 notice of the contract or modification before furnishing labor, service, equipment,
18 or materials.

19 (b) The filing of a contract for a work of improvement or of a modification of the
20 contract with the county recorder of the county where the property is situated,
21 before the commencement of work, is equivalent to giving actual notice of its
22 provisions to persons furnishing labor, services, equipment, or materials.

23 **Comment.** Section 3146 restates former Section 3124 without substantive change.

24 See also Sections 3083 (“claim of lien” defined), 3084 (“claimant” defined), 3086 (“contract”
25 defined), 3092 (“owner” defined), 3095 (“prime contractor” defined), 3102 (“subcontractor”
26 defined), 3103 (“work of improvement” defined).

27 ☞ **Staff Note.** This section looks like an archaic remnant of the law before 1911. We doubt that
28 “employed” is the correct term, since it implies laborers rather than suppliers or subcontractors.

29 Article 3. Property Subject to Mechanic’s Lien

30 § 3147. Property reached by mechanic’s lien

31 3147. (a) A mechanic’s lien attaches to both of the following:

32 (1) The work of improvement.

33 (2) The land on which the work of improvement is situated, together with a
34 convenient space about the land or as much space as is required for the convenient
35 use and occupation of the land.

36 (b) Except as provided in Section 3148, if the person who contracted for the
37 work of improvement owned less than a fee simple estate in the land when labor,
38 services, equipment, or materials were first furnished, only the person’s interest in
39 the land is subject to the lien.

40 **Comment.** Section 3147 restates former Section 3128 without substantive change. A reference
41 to “labor, services, equipment, or materials” has been substituted for the former reference to

1 “commencement of the work or of the furnishing of the materials” for consistency with other
2 provisions in this chapter. See, e.g., Sections 3141 (persons entitled to mechanic’s lien), 3145
3 (amount of mechanic’s lien).

4 See also Section 3103 (“work of improvement” defined).

5 ☞ **Staff Note.** What about furnishing equipment? Why only “materials”? Does “commencement
6 of the work of improvement” mean the same thing as “furnishing labor and services”? Isn’t
7 “person who caused such work of improvement to be constructed” the “owner”? Why “land”
8 instead of “real property” or “site”?

9 Is a site improvement lien included here?

10 **§ 3148. Notice of nonresponsibility**

11 3148. Unless a notice of nonresponsibility is posted and recorded pursuant to
12 this section, if labor, services, equipment, or materials are furnished with the
13 knowledge of the owner, or other person having or claiming an estate in the real
14 property, the owner or other person is deemed to have been constructed,
15 performed, or furnished at the instance of the owner or other person and the
16 interest shall be subject to a lien recorded under this chapter.

17 (b) The owner, or other person having or claiming an estate in the real property
18 that is the subject of the work of improvement who has not [caused] the work of
19 improvement [to be performed], may execute a written notice of nonresponsibility
20 containing all of the following:

21 (1) A description of the site sufficient for identification.

22 (2) The name and nature of the title or interest of the person giving the notice.

23 (3) The name of the purchaser under contract, if any, or lessee, if known.

24 (4) A statement that the person giving the notice is not responsible for claims
25 arising from the work of improvement.

26 (c) The notice of nonresponsibility shall be signed and verified by the owner, or
27 other person owning or claiming an interest in the [site], or the owner or other
28 person’s agent.

29 (d) Within 10 days after obtaining knowledge of the work of improvement, the
30 notice of nonresponsibility shall be posted in a conspicuous place on the site and
31 recorded in the office of the county recorder of the county in which all or part of
32 the site is located.

33 **Comment.** Subdivision (a) of Section 3148 restates former Section 3129 without substantive
34 change.

35 Subdivisions (b) and (c) restate the first paragraph of former Section 3094 without substantive
36 change

37 Subdivision (d) restates the second paragraph of former Section 3094 without substantive
38 change.

39 See also Sections 3089 (“mechanic’s lien” defined), 3092 (“owner” defined), 3099 (“site”
40 defined), 3103 (“work of improvement” defined).

41 ☞ **Staff Note.** “Caused to be performed” should probably be “contracted for” in the interest of
42 consistency with other sections

1 **§ 3149. One claim against multiple improvements [needs revision]**

2 3149. (a) Where one claim of lien is filed against two or more buildings or other
3 works of improvement owned or reputed to be owned by the same person or on
4 which the claimant has been employed by the same person to do his work or
5 furnish his materials, whether such works of improvement are owned by one or
6 more owners, the person filing such claim must at the same time designate the
7 amount due to him on each of such works of improvement; otherwise the lien of
8 such claim is postponed to other liens. If such claimant has been employed to
9 furnish labor or materials under a contract providing for a lump sum to be paid to
10 him for his work or materials on such works of improvement as a whole, and such
11 contract does not segregate the amount due for the work done and materials
12 furnished on such works of improvement separately, then such claimant, for the
13 purposes of this section, may estimate an equitable distribution of the sum due him
14 over all of such works of improvement based upon the proportionate amount of
15 work done or materials furnished upon such respective works of improvement.
16 The lien of such claimant does not extend beyond the amount designated as
17 against other creditors having liens, by judgment, mortgage, or otherwise, upon
18 either such works of improvement or upon the land upon which the same are
19 situated.

20 (b) For all purposes of this section, if there is a single structure on more than one
21 parcel of land owned by one or more different owners, it shall not be the duty of
22 the claimant to segregate the proportion of material or labor entering into the
23 structure on any one of such parcels; but upon the trial thereof the court may, when
24 it deems it equitable so to do, distribute the lien equitably as between the several
25 parcels involved.

26 **Comment.** Section 3149 continues former Section 3130 without substantive change.

27 See also Sections 3089 (“mechanic’s lien” defined), 3092 (“owner” defined), 3103 (“work of
28 improvement” defined).

29 ☞ **Staff Note.** Again, the phrase “work done and materials furnished” is out of step with the
30 common phrase in other sections, “labor, services, equipment, and materials furnished.”

31 **§ 3150. Claims against separate residential units**

32 3150. (a) If a work of improvement consists of the construction of two or more
33 separate residential units, each unit is considered to be a separate work of
34 improvement, and the time for filing a claims of lien against each unit commences
35 to run at the completion of each unit. A separate residential unit means one
36 residential structure, including a residential structure containing multiple
37 condominium units, together with any common area, or any garage or other
38 improvements appurtenant thereto. The [provisions of this qualification] do not
39 impair rights conferred under the provisions of Section 3143 and 3149.

40 (b) Materials delivered [to or upon any portion of the entire work of
41 improvement] or furnished to be used in the entire work of improvement and
42 ultimately used or consumed in one of the separate residential units shall, for all

1 purposes of this title, be deemed to have been furnished to be used or consumed in
2 the separate residential unit in which they are actually used or consumed, but if the
3 claimant is unable to segregate the amounts used or consumed in the separate
4 units, the claimant is entitled to all the benefits of Section 3149.

5 (c) For purposes of this section and notwithstanding any other provision of this
6 chapter, the completion of a residential structure containing multiple condominium
7 units, together with any common area, or a garage or other improvements
8 appurtenant thereto, and only such residential structure, shall not operate in any
9 manner to impair the rights of a claimant entitled to a mechanic's lien, if the claim
10 of lien is recorded in the manner prescribed by this chapter within 120 days after
11 the completion of the residential structure.

12 **Comment.** Section 3150 restates former Section 3131 without substantive change. See also
13 Sections 3111 (persons entitled to mechanic's lien), 3143 (site improvement lien), 3149 (one
14 claim against multiple improvements).

15 See also Sections 3083 ("claim of lien" defined), 3084 ("claimant" defined), 3089 ("mechanic's
16 lien" defined), 3103 ("work of improvement" defined).

17 ☞ **Staff Note.** This section needs more work.

18 Note that it refers to work and materials, but not the full set of "labor, services, equipment, or
19 materials." Is there any reason for this?

20 Article 4. Conditions to Enforcing Mechanic's Lien

21 § 3151. Preliminary notice required

22 3151. A claimant may enforce a mechanic's lien only if a preliminary 20-day
23 notice (private work), if required, has been served under Article 4 (commencing
24 with Section 3111) of Chapter 1, and proof of service has been made under
25 Section 3114.

26 **Comment.** Section 3151 continues former Section 3114 without substantive change.

27 See also Sections 3084 ("claimant" defined), 3089 ("mechanic's lien" defined), 3094
28 ("preliminary 20-day notice" defined).

29 ☞ **Staff Note.** The prerequisite provided here unnecessarily duplicates the prerequisite language
30 in the preliminary notice provisions.

31 § 3152. Recordation of claim of lien by prime contractor

32 3152. In order to enforce a mechanic's lien, a prime contractor shall record a
33 claim of lien after completion of the contract and before the expiration of either of
34 the following periods:

35 (a) Where a notice of completion or notice of cessation is recorded, 60 days after
36 recordation.

37 (b) Where a notice of completion or notice of cessation is not recorded, 90 days
38 after completion of the work of improvement.

39 **Comment.** Section 3152 continues former Section 3115 without substantive change.

40 See also Sections 3083 ("claim of lien" defined), 3084.5 ("completion" defined), 3089
41 ("mechanic's lien" defined), 3092 ("notice of cessation" defined), 3093 ("notice of completion"
42 defined), 3095 ("prime contractor" defined), 3103 ("work of improvement" defined).

1 ☞ **Staff Note.** As discussed at the September meeting, Gordon Hunt has proposed adding
2 references to stop notices in this section to make clear that the same time limits apply to
3 mechanic's lien enforcement and stop notice enforcement. See Memorandum 2001-71, pp. 6-8.
4 The Commission approved the substance of this approach. Under the current statutory structure,
5 however, this presents a drafting problem because this chapter relates to mechanic's lien, not stop
6 notices or bonds. As drafting proceeds, we will deal with this issue, probably by incorporating the
7 rule in other chapters, rather than violating the structure. It points up the weakness of the existing
8 rigid division between types of remedies, when the prerequisites to their use is, or should be, the
9 same.

10 **§ 3153. Recordation of claim by claimants other than prime contractor**

11 3153. In order to enforce a mechanic's lien, a claimant other than a prime
12 contractor shall record a claim of lien after ceasing to furnish labor, services,
13 equipment, or materials, and before the expiration of either of the following
14 periods:

15 (a) Where a notice of completion or notice of cessation is recorded, 30 days after
16 recordation.

17 (b) Where a notice of completion or notice of cessation is not recorded, 90 days
18 after completion of the work of improvement

19 **Comment.** Section 3153 continues former Section 3116 without substantive change.

20 See also Sections 3083 ("claim of lien" defined), 3084.5 ("completion" defined), 3089
21 ("mechanic's lien" defined), 3092 ("notice of cessation" defined), 3093 ("notice of completion"
22 defined), 3095 ("prime contractor" defined), 3103 ("work of improvement" defined).

23 ☞ **Staff Note.** See staff note after draft Section 3152.

24 **§ 3154. Claim of lien**

25 3154. A claim of lien shall be in writing, signed and verified by the claimant or
26 by the claimant's agent, and shall contain the following information:

27 (a) The name of the owner [or reputed owner], if known.

28 (b) The name of the person who employed the claimant or to whom the claimant
29 furnished the labor, services, equipment, or materials.

30 (c) A description of the site sufficient for identification.

31 (d) A general statement of the kind of labor, services, equipment, or materials
32 furnished by the claimant.

33 (e) A statement of the claimant's demand after deducting all just credits and
34 offsets.

35 **Comment.** Section 3154 continues former Section 3084(a) without substantive change. See
36 also Section 3134(c) (recorder's duty concerning claim of lien).

37 See also Sections 3084 ("claimant" defined), 3092 ("owner" defined), 3099 ("site" defined).

38 **§ 3155. Forfeiture of lien for improper claim**

39 3155. A claimant who willfully includes a claim for labor, services, equipment,
40 or materials not furnished for the property described in the claim of lien forfeits
41 the right to a mechanic's lien.

42 **Comment.** Section 3155 continues former Section 3118 without substantive change.

1 See also Sections 3083 (“claim of lien” defined), 3084 (“claimant” defined), 3089 (“mechanic’s
2 lien” defined).

3 ☞ **Staff Note.** Parallel provisions relating to stop notices and bonds are also needed. Or this
4 section could be generalized in Chapter 1. Making a false claim should deprive the miscreant of
5 all remedies under this title.

6 **§ 3156. Recordation of notice of completion**

7 3156. (a) Where a work of improvement is not made pursuant to one [original]
8 contract, but is made in whole or in part pursuant to two or more [original]
9 contracts, each covering a portion of the work of improvement, the owner may,
10 within 10 days after completion of a contract for a portion of the work of
11 improvement, record a notice of completion.

12 (b) Notwithstanding the Sections 3152 and 3153, where a notice of completion is
13 recorded under subdivision (a), the prime contractor under the contract covered by
14 the notice shall, within 60 days after the notice is recorded, and any claimant under
15 the contract other than the prime contractor shall, within 30 days after the
16 recording of the notice of completion, record a claim of lien.

17 (c) If a notice is not recorded under subdivision (a), the period for recording
18 claims of lien is governed by Sections 3152 and 3153.

19 **Comment.** Section 3156 continues former Section 3117 without substantive change.

20 See also Sections 3083 (“claim of lien” defined), 3084 (“claimant” defined), 3086 (“contract”
21 defined), 3091 (“notice of completion” defined), 3092 (“owner” defined), 3095 (“prime
22 contractor” defined), 3103 (“work of improvement” defined).

23 ☞ **Staff Note.** This section should be split up. Subdivision (a) has to do with the availability of
24 the notice of completion for different “original contracts.” The rest of the section looks like it is
25 surplus. Once the statute makes clear that the notice of completion can issue for each prime
26 contract, there is no reason to repeat the general rules governing the time for recording claims.

27 **Article 5. Proceedings to Enforce Mechanic’s Liens**

28 **§ 3157. Time for commencement of action to foreclose mechanic’s lien**

29 3157. (a) Except as provided in subdivision (b), an action to foreclose a
30 mechanic’s lien shall be commenced within 90 days after the claim of lien is
31 recorded. If the action is not commenced within this time, the lien expires and is
32 unenforceable.

33 (b) If the claimant gives credit and notice of the fact and terms of the credit is
34 recorded in the office of the county recorder after the claim of lien was recorded
35 and before expiration of the 90-day period, the lien continues in force until the
36 earlier of the following times:

37 (1) 90 days after the expiration of the credit.

38 (2) One year after the date of completion of the work of improvement.

39 **Comment.** Section 3157 restates former Section 3144 without substantive change. Subdivision
40 (a) makes clear that the lien ceases to have any effect if the action to foreclose is not brought
41 within the applicable time. This continues the substance of the former language that “the lien
42 automatically shall be null and void and of no further force and effect.”

1 ☞ **Staff Note.** The first clause of subdivision (a) and subdivision (b) of the existing section
2 provide the same basic rule, that the action must be commenced within 90 days or the lien expires
3 (subject to the extension of credit exception). This section has been redrafted to state the
4 limitations period separately from the lien expiration rule (which are two sides of the same coin).

5 **§ 3158. Amount of recovery**

6 3158. A prime contractor or subcontractor may recover on a recorded claim of
7 lien only the amount due according to the terms of contract after deducting all
8 claims of other claimants for labor, services, equipment, or materials furnished and
9 embraced within the contract.

10 **Comment.** Section 3158 continues former Section 3140 without substantive change.

11 See also Sections 3083 (“claim of lien” defined), 3086 (“contract” defined), 3095 (“prime
12 contractor” defined),

13 ☞ **Staff Note.** Why is this section needed? It repeats limitations stated elsewhere. See draft
14 Section 3145. Why does it apply only to prime contractors and subcontractors? What about
15 equipment and material furnishers?

16 **§ 3159 Lis pendens**

17 3159. After filing a complaint [in the proper court], the plaintiff may record in
18 the office of the county recorder of the county, or of the several counties in which
19 the property is situated, a notice of the pendency of action under Title 4.5
20 (commencing with Section 405) of Part 2 of the Code of Civil Procedure. From the
21 time of recording, a purchaser or encumbrancer of the property affected thereby be
22 deemed to have constructive notice of the pendency of the action, and in that event
23 only if its pendency against parties designated by their real names.

24 **Comment.** Section 3159 continues former Section 3146 without substantive change. The
25 reference to the lis pendens statute has been corrected, to reflect the repeal of Code of Civil
26 Procedure 409. See 1992 Cal. Stat. ch. 883, § 1.

27 ☞ **Staff Note.** Why is a special lis pendens rule needed here? *The staff recommends deleting this*
28 *section and relying on the general lis pendens statute.* There is no point in repeating or attempting
29 to summarize what is in the general lis pendens statute, and to the extent it differs, it creates doubt
30 about the effect of a notice of pendency of action (defined in Code Civ. Proc. § 405.2) recorded
31 under this section. Compare the last sentence of draft Section 3160 to Code of Civil Procedure
32 Section 405.24:

33 405.24. From the time of recording the notice of pendency of action, a purchaser,
34 encumbrancer, or other transferee of the real property described in the notice shall be deemed
35 to have constructive notice of the pendency of the noticed action as it relates to the real
36 property and only of its pendency against parties not fictitiously named. The rights and
37 interest of the claimant in the property, as ultimately determined in the pending noticed
38 action, shall relate back to the date of the recording of the notice.

39 **§ 3160. Dismissal for lack of prosecution**

40 3160. If an action to foreclose a mechanic's lien is not brought to trial within two
41 years after commencement, the court may in its discretion dismiss the action for
42 delay in prosecution.

1 **Comment.** Section 3160 continues former Section 3147 without substantive change. The
2 phrase “want of prosecution” has been replaced by “delay in prosecution” for consistency with
3 the terminology of the Code of Civil Procedure. See, e.g., Code. Civ. Proc. § 583.410.

4 **§ 3161. Effect of dismissal or judgment**

5 3161. Dismissal of an action to foreclose a mechanic’s lien, unless dismissal is
6 expressly stated to be without prejudice, or a entry of a judgment that no lien
7 exists is equivalent to the cancellation and removal from the record of the lien.

8 **Comment.** Section 3161 continues former Section 3148 without substantive change.

9 ☞ **Staff Note.** This section needs more work. “Cancellation and removal from the record of the
10 lien.” should probably be changed to “lien is extinguished.” “Judgment that no lien exists” seems
11 artificial and limited.

12 **§ 3162. Consolidation of actions**

13 3162. Persons claiming mechanic’s liens on the same property may join in the
14 same action to foreclose their liens. If separate actions are commenced, the court
15 may consolidate them.

16 **Comment.** Section 3162 continues former Section 3149 without substantive change.

17 ☞ **Staff Note.** Does the mechanic’s lien law really need its own provisions on joinder and
18 consolidation?

19 **§ 3163. Costs**

20 3163. In addition to any other costs allowed by law, the court in an action to
21 foreclose a mechanic’s lien shall also allow as costs the money paid for verifying
22 and recording the lien to each claimant whose lien is established, whether the
23 claimant is a plaintiff or defendant.

24 **Comment.** Section 3163 continues former Section 3150 without substantive change.

25 See also Sections 3084 (“claimant” defined), 3089 (“mechanic’s lien” defined).

26 **§ 3164 Deficiency**

27 3164. If there is a deficiency of proceeds from the sale of the property on a
28 judgment to foreclose a mechanic’s lien, a deficiency judgment may be entered
29 against a party personally liable for the deficiency in the same manner and with the
30 same effect as in an action for the foreclosure of a mortgage.

31 **Comment.** Section 3164 restates former Section 3151 without substantive change.

32 ☞ **Staff Note.** “Deficiency of proceeds” isn’t defined, but it is probably understood to mean
33 proceeds insufficient to satisfy all claims in the action.

34 **§ 3165. Personal liability**

35 3165. This title does not affect the following:

36 (a) The right of a claimant to maintain a personal action to recover a debt against
37 the person liable, either in a separate action or in the action to foreclose the
38 mechanic’s lien.

1 (b) The right of the claimant to the issuance of a writ of attachment In an
2 application for a writ of attachment, the claimant shall refer to this section. A
3 mechanic's lien held by the claimant does not affect the right to procure a writ of
4 attachment.

5 (c) The claimant's right to enforce a money judgment. A judgment obtained by
6 the claimant in a personal action, or personal judgment obtained in a mechanic's
7 lien action, does not impair or merge a mechanic's lien held by the claimant, but
8 any money collected on the judgment shall be credited on the amount of the lien.

9 **Comment.** Section 3165 restates former Section 3152 without substantive change. For
10 provisions relating to attachment, see Code Civ. Proc. § 481.010 *et seq.* For provisions relating to
11 enforcement of money judgments, see Code Civ. Proc. § 681.010 *et seq.*

12 See also Sections 3084 ("claimant" defined), 3089 ("mechanic's lien" defined).

13 **§ 3166. Defense at expense of contractor [needs more revision]**

14 3166. (a) In an action to foreclose a mechanic's lien for labor, services,
15 equipment, or materials furnished to a prime contractor, the prime contractor shall
16 defend the action at its own expense. During the pendency of the action, the owner
17 may withhold from the prime contractor the amount of money [for which the claim
18 of lien is recorded].

19 (b) If a judgment foreclosing the mechanic's lien is entered against the owner or
20 the owner's property, the owner may deduct from any amount due or to become
21 due to the prime contractor the amount of the judgment and costs. If the amount of
22 the judgment and costs exceeds the amount due from the owner to the prime
23 contractor, or if the owner has settled with the prime contractor in full, the owner
24 may recover from the prime contractor, or the sureties on any bond given by the
25 prime contractor for the faithful performance of the contract, the amount of the
26 judgment and costs that exceed the contract price and for which the prime
27 contractor was originally the party liable.

28 **Comment.** Section 3167 restates former Section 3153 without substantive change.

29 See also Sections 3092 ("owner" defined), 3095 ("prime contractor" defined).

30 ☞ **Staff Note.** Existing Section 3153 refers to "contractor" in its opening clause, but elsewhere
31 to "original contractor."

32 **Article 6. Priorities**

33 **§ 3167. Priority of mechanic's lien**

34 3167. Except as provided in Sections 3170 and 3171, a mechanic's lien is
35 superior to any lien, mortgage, deed of trust, or other encumbrance on the work of
36 improvement and the site, that (1) attaches after commencement of the work of
37 improvement or (2) was unrecorded when the work of improvement commenced
38 and of which the claimant had no notice.

39 **Comment.** Section 3167 restates former Section 3134 without substantive change.

40 See also Sections 3084 ("claimant" defined), 3089 ("mechanic's lien" defined), 3099 ("site"
41 defined), 3103 ("work of improvement" defined).

1 **§ 3168. Time of commencement of works under separate contracts**

2 3168. If a site improvement is provided for in a separate contract from a contract
3 with respect to [the erection of residential units or other structures], the site
4 improvement is considered as a separate work of improvement and its
5 commencement does not constitute commencement of the work of improvement.

6 **Comment.** Section 3168 continues former Section 3135 without substantive change.

7 See also Sections 3100 (“site improvement” defined), 3103 (“work of improvement” defined).

8 ☞ **Staff Note.** This section is not a priority provision in its current form. It relates to the time of
9 commencement of the work, which is, of course, critical to determining priorities based on time,
10 but it is really a clarification of the rule in draft Section 3167. The treatment of the scattered
11 provisions concerning site improvements needs to be given further consideration.

12 The phrase “erection of residential unit or other structure” seems to cover construction of all
13 structures. Why is this wording used? Why are residential units singled out here?

14 **§ 3169. Priority of advances by lender**

15 3169. (a) A mortgage or deed of trust that would be superior to mechanic’s liens
16 to the extent of obligatory advances made in accordance with the commitment of
17 the lender is also superior to mechanic’s liens as to any other advances, secured by
18 the mortgage or deed of trust, that are used to pay claims of lien [recorded at the
19 date or dates of the other advances and thereafter in payment of costs of the work
20 of improvement].

21 (b) The priority under subdivision (a) does not exceed the original obligatory
22 commitment of the lender as shown in the mortgage or deed of trust.

23 **Comment.** Section 3169 continues former Section 3136 without substantive change.

24 See also Sections 3083 (“claim of lien” defined), 3089 (“mechanic’s lien” defined), 3103
25 (“work of improvement” defined).

26 ☞ **Staff Note.** The phrase “recorded at the date or dates of such other advances and thereafter in
27 payment of costs of the work of improvement” is confusing. This provision needs further
28 clarification.

29 **§ 3170. Priority of site improvements**

30 3170. Except as provided by Section 3172, a site improvement lien under
31 Section 3143 is superior to the all of the following:

32 (a) A mortgage, deed of trust, or other encumbrance that attaches after
33 commencement of the site improvement.

34 (b) A mortgage, deed of trust, or other encumbrance that was unrecorded at the
35 time of the commencement of the site improvement and of which the claimant had
36 no notice.

37 (c) A mortgage, deed of trust, or other encumbrance recorded before
38 commencement of the site improvement that was given for the sole or primary
39 purpose of financing the site improvement, unless the loan proceeds are, in good
40 faith, placed in the control of the lender under a binding agreement with the
41 borrower to the effect that (1) the proceeds are to be applied to the payment of
42 claimants and (2) no portion of the proceeds will be paid to the borrower in the

1 absence of satisfactory evidence that all claims have been paid or that the time for
2 recording claims of liens has expired and no claims have been recorded.

3 **Comment.** Section 3170 continues former Section 3137 without substantive change.

4 See also Sections 3083 (“claim of lien” defined), 3084 (“claimant” defined), 3100 (“site
5 improvement” defined).

6 **§ 3171. Payment bond furnished by holder of mortgage or deed of trust [not yet revised]**

7 3171. If the holder of any mortgage or deed of trust which is subordinate
8 pursuant to Section 3167 to any lien, shall procure a payment bond as defined in
9 Section 3096 in an amount not less than 75 percent of the principal amount of such
10 mortgage or deed of trust, which bond refers to such mortgage or deed of trust, and
11 shall record such payment bond in the office of the county recorder in the county
12 where the site is located, then such mortgage or deed of trust shall be preferred to
13 all liens for labor, services, equipment, or materials furnished after such recording.

14 **Comment.** Section 3171 continues former Section 3138 without substantive change.

15 **§ 3172. Payment bond by owner or holder of mortgage or deed of trust on site improvement**
16 **[not yet revised]**

17 3172. If the owner of the land or holder of any mortgage or deed of trust, which
18 is subordinate pursuant to Section 3137 to any lien, shall procure a payment bond
19 in an amount not less than 50 percent of the principal amount of such mortgage or
20 deed of trust and shall record such payment bond in the office of the county
21 recorder in the county where the site is located before completion of the work of
22 improvement, then such mortgage or deed of trust shall be preferred to all such
23 liens provided in Section 3112.

24 **Comment.** Section 3172 continues former Section 3139 without substantive change.

25 **§ 3173. Bona fide purchasers and encumbrancers [not yet revised]**

26 3173. As against any purchaser or encumbrancer for value and in good faith
27 whose rights are acquired subsequent to the expiration of the 90-day period
28 following the recording of the claim of lien, no giving of credit or extension of the
29 lien or of the time to enforce the same shall be effective unless evidenced by a
30 notice or agreement recorded in the office of the county recorder prior to the
31 acquisition of the rights of such purchaser or encumbrancer.

32 **Comment.** Section 3173 continues former Section 3145 without substantive change.

33 **Article 7. Release of Mechanic's Lien**

34 **§ 3175. Release bond [not yet revised]**

35 3175. If the owner of property, or the owner of any interest therein, sought to be
36 charged with a claim of lien, or any original contractor or subcontractor disputes
37 the correctness or validity of any claim of lien, he may record in the office of the
38 county recorder in which such claim of lien was recorded, either before or after the

1 commencement of an action to enforce such claim of lien, a bond executed by a
2 corporation authorized to issue surety bonds in the State of California, in a penal
3 sum equal to 1-1/2 times the amount of the claim or 1-1/2 times the amount
4 allocated in the claim of lien to the parcel or parcels of real property sought to be
5 released, which bond shall be conditioned for the payment of any sum which the
6 claimant may recover on the claim together with his cost of suit in the action, if he
7 recovers therein. Upon the recording of such bond the real property described in
8 such bond is released from the lien and from any action brought to foreclose such
9 lien. The principal upon such bond may be either the owner of the property or the
10 owner of any interest therein, or any original contractor, subcontractor, or sub-
11 subcontractor affected by such claim of lien.

12 **Comment.** Section 3175 continues former Section 3143 without substantive change.

13 **§ 3176. Notice of recording of release bond [not yet revised]**

14 3176. Any person who obtains a lien release bond which is recorded pursuant to
15 Section 3175 shall give notice of the recording to the lienholder by mailing a copy
16 of the bond to the lienholder at the address appearing on the lien. Service of the
17 notice shall be by certified or registered mail, return receipt requested. Failure to
18 give the notice provided by this section shall not affect the validity of the lien
19 release bond, but the statute of limitations on any action on the bond shall be tolled
20 until the notice is given. Any action on the lien release bond shall be commenced
21 by the claimant within six months of the recording of the lien release bond.

22 **Comment.** Section 3176 continues former Section 3144.5 without substantive change.

23 **§ 3177. Petition for release of lien [not yet revised]**

24 3177. (a) At any time after the expiration of the time period specified by Section
25 3157 with regard to the period during which property is bound by a lien after
26 recordation of a claim of lien, where no action has been brought to enforce such
27 lien, the owner of the property or the owner of any interest therein may petition the
28 proper court for a decree to release the property from the lien.

29 (b) The petition shall be verified and shall allege all of the following:

30 (1) The date of recordation of the claim of lien.

31 (2) The legal description of the property affected by such claim of lien.

32 (3) That no action has been filed to foreclose the lien, or that no extension of
33 credit has been recorded, and that the time period during which suit can be brought
34 to foreclose the lien has expired.

35 (4) That the lien claimant is unable or unwilling to execute a release of the lien
36 or cannot with reasonable diligence be found.

37 (5) That the owner of the property or interest in the property has not filed for
38 relief under any law governing bankrupts, and that there exists no other restraint to
39 prevent the lien claimant from filing to foreclose his or her lien. A certified copy
40 of the claim of lien shall be attached to the petition. The petition shall be deemed
41 controverted by the lien claimant.

1 (c) Upon the filing of the petition, and before any further proceedings are had,
2 the clerk, or if there is no clerk, the judge shall set a date for the hearing not more
3 that 30 days following the filing of the petition. The court may continue the
4 hearing beyond the 30-day period, but good cause shall be shown for any
5 continuance.

6 (d) A copy of the petition and the notice setting the date for the hearing shall be
7 served upon the lien claimant at least 10 days prior to the date set for hearing, in
8 the manner in which a summons is required to be served, or by certified or
9 registered mail, postage prepaid, return receipt requested, addressed to the lien
10 claimant at the claimant's address as shown: (1) on the preliminary 20-day notice
11 served by the claimant pursuant to Section 3097, (2) in the records of the registrar
12 of contractors, (3) on the contract on which the lien is based, or (4) on the claim of
13 lien itself. When service is made by mail as provided in this section, service is
14 complete on the fifth day following the day of the deposit of such mail. No decree
15 shall issue in favor of the petitioner unless the petitioner proves that service of the
16 petition and the order fixing the date for hearing was made in compliance with this
17 subdivision. The issue of compliance with this subdivision shall be deemed
18 controverted by the lien claimant.

19 (e) In the event judgment is rendered in favor of the petitioner, the decree shall
20 indicate all of the following:

21 (1) The date the lien was recorded.

22 (2) The county and city, if any, in which the lien was recorded.

23 (3) The book and page of the place in the official records where the lien is
24 recorded.

25 (4) The legal description of the property affected. Upon the recordation of a
26 certified copy of the decree, the property described in the decree shall be released
27 from the lien.

28 (f) The prevailing party shall be entitled to attorneys' fees not to exceed one
29 thousand dollars (\$1,000).

30 (g) Nothing in this section shall be construed to bar any other cause of action or
31 claim for relief by the owner of the property or an interest in the property, nor shall
32 a decree canceling a claimant's lien bar the lien claimant from bringing any other
33 cause of action or claim for relief, other than an action foreclosing such lien.
34 However, no other action or claim shall be joined with the claim for relief
35 established by this section.

36 (h) Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the
37 Code of Civil Procedure does not apply to actions commenced pursuant to this
38 section.

39 **Comment.** Section 3177 continues former Section 3154 without substantive change.

40 * * * * *

1 (4) The name of the person by whom the claimant was employed or to whom the
2 claimant furnished the labor, services, equipment, or materials.

3 (5) A description of the site sufficient for identification.

4 (b) A claim of lien in otherwise proper form, verified and containing the information
5 required by this section shall be accepted by the recorder for recording and shall be
6 deemed duly recorded without acknowledgment.

7 **Comment.** Subdivision (a) of former Section 3084 is continued in Section 3154 without
8 substantive change.

9 Subdivision (b) is continued in Section 3134(c) without substantive change.

10 ☞ **Staff Note.** This is not really a definition.

11 Used in §§ [3084], 3085, 3097, 3115, 3116, 3117, 3118, 3124, 3131, 3136, 3140, 3143, 3144,
12 3145, 3153, 3154, 3159, 3160, 3161, 3162.

13 § 3085 (repealed). Claimant

14 3085. “Claimant” means any person entitled under this title to record a claim of lien, to
15 give a stop notice in connection with any work of improvement, or to recover on any
16 payment bond, or any combination of the foregoing.

17 **Comment.** Former Section 3085 is restated in Section 3083 without substantive change. See
18 Comment to Section 3083.

19 ☞ **Staff Note.** This definition is technically defective because a claimant is not “entitled to
20 record” a claim of lien unless a preliminary notice has been given, work is complete, and the
21 “claimant” has not been paid. Nor is a person ever simply “entitled” to give a stop notice or
22 recover on a payment bond. “*Recover* on a payment bond” is not parallel to “*recording* a claim of
23 lien” or “*giving* a stop notice.”

24 If it is retained, the reference to “giving” a stop notice needs to be consistent with language of
25 stop notice provisions, which also refer to filing and serving.

26 Used in §§ 3083, 3084, 3085, 3096, 3097, 3098, 3103, 3105, 3112, 3114, 3116, 3117, 3123,
27 3124, 3130, 3131, 3134, 3137, 3140, 3143, 3144, 3144.5, 3150, 3152, 3154, 3159, 3160, 3161,
28 3162, 3163, 3166, 3171, 3174, 3175, 3183, 3185, 3190, 3191, 3193, 3196, 3197, 3199, 3200,
29 3201, 3203, 3205, 3210, 3213, 3214, 3225, 3226, 3227, 3235, 3239, 3242, 3249, 3251, 3252,
30 3261, 3262, 3263.

31 § 3086 (repealed). Completion

32 3086. “Completion” means, in the case of any work of improvement other than a public
33 work, actual completion of the work of improvement. Any of the following shall be
34 deemed equivalent to a completion:

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

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

38 (c) After the commencement of a work of improvement, a cessation of labor thereon for
39 a continuous period of 60 days, or a cessation of labor thereon for a continuous period of
40 30 days or more if the owner files for record a notice of cessation.

41 If the work of improvement is subject to acceptance by any public entity, the
42 completion of such work of improvement shall be deemed to be the date of such
43 acceptance; provided, however, that, except as to contracts awarded under the State
44 Contract Act, Chapter 3 (commencing with Section 14250), Part 5, Division 3, Title 2 of
45 the Government Code, a cessation of labor on any public work for a continuous period of
46 30 days shall be a completion thereof.

47 **Comment.** Former Section 3086 is continued in Section 3084 without substantive change. See
48 Comment to Section 3084. The introductory clause in subdivision (c) has been omitted as surplus,

1 since labor cannot cease unless it has commenced, and the phrase was not used in other
2 alternatives.

3 ☞ **Staff Note.** Used in §§ [3086], 3093, 3097, 3115, 3116, 3117, 3131, 3139, 3144, 3184, 3185,
4 3239, 3240, 3242, 3252, 3260.

5 **§ 3087 (repealed). Construction lender**

6 3087. “Construction lender” means any mortgagee or beneficiary under a deed of trust
7 lending funds with which the cost of the work of improvement is, wholly or in part, to be
8 defrayed, or any assignee or successor in interest of either, or any escrow holder or other
9 party holding any funds furnished or to be furnished by the owner or lender or any other
10 person as a fund from which to pay construction costs.

11 **Comment.** Former Section 3087 is continued in Section 3085 without substantive change. See
12 Comment to Section 3085.

13 ☞ **Staff Note.** Used in §§ 3083, [3087], 3097, 3103, 3110.5, 3123, 3159, 3162, 3163, 3166,
14 3171, 3172, 3175, 3176, 3176.5, 3260.2, 3262.

15 “Lender” only used in §§ 3136, 3137, 3260.

16 “Construction cost(s)” used in §§ [3087], 3264.

17 **§ 3088 (repealed). Contract**

18 3088. “Contract” means an agreement between an owner and any original contractor
19 providing for the work of improvement or any part thereof.

20 **Comment.** Section 3088 is continued in Section 3086 without substantive change. See
21 Comment to Section 3086.

22 ☞ **Staff Note.** Used in §§ 3086, [3088], 3092, 3093, 3094, 3097, 3098, 3103, 3110.5, 3115,
23 3117, 3123, 3124, 3130, 3135, 3140, 3153, 3154, 3181, 3186, 3193, 3225, 3226, 3235, 3236,
24 3239, 3242, 3247, 3248, 3250, 3251, 3252, 3260, 3260.1, 3260.2, 3262, 3263, 3264, 3267.

25 **§ 3089 (repealed). Laborer**

26 3089. (a) “Laborer” means any person who, acting as an employee, performs labor
27 upon or bestows skill or other necessary services on any work of improvement.

28 (b) “Laborer” also includes any person or entity, including an express trust fund
29 described in Section 3111, to whom a portion of the compensation of a laborer as defined
30 in subdivision (a) is paid by agreement with that laborer or the collective bargaining
31 agent of that laborer. To the extent that a person or entity defined in this subdivision has
32 standing under applicable law to maintain a direct legal action, in their own name or as an
33 assignee, to collect any portion of compensation owed for a laborer, that person or entity
34 shall have standing to enforce any rights under this title to the same extent as the laborer.
35 This section is intended to give effect to the long-standing public policy of this state to
36 protect the entire compensation of laborers on works of improvement, regardless of the
37 form in which that compensation is to be paid.

38 **Comment.** Former Section 3089 is continued in Section 3097 without substantive change. The
39 reference to this “section” in the last sentence of subdivision (b) has been changed to refer to this
40 “subdivision” in Section 3087 to reflect the scope of the addition of subdivision (b) in 1999. See
41 1999 Cal. Stat. ch. 795, § 4.

42 ☞ **Staff Note.** “Laborer” used in §§ [3089], 3097, 3098, 3110, 3111.

43 “Labor” used in §§ 3086, [3089], 3092, 3093, 3097, 3098, 3103, 3110, 3111, 3116, 3118, 3123,
44 3124, 3129, 3130, 3138, 3140, 3153, 3159, 3161, 3168, 3185, 3192, 3205, 3225, 3227, 3248,
45 3249, 3262, 3264

1 **§ 3090 (repealed). Materialman**

2 3090. "Materialman" means any person who furnishes materials or supplies to be used
3 or consumed in any work of improvement.

4 **Comment.** Section 3090 is continued without substantive change in Section _____
5 ("material supplier" defined).

6 ☞ **Staff Note.** "Materialman" is not used in Title 15.

7 "Material(s)" used in §§ 3084, [3090], 3093, 3097, 3098, 3103, 3110, 3112, 3116, 3118, 3123,
8 3124, 3128, 3129, 3130, 3131, 3138, 3140, 3153, 3159, 3161, 3162, 3168, 3192, 3205, 3225,
9 3227, 3236, 3249, 3260.2, 3262, 3264.

10 "Furnish" and variations used in §§ 3084, 3087, [3090], 3093, 3097, 3098, 3103, 3110, 3112,
11 3116, 3118, 3123, 3124, 3128, 3129, 3130, 3131, 3138, 3140, 3153, 3159, 3161, 3162, 3168,
12 3181, 3192, 3196, 3225, 3227, 3236, 3237, 3249, 3262, 3264.

13 "Supplier(s)" used in §§ 3159, 3162, 3260.2.

14 "Supplies" used in §§ [3090], 3181 (which also refers to provisions and provender).

15 "Equipment" used in §§ 3084, 3097, 3098, 3103, 3110, 3116, 3118, 3123, 3124, 3138, 3140,
16 3153, 3159, 3168, 3192, 3225, 3227, 3262, 3264.

17 **§ 3092 (repealed). Notice of cessation**

18 3092. "Notice of cessation" means a written notice, signed and verified by the owner or
19 his agent, containing all of the following:

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

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

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

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

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

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

30 (g) For the purpose of this section, "owner" means the owner who causes a building,
31 improvement, or structure, to be constructed, altered, or repaired (or his successor in
32 interest at the date of a notice of cessation from labor is filed for record) whether the
33 interest or estate of such owner be in fee, as vendee under a contract of purchase, as
34 lessee, or other interest or estate less than the fee. Where such interest or estate is held by
35 two or more persons as joint tenants or tenants in common, any one or more of the
36 cotenants may be deemed to be the "owner" within the meaning of this section. Any
37 notice of cessation signed by less than all of such cotenants shall recite the names and
38 addresses of all such cotenants.

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

42 **Comment.** Former Section ____ is continued in Section ____ without substantive change.

43 ☞ **Staff Note.** This is not really a definition and should be moved to the relevant part of the
44 statute. The phrase "when cessation of labor commenced" is awkward. The need for a specialized
45 definition of "owner" is not clear.

46 Used in §§ 3086, [3092], 3097, 3115, 3116, 3184. "Cessation" used in §§ 3093, 3185, 3260.2.

47 **§ 3093 (repealed). Notice of completion**

48 3093. "Notice of completion" means a written notice, signed and verified by the owner
49 or his agent, containing all of the following:

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

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

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

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

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

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

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

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

26 **Comment.** Former Section 3093 is continued in Section ____ without substantive change.

27 ☞ **Staff Note.** Used in §§ [3093], 3097, 3115, 3116, 3117, 3184, 3185, 3242, 3252, 3260.

28 **§ 3094 (repealed). Notice of nonresponsibility**

29 3094. “Notice of nonresponsibility” means a written notice, signed and verified by a
30 person owning or claiming an interest in the site who has not caused the work of
31 improvement to be performed, or his agent, containing all of the following:

32 (a) A description of the site sufficient for identification.

33 (b) The name and nature of the title or interest of the person giving the notice.

34 (c) The name of the purchaser under contract, if any, or lessee, if known.

35 (d) A statement that the person giving the notice will not be responsible for any claims
36 arising from the work of improvement.

37 Within 10 days after the person claiming the benefits of nonresponsibility has obtained
38 knowledge of the work of improvement, the notice provided for in this section shall be
39 posted in some conspicuous place on the site. Within the same 10-day period provided for
40 the posting of the notice, the notice shall be recorded in the office of the county recorder
41 of the county in which the site or some part thereof is located.

42 **Comment.** The first paragraph of former Section 3094 is restated in Section 3148(b)-(c)
43 without substantive change. The second paragraph is restated in Section 3148(d) without
44 substantive change.

45 ☞ **Staff Note.** Used in §§ [3094], 3129.

46 **§ 3095 (repealed). Original contractor**

47 3095. “Original contractor” means any contractor who has a direct contractual
48 relationship with the owner.

1 **Comment.** Former Section 3095, defining “original contractor,” is replaced by the definition of
2 “prime contractor” in new Section 3095.

3 ☞ **Staff Note.** Original contractor used in §§ 3083, 3088, 3092, 3093, 3095, 3096, 3097, 3115,
4 3116, 3117, 3124, 3140, 3143, 3153., 3158, 3159, 3161, 3162, 3171, 3181, 3186, 3187, 3193,
5 3196, 3197, 3198, 3200, 3201, 3202, 3203, 3210, 3226, 3235, 3236, 3247, 3248, 3251, 3260,
6 3260.2, 3262, 3263, 3267.

7 Contractor used in §§ 3083, 3088, 3092, 3093, 3095, 3096, 3097, 3098, 3104, 3110, 3112,
8 3115, 3116, 3117, 3123, 3124, 3140, 3143, 3153., 3154., 3158, 3159, 3161, 3162, 3166, 3171,
9 3172, 3181, 3186, 3187, 3191, 3193, 3196, 3197, 3198, 3200, 3201, 3202, 3203, 3210, 3226,
10 3235, 3236, 3247, 3248, 3251, 3260, 3260.1, 3260.2, 3262, 3262.5, 3263, 3267.

11 Prime contractor used in § 3123.

12 **§ 3096 (repealed). Payment bond**

13 3096. “Payment bond” means a bond with good and sufficient sureties that is
14 conditioned for the payment in full of the claims of all claimants and that also by its terms
15 is made to inure to the benefit of all claimants so as to give these persons a right of action
16 to recover upon this bond in any suit brought to foreclose the liens provided for in this
17 title or in a separate suit brought on the bond. An owner, original contractor, or a
18 subcontractor may be the principal upon any payment bond.

19 **Comment.** Former Section 3096 is continued in Section ____ without substantive change. See
20 Comment to Section _____. The provision has been moved to the general provisions on bonds,
21 because it states substantive rules. See also Section 3093 (“payment bond” defined).

22 ☞ **Staff Note.** Most of this language is substantive and needs to be moved, if a definition is
23 retained. It appears that a limited definition would be useful, since the term is used in a number of
24 substantive provisions. See Sections 3138, 3139, 3159, 3161, 3162, 3196, 3235, 3236, 3237,
25 3239, 3240, 3242, 3247, 3248, 3249, 3250, 3251, 3252, 3258, 3262, 3267. But no bond definition
26 needs to refer to “good and sufficient sureties” or other standard qualifications. The Bond and
27 Undertaking Law should be relied on for general provisions. See Code Civ. Proc. § 995.010 *et*
28 *seq.*

29 Used in §§ 3085, [3096], 3097, 3098, 3138, 3139, 3159, 3161, 3162, 3196, 3235, 3236, 3237,
30 3239, 3240, 3242, 3247, 3248, 3249, 3250, 3251, 3252, 3258, 3262, 3267.

31 **§ 3097 (repealed). Preliminary 20-day notice (private work)**

32 3097. “Preliminary 20-day notice (private work)” means a written notice from a
33 claimant that is given prior to the recording of a mechanic’s lien, prior to the filing of a
34 stop notice, and prior to asserting a claim against a payment bond, and is required to be
35 given under the following circumstances:

36 (a) Except one under direct contract with the owner or one performing actual labor for
37 wages as described in subdivision (a) of Section 3089, or a person or entity to whom a
38 portion of a laborer’s compensation is paid as described in subdivision (b) of Section
39 3089, every person who furnishes labor, service, equipment, or material for which a lien
40 or payment bond otherwise can be claimed under this title, or for which a notice to
41 withhold can otherwise be given under this title, shall, as a necessary prerequisite to the
42 validity of any claim of lien, payment bond, and of a notice to withhold, cause to be given
43 to the owner or reputed owner, to the original contractor, or reputed contractor, and to the
44 construction lender, if any, or to the reputed construction lender, if any, a written
45 preliminary notice as prescribed by this section.

46 (b) Except the contractor, or one performing actual labor for wages as described in
47 subdivision (a) of Section 3089, or a person or entity to whom a portion of a laborer’s
48 compensation is paid as described in subdivision (b) of Section 3089, all persons who
49 have a direct contract with the owner and who furnish labor, service, equipment, or

1 material for which a lien or payment bond otherwise can be claimed under this title, or for
2 which a notice to withhold can otherwise be given under this title, shall, as a necessary
3 prerequisite to the validity of any claim of lien, claim on a payment bond, and of a notice
4 to withhold, cause to be given to the construction lender, if any, or to the reputed
5 construction lender, if any, a written preliminary notice as prescribed by this section.

6 (c) The preliminary notice referred to in subdivisions (a) and (b) shall contain the
7 following information:

8 (1) A general description of the labor, service, equipment, or materials furnished, or to
9 be furnished, and an estimate of the total price thereof.

10 (2) The name and address of the person furnishing that labor, service, equipment, or
11 materials.

12 (3) The name of the person who contracted for purchase of that labor, service,
13 equipment, or materials.

14 (4) A description of the jobsite sufficient for identification.

15 (5) The following statement in boldface type:

16 **NOTICE TO PROPERTY OWNER**

17 If bills are not paid in full for the labor, services, equipment, or materials furnished or
18 to be furnished, a mechanic's lien leading to the loss, through court foreclosure
19 proceedings, of all or part of your property being so improved may be placed against the
20 property even though you have paid your contractor in full. You may wish to protect
21 yourself against this consequence by (1) requiring your contractor to furnish a signed
22 release by the person or firm giving you this notice before making payment to your
23 contractor, or (2) any other method or device that is appropriate under the circumstances.

24 (6) If the notice is given by a subcontractor who has failed to pay all compensation due
25 to his or her laborers on the job, the notice shall also contain the identity and address of
26 any laborer and any express trust fund to whom employer payments are due.

27 If an invoice for materials or certified payroll contains the information required by this
28 section, a copy of the invoice, transmitted in the manner prescribed by this section shall
29 be sufficient notice.

30 A certificated architect, registered engineer, or licensed land surveyor who has
31 furnished services for the design of the work of improvement and who gives a
32 preliminary notice as provided in this section not later than 20 days after the work of
33 improvement has commenced shall be deemed to have complied with subdivisions (a)
34 and (b) with respect to architectural, engineering, or surveying services furnished, or to be
35 furnished.

36 (d) The preliminary notice referred to in subdivisions (a) and (b) shall be given not later
37 than 20 days after the claimant has first furnished labor, service, equipment, or materials
38 to the jobsite. If labor, service, equipment, or materials have been furnished to a jobsite
39 by a claimant who did not give a preliminary notice, that claimant shall not be precluded
40 from giving a preliminary notice at any time thereafter. The claimant shall, however, be
41 entitled to record a lien, file a stop notice, and assert a claim against a payment bond only
42 for labor, service, equipment, or material furnished within 20 days prior to the service of
43 the preliminary notice, and at any time thereafter.

44 (e) Any agreement made or entered into by an owner, whereby the owner agrees to
45 waive the rights or privileges conferred upon the owner by this section shall be void and
46 of no effect.

47 (f) The notice required under this section may be served as follows:

48 (1) If the person to be notified resides in this state, by delivering the notice personally,
49 or by leaving it at his or her address of residence or place of business with some person in
50 charge, or by first-class registered or certified mail, postage prepaid, addressed to the
51 person to whom notice is to be given at his or her residence or place of business address
52 or at the address shown by the building permit on file with the authority issuing a
53 building permit for the work, or at an address recorded pursuant to subdivision (j).

1 (2) If the person to be notified does not reside in this state, by any method enumerated
2 in paragraph (1) of this subdivision. If the person cannot be served by any of these
3 methods, then notice may be given by first-class certified or registered mail, addressed to
4 the construction lender or to the original contractor.

5 (3) When service is made by first-class certified or registered mail, service is complete
6 at the time of the deposit of that registered or certified mail.

7 (g) A person required by this section to give notice to the owner, to an original
8 contractor, and to a person to whom a notice to withhold may be given, need give only
9 one notice to the owner, to the original contractor, and to the person to whom a notice to
10 withhold may be given with respect to all materials, services, labor, or equipment he or
11 she furnishes for a work of improvement, that means the entire structure or scheme of
12 improvements as a whole, unless the same is furnished under contracts with more than
13 one subcontractor, in which event, the notice requirements shall be met with respect to
14 materials, services, labor, or equipment furnished to each contractor.

15 If a notice contains a general description required by subdivision (a) or (b) of the
16 materials, services, labor, or equipment furnished to the date of notice, it is not defective
17 because, after that date, the person giving notice furnishes materials, services, labor, or
18 equipment not within the scope of this general description.

19 (h) If the contract price to be paid to any subcontractor on a particular work of
20 improvement exceeds four hundred dollars (\$400), the failure of that contractor, licensed
21 under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
22 Professions Code, to give the notice provided for in this section, constitutes grounds for
23 disciplinary action by the Registrar of Contractors.

24 If the notice is required to contain the information set forth in paragraph (6) of
25 subdivision (c), a failure to give the notice, including that information, that results in the
26 filing of a lien, claim on a payment bond, or the delivery of a stop notice by the express
27 trust fund to which the obligation is owing constitutes grounds for disciplinary action by
28 the Registrar of Contractors against the subcontractor if the amount due the trust fund is
29 not paid.

30 (i) Every city, county, city and county, or other governmental authority issuing building
31 permits shall, in its application form for a building permit, provide space and a
32 designation for the applicant to enter the name, branch, designation, if any, and address of
33 the construction lender and shall keep the information on file open for public inspection
34 during the regular business hours of the authority.

35 If there is no known construction lender, that fact shall be noted in the designated
36 space. Any failure to indicate the name and address of the construction lender on the
37 application, however, shall not relieve any person from the obligation to give to the
38 construction lender the notice required by this section.

39 (j) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds
40 of which may be used for the purpose of constructing improvements on real property,
41 shall bear the designation "Construction Trust Deed" prominently on its face and shall
42 state all of the following: (1) the name and address of the lender, and the name and
43 address of the owner of the real property described in the instrument, and (2) a legal
44 description of the real property that secures the loan and, if known, the street address of
45 the property. The failure to be so designated or to state any of the information required by
46 this subdivision shall not affect the validity of the mortgage, deed of trust, or other
47 instrument.

48 Failure to provide this information on this instrument when recorded shall not relieve
49 persons required to give preliminary notice under this section from that duty.

50 The county recorder of the county in which the instrument is recorded shall indicate in
51 the general index of the official records of the county that the instrument secures a
52 construction loan.

53 (k) Every contractor and subcontractor employing laborers as described in subdivision
54 (a) of Section 3089 who has failed to pay those laborers their full compensation when it

1 became due, including any employer payments described in Section 1773.1 of the Labor
2 Code and regulations adopted thereunder shall, without regard to whether the work was
3 performed on a public or private work, cause to be given to those laborers, their
4 bargaining representatives, if any, and to the construction lender, if any, or to the reputed
5 construction lender, if any, not later than the date the compensation became delinquent, a
6 written notice containing all of the following:

7 (1) The name of the owner and the contractor.

8 (2) A description of the jobsite sufficient for identification.

9 (3) The identity and address of any express trust fund described in Section 3111 to
10 which employer payments are due.

11 (4) The total number of straight time and overtime hours on each job.

12 (5) The amount then past due and owing.

13 Failure to give this notice shall constitute grounds for disciplinary action by the
14 Registrar of Contractors.

15 (l) Every written contract entered into between a property owner and an original
16 contractor shall provide space for the owner to enter his or her name, residence address,
17 and place of business if any. The original contractor shall make available the name and
18 address of residence of the owner to any person seeking to serve the notice specified in
19 subdivision (c).

20 (m) Every written contract entered into between a property owner and an original
21 contractor, except home improvement contracts and swimming pool contracts subject to
22 Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the Business
23 and Professions Code, shall provide space for the owner to enter the name and address of
24 the construction lender or lenders. The original contractor shall make available the name
25 and address of the construction lender or lenders to any person seeking to serve the notice
26 specified in subdivision (c). Every contract entered into between an original contractor
27 and subcontractor, and between subcontractors, shall provide a space for the name and
28 address of the owner, original contractor, and any construction lender.

29 (n) Where one or more construction loans are obtained after commencement of
30 construction, the property owner shall provide the name and address of the construction
31 lender or lenders to each person who has given the property owner the notice specified in
32 subdivision (c).

33 (o)(1) Each person who has served a preliminary 20-day notice pursuant to subdivision
34 (f) may file the preliminary 20-day notice with the county recorder in the county in which
35 any portion of the property is located. A preliminary 20-day notice filed pursuant to this
36 section shall contain all of the following:

37 (A) The name and address of the person furnishing the labor, service, equipment, or
38 materials.

39 (B) The name of the person who contracted for purchase of the labor, services,
40 equipment, or materials.

41 (C) The common street address of the jobsite.

42 (2) Upon the acceptance for recording of a notice of completion or notice of cessation
43 the county recorder shall mail to those persons who have filed a preliminary 20-day
44 notice, notification that a notice of completion or notice of cessation has been recorded on
45 the property, and shall affix the date that the notice of completion or notice of cessation
46 was recorded with the county recorder.

47 (3) The failure of the county recorder to mail the notification to the person who filed a
48 preliminary 20-day notice, or the failure of those persons to receive the notification or to
49 receive complete notification, shall not affect the period within which a claim of lien is
50 required to be recorded. However, the county recorder shall make a good faith effort to
51 mail notification to those persons who have filed the preliminary 20-day notice under this
52 section and to do so within five days after the recording of a notice of completion or
53 notice of cessation.

1 (4) This new function of the county recorder shall not become operative until July 1,
2 1988. The county recorder may cause to be destroyed all documents filed pursuant to this
3 section, two years after the date of filing.

4 (5) The preliminary 20-day notice that a person may file pursuant to this subdivision is
5 for the limited purpose of facilitating the mailing of notice by the county recorder of
6 recorded notices of completion and notices of cessation. The notice that is filed is not a
7 recordable document and shall not be entered into those official records of the county
8 which by law impart constructive notice. Notwithstanding any other provision of law, the
9 index maintained by the recorder of filed preliminary 20-day notices shall be separate and
10 distinct from those indexes maintained by the county recorder of those official records of
11 the county which by law impart constructive notice. The filing of a preliminary 20-day
12 notice with the county recorder does not give rise to any actual or constructive notice
13 with respect to any party of the existence or contents of a filed preliminary 20-day notice
14 nor to any duty of inquiry on the part of any party as to the existence or contents of that
15 notice.

16 (p)(1) The change made to the statement described in subdivision (c) by Chapter 974 of
17 the Statutes of 1994 shall have no effect upon the validity of any notice that otherwise
18 meets the requirements of this section. The failure to provide, pursuant to Chapter 974 of
19 the Statutes of 1994, a written preliminary notice to a subcontractor with whom the
20 claimant has contracted shall not affect the validity of any preliminary notice provided
21 pursuant to this section.

22 (2)(A) The inclusion of the language added to paragraph (5) of subdivision (c) by
23 Chapter 795 of the Statutes of 1999, shall not affect the validity of any preliminary notice
24 given on or after January 1, 2000, and prior to the operative date of the amendments to
25 this section enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise
26 meets the requirements of that subdivision.

27 (B) A preliminary notice given on or after January 1, 2000, and prior to the operative
28 date of the amendments to this section enacted at the 2000 portion of the 1999-2000
29 Regular Session, shall not be invalid because of the failure to include the language added
30 to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, if the notice
31 otherwise complies with that subdivision.

32 (C) The failure to provide an affidavit form or notice of rights, or both, pursuant to the
33 requirements of Chapter 795 of the Statutes of 1999, shall not affect the validity of any
34 preliminary notice pursuant to this section.

35 **Comment.** The introductory paragraph and subdivision (a) of Section 3097 are restated in
36 Section 3111 without substantive change.

37 Subdivision (b) is not continued. Section 3111 provides the full scope of the preliminary 20-
38 day notice (private work).

39 The provisions relating to the contents of the preliminary notice in subdivision (c) (paragraphs
40 (1)-(6) and the unnumbered paragraph following paragraph (6)) are continued in Section 3112
41 without substantive change.

42 The unnumbered paragraph preceding subdivision (d) is continued in Section 3113(c) without
43 substantive change.

44 Subdivision (d) is restated in Section 3113(a)-(b) without substantive change.

45 Subdivision (e) is continued in Section 3120 without substantive change

46 Subdivision (f) is continued in Section 3114(a) without substantive change

47 The first paragraph of subdivision (g) is restated in Section 3115(a)-(b) without substantive
48 change. The reference to "contractor" at the end of this paragraph is changed to "subcontractor"
49 for consistency with the phrase "unless the same is furnished under contracts with more than one
50 subcontractor."

51 The unnumbered second paragraph of subdivision (g) is continued in Section 3115(c) without
52 substantive change.

1 The first paragraph of subdivision (h) is continued in Section 3118(a) without substantive
2 change. The unnumbered second paragraph of subdivision (h) is continued in Section 3118(b)
3 without substantive change.

4 Subdivision (i) is continued in Section 3109 without substantive change.

5 The first two paragraphs of subdivision (j) are continued in Section 3108 without substantive
6 change. The third paragraph is continued in Section [3135(b)].

7 Subdivision (k) is restated in Section 3137 without substantive change. See Comment to
8 Section 3137.

9 The first sentence of subdivision (l) is continued in Section 3107(a) without substantive change.
10 The second sentence is generalized in Section 3116.

11 The first and third sentences of subdivision (m) are continued respectively in Section 3107(b)-
12 (c) without substantive change. The second sentence is generalized in Section 3116.

13 Subdivision (n) is continued in Section ____.

14 Subdivision (o) is continued in Section 3118 without substantive change. The 1988 operative
15 date provision in the first sentence of paragraph (4) is omitted as obsolete.

16 Subdivision (n) is continued in Section ____.

17 Subdivision (p) is continued in Section 3120.5 without substantive change.

18 ☞ **Staff Note.** This section — amended about 15 times since 1969, is far too long (over twice as
19 long as the entire mechanic's lien statute in the 1872 Code of Civil Procedure). It contains much
20 substantive and procedural material that should be located with related provisions. It also contains
21 a number of provisions only peripherally related to the term being “defined.”

22 The text set out above includes changes from the 2001 maintenance of the codes bill. 2001 Cal.
23 Stat. ch. 159, § 37.

24 “Jobsite” is used in §§ [3097], 3098.

25 “Site” is used in §§ 3084, 3092, 3093, 3094, 3101, 3102, 3112, 3134, 3135, 3137, 3138, 3139,
26 3159, 3162, 3260.2.

27 **§ 3097.1 (repealed) Proof of service of preliminary 20-day notice**

28 3097.1. Proof that the preliminary 20-day notice required by Section 3097 was served
29 in accordance with subdivision (f) of Section 3097 shall be made as follows:

30 (a) If served by mail, by the proof of service affidavit described in subdivision (c) of
31 this section accompanied either by the return receipt of certified or registered mail, or by
32 a photocopy of the record of delivery and receipt maintained by the post office, showing
33 the date of delivery and to whom delivered, or, in the event of nondelivery, by the
34 returned envelope itself.

35 (b) If served by personally delivering the notice to the person to be notified, or by
36 leaving it at his address or place of business with some person in charge, by the proof of
37 service affidavit described in subdivision (c).

38 (c) A “proof of service affidavit” is an affidavit of the person making the service,
39 showing the time, place and manner of service and facts showing that such service was
40 made in accordance with Section 3097. Such affidavit shall show the name and address of
41 the person upon whom a copy of the preliminary 20-day notice was served, and, if
42 appropriate, the title or capacity in which he was served.

43 **Comment.** Former Section 3097.1 is continued in Section 3114(b) without substantive change.

44 ☞ **Staff Note.** This is not a definition, and it is out of order. This section clearly needs to be
45 moved to the substantive and procedural portion of the statute.

46 **§ 3098 (repealed). Preliminary 20-day notice (public work)**

47 3098. “Preliminary 20-day notice (public work)” means a written notice from a
48 claimant that was given prior to the assertion of a claim against a payment bond, or the

1 filing of a stop notice on public work, and is required to be given under the following
2 circumstances:

3 (a) In any case in which the law of this state affords a right to a person furnishing labor
4 or materials for a public work who has not been paid therefor to assert a claim against a
5 payment bond, or to file a stop notice with the public agency concerned, and thereby
6 cause the withholding of payment from the contractor for the public work, any person
7 that has no direct contractual relationship with the contractor, other than a person who
8 performed actual labor for wages or an express trust fund described in Section 3111, may
9 file the preliminary notice, but no payment shall be withheld from the contractor pursuant
10 to that notice unless the person has caused written notice to be given to the contractor,
11 and the public agency concerned, not later than 20 days after the claimant has first
12 furnished labor, services, equipment, or materials to the jobsite, stating with substantial
13 accuracy a general description of labor, service, equipment, or materials furnished or to
14 be furnished, and the name of the party to whom the same was furnished. This notice
15 shall be served by mailing the same by first-class mail, registered mail, or certified mail,
16 postage prepaid, in an envelope addressed to the contractor at any place the contractor
17 maintains an office or conducts business, or his or her residence, or by personal service.
18 In case of any public works constructed by the Department of Public Works or the
19 Department of General Services of the state, such notice shall be served by mailing in the
20 same manner as above, addressed to the office of the disbursing officer of the department
21 constructing the work, or by personal service upon the officer. When service is by
22 registered or certified mail, service is complete at the time of the deposit of the registered
23 or certified mail.

24 (b) Where the contract price to be paid to any subcontractor on a particular work of
25 improvement exceeds four hundred dollars (\$400), the failure of that contractor, licensed
26 under Chapter 9, (commencing with Section 7000) of Division 3 of the Business and
27 Professions Code, to give the notice provided for in this section, constitutes grounds for
28 disciplinary action by the Registrar of Contractors.

29 (c) The notice requirements of this section shall not apply to a laborer described in
30 Section 3089 or to an express trust fund described in Section 3111.

31 (d) If labor, service, equipment, or materials have been furnished to a jobsite by a
32 claimant who did not give a preliminary notice pursuant to subdivision (a), that claimant
33 shall not be precluded from giving a preliminary notice at any time thereafter. The
34 claimant shall, however, be entitled to assert a claim against a payment bond and file a
35 stop notice only for labor, service, equipment, or material furnished within 20 days prior
36 to the service of the preliminary notice, and at any time thereafter.

37 (e) The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a written
38 preliminary notice to a subcontractor with whom the claimant has contracted shall not
39 affect the validity of any preliminary notice provided pursuant to this section.

40 **Comment.** The introductory paragraph and part of subdivision (a) of former Section 3098 are
41 continued in Section 3121 without substantive change. See Comment to Section 3121. See also
42 Section 3094 (“preliminary 20-day notice” defined). The last part of the first sentence of
43 subdivision (a) is superseded by Section 3122. See Comment to Section 3122. The second, third,
44 and fourth sentences of subdivision (a) are restated in Section 3124 without substantive change.

45 Subdivision (b) is continued in Section 3125 without substantive change.

46 Subdivision (c) is restated in Section 3121(b) without substantive change.

47 Subdivision (d) is restated in Section 3123 without substantive change. See Comment to
48 Section 3123.

49 Subdivision (e) is continued in Section 3126 without substantive change.

50  **Staff Note.**

51 Used in literal form only in § 3183. Used in general form in § 3252 (“20-day public works
52 preliminary bond notice as provided in Section 3098”).

1 **§ 3099 (repealed). Public entity**

2 3099. "Public entity" means the state, Regents of the University of California, a county,
3 city, district, public authority, public agency, and any other political subdivision or public
4 corporation in the state.

5 **Comment.** Former Section 3099 is continued in Section 3097 without substantive change.

6 ☞ **Staff Note.** Used in §§ 3086, 3099, 3100, 3181, 3185, 3186, 3192, 3196, 3198, 3199, 3200,
7 3201, 3202, 3203, 3210, 3211, 3214, 3247, 3250, 3251.

8 **§ 3100 (repealed). Public work**

9 3100. "Public work" means any work of improvement contracted for by a public entity.

10 **Comment.** Former Section 3100 is continued in Section 3098 without substantive change.

11 ☞ **Staff Note.** Used in §§ 3086, 3098, 3100, 3103, 3109, 3156, 3179, 3181, 3183, 3184, 3185,
12 3247, 3252, 3267. "Public works" used in §§ 3098, 3184, 3252.

13 **§ 3101 (repealed). Site**

14 3101. "Site" means the real property upon which the work of improvement is being
15 constructed or performed.

16 **Comment.** Former Section 3101 is continued in Section 3099 without substantive change.

17 ☞ **Staff Note.** Used in §§ 3084, 3092, 3093, 3094, [3101], 3102, 3112, 3134, 3135, 3137, 3138,
18 3139, 3159, 3162, 3260.2.

19 "Site improvement" used in §§ 3112, 3134, 3135, 3137.

20 "Jobsite" is used in §§ [3097], 3098.

21 **§ 3102 (repealed). Site improvement**

22 3102. "Site improvement" means the demolishing or removing of improvements, trees,
23 or other vegetation located thereon, or drilling test holes or the grading, filling, or
24 otherwise improving of any lot or tract of land or the street, highway, or sidewalk in front
25 of or adjoining any lot or tract of land, or constructing or installing sewers or other public
26 utilities therein, or constructing any areas, vaults, cellars, or rooms under said sidewalks
27 or making any improvements thereon.

28 **Comment.** Former Section 3102 is continued in Section 3100 without substantive change. See
29 Comment to Section 3100.

30 ☞ **Staff Note.** Used in §§ [3102], 3112, 3134, 3135, 3137.

31 **§ 3103 (repealed). Stop notice**

32 3103. "Stop notice" means a written notice, signed and verified by the claimant or his
33 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 of the
38 whole agreed to be done or furnished.

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

40 The notice, in the case of any work of improvement other than a public work, shall be
41 delivered to the owner personally or left at his or her residence or place of business with
42 some person in charge, or delivered to his or her architect, if any, if the notice is served
43 upon a construction lender, holding construction funds and maintaining branch offices, it
44 shall not be effective as against the construction lender unless given to or served upon the

1 manager or other responsible officer or person at the office or branch thereof
2 administering or holding the construction funds. The notice, in the case of any public
3 work for the state, shall be filed with the director of the department which let the contract
4 and, in the case of any other public work, shall be filed in the office of the controller,
5 auditor, or other public disbursing officer whose duty it is to make payments under the
6 provisions of the contract, or with the commissioners, managers, trustees, officers, board
7 of supervisors, board of trustees, common council, or other body by whom the contract
8 was awarded. No stop notice shall be invalid by reason of any defect in form if it is
9 sufficient to substantially inform the owner of the information required.

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

12 **Comment.** Section 3103 is superseded by Sections 3101 (“stop notice” defined) and the
13 substantive provisions in Chapter 3 (stop notices in private works) and Chapter 4 (stop notices in
14 public works).

15 ☞ **Staff Note.** Used in §§ 3083, 3085, 3097, 3098, [3103], 3158, 3159, 3160, 3161, 3162, 3163,
16 3166, 3167, 3168, 3171, 3172, 3174, 3175, 3176, 3176.5, 3181, 3183, 3184, 3185, 3186, 3187,
17 3190, 3191, 3192, 3193, 3196, 3197, 3210, 3213, 3214, 3249, 3250, 3262, 3267.

18 § 3104 (repealed). Subcontractor

19 3104. “Subcontractor” means any contractor who has no direct contractual relationship
20 with the owner.

21 **Comment.** Former Section 3104 is continued in Section 3102 without substantive change. See
22 Comment to Section 3102.

23 ☞ **Staff Note.** Several definitions depend on the meaning of “contractor.” which is not defined.

24 Used in §§ 3096, 3097, 3098, [3104], 3110, 3124, 3140, 3143, 3159, 3162, 3171, 3196, 3248,
25 3260, 3260.2, 3262.5, 3267.

26 § 3105 (repealed). Subdivision

27 3105. “Subdivision” means a work of improvement consisting of two or more separate
28 residential units or two or more buildings, mining claims, or other improvements owned
29 or reputed to be owned by the same person or on which the claimant has been employed
30 by the same person. A separate residential unit means one residential structure, together
31 with any garage or other improvements appurtenant thereto.

32 **Comment.** Section 3105 is not continued because the term is not used in Title 15.

33 ☞ **Staff Note.** The reference to “mining claims” also seems archaic.

34 § 3106 (repealed). Work of improvement

35 3106. “Work of improvement” includes but is not restricted to the construction,
36 alteration, addition to, or repair, in whole or in part, of any building, wharf, bridge, ditch,
37 flume, aqueduct, well, tunnel, fence, machinery, railroad, or road, the seeding, sodding, or
38 planting of any lot or tract of land for landscaping purposes, the filling, leveling, or
39 grading of any lot or tract of land, the demolition of buildings, and the removal of
40 buildings. Except as otherwise provided in this title, “work of improvement” means the
41 entire structure or scheme of improvement as a whole.

42 **Comment.** Former Section 3106 is continued in Section 3103 without substantive change. See
43 Comment to Section 3103.

44 ☞ **Staff Note.**

45 Used in §§ 3085, 3086, 3087, 3088, 3089, 3090, 3092, 3093, 3094, 3097, 3098, 3100, 3101,
46 3103, 3105, [3106], 3110, 3111, 3115, 3116, 3117, 3124, 3128, 3129, 3130, 3131, 3134, 3135,

1 3136, 3139, 3144, 3186, 3192, 3196, 3225, 3235, 3237, 3239, 3240, 3242, 3252, 3260, 3260.1,
2 3260.2, 3264.

3 CHAPTER 2. MECHANICS' LIENS

4 Article 1. Application of Chapter

5 **§ 3109 (repealed) Scope of chapter**

6 3109. This chapter does not apply to any public work.

7 **Comment.** Former Section 3109 is superseded by the limitation provided in Section 3141
8 (persons entitled to mechanic's lien). This is not a substantive change.

9 Article 2. Who Is Entitled to Lien

10 **§ 3110 (repealed). Persons entitled to lien**

11 3110. Mechanics, materialmen, contractors, subcontractors, lessors of equipment,
12 artisans, architects, registered engineers, licensed land surveyors, machinists, builders,
13 teamsters, and draymen, and all persons and laborers of every class performing labor
14 upon or bestowing skill or other necessary services on, or furnishing materials or leasing
15 equipment to be used or consumed in or furnishing appliances, teams, or power
16 contributing to a work of improvement shall have a lien upon the property upon which
17 they have bestowed labor or furnished materials or appliances or leased equipment for the
18 value of such labor done or materials furnished and for the value of the use of such
19 appliances, equipment, teams, or power whether done or furnished at the instance of the
20 owner or of any person acting by his authority or under him as contractor or otherwise.
21 For the purposes of this chapter, every contractor, subcontractor, sub-subcontractor,
22 architect, builder, or other person having charge of a work of improvement or portion
23 thereof shall be held to be the agent of the owner.

24 **Comment.** The first sentence of former Section 3110 is restated in Section 3141 without
25 substantive change. See Comment to Section 3141. The second sentence is continued in Section
26 3144 without substantive change. See Comment to Section 3144.

27  **Staff Note.** “Sub-subcontractor” used in §§ [3110], 3143. “Builder” used only in § [3110].

28 **§ 3110.5 (repealed). Security for large projects**

29 3110.5. (a)(1) This section shall apply only to an owner who contracts for a work of
30 improvement for construction, alteration, addition to, or repair upon, property, whether
31 the contracting owner is the owner of a fee simple absolute interest in the property or the
32 owner of any lesser interest in the property. For purposes of this section, a lessee of real
33 property shall be considered to be the owner of a fee simple absolute interest in that real
34 property if and only if: (A) the initial term of the lease is at least 35 years and (B) the
35 lease covers one or more lawful parcels under the Subdivision Map Act (Division 2
36 (commencing with Section 66410) of Title 7 of the Government Code) and any
37 applicable local ordinances adopted pursuant thereto, in their entirety, including, but not
38 limited to, parcels approved pursuant to certificate of compliance proceedings. For
39 purposes of this section, the owner of a fee simple absolute interest shall not be deemed
40 to be the owner of less than a fee simple absolute interest by reason of any mortgages,
41 deeds of trust, ground leases, or other liens or encumbrances or rights to occupancy that
42 may encumber the fee simple absolute interest. When the owner contracting for the work
43 of improvement is an owner of an interest in the property which is less than a fee simple

1 absolute interest, nothing in this section shall require the owner of the fee simple absolute
2 interest who does not contract for the work of improvement to provide any security
3 pursuant to this section or to comply with any of the other obligations of an owner under
4 this section. When the owner contracting for the work of improvement is an owner of the
5 fee simple absolute interest in the property, nothing in this section shall require the owner
6 of an interest in the property which is less than a fee simple absolute interest who does
7 not contract for the work of improvement to provide any security pursuant to this section
8 or to comply with any of the other obligations of an owner under this section.

9 (2) An owner contracting for a work of improvement is subject to this section only if
10 one of the following conditions is satisfied:

11 (A) The owner contracting for the work of improvement is the owner of a fee simple
12 absolute interest in the property upon which the work of improvement is to be made, and
13 the value of the contract for the work of improvement is more than five million dollars
14 (\$5,000,000).

15 (B) The owner contracting for the work of improvement is the owner of an interest
16 which is less than a fee simple absolute interest, including a leasehold interest, in the
17 property upon which the work of improvement is to be made, and the value of the
18 contract for the work of improvement is more than one million dollars (\$1,000,000).

19 (b) When an owner of property, whether an owner of a fee simple absolute interest or
20 any lesser interest therein, contracts for any work of improvement for construction,
21 alteration, addition to, or repair upon, the property, and the contracting owner is subject
22 to the requirements of this section, as determined by subdivision (a), the contracting
23 owner shall supply to the original contractor, if a lending institution is providing a
24 construction loan, a copy certified by the county recorder of the recorded construction
25 mortgage or deed of trust that shall disclose the amount of the construction loan. In
26 addition, if the contracting owner is not the majority owner of the original contractor, the
27 contracting owner shall provide security for the contracting owner's payment obligations
28 under the construction contract. The security shall be used only when the contracting
29 owner defaults on his or her contractual obligations to the original contractor. The
30 security for the contracting owner's payment obligations under the construction contract
31 shall be provided by one of the following means:

32 (1) A payment bond, as defined in Section 3096, in the amount of either (A) not less
33 than 25 percent of the total amount of any construction contract that is subject to this
34 section where the construction contract provides that the work of improvement is
35 scheduled to be substantially completed within six months following the commencement
36 thereof, or (B) not less than 15 percent of the total amount of any other construction
37 contract that is subject to this section, which payment bond shall be payable upon default
38 by the contracting owner of any undisputed amount under the contract that has been due
39 and payable for more than 30 days. The payment bond shall be from a California
40 admitted surety which is either listed in the Department of the Treasury's Listing of
41 Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or
42 better and has an underwriting limitation, pursuant to Section 12090 of the Insurance
43 Code, greater than the value of the contract amount of the bond.

44 (2) An irrevocable letter of credit from a financial institution, as defined in Section
45 5107 of the Financial Code, inuring to the benefit of the original contractor in the amount
46 of either (A) not less than 25 percent of the total amount of any construction contract that
47 is subject to this section where the construction contract provides that the work of
48 improvement is scheduled to be substantially completed within six months following the
49 commencement thereof, or (B) not less than 15 percent of the total amount of any other
50 construction contract that is subject to this section. The maturity date of the letter of credit
51 and other terms of the letter of credit shall be determined by agreement between the
52 contracting owner, the original contractor, and the issuer of the letter of credit provided
53 that the contracting owner shall be required to maintain the letter of credit in effect until

1 the contracting owner has satisfied all of its payment obligations to the original
2 contractor.

3 (3)(A) An escrow account, designated as a “construction security escrow account,”
4 maintained with an escrow agent licensed under the Escrow Law, as set forth in Division
5 6 (commencing with Section 17000) of the Financial Code, or with any person exempt
6 from the Escrow Law pursuant to paragraph (1) or (3) of subdivision (a) of Section 17006
7 of the Financial Code, which construction security escrow account shall be located in
8 California and in which the contracting owner shall deposit funds in the amount provided
9 in subparagraph (B); provided that the original contractor shall not be obligated to accept
10 a construction security escrow account as security unless the contracting owner
11 establishes to the reasonable satisfaction of the original contractor (which may be
12 established by a written opinion of legal counsel for the contracting owner), that the
13 contracting owner has granted the original contractor a perfected, first priority security
14 interest in the construction security escrow account and all funds deposited by the
15 contracting owner therein and the proceeds thereof. The funds on deposit in the
16 construction security escrow account shall be the sole property of the contracting owner,
17 subject to the security interest in favor of the original contractor. The escrowholder shall
18 be instructed by the contracting owner and the original contractor to hold the funds on
19 deposit in the construction security escrow account for the purpose of perfecting the
20 original contractor’s security interest therein and to disburse those funds only upon the
21 joint authorization of the contracting owner and the original contractor, or in accordance
22 with an order of any court which is binding on both the owner and the original contractor.
23 Nothing in this section shall be construed to require any construction lender to agree to
24 deposit proceeds of a construction loan in a construction security escrow account.

25 (B) Prior to commencement of the work under the construction contract, the contracting
26 owner shall make an initial deposit to the construction security escrow account in the
27 amount of either (i) not less than 25 percent of the total amount of any construction
28 contract which is subject to this section where the construction contract provides that the
29 work of improvement is scheduled to be substantially completed within six months
30 following the commencement thereof, or (ii) not less than 15 percent of the total amount
31 of any other construction contract which is subject to this section. In addition, if the
32 construction contract provides for a so-called retainage or retention to be withheld from
33 periodic payments to the original contractor, the contracting owner shall deposit all
34 amounts withheld as retainage or retention in the construction security escrow account at
35 the same time the contracting owner makes the corresponding payment to the original
36 contractor from which the retainage or retention is withheld provided, however, that in no
37 event shall the amount required to be maintained on deposit in the construction security
38 escrow account exceed the total amount of future payments remaining to be due the
39 original contractor under its construction contract (as the same may be adjusted by
40 agreement between the contracting owner and the original contractor). Whenever the
41 amount of funds on deposit in the construction security escrow account equals or exceeds
42 the total amount of future payments remaining to be due the original contractor, the
43 contracting owner and the original contractor shall authorize the disbursement to the
44 original contractor of funds on deposit in the construction security escrow account to pay
45 progress payments then due the original contractor under its construction contract (in
46 whole or in part), but in no event shall either party be obligated to authorize the
47 disbursement of any funds that would cause the amount remaining on deposit in the
48 construction security escrow account following that disbursement to be less than the total
49 amount of future payments remaining to be due the original contractor after application of
50 any funds disbursed to the original contractor. The contracting owner and the original
51 contractor shall authorize the disbursement to the contracting owner of any funds
52 remaining on deposit in the construction security escrow account after the original
53 contractor has been paid all amounts due under its construction contract. The contracting
54 owner and the original contractor shall authorize the disbursement of funds on deposit in

1 the construction security escrow account in accordance with the order of any court which
2 is binding on both of them. The contracting owner and the original contractor may agree
3 in the construction contract upon additional conditions for the disbursement of funds on
4 deposit in the construction security escrow account provided that the conditions shall not
5 cause the amount remaining on deposit in the construction security escrow account to be
6 less than the amount required pursuant to this subparagraph.

7 (c) For the purposes of subdivision (b), in cases where the price under the construction
8 contract is not a fixed price, the amount of security to be provided shall be determined
9 with reference to the guaranteed maximum price, if there is one, or if there is no
10 guaranteed maximum price, the amount of security shall be determined with reference to
11 the contracting owner's and original contractor's good faith estimate as to the total cost
12 anticipated to be incurred under the construction contract. Whenever any contracting
13 owner that is required to provide security under this section with respect to a construction
14 contract fails to provide that security or fails to maintain that security as required, the
15 original contractor may make written demand on the contracting owner to do so, and if
16 the contracting owner fails to provide and maintain that security within 10 days after the
17 original contractor makes written demand on the owner, the original contractor may
18 suspend work until the required security is provided and maintained in accordance with
19 this section.

20 (d) No part of this section shall be interpreted to affect provisions in this code providing
21 for mechanics' liens, stop notices, bond remedies, or prompt payment rights of a
22 subcontractor, including the original contractor's payment responsibilities as set forth in
23 Section 7108.5 of the Business and Professions Code and Section 10262 of the Public
24 Contract Code.

25 (e) Nothing in this section shall apply to the construction of single-family residences,
26 including single-family residences located within a subdivision, and any associated fixed
27 works that require the services of a general engineering contractor, as defined in Section
28 7056 of the Business and Professions Code, any public works projects, or housing
29 developments eligible for a density bonus pursuant to Section 65915 of the Government
30 Code. As used in this section, the term "single-family" residence means a real property
31 improvement used or intended to be used as a dwelling unit for one family.

32 (f) This section does not apply to either of the following:

33 (1) Any contract where the contracting owner is either a qualified publicly traded
34 company or a wholly owned subsidiary of a qualified publicly traded company, provided
35 that the obligations of the subsidiary under the construction contract are guaranteed by
36 the parent which is a qualified publicly traded company. As used in this section, the term
37 "qualified publicly traded company" means any company having a class of equity
38 securities listed for trading on the New York Stock Exchange, the American Stock
39 Exchange or the NASDAQ stock market and the nonsubordinated debt securities thereof
40 which are rated as "investment grade" by either Fitch IBCA, Inc., Moody's Investor
41 Services, Inc., Standard & Poor's Ratings Services or a similar statistical rating
42 organization which is nationally recognized for rating the creditworthiness of publicly
43 traded companies. If at any time prior to final payment of all sums due under the
44 construction contract the nonsubordinated debt securities of the qualified publicly traded
45 company are downgraded to below "investment grade" by one of the referenced rating
46 agencies, the contracting owner of the property will no longer be exempt from the
47 provisions of this section.

48 (2) Any contract where the contracting owner is either a qualified private company or a
49 wholly owned subsidiary of a qualified private company, provided that the obligations of
50 the subsidiary under the construction contract are guaranteed by the parent which is a
51 qualified private company. As used in this section, the term "qualified private company"
52 means any company that has no equity securities listed for trading on the New York
53 Stock Exchange, the American Stock Exchange or the NASDAQ stock market, and that
54 has a net worth determined in accordance with generally accepted accounting principles

1 in excess of fifty million dollars (\$50,000,000). If at any time prior to final payment of all
2 sums due under the construction contract the net worth of the qualified private company
3 is reduced below the level referenced in this section the owner of the property will no
4 longer be exempt from the provisions of this section.

5 (g) It shall be against public policy to waive the provisions of this section in any
6 contract for any private work of improvement to which this section applies.

7 **Comment.** Former Section 3110.5 is continued in Article __ (commencing with Section ____)
8 without substantive change. See Comments to Sections ____ - ____.

9 ☞ **Staff Note.** 2001 Cal. Stat. ch. 823. This section is only about 1000 characters shorter than
10 Section 3097. It needs to be broken up into shorter sections in compliance with the sense of Joint
11 Rule 8 and best drafting principles.

12 Compare Section 3128 (extent of lien), which refers to “fee simple estate.” Is there any
13 difference between that and this section’s repeated references to “fee simple absolute interest”?

14 **§ 3111 (repealed). Lien rights of laborers’ trust fund**

15 3111. For the purposes of this chapter, an express trust fund to which a portion of a
16 laborer’s total compensation is to be paid pursuant to an applicable employment
17 agreement or a collective bargaining agreement for the provision of benefits, including,
18 but not limited to, employer payments described in Section 1773.1 of the Labor Code and
19 regulations thereunder, shall be entitled to assert the same rights and claims as laborers
20 performing labor upon, or bestowing skill or other necessary services on, a work of
21 improvement, to the extent of the compensation agreed to be paid to that express trust
22 fund for labor on that improvement only.

23 **Comment.** Former Section 3111 is continued in Section 3142 without substantive change. See
24 Comment to Section 3142.

25 **§ 3112 (repealed). Site improvement lien**

26 3112. Any claimant who, at the instance or request of the owner (or any other person
27 acting by his authority or under him, as contractor or otherwise) of any lot or tract of
28 land, has made any site improvement has a lien upon such lot or tract of land for work
29 done or materials furnished.

30 **Comment.** Former Section 3112 is continued in Section 3143 without substantive change.

31 ☞ **Staff Note.** This section is probably unnecessary. The special treatment of separate site
32 improvements are adequately covered in the relevant sections. See, e.g., Sections 3134, 3135,
33 3137.

34 Article 3. Conditions to Enforcing a Lien

35 **§ 3114 (repealed). Preliminary notice required**

36 3114. A claimant shall be entitled to enforce a lien only if he has given the preliminary
37 20-day notice (private work) in accordance with the provisions of Section 3097, if
38 required by that section, and has made proof of service in accordance with the provisions
39 of Section 3097.1.

40 **Comment.** Former Section 3114 is continued in Section 3151 without substantive change.

41 **§ 3115 (repealed). Recordation by original contractor**

42 3115. Each original contractor, in order to enforce a lien, must record his claim of lien
43 after he completes his contract and before the expiration of (a) 90 days after the
44 completion of the work of improvement as defined in Section 3106 if no notice of

1 completion or notice of cessation has been recorded, or (b) 60 days after recordation of a
2 notice of completion or notice of cessation.

3 **Comment.** Former Section 3115 is continued in Section 3152 without substantive change.

4 **§ 3116 (repealed). Recordation by claimants other than original contractor**

5 3116. Each claimant other than an original contractor, in order to enforce a lien, must
6 record his claim of lien after he has ceased furnishing labor, services, equipment, or
7 materials, and before the expiration of (a) 90 days after completion of the work of
8 improvement if no notice of completion or cessation has been recorded, or (b) 30 days
9 after recordation of a notice of completion or notice of cessation.

10 **Comment.** Former Section 3116 is continued in Section 3153 without substantive change.

11 **§ 3117 (repealed). Recordation of notice of completion**

12 3117. Where the work of improvement is not made pursuant to one original contract for
13 the work of improvement but is made in whole or in part pursuant to two or more original
14 contracts, each covering a particular portion of the work of improvement, the owner may,
15 within 10 days after completion of any such contract for a particular portion of the work
16 of improvement, record a notice of completion. If such notice of completion be recorded,
17 notwithstanding the provisions of Sections 3115 and 3116, the original contractor under
18 the contract covered by such notice must, within 60 days after recording of such notice,
19 and any claimant under such contract other than the original contractor must, within 30
20 days after the recording of such notice of completion, record his claim of lien. If such
21 notice is not recorded, then the period for recording claims of lien shall be as provided for
22 in Sections 3115 and 3116.

23 **Comment.** Former Section 3117 is continued in Section 3156 without substantive change.

24 ☞ **Staff Note.** This section should be integrated into the general rules to avoid repetition of the
25 time limits.

26 **§ 3118 (repealed). Forfeiture of lien for improper claim**

27 3118. Any person who shall willfully include in his claim of lien labor, services,
28 equipment, or materials not furnished for the property described in such claim shall
29 thereby forfeit his lien.

30 **Comment.** Former Section 3118 is continued in Section 3155 without substantive change.

31 **Article 4. Amount of Lien**

32 **§ 3123 (repealed). Direct lien, amount of lien**

33 3123. (a) The liens provided for in this chapter shall be direct liens, and shall be for the
34 reasonable value of the labor, services, equipment, or materials furnished or for the price
35 agreed upon by the claimant and the person with whom he or she contracted, whichever is
36 less. The lien shall not be limited in amount by the price stated in the contract as defined
37 in Section 3088, except as provided in Sections 3235 and 3236 and in subdivision (c) of
38 this section.

39 (b) This section does not preclude the claimant from including in the lien any amount
40 due for labor, services, equipment, or materials furnished based on a written modification
41 of the contract or as a result of the rescission, abandonment, or breach of the contract.
42 However, in the event of rescission, abandonment, or breach of the contract, the amount
43 of the lien may not exceed the reasonable value of the labor, services, equipment, and
44 materials furnished by the claimant.

1 (c) The owner shall notify the prime contractor and construction lenders of any changes
2 in the contract if the change has the effect of increasing the price stated in the contract by
3 5 percent or more.

4 **Comment.** Subdivisions (a) and (b) of former Section 3123 are restated in Section 3145
5 without substantive change, except that the reference in subdivision (a) to subdivision (c)
6 (owner's duty to notify of changes of 5 percent or more) is not continued. Changes in the contract
7 amount and the duty to inform the prime contractor and construction lender do not affect the
8 amount of the lien.

9 Subdivision (c) is continued in Section 3133 without substantive change.

10 ☞ **Staff Note**

11 *Hunt Report* pp. 10-11:

12 Civil Code Section 3123 sets forth the amount of the "lien." Section 3123(b) was amended to
13 allow claimants to include in their "lien" amounts due for written modifications of the contract or
14 as a result of the rescission, abandonment, or breach of the contract. This section does not set
15 forth that Stop Notices may likewise include those sums.

16 Section 3123(b) was recently interpreted in *Basic Modular Facilities, Inc. v. Ehsanipour*¹ to
17 expressly hold that a lien claimant could include, in its Mechanic's Lien, damages for breach of
18 contract. No court has yet addressed whether or not a Stop Notice can include damages for breach
19 of contract and the other items specified in Section 3123(b). Most practitioners believe that the
20 Stop Notice is co-extensive with the Mechanic's Lien and whatever amounts are includable in a
21 Mechanic's Lien would likewise be includable in a Stop Notice or bonded Stop Notice.

22 In order to clear up any ambiguity in that respect, it is suggested that Section 3123 be amended
23 to apply to both liens and Stop Notices by adding a reference to "stop notice and bond claims"
24 after references to "lien" or "liens" in this section.

25 **§ 3124 (repealed). Limitation on claim of employee of contractor or subcontractor**

26 3124. In any case where the claimant was employed by a contractor or subcontractor,
27 his claim of lien shall not extend to any labor, services, equipment, or materials not
28 included in the contract between the owner and original contractor or any modification
29 thereof, if the claimant had actual knowledge or constructive notice of the contract as
30 defined in Section 3088 or any such modification before he furnished such labor, service,
31 equipment, or materials. The filing of a contract for a work of improvement or of a
32 modification of such contract with the county recorder of the county where the property is
33 situated, before the commencement of work, shall be equivalent to the giving of actual
34 notice of the provisions thereof by the owner to all persons performing work or
35 furnishing materials thereunder.

36 **Comment.** Former Section 3124 is restated in Section 3146 without substantive change.

37 ☞ **Staff Note.** The phrase "performing work" in this and other sections appears to be a shorthand
38 for "furnishing labor and services," but when paired with materials, it leaves out any reference to
39 equipment. Throughout the staff draft, we are assuming that labor, services, equipment, or
40 materials are included unless there is a clear reason not to. This is a section where the variant
41 wording appears to be happenstance and not substantive.

42 **Article 5. Property Subject to Lien**

43 **§ 3128 (repealed). Extent of lien**

44 3128. The liens provided for in this chapter shall attach to the work of improvement
45 and the land on which it is situated together with a convenient space about the same or so

1. 83 Cal. Rptr. 2d 462 (1999).

1 much as may be required for the convenient use and occupation thereof, if at the
2 commencement of the work or of the furnishing of the materials for the same, the land
3 belonged to the person who caused such work of improvement to be constructed, but if
4 such person owned less than a fee simple estate in such land then only his interest therein
5 is subject to such lien, except as provided in Section 3129.

6 **Comment.** Former Section 3128 is restated in Section 3147 without substantive change. See
7 Comment to Section 3147.

8 ☞ **Staff Note.** What about furnishing equipment? Why only “materials”? Isn’t “person who
9 caused such work of improvement to be constructed” the “owner”? Why “land” instead of “real
10 property”?

11 **§ 3129 (repealed). Notice of nonresponsibility**

12 3129. Every work of improvement constructed upon any land and all work or labor
13 performed or materials furnished in connection therewith with the knowledge of the
14 owner or of any person having or claiming any estate therein shall be held to have been
15 constructed, performed, or furnished at the instance of such owner or person having or
16 claiming any estate therein and such interest shall be subject to any lien recorded under
17 this chapter unless such owner or person having or claiming any estate therein shall give
18 a notice of nonresponsibility pursuant to Section 3094.

19 **Comment.** Former Section 3129 is restated in Section 3148(a) without substantive change.

20 **§ 3130 (repealed). One claim against multiple improvements**

21 3130. In every case in which one claim is filed against two or more buildings or other
22 works of improvement owned or reputed to be owned by the same person or on which the
23 claimant has been employed by the same person to do his work or furnish his materials,
24 whether such works of improvement are owned by one or more owners, the person filing
25 such claim must at the same time designate the amount due to him on each of such works
26 of improvement; otherwise the lien of such claim is postponed to other liens. If such
27 claimant has been employed to furnish labor or materials under a contract providing for a
28 lump sum to be paid to him for his work or materials on such works of improvement as a
29 whole, and such contract does not segregate the amount due for the work done and
30 materials furnished on such works of improvement separately, then such claimant, for the
31 purposes of this section, may estimate an equitable distribution of the sum due him over
32 all of such works of improvement based upon the proportionate amount of work done or
33 materials furnished upon such respective works of improvement. The lien of such
34 claimant does not extend beyond the amount designated as against other creditors having
35 liens, by judgment, mortgage, or otherwise, upon either such works of improvement or
36 upon the land upon which the same are situated.

37 For all purposes of this section, if there is a single structure on more than one parcel of
38 land owned by one or more different owners, it shall not be the duty of the claimant to
39 segregate the proportion of material or labor entering into the structure on any one of
40 such parcels; but upon the trial thereof the court may, when it deems it equitable so to do,
41 distribute the lien equitably as between the several parcels involved.

42 **Comment.** Former Section 3130 is restated in Section 3149 without substantive change.

43 **§ 3131 (repealed). Claims against separate residential units**

44 3131. If a work of improvement consists in the construction of two or more separate
45 residential units, each such unit shall be considered a separate “work of improvement,”
46 and the time for filing claims of lien against each such residential unit shall commence to
47 run upon the completion of each such residential unit. A separate residential unit means
48 one residential structure, including a residential structure containing multiple

1 condominium units, together with any common area, or any garage or other
2 improvements appurtenant thereto. The provisions of this qualification shall not impair
3 any rights conferred under the provisions of Section 3112 and 3130. Materials delivered
4 to or upon any portion of such entire work of improvement or furnished to be used in
5 such entire work of improvement and ultimately used or consumed in one of such
6 separate residential units shall, for all the purposes of this title, be deemed to have been
7 furnished to be used or consumed in the separate residential unit in which the same shall
8 have been actually used or consumed; provided, however, that if the claimant is unable to
9 segregate the amounts used on or consumed in such separate units, he shall be entitled to
10 all the benefits of Section 3130.

11 For purposes of this section and notwithstanding any other provision of this chapter, the
12 completion of a residential structure containing multiple condominium units, together
13 with any common area, or any garage or other improvements appurtenant thereto, and
14 only such residential structure, shall not operate in any manner to impair the rights of a
15 lien claimant entitled to a lien pursuant to Section 3111, if the claim of lien is recorded in
16 the manner prescribed by this chapter within 120 days of the completion of the residential
17 structure.

18 **Comment.** Former Section 3131 is restated in Section 3150 without substantive change.

19 Article 6. Priorities

20 § 3134 (repealed). Priority of mechanic's lien

21 3134. The liens provided for in this chapter (other than with respect to site
22 improvements) are, subject to the exception in Section 3138, preferred to any lien,
23 mortgage, deed of trust, or other encumbrance upon the work of improvement and the
24 site, which attaches subsequent to the commencement of the work of improvement, and
25 also to any lien, mortgage, deed of trust, or other encumbrance of which the claimant had
26 no notice and which was unrecorded at the time of commencement of the work of
27 improvement.

28 **Comment.** Former Section 3134 is restated in Section 3167 without substantive change.

29 § 3135 (repealed). Commencement of work on separate contract

30 3135. If any site improvement is provided for in a separate contract from any contract
31 with respect to the erection of residential units or other structures, then the site
32 improvement shall be considered a separate work of improvement and the
33 commencement thereof shall not constitute a commencement of the work of improvement
34 consisting of the erection of any residential unit or other structure.

35 **Comment.** Former Section 3135 is continued in Section 3169 without substantive change.

36 § 3136 (repealed). Priority of advances by lender

37 3136. A mortgage or deed of trust which would be prior to the liens provided for in this
38 chapter to the extent of obligatory advances made thereunder in accordance with the
39 commitment of the lender shall also be prior to the liens provided for in this chapter as to
40 any other advances, secured by such mortgage or deed of trust, which are used in
41 payment of any claim of lien which is recorded at the date or dates of such other advances
42 and thereafter in payment of costs of the work of improvement. Such priority shall not,
43 however, exceed the original obligatory commitment of the lender as shown in such
44 mortgage or deed of trust.

45 **Comment.** Former Section 3136 is continued in Section 3168 without substantive change.

1 **§ 3137 (repealed). Priority of site improvements**

2 3137. The liens provided for in Section 3112 with respect to site improvements are,
3 subject to the exception in Section 3139, preferred to (a) any mortgage, deed of trust, or
4 other encumbrance which attaches subsequent to the commencement of the site
5 improvement work; and (b) any mortgage, deed of trust, or other encumbrance of which
6 the claimant had no notice and which was unrecorded at the time of the commencement
7 of such site improvement; and (c) any mortgage, deed of trust, or other encumbrance
8 recorded before the commencement of the site improvement work which was given for
9 the sole or primary purpose of financing such site improvements, unless the loan
10 proceeds are, in good faith, placed in the control of the lender under a binding agreement
11 with the borrower to the effect that such proceeds are to be applied to the payment of
12 claims of claimants and that no portion of such proceeds will be paid to the borrower in
13 the absence of satisfactory evidence that all such claims have been paid or that the time
14 for recording claims of liens has expired and no such claims have been recorded.

15 **Comment.** Former Section 3137 is continued in Section 3170 without substantive change.

16 **§ 3138 (repealed). Payment bond furnished by holder of mortgage or deed of trust**

17 3138. If the holder of any mortgage or deed of trust which is subordinate pursuant to
18 Section 3134 to any lien, shall procure a payment bond as defined in Section 3096 in an
19 amount not less than 75 percent of the principal amount of such mortgage or deed of
20 trust, which bond refers to such mortgage or deed of trust, and shall record such payment
21 bond in the office of the county recorder in the county where the site is located, then such
22 mortgage or deed of trust shall be preferred to all liens for labor, services, equipment, or
23 materials furnished after such recording.

24 **Comment.** Former Section 3138 is continued in Section ____ without substantive change.

25 **§ 3139 (repealed). Payment bond by owner or holder of mortgage or deed of trust on site**
26 **improvement**

27 3139. If the owner of the land or holder of any mortgage or deed of trust, which is
28 subordinate pursuant to Section 3137 to any lien, shall procure a payment bond in an
29 amount not less than 50 percent of the principal amount of such mortgage or deed of trust
30 and shall record such payment bond in the office of the county recorder in the county
31 where the site is located before completion of the work of improvement, then such
32 mortgage or deed of trust shall be preferred to all such liens provided in Section 3112.

33 **Comment.** Former Section 3139 is continued in Section ____ without substantive change.

34 **§ 3140 (repealed). Amount of recovery**

35 3140. Any original contractor or subcontractor shall be entitled to recover, upon a claim
36 of lien recorded by him, only such amount as may be due him according to the terms of
37 his contract after deducting all claims of other claimants for labor, services, equipment, or
38 materials furnished and embraced within his contract.

39 **Comment.** Former Section 3140 is continued in Section 3158 without substantive change.

40 **Article 7. Enforcement of Lien**

41 **§ 3143 (repealed). Release bond**

42 3143. If the owner of property, or the owner of any interest therein, sought to be
43 charged with a claim of lien, or any original contractor or subcontractor disputes the
44 correctness or validity of any claim of lien, he may record in the office of the county
45 recorder in which such claim of lien was recorded, either before or after the

1 commencement of an action to enforce such claim of lien, a bond executed by a
2 corporation authorized to issue surety bonds in the State of California, in a penal sum
3 equal to 1-1/2 times the amount of the claim or 1-1/2 times the amount allocated in the
4 claim of lien to the parcel or parcels of real property sought to be released, which bond
5 shall be conditioned for the payment of any sum which the claimant may recover on the
6 claim together with his cost of suit in the action, if he recovers therein. Upon the
7 recording of such bond the real property described in such bond is released from the lien
8 and from any action brought to foreclose such lien. The principal upon such bond may be
9 either the owner of the property or the owner of any interest therein, or any original
10 contractor, subcontractor, or sub-subcontractor affected by such claim of lien.

11 **Comment.** Former Section 3143 is continued in Section 3175 without substantive change.

12 **§ 3144 (repealed). Duration of lien**

13 3144. (a) No lien provided for in this chapter binds any property for a longer period of
14 time than 90 days after the recording of the claim of lien, unless within that time an
15 action to foreclose the lien is commenced in a proper court, except that, if credit is given
16 and notice of the fact and terms of such credit is recorded in the office of the county
17 recorder subsequent to the recording of such claim of lien and prior to the expiration of
18 such 90-day period, then such lien continues in force until 90 days after the expiration of
19 such credit, but in no case longer than one year from the time of completion of the work
20 of improvement.

21 (b) If the claimant fails to commence an action to foreclose the lien within the time
22 limitation provided in this section, the lien automatically shall be null and void and of no
23 further force and effect.

24 **Comment.** Former Section 3144 is restated in Section 3157 without substantive change.

25 ☞ **Staff Note.** “Bind” is used here, but a lien “attaches” to property under Section 3128.

26 **§ 3144.5 (repealed). Notice of recording of release bond**

27 3144.5. Any person who obtains a lien release bond which is recorded pursuant to
28 Section 3143 shall give notice of the recording to the lienholder by mailing a copy of the
29 bond to the lienholder at the address appearing on the lien. Service of the notice shall be
30 by certified or registered mail, return receipt requested. Failure to give the notice
31 provided by this section shall not affect the validity of the lien release bond, but the
32 statute of limitations on any action on the bond shall be tolled until the notice is given.
33 Any action on the lien release bond shall be commenced by the claimant within six
34 months of the recording of the lien release bond.

35 **Comment.** Former Section 3144.5 is continued in Section 3176 without substantive change.

36 **§ 3145 (repealed). Bona fide purchasers and encumbrancers**

37 3145. As against any purchaser or encumbrancer for value and in good faith whose
38 rights are acquired subsequent to the expiration of the 90-day period following the
39 recording of the claim of lien, no giving of credit or extension of the lien or of the time to
40 enforce the same shall be effective unless evidenced by a notice or agreement recorded in
41 the office of the county recorder prior to the acquisition of the rights of such purchaser or
42 encumbrancer.

43 **Comment.** Former Section 3145 is continued in Section 3173 without substantive change.

44 **§ 3146 (repealed). Lis pendens**

45 3146. After the filing of the complaint in the proper court, the plaintiff may record in
46 the office of the county recorder of the county, or of the several counties in which the

1 property is situated, a notice of the pendency of such proceedings, as provided in Section
2 409 of the Code of Civil Procedure. Only from the time of recording such notice shall a
3 purchaser or encumbrancer of the property affected thereby be deemed to have
4 constructive notice of the pendency of the action, and in that event only if its pendency
5 against parties designated by their real names.

6 **Comment.** Former Section 3146 is continued in Section 3159 without substantive change.

7 **§ 3147 (repealed). Dismissal for lack of prosecution**

8 3147. If the action to foreclose the lien is not brought to trial within two years after the
9 commencement thereof, the court may in its discretion dismiss the same for want of
10 prosecution.

11 **Comment.** Former Section 3147 is continued in Section 3160 without substantive change.

12 **§ 3148 (repealed). Effect of dismissal or judgment**

13 3148. In all cases the dismissal of an action to foreclose the lien (unless it is expressly
14 stated that the same is without prejudice) or a judgment rendered therein that no lien
15 exists shall be equivalent to the cancellation and removal from the record of such lien.

16 **Comment.** Former Section 3148 is continued in Section 3161 without substantive change.

17 **§ 3149 (repealed). Consolidation of actions**

18 3149. Any number of persons claiming liens on the same property may join in the same
19 action to foreclose their liens and when separate actions are commenced the court may
20 consolidate them.

21 **Comment.** Former Section 3149 is continued in Section 3162 without substantive change.

22 **§ 3150 (repealed). Costs**

23 3150. In addition to any other costs allowed by law, the court in an action to foreclose a
24 lien must also allow as costs the money paid for verifying and recording the lien, such
25 costs to be allowed each claimant whose lien is established, whether he be plaintiff or
26 defendant.

27 **Comment.** Former Section 3150 is continued in Section 3163 without substantive change.

28 **§ 3151 (repealed). Deficiency**

29 3151. Whenever on the sale of the property subject to any liens provided for in this
30 chapter, under a judgment of foreclosure of such lien, there is a deficiency of proceeds,
31 judgment for the deficiency may be entered against any party personally liable therefor in
32 like manner and with like effect as in an action for the foreclosure of a mortgage.

33 **Comment.** Former Section 3151 is restated in Section 3164 without substantive change.

34 **§ 3152 (repealed). Personal liability**

35 3152. Nothing contained in this title affects the right of a claimant to maintain a
36 personal action to recover a debt against the person liable therefor either in a separate
37 action or in the action to foreclose the lien, nor any right the claimant may have to the
38 issuance of a writ of attachment or execution or to enforce a judgment by other means. In
39 an application for a writ of attachment, the claimant shall refer to this section. A lien held
40 by the claimant under this chapter does not affect the right to procure a writ of
41 attachment. The judgment, if any, obtained by the claimant in a personal action, or
42 personal judgment obtained in a mechanic's lien action, does not impair or merge a lien

1 held by the claimant under this chapter, but any money collected on the judgment shall be
2 credited on the amount of the lien.

3 **Comment.** Former Section 3152 is restated in Section 3165 without substantive change.

4 **§ 3153 (repealed). Defense at expense of contractor**

5 3153. In all cases where a claim of lien is recorded for labor, services, equipment, or
6 materials furnished to any contractor, he shall defend any action brought thereon at his
7 own expense, and during the pendency of such action the owner may withhold from the
8 original contractor the amount of money for which the claim of lien is recorded. In case
9 of judgment in such action against the owner or his property upon the lien, the owner
10 shall be entitled to deduct from any amount then or thereafter due from him to the
11 original contractor the amount of such judgment and costs. If the amount of such
12 judgment and costs exceeds the amount due from him to the original contractor, or if he
13 has settled with the original contractor in full, he shall be entitled to recover back from
14 the original contractor, or the sureties on any bond given by him for the faithful
15 performance of his contract, any amount of such judgment and costs in excess of the
16 contract price, and for which the original contractor was originally the party liable.

17 **Comment.** Former Section 3153 is continued in Section 3166 without substantive change.

18 **§ 3154 (repealed). Petition for release of lien**

19 3154. (a) At any time after the expiration of the time period specified by Section 3144
20 with regard to the period during which property is bound by a lien after recordation of a
21 claim of lien, where no action has been brought to enforce such lien, the owner of the
22 property or the owner of any interest therein may petition the proper court for a decree to
23 release the property from the lien.

24 (b) The petition shall be verified and shall allege all of the following:

25 (1) The date of recordation of the claim of lien.

26 (2) The legal description of the property affected by such claim of lien.

27 (3) That no action has been filed to foreclose the lien, or that no extension of credit has
28 been recorded, and that the time period during which suit can be brought to foreclose the
29 lien has expired.

30 (4) That the lien claimant is unable or unwilling to execute a release of the lien or
31 cannot with reasonable diligence be found.

32 (5) That the owner of the property or interest in the property has not filed for relief
33 under any law governing bankrupts, and that there exists no other restraint to prevent the
34 lien claimant from filing to foreclose his or her lien. A certified copy of the claim of lien
35 shall be attached to the petition. The petition shall be deemed controverted by the lien
36 claimant.

37 (c) Upon the filing of the petition, and before any further proceedings are had, the clerk,
38 or if there is no clerk, the judge shall set a date for the hearing not more than 30 days
39 following the filing of the petition. The court may continue the hearing beyond the 30-
40 day period, but good cause shall be shown for any continuance.

41 (d) A copy of the petition and the notice setting the date for the hearing shall be served
42 upon the lien claimant at least 10 days prior to the date set for hearing, in the manner in
43 which a summons is required to be served, or by certified or registered mail, postage
44 prepaid, return receipt requested, addressed to the lien claimant at the claimant's address
45 as shown: (1) on the preliminary 20-day notice served by the claimant pursuant to Section
46 3097, (2) in the records of the registrar of contractors, (3) on the contract on which the
47 lien is based, or (4) on the claim of lien itself. When service is made by mail as provided
48 in this section, service is complete on the fifth day following the day of the deposit of
49 such mail. No decree shall issue in favor of the petitioner unless the petitioner proves that
50 service of the petition and the order fixing the date for hearing was made in compliance

1 with this subdivision. The issue of compliance with this subdivision shall be deemed
2 controverted by the lien claimant.

3 (e) In the event judgment is rendered in favor of the petitioner, the decree shall indicate
4 all of the following:

5 (1) The date the lien was recorded.

6 (2) The county and city, if any, in which the lien was recorded.

7 (3) The book and page of the place in the official records where the lien is recorded.

8 (4) The legal description of the property affected. Upon the recordation of a certified
9 copy of the decree, the property described in the decree shall be released from the lien.

10 (f) The prevailing party shall be entitled to attorneys' fees not to exceed one thousand
11 dollars (\$1,000).

12 (g) Nothing in this section shall be construed to bar any other cause of action or claim
13 for relief by the owner of the property or an interest in the property, nor shall a decree
14 canceling a claimant's lien bar the lien claimant from bringing any other cause of action
15 or claim for relief, other than an action foreclosing such lien. However, no other action or
16 claim shall be joined with the claim for relief established by this section.

17 (h) The provisions of Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part
18 3 of the Code of Civil Procedure shall not apply to causes commenced pursuant to this
19 section.

20 **Comment.** Former Section 3154 is continued in Section ____ without substantive change.

21 * * * * *

22 CHAPTER 8. MISCELLANEOUS PROVISIONS

23 **§ 3258 (repealed). Duties of county recorder**

24 3258. The county recorder shall number, index, and preserve all contracts, plans, and
25 other papers presented to him for filing pursuant to this title, and shall number, index, and
26 transcribe into the official records in his office in the same manner as a conveyance of
27 land, all notices, claims of lien, payment bonds, and other papers recorded pursuant to
28 this title. He shall receive therefor the fees prescribed in Article 5 (commencing with
29 Section 27360), Chapter 6, Part 3, Division 2, Title 3 of the Government Code.

30 **Comment.** The first sentence of former Section 3258 is continued in Section 3134(a) without
31 substantive change. The second sentence is continued in Section 3134(d) without substantive
32 change.

33 **§ 3259 (repealed). Rules of practice**

34 3259. Except as otherwise provided in this title, the provisions of Part 2 (commencing
35 with Section 307) of the Code of Civil Procedure are applicable to, and constitute the
36 rules of practice in, the proceedings mentioned in this title. The provisions of Part 2
37 (commencing with Section 307) of the Code of Civil Procedure, relative to new trials and
38 appeals, except insofar as they are inconsistent with the provisions of this title or with
39 rules adopted by the Judicial Council, apply to the proceedings mentioned in this title.

40 **Comment.** Former Section 3259 is continued in Section 3104 without substantive change.

41 **§ 3260 (repealed). Retention proceeds**

42 3260. (a) This section is applicable with respect to all contracts entered into on or after
43 July 1, 1991, relating to the construction of any private work of improvement. However,
44 the amendments made to this section during the 1992 portion of the 1991-92 Regular
45 Session of the Legislature are applicable only with respect to contracts entered into on or

1 after January 1, 1993, relating to the construction of any private work of improvement.
2 Moreover, the amendments made to this section during the 1993 portion of the 1993-94
3 Regular Session of the Legislature are applicable only with respect to contracts entered
4 into on or after January 1, 1994, relating to the construction of any private work of
5 improvement.

6 (b) The retention proceeds withheld from any payment by the owner from the original
7 contractor, or by the original contractor from any subcontractor, shall be subject to this
8 section.

9 (c) Within 45 days after the date of completion, the retention withheld by the owner
10 shall be released. "Date of completion," for purposes of this section, means any of the
11 following:

12 (1) The date of issuance of any certificate of occupancy covering the work by the
13 public agency issuing the building permit.

14 (2) The date of completion indicated on a valid notice of completion recorded pursuant
15 to Section 3093.

16 (3) The date of completion as defined in Section 3086.

17 However, release of retentions withheld for any portion of the work of improvement
18 which ultimately will become the property of a public agency, may be conditioned upon
19 the acceptance of the work by the public agency. In the event of a dispute between the
20 owner and the original contractor, the owner may withhold from the final payment an
21 amount not to exceed 150 percent of the disputed amount.

22 (d) Subject to subdivision (e), within 10 days from the time that all or any portion of
23 the retention proceeds are received by the original contractor, the original contractor shall
24 pay each of its subcontractors from whom retention has been withheld, each
25 subcontractor's share of the retention received. However, if a retention payment received
26 by the original contractor is specifically designated for a particular subcontractor,
27 payment of the retention shall be made to the designated subcontractor, if the payment is
28 consistent with the terms of the subcontract.

29 (e) If a bona fide dispute exists between a subcontractor and the original contractor, the
30 original contractor may withhold from that subcontractor with whom the dispute exists its
31 portion of the retention proceeds. The amount withheld from the retention payment shall
32 not exceed 150 percent of the estimated value of the disputed amount.

33 (f) Within 10 days of receipt of written notice by the owner from the original contractor
34 or by the original contractor from the subcontractor, as the case may be, that any work in
35 dispute has been completed in accordance with the terms of the contract, the owner or
36 original contractor shall advise the notifying party of the acceptance or rejection of the
37 disputed work. Within 10 days of acceptance of the disputed work, the owner or original
38 contractor, as the case may be, shall release the retained portion of the retention proceeds.

39 (g) In the event that retention payments are not made within the time periods required
40 by this section, the owner or original contractor withholding the unpaid amounts shall be
41 subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of
42 any interest otherwise due. Additionally, in any action for the collection of funds
43 wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and
44 costs.

45 (h) It shall be against public policy for any party to require any other party to waive any
46 provision of this section.

47 (i) This section shall not be construed to apply to retentions withheld by a lender in
48 accordance with the construction loan agreement.

49 **Comment.** Former Section ____ is continued in Section ____ without substantive change.

50 **§ 3260.1 (repealed). Progress payments**

51 3260.1. (a) This section is applicable with respect to all contracts entered into on or
52 after January 1, 1992, relating to the construction of any private work of improvement.

1 (b) Except as otherwise agreed in writing, the owner shall pay to the contractor, within
2 30 days following receipt of a demand for payment in accordance with the contract, any
3 progress payment due thereunder as to which there is no good faith dispute between the
4 parties. In the event of a dispute between the owner and the contractor, the owner may
5 withhold from the progress payment an amount not to exceed 150 percent of the disputed
6 amount. If any amount is wrongfully withheld in violation of this subdivision, the
7 contractor shall be entitled to the penalty specified in subdivision (g) of Section 3260.

8 (c) Nothing in this section shall be deemed to supersede any requirement of Section
9 3260 respecting the withholding of retention proceeds.

10 **Comment.** Former Section ____ is continued in Section ____ without substantive change.

11 **§ 3260.2 (repealed). Stop work order**

12 3260.2. (a) If an original contractor is not paid all moneys which are owed pursuant to a
13 written contract for a private work of improvement within 35 days from the date payment
14 is due pursuant to the written contract, and there is no dispute as to the satisfactory
15 performance of that original contractor, the original contractor shall have a right to serve
16 upon the owner a “10-day stop work order” that states that unless all amounts then due
17 the original contractor are paid within 10 days from the date notice is provided under this
18 section, the original contractor will stop work on the project. At least five days before
19 service upon the owner of a “10-day stop work order,” the contractor shall post, in a
20 conspicuous location at the job site and at the main office, if one exists, of the job site, a
21 notice that the original contractor intends to file a 10-day stop work order pursuant to this
22 section. A copy of the written notice shall also be served upon all subcontractors with
23 whom the original contractor has a direct contractual relationship on the project at the
24 same time the notice is served upon the owner. Within five days of receipt of written
25 notice by an original contractor pursuant to this section, the owner shall forward to the
26 construction lender, if any, at the address provided in the construction loan agreement, a
27 copy of the notice by first-class mail.

28 Upon resolution of the dispute or cancellation of the 10-day notice by the original
29 contractor, the original contractor shall post, in a conspicuous location at the job site and
30 at the main office, and serve a notice to inform the subcontractors with whom the original
31 contractor has a direct contractual relationship of this resolution or cancellation.

32 (b) The original contractor’s right to stop work pursuant to this section is in addition to
33 any and all other rights the original contractor may have under the law.

34 (c) Notwithstanding any other provision, the original contractor or his or her surety, or
35 subcontractor or his or her surety, shall not be liable for any delays or damages that the
36 owner or contractor of a subcontractor may suffer as a result of the original contractor
37 serving the owner with a 10-day stop work order, and subsequently stopping work for
38 nonpayment if all of the posting and notice requirements described in subdivision (a) are
39 met. An original contractor’s or original subcontractor’s liability to a subcontractor or
40 material supplier resulting from the cessation of work under this section shall be limited
41 to the amount of monetary damages the subcontractor or material supplier could recover
42 under the mechanic’s lien law for goods and services provided up to the date the
43 subcontractor ceases work, provided that (1) liability shall continue for work performed
44 and materials supplied up to and including the 10-day notice period and not beyond, and
45 (2) this provision does not apply to limit monetary damages for custom work, including
46 materials which have been fabricated, manufactured, or ordered to specifications that are
47 unique to the job.

48 (d) If the payment is not made within 10 days from the date the notice was served, the
49 original contractor or his or her surety, may seek a judicial determination of liability for
50 the amount not paid for work performed in an expedited proceeding in the superior court
51 in the county in which the private work improvement is located.

1 (e) It shall be against public policy to waive the provisions of this section in any written
2 contract for private work of improvement.

3 (f) This section shall apply to any contract entered into on or after January 1, 1999.
4 However, nothing in this section shall be construed to apply to retentions withheld by a
5 lender in accordance with the construction loan agreement.

6 (g) The stop work order specified in this section for private works of improvement may
7 be served as follows:

8 (1) If the person to be notified resides in this state, by delivering the stop work order
9 personally, or by leaving it at his or her address of residence or place of business with
10 some person in charge, or by first-class registered or certified mail, postage prepaid,
11 addressed to the person to whom notice is to be given at his or her residence or place of
12 business address or at the address shown by the building permit on file with the authority
13 issuing a building permit for the work, or at an address recorded pursuant to subdivision
14 (j) of Section 3097.

15 (2) If the person to be notified of the stop work order does not reside in this state, by
16 any method enumerated in paragraph (1) of this subdivision. If the person cannot be
17 served by any of these methods, then notice may be given by first-class certified or
18 registered mail, addressed to the construction lender.

19 (3) Service pursuant to this paragraph by certified mail is effective upon receipt.
20 Service by registered mail is effective five days after mailing.

21 **Comment.** Former Section ____ is continued in Section ____ without substantive change.

22 **§ 3261 (repealed). Effect of mistakes**

23 3261. No mistake or errors in the statement of the demand, or of the amount of credits
24 and offsets allowed, or of the balance asserted to be due the claimant, or in the description
25 of the property against which the lien is recorded, shall invalidate the lien, unless the
26 court finds that such mistake or error in the statement of the demand, credits and offsets,
27 or of the balance due, was made with the intent to defraud, or that an innocent third party,
28 without notice, direct or constructive, has since the claim was recorded become the bona
29 fide owner of the property, and that the notice of claim was so deficient that it did not put
30 the party on further inquiry in any manner.

31 **Comment.** Former Section ____ is continued in Section ____ without substantive change.

32 **§ 3262 (repealed). Waiver and release**

33 3262. (a) Neither the owner nor original contractor by any term of their contract, or
34 otherwise, shall waive, affect, or impair the claims and liens of other persons whether
35 with or without notice except by their written consent, and any term of the contract to that
36 effect shall be null and void. Any written consent given by any claimant pursuant to this
37 subdivision shall be null, void, and unenforceable unless and until the claimant executes
38 and delivers a waiver and release. Such a waiver and release shall be binding and
39 effective to release the owner, construction lender, and surety on a payment bond from
40 claims and liens only if the waiver and release follows substantially one of the forms set
41 forth in this section and is signed by the claimant or his or her authorized agent, and, in
42 the case of a conditional release, there is evidence of payment to the claimant. Evidence
43 of payment may be by the claimant's endorsement on a single or joint payee check which
44 has been paid by the bank upon which it was drawn or by written acknowledgment of
45 payment given by the claimant.

46 (b) No oral or written statement purporting to waive, release, impair or otherwise
47 adversely affect a claim is enforceable or creates any estoppel or impairment of a claim
48 unless (1) it is pursuant to a waiver and release prescribed herein, or (2) the claimant had
49 actually received payment in full for the claim.

1 (c) This section does not affect the enforceability of either an accord and satisfaction
2 regarding a bona fide dispute or any agreement made in settlement of an action pending
3 in any court provided the accord and satisfaction or agreement and settlement make
4 specific reference to the mechanic's lien, stop notice, or bond claims.

5 (d) The waiver and release given by any claimant hereunder shall be null, void, and
6 unenforceable unless it follows substantially the following forms in the following
7 circumstances:

8 (1) Where the claimant is required to execute a waiver and release in exchange for, or
9 in order to induce the payment of, a progress payment and the claimant is not, in fact,
10 paid in exchange for the waiver and release or a single payee check or joint payee check
11 is given in exchange for the waiver and release, the waiver and release shall follow
12 substantially the following form:

13 **CONDITIONAL WAIVER AND RELEASE**
14 **UPON PROGRESS PAYMENT**

15 Upon receipt by the undersigned of a check from

16 _____
17 (Maker of Check)

18 in the sum of \$ _____

19 (Amount of Check)

20 payable to _____

21 (Payee or Payees of Check)

22 and when the check has been properly endorsed and has
23 been paid by the bank upon which it is drawn, this
24 document shall become effective to release any mechanic's
25 lien, stop notice, or bond right the undersigned has on the
26 job of _____

27 (Owner)

28 located at _____

29 (Job Description)

30 to the following extent. This release covers a progress
31 payment for labor, services, equipment, or material
32 furnished to _____

33 (Your Customer)

34 through _____ only and

35 (Date)

36 does not cover any retentions retained before or after the
37 release date; extras furnished before the release date for
38 which payment has not been received ; extras or items
39 furnished after the release date. Rights based upon work
40 performed or items furnished under a written change order
41 which has been fully executed by the parties prior to the
42 release date are covered by this release unless specifically
43 reserved by the claimant in this release. This release of any
44 mechanic's lien, stop notice, or bond right shall not
45 otherwise affect the contract rights, including rights
46 between parties to the contract based upon a rescission,
47 abandonment, or breach of the contract, or the right of the
48 undersigned to recover compensation for furnished labor,
49 services, equipment, or material covered by this release if
50 that furnished labor, services, equipment, or material was

1 not compensated by the progress payment. Before any
2 recipient of this document relies on it, said party should
3 verify evidence of payment to the undersigned.

4 Dated: _____
5 (Company Name)

6 By _____
7 (Title)

8 (2) Where the claimant is required to execute a waiver and release in exchange for, or
9 in order to induce payment of, a progress payment and the claimant asserts in the waiver
10 it has, in fact, been paid the progress payment, the waiver and release shall follow
11 substantially the following form:

12 UNCONDITIONAL WAIVER AND RELEASE UPON
13 PROGRESS PAYMENT

14 The undersigned has been paid and has received a
15 progress payment in the sum of \$_____ for labor, services,
16 equipment, or material furnished to

17 _____
18 (Your Customer)

19 on the job of _____
20 (Owner)

21 located at _____
22 (Job Description)

23 and does hereby release any mechanic's lien, stop notice, or
24 bond right that the undersigned has on the above referenced
25 job to the following extent. This release covers a progress
26 payment for labor, services, equipment, or materials
27 furnished to

28 _____ through
29 (Your Customer)

30 _____ only and does not cover
31 (Date)

32 any retentions retained before or after the release date;
33 extras furnished before the release date for which payment
34 has not been received ; extras or items furnished after the
35 release date. Rights based upon work performed or items
36 furnished under a written change order which has been
37 fully executed by the parties prior to the release date are
38 covered by this release unless specifically reserved by the
39 claimant in this release. This release of any mechanic's
40 lien, stop notice, or bond right shall not otherwise affect the
41 contract rights, including rights between parties to the
42 contract based upon a rescission, abandonment, or breach
43 of the contract, or the right of the undersigned to recover
44 compensation for furnished labor, services, equipment, or
45 material covered by this release if that furnished labor,
46 services, equipment, or material was not compensated by
47 the progress payment.

48 Dated: _____

(Company Name)

By _____

(Title)

Each unconditional waiver in this provision shall contain the following language, in at least as large a type as the largest type otherwise on the document:

“NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.”

(3) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

CONDITIONAL WAIVER AND RELEASE
UPON FINAL PAYMENT

Upon receipt by the undersigned of a check from _____ in the sum of \$_____ payable to _____ and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the job of _____

(Owner)

located at _____

(Job Description)

This release covers the final payment to the undersigned for all labor, services, equipment, or material furnished on the job, except for disputed claims for additional work in the amount of \$____. Before any recipient of this document relies on it, the party should verify evidence of payment to the undersigned.

Dated: _____

(Company Name)

By _____

(Title)

(4) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall follow substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE UPON
FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment or material furnished to _____

(Your Customer)

1 on the job of _____
2 (Owner)

3 located at _____
4 (Job Description)

5 and does hereby waive and release any right to a
6 mechanic's lien, stop notice, or any right against a labor
7 and material bond on the job, except for disputed claims for
8 extra work in the amount of \$_____.

9 Dated: _____
10 (Company Name)

11 By _____
12 (Title)

13 Each unconditional waiver in this provision shall contain the following language, in at
14 least as large a type as the largest type otherwise on the document:

15 "NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND
16 STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS
17 DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU
18 HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL
19 RELEASE FORM."

20 **Comment.** Former Section ____ is continued in Section ____ without substantive change.

21 **§ 3262.5 (repealed). Public utilities**

22 3262.5. (a) Any person or corporation which has contracted to do business with a
23 public utility, hereafter referred to in this section as a contractor, shall pay any
24 subcontractors within 15 working days of receipt of each progress payment from the
25 public utility, unless otherwise agreed in writing by the parties, the respective amounts
26 allowed the contractor on account of the work performed by the subcontractors, to the
27 extent of each of the subcontractors' interest in that work. In the event that there is a good
28 faith dispute over all or any portion of the amount due on a progress payment from a
29 contractor to a subcontractor, then the contractor may withhold no more than 150 percent
30 of the disputed amount.

31 (b) Any contractor who violates this section shall pay to the subcontractor a penalty of
32 2 percent of the disputed amount due per month for every month that payment is not
33 made. In any action for the collection of funds wrongfully withheld, the prevailing party
34 shall be entitled to his or her attorney's fees and costs.

35 (c) This section shall not be construed to limit or impair any contractual, administrative,
36 or judicial remedies otherwise available to a contractor or a subcontractor in the event of
37 a dispute involving late payment or nonpayment by a contractor, or deficient performance
38 or nonperformance by a subcontractor.

39 **Comment.** Former Section 3262.5 is continued in Section 3138 without substantive change.
40 See Comment to Section 3138.

41  **Staff Note.** Civ. Code § 14 provides, in part: "the word person includes a corporation as well
42 as a natural person."

43 **§ 3263 (repealed). Acts of owner in good faith**

44 3263. No act done by an owner in good faith and in compliance with any of the
45 provisions of this title shall be held to be a prevention of the performance of any contract
46 between the owner and an original contractor by an original contractor, or to exonerate
47 the sureties on any bond given for faithful performance or for the payment of claimants.

1 **Comment.** Former Section 3263 is restated in Section 3132 without substantive change. See
2 Comment to Section 3132.

3 **§ 3264 (repealed). Rights of suppliers of labor, services, equipment, or materials**

4 3264. The rights of all persons furnishing labor, services, equipment, or materials for
5 any work of improvement, with respect to any fund for payment of construction costs, are
6 governed exclusively by Chapters 3 (commencing with Section 3156) and 4
7 (commencing with Section 3179) of this title, and no person may assert any legal or
8 equitable right with respect to such fund, other than a right created by direct written
9 contract between such person and the person holding the fund, except pursuant to the
10 provisions of such chapters.

11 **Comment.** Section 3264 is restated in Section 3131 without substantive change, See Comment
12 to Section 3131.

13 **§ 3265 (repealed). Claim filing procedures inapplicable**

14 3265. The claim filing procedures set forth in Part 3 (commencing with Section 900) of
15 Division 3.6 of Title 1 of the Government Code do not apply to actions commenced
16 pursuant to Section 3210 of this code.

17 **Comment. Comment.** Former Section ____ is continued in Section ____ without substantive
18 change.

19 **§ 3266 (repealed). Relation to other statutes**

20 3266. (a) This title does not supersede the Oil and Gas Lien Act, Chapter 2.5
21 (commencing with Section 1203.50), Title 4, Part 3, of the Code of Civil Procedure, and
22 the provisions of that act shall govern those transactions to which it applies rather than
23 the provisions of this title.

24 (b) This title does not supersede Chapter 12 (commencing with Section 5290), Part 3,
25 Division 7, of the Streets and Highways Code, and the provisions of that chapter shall
26 govern those transactions to which it applies rather than the provisions of this title.

27 **Comment.** Subdivision (a) of former Section 3266 is continued in Section 3105 without
28 substantive change.

29 Subdivision (b) is continued in Section 3106 without substantive change. See Comment to
30 Section 3106.

31 **§ 3267 (repealed). Limitation on title**

32 3267. Nothing contained in this title shall be construed to give to any person any right
33 of action on any original contractor's private or public work payment bond described in
34 Chapter 6 (commencing with Section 3235) or Chapter 7 (commencing with Section
35 3247), unless the work forming the basis for his claim was performed by such person for
36 the principal on such payment bond, or one of his subcontractors, pursuant to the contract
37 between the original contractor and the owner.

38 Nothing in this section shall affect the stop notice rights of, and relative priorities
39 among, architects, registered engineers, or licensed land surveyors and holders of secured
40 interests on the land.

41 **Comment.** Former Section ____ is continued in Section ____ without substantive change.
42
43