

## Memorandum 2004-31

**Mechanics Lien Law (Discussion of Issues)**

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## BACKGROUND

The Commission has decided to reactivate the mechanics lien law project with the view to wrapping it up on a priority basis. The Commission will take a “moderate” approach to general revision of the mechanics lien law. This will involve maintaining the basic structure of existing law while improving its organization and simplifying and clarifying its drafting. If we see opportunities for more significant simplification or improvement in the process, we will explore them.

The existing “mechanics lien law” is found at Civil Code Sections 3082-3267. The law includes a number of major remedies to deal with unpaid construction debts, including the mechanics lien, the stop notice, the payment bond, and prompt payment statutes. There is a separate statute for the lien of a design professional, which may be merged with the mechanics lien. See Civ. Code §§ 3081.1-3081.10.

This memorandum deals with the mechanics lien portion of the law only. Attached to this memorandum as an Exhibit is a staff draft of a mechanics lien law revision. Subsequent memoranda will address the stop notice, the payment bond, prompt payment statutes, design professionals lien, and other remedies.

In this memorandum we refer to the background study prepared by Commission consultant Gordon Hunt and to materials provided by Commission consultant James Acret, as well as to other correspondence we have received from interested persons. Because most of these materials have been attached to previous memoranda, we do not reproduce them here, but refer generally to points made by their authors. The staff also appreciates Mr. Hunt’s review of a preliminary draft of this memorandum; his remarks are referenced throughout.

## GENERAL CONSIDERATIONS

### **Drafting Approach**

The attached draft primarily does a technical cleanup of existing law. It breaks long sections into shorter ones, inserts appropriate paragraphing, relocates out of place provisions, modernizes drafting style, substitutes gender-neutral language, seeks to achieve consistency in usage throughout the statute, and in general attempts to make the statute better and more usable without making substantive changes.

Because the changes are so minor and so numerous, we have simply set out the recast provisions clean, without pockmarking each section with strikeout and underscore.

The draft includes Staff Notes that raise technical or minor substantive questions. More significant substantive issues are raised in this memorandum.

### **Caveat**

The existing statute has evolved over 150 years, and there is a substantial body of case law interpreting and applying many details of the existing language.

We have tried not to be overly zealous in our effort to modernize the statute. Nonetheless, it is likely that a clean draft, even though it may appear on its face to maintain existing law, in fact changes the meaning or disrupts an established interpretation of an existing provision.

We would appreciate practitioners who review this material alerting us to errors we may have inadvertently introduced that need correction.

### **Location of Statute**

The mechanics lien law has been housed in various places in the California codes during its long career. In the not too distant past it was located in the Code of Civil Procedure, before it was moved to its current location in the Civil Code.

An argument can be made for any one of many logical locations. The staff thinks the current Civil Code location is about as good as any. In addition, keeping the statute in its current location will avoid the need to correct cross-references to it found in other statutes. There are about 50 of these.

The main problems with amending the statute in place are that reuse of the same numbers for different sections may cause confusion, and the space available is limited.

The space issue can be overcome by use of decimal numbers. In fact, decimal numbers are preferable since they provide a logical framework for future growth. If the history of the mechanics lien law teaches us anything, it is that there will be ongoing revisions and augmentations to it. But decimal numbers are also cumbersome, particularly in a statute that will be used frequently by laypersons.

What we have done in the current draft is to leave the law in its current location, but reorganize it in decimal form. Once we finalize the draft, we can either leave it as is, or convert to whole numbers, with or without relocation.

## TERMINOLOGY

### **“Furnish”**

There’s lots of talk in the existing statute about “furnishing” labor, materials, and the like. More contemporary usage would refer to “providing” those items. The constitutional provision refers to “persons furnishing materials”. Cal. Const. art. 14, § 3. However, in this draft we have gone for the more modern usage.

### **“Labor, Service, Equipment, or Material”**

Various words and phrases are used inconsistently throughout the statute to describe the work, supplies, etc., for which the statute provides a remedy. We have standardized the terminology with commonly used language, and defined it to include all the various phrases used in existing law to describe lienable contributions to a work of improvement. See Staff Draft § 3082.030 (“labor, service, equipment, or material” defined).

### **“Lien”**

Does a person have a lien, a claim of lien, a lien right, or what? Does a person file or record the lien or the claim of lien? Is there an action on the lien, or is the lien foreclosed or enforced? All these terms are used somewhat interchangeably in existing law.

The Constitution says that a person who provides labor or materials “has a lien”. This is an inchoate lien that does not become enforceable until all statutory requirements are satisfied.

In the current draft we have standardized the statutory usage. A person has a lien right. A person having a lien right does not have a lien until the person records a claim of lien. Once the person has a lien, the person’s remedy is to enforce the lien.

## **“Mechanics Lien”**

No one is really sure whether there should be an apostrophe before the “s”, after the “s”, or none at all. The statutes, and construction law experts, are all over the place on this one. The term “mechanic” itself is a 19th century relic.

The California statute, in fact, rarely uses the term, and for good reason. The more common usage is simply to refer to “a lien” or “a lien provided for in this chapter”. The statute provides for several types of construction liens, including “site improvement” lien. See discussion below under “Site Improvement Lien”.

In this draft, we follow the lead of the existing statute and simply refer to a lien provided for in the statute. Although the term “mechanics lien” is well known and accepted, it is a little confusing and does put people off. It also gives the impression that the entire statute and process is archaic and complex, which hopefully it will not be when we finish this project.

## **“Original Contractor”**

The statute distinguishes between an “original contractor” — one who contracts directly with the owner — and others such as a subcontractor, who does not contract directly with the owner. The distinction is important, since questions of privity, notice, and the like, depend on it.

The term “original contractor” seems to be confined to the mechanics lien law; it does not appear to be in common use outside of the statute. The term is also used in the Oil and Gas Lien Act and in the Public Contract Code, where it apparently has the same meaning.

When the Commission considered this matter a while back, we decided to shift to “prime contractor” terminology as more consistent with usage in the industry. The staff has not followed that convention in the current draft. “Prime contractor” seems to suggest that the owner contracts with only one contractor, who in turn subcontracts everything. However, the owner may in fact contract directly with a number of construction specialists, each of whom is in privity with the owner. This frequently occurs in the owner-builder context.

The staff has retained “original contractor” terminology in the current draft, although the Commission might consider “direct contractor” as perhaps a preferable alternative. Existing law defines an original contractor as a contractor with a “direct” contractual relationship with the owner, and a subcontractor as a contractor without a “direct” contractual relationship with the owner.

The simple term “contractor” (as distinguished from subcontractor) could also be used, although that could get confusing since the statute often uses the term as a shorthand for either an original contractor or a subcontractor.

The statute defines a “contract” as an agreement between an owner and an original contractor providing for all or part of a work of improvement. Civ. Code § 3088. We have omitted this definition from the draft. It doesn’t appear to add anything useful, and the term is used as often to refer to an agreement between a contractor and subcontractor as it is to refer to an agreement between the owner and contractor.

### **“Owner”**

#### *Owner of Property*

Use of the term “owner” in the statute is problematic. Ordinarily it refers to the person who contracted for a work of improvement. In some cases it refers to the person who owns the property on which a work of improvement is constructed. In many instances this will be the same person, but not always.

A few of the statutes are precise in their reference to the owner who has contracted for a work of improvement or to the owner of the property on which a work of improvement is constructed. Most of the statutes are not so precise, leaving it a question of interpretation.

It appears to the staff that most of the statutes that refer to an “owner” without limitation are intended to refer to the person who contracted for a work of improvement. The cases where a statute is intended to apply to the owner of property on which a work of improvement is constructed ordinarily refer to the owner “of the property”. We have followed this convention in the staff draft.

#### *Fee or Lesser Interest*

Some existing provisions refer to an owner of property “or an interest therein”; others do not. The staff believes that any time the statute refers to an owner of property, the intention is to include the owner of an interest in property. The staff draft includes a general provision to this effect.

#### *Agent*

A number of the existing provisions refer to the authority of an owner’s agent. For example a work of improvement is deemed complete when occupied or accepted by the owner or agent. A notice of cessation may be executed by an

owner or agent. The staff draft generalizes these provisions — notice by or to, or an action by, an agent binds the owner.

#### *Successor in Interest*

A few statutes talk about an owner's successor in interest. For example, a notice of completion signed by an owner's successor in interest must "recite the names and addresses of his transferor or transferors." Civ. Code § 3093. On the other hand, a notice of cessation may be recorded by a successor in interest but is not required to include information about predecessors in interest. Civ. Code § 3092.

Mr. Hunt notes that it is important to include that information in a notice of completion so that a claimant can link the notice to the particular project on which the claimant has provided labor, service, equipment, or material. But why is the same information not important in a notice of cessation, or in other notices given by a successor in interest? Perhaps we should generalize the requirement that a successor in interest must include in a notice information about the owner's predecessors.

#### *Co-Owners*

A few provisions deal with the question of co-ownership. A notice of completion may be signed by one of several co-owners on behalf of all; a notice of cessation may be signed by one of several joint tenants or tenants in common on behalf of all (but apparently not by a spouse in the case of community property). In either case the notice must "recite the names and addresses" of the other co-owners.

May other notices under the statute be signed by fewer than all co-owners? If not, does notice by one co-owner affect only the interest of that co-owner? If one co-owner signs a notice of cessation or completion but neglects to recite names and addresses of the others, what is the effect of the notice?

What about notice to, rather than by, one of several co-owners. Does notice to one bind all? Does a lien against the interest of one co-owner affect the interests of all co-owners?

Again, Mr. Hunt indicates it is important to include co-owner information in the notice of completion and notice of cessation to enable the claimant to link the labor, service, equipment, or material provided by the claimant to the particular

project. They may have been provided to one co-owner, but the notice is filed by a different co-owner.

The staff thinks in this situation we are really dealing with an agency issue — one co-owner acting on behalf of the others. We would add a general provision to the statute to address this situation, and not single out notices of cessation and completion.

*Draft*

The staff draft to implement the foregoing suggestions would read:

**§ 3082.100. Owner**

3082.100. “Owner” means:

(a) With respect to a work of improvement, a person that contracts for the work of improvement.

(b) With respect to property on which a work of improvement is situated, a person that owns the fee or a lesser interest in the property, including but not limited to an interest as lessee or as vendee under a contract of purchase.

(c) A successor in interest of a person described in subdivision (a) or (b), or an agent or person acting pursuant to authority of a person described in subdivision (a) or (b).

**Comment.** Section 3082.100 is a new definition. It is included for drafting convenience. For the authority of an owner to act on behalf of co-owners, see Section 3082.260 (acts of co-owner).

See also Sections 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

**§ 3082.260. Acts of co-owner**

3082.260. An owner may give a notice or execute or file a document under this title on behalf of a co-owner if the owner acts on the co-owner’s behalf and includes in the notice or document the name and address of the co-owner on whose behalf the owner acts.

**Comment.** Section 3082.260 is new. It generalizes provisions found in former Sections 3092 (notice of cessation) and 3093 (notice of completion).

See also Sections 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

**“Preliminary 20-day Notice (Private Work)”**

This is a mouthful. The staff has simplified it in this draft to “preliminary notice (private work)”. We could probably get along without the definition at all, but perhaps it will prove useful to distinguish the private work preliminary

notice from the public work preliminary notice, when we get to the stop notice and payment bond remedies.

It is also unclear under existing law whether a preliminary notice is given, served, or transmitted. In this draft we have eschewed service terminology, and adhered to the concept of giving notice.

### **“Stop Notice”**

This phrase is somewhat unfortunate, since it can be confused with the “stop work order”. At least one other place in the statutes uses the more descriptive phrase “notice to withhold”. We have not substituted the phrase in this draft, but solicit input from experts as to whether that might not be preferable.

## GENERAL PROVISIONS

### **Writing**

A number of the provisions of the statute require a document or notice to be in writing. Is electronic delivery of the notice sufficient?

The Civil Code includes no general provisions on the matter; “writing” is defined to include printing and typewriting. Civ. Code § 14. Compare Evidence Code Section 250:

250. “Writing” means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

There are two issues here — (1) whether a document or notice that is not handwritten, printed, or typed satisfies the statute, and if so, (2) whether such a document should satisfy the statute.

All significant notices and acts under the mechanics lien law are required to be in writing, including the preliminary notice, notice of nonresponsibility, notice of completion, notice of cessation, claim of lien, and various waivers and releases.

In theory, there doesn’t seem to be a reason not to authorize electronic delivery of these documents. If a document must be recorded, and the recorder does not yet accept electronic authentication and submission, the party seeking to record will produce the document in whatever form is necessary to give it the

desired legal effect. If a document must be delivered, the person seeking to give it legal effect will deliver it by whatever means and in whatever form will facilitate proof of delivery.

As a practical matter, this will require paper in most instances. But as the law evolves to allow for more electronic recording and to provide for proof of electronic delivery, the parties should be able to take advantage of it. Perhaps someday we will be able to reduce the blizzard of paper that characterizes the mechanics lien law.

On the other hand, the staff is concerned that unsophisticated owners and claimants may attempt to take advantage of electronic communication, unaware of potential proof and other problems. For that reason, the staff is not inclined to get ahead of the curve in this area and create a classic “trap for the unwary.” We have not included an electronic communication provision in this draft.

### **Service of Notice**

Notices under the mechanics lien law are typically given either by recording or mailing or both. Mailed notices ordinarily must be given by registered or certified mail. A few notices may be given by first class mail evidenced by a certificate of mailing.

There does not appear to be a good reason to repeat the details concerning mailing each time the statute requires notification. We have prepared a general mailing statute for this draft, and eliminated individual mailing provisions. See Staff Draft § 3082.240 (mailed notice).

In the draft we have standardized the variant forms of proof of mailing and proof of delivery. Under the draft, any mailed notice may be given by registered or certified mail; we have omitted first class mail evidenced by a certificate of mailing. This may narrow the options in some cases, but the staff perceives no detriment in this.

There is one mailed notice we have exempted from the service and proof requirements. Under Civil Code Section 3097(o), the county recorder is required to mail notice of the recording of a notice of completion or cessation to persons who have filed a copy of the preliminary notice. Because the county recorder is a public official, and is not an adversarial party, because no legal rights depend on the notice, and because of the added cost of certified mail, the draft does not impose a certified mail requirement in that situation. See Staff Draft § 3089.460 (notice of recordation by county recorder).

## **Contents of Notice**

The various notices under the mechanics lien law typically require similar information, such as the name and address of the owner, original contractor, and construction lender, and a description of the site sufficient for identification. Each of these notices varies slightly; often there is no apparent reason for the variation.

For example, many notices require a description of the site and the street address, but excuse an erroneous address if there is an accurate legal description. Some simply require a description without elaboration. Others require a legal description.

We have not tried to standardize provisions of this type in the draft, but it is our intention to do so in the next draft, unless we find good reason not to.

## **Agency**

We have discussed agency above in the context of actions by or on behalf of an owner. But a few provisions of existing law also provide for actions by an agent in other circumstances. For example, a lien claimant may act through an agent when executing a waiver and release or when making a claim of lien. See Civ. Code §§ 3084, 3262.

Do these provisions imply that an agent cannot perform other acts under the mechanics lien law? The staff sees no reason why an authorized agent should not be able to perform any act the principal can perform under the mechanics lien law.

It might be argued that in a case where verification is required, the principal should be required to act. But the statute already authorizes an agent to make a verification in a number of instances. Moreover, in many cases the principal will be an artificial person and action must necessarily be taken by an agent. Mr. Hunt points out that often a waiver or claim of lien is signed by a credit manager or other person in the credit department of a claimant.

We could generalize the agency provision, and make clear that any act under the mechanics lien law may be done by an agent on behalf of the principal. But why reinvent the law of agency for the purpose of mechanics liens? Existing statutes already say the same thing:

### **Civ. Code § 2305. Acts may be performed by agent**

2305. AGENT MAY PERFORM ACTS REQUIRED OF PRINCIPAL BY CODE. Every act which, according to this Code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

In the interest of simplifying the mechanics lien statute, rather than adding a general agency provision, we could delete existing references to agents, in reliance on Section 2305. In that case we would add Comments to the deleted provisions, cross referring to Civil Code Section 2305.

Mr. Hunt argues against that, suggesting that a general provision similar to Section 2305 could be added to the mechanics lien law, so that it will be clear that the lien claimant may act by virtue of a principal or an agent. That suggestion has some attraction to the staff, given that the mechanics lien law will commonly be used by laypersons who are unfamiliar with the general law of agency, or will not know where to find it in the codes.

### **Assignees and Successors in Interest**

Only a handful of provisions of the mechanics lien law deal directly with rights of assignees and successors in interest.

We have previously addressed successors in interest of an “owner.” See discussion above. The mechanics lien law also includes assignees and successors within the definition of a “construction lender.” Civ. Code § 3087.

The staff would be reluctant to extend the mechanics lien law to the successor in interest of every person having rights or duties under the law. We must be careful not to impose a duty that may impact the validity of a notice given to a person rather than to the person’s successor or assignee or that may impose a duty on a person inappropriately.

The staff’s position is that, for now, we should not expand the rights of assignees or successors absent a showing that it is appropriate to do so in the case of a particular type of person.

We would preserve the existing reference to assignees and successors of a construction lender. Mr. Hunt indicates that a construction loan may be sold to another financial institution, or the construction lender may employ a joint control firm as a potential assignee or successor in interest for purposes of disbursement of proceeds.

### **POSSIBLE SUBSTANTIVE REVISIONS AND SIMPLIFICATIONS**

A number of substantive revisions and simplifications have been suggested for the mechanics lien law. However, the suggestions often favor one side or another in the construction dispute equation. The staff suggests that we go through the possible reforms and identify them for potential inclusion in our

final recommendation on the matter. However, we would not propose enactment of any major substantive revisions unless we are able to propose a package that, taken as a whole, does not on balance disadvantage one side or another.

If there are sufficient tradeoffs among the major substantive reforms, we may end up with an enactable package. But the staff would not propose these in a vacuum.

### **Use of Material in Structure**

A material supplier has a lien for material that is provided “to be used or consumed in” a work of improvement. Civ. Code §§ 3090, 3110. The implication of this language is that the material supplier is entitled to the lien whether or not the material is actually used in the work of improvement.

However, case law is that the material must actually be used in the work of improvement in order for the material supplier to have a lien. This interpretation of the statutes stems from the unjust enrichment theory underlying the mechanics lien right — a person whose material permanently improves real property should be paid because value has been added to the property. If the material does not actually improve the property, the material supplier has no stake in the property.

A material supplier must prove that the material was actually used in the particular construction project, and also that it was provided with that intent. Delivery provides “some evidence of use and consumption if coupled with other evidence tending to show use.” Marsh and Marsh, *California Mechanics’ Lien Law and Construction Industry Practice*, § 2.30 (6th Ed. 2003). But mere delivery does not create a presumption of use.

Mr. Hunt has recommended that the mechanics lien law should be revised to provide that proof of delivery of material creates a rebuttable presumption of use of the material in the work of improvement. He argues that a logical inference to be drawn on proof of delivery of material to the jobsite is that, in fact, the material was used in the job, in the absence of some evidence that it was removed from the job after delivery. He would add a provision to the statute to the effect that proof of delivery to the jobsite creates a rebuttable presumption that the material was used in the job; the burden of proof would then shift to the owner to prove that it was not.

Sam Abdulaziz of the Construction Industry Trade Association supports enactment of such a rebuttable presumption, noting that this is a true to life

problem for all material suppliers. He also suggests that adoption of the federal rule would be “perhaps a better proposal.” Under the federal rule, delivery of material to the jobsite is all that is necessary to allow a material supplier to recover on a federal project.

It appears to the staff that there is a legitimate concern here. Once a material supplier has delivered material to a jobsite it may be impractical to monitor construction to determine whether the material was actually used on the job. Proof problems may be difficult where materials are fungible.

The Commission needs to decide whether to recommend either a presumption of use of material delivered to a jobsite or a lien based on delivery to a jobsite. If so, we would draft the provision but hold it to see whether it can be made part of a balanced package.

### **Change Orders**

Existing law requires that an owner notify the original contractor and construction lender of a change in the original contract if the change increases the contract amount by 5% or more. Civ. Code § 3123(c). The statute is notably unspecific about when the notification must be made, the manner of notification, and the consequences of failure to notify.

The intent appears to be that if the owner fails to give the required notification, a lien does not cover the amount of the change order. Civ. Code § 3123(a). But if that were the case, it would not be in the owner’s interest to give the notification (except in the odd case where the change order actually reduced the contract price).

The staff finds this section more confusing than helpful, and would delete it from the statute absent a showing of its utility. Mr. Hunt says that as a practical matter the provision is not observed in the industry and it serves no useful purpose.

### **Completion Issues**

Completion of a work of improvement is a critical concept in the operation of the mechanics lien system. Under existing law, the time for recording a claim of lien is keyed to completion. See Civ. Code §§ 3115, 3116.

Completion of a work of improvement may be defined by any of several critical events. For example, cessation of labor for a period of time, acceptance by

the owner, acceptance by a public entity, and actual completion, are all deemed to be completion for purposes of the mechanics lien law. See Civ. Code § 3086.

#### *Substantial Completion*

James Stiepan of the Irvine Company has pointed out that, “Because the lien periods are keyed to the date of completion of the project, as is the validity of a recorded Notice of Completion, it is essential that the date of completion be ascertainable with some confidence. Unfortunately, conflicting case law and ambiguous code provisions make that determination more of a crap shoot.”

He argues that the date of completion should be tied to the standard real estate concept of substantial completion, exclusive of minor punch list items that do not materially adversely affect use or occupancy. That would be consistent with the practice in most construction contracts to effect final payment within a specified time after substantial completion.

If that were done, however, as a matter of fairness to the contractor who is actually performing a portion of the remaining punch list work, the date of completion for that claimant would occur upon the later completion of the portion of the work for which that claimant is responsible.

Mr. Hunt argues against using a substantial completion concept. He points out that the punch list often contains essential work that wasn’t done by the contractor and therefore until that work is done the job is not in fact completed.

#### *Certificate of Occupancy*

Mr. Stiepan also argues that the date of issuance of a certificate of occupancy, if applicable, should be usable as a proxy for completion. “Perhaps this is what is intended by reference to ‘acceptance by any public entity’ in Section 3086, although that is not sufficiently clear.”

Mr. Hunt argues against that. He says that issuance of the certificate is known only by the owner and the architect. It is typically not known by the construction side of the industry. “Not even the original contractor often knows when the Certificate of Occupancy is issued.”

#### *Acceptance by Public Entity*

Mr. Acret argues that the definition of “completion” for a work subject to acceptance by a public entity differs unnecessarily from the definition of “completion” for all other works, thus adding to the complexity of the statute. He would omit this provision. Mr. Hunt agrees with this suggestion.

### *Acceptance by Owner*

Under the existing statute, completion occurs on acceptance of a work of improvement by the owner. Mr. Hunt would delete this provision. "Acceptance by the owner is never used and furthermore, would never be communicated by the owner to the potential claimants." He eliminates this provision in his proposed draft set out below.

### *Simplified Definition of "Completion"*

Mr. Hunt would simplify the definition of completion, along the following lines:

Completion means actual completion of the work of improvement. Any of the following shall be deemed equivalent to a completion:

(a) The occupation or use of a work of improvement by the owner accompanied by a cessation of labor thereon.

(b) After commencement of a work of improvement, a cessation of labor thereon for a continuous period of sixty days or a cessation of labor thereon for a continuous period of thirty days or more if the owner files to record a Notice of Cessation.

### *Notice of Completion*

The owner may record a notice of completion. The notice must be recorded within ten days after the date of completion. Civ. Code § 3093. Recordation triggers the statutory period for a claimant to record a claim of lien. See Civ. Code §§ 3115, 3116.

Mr. Stiepan suggests that, rather than requiring a notice of completion to be recorded within a narrow window of ten days, the provision should be revised to provide that the lien filing period is extended on a day-for-day basis for any notice of completion recorded after the ten day period. Mr. Hunt thinks it's unnecessary to revise the statute along these lines since case law gives the same result. *Doherty v. Carruthers*, 171 Cal.App.2d 214, 340 P.2d 58 (1959). The staff notes that case is based on an estoppel theory. It may be helpful to spell it out by statute rather than relegating the matter to case law.

Mr. Acret suggests elimination of the provision of existing law that permits a notice of completion as to a portion of a work of improvement if there are two or more contracts for the work of improvement. See Civ. Code § 3117. He notes that a developer, by using this provision, may record an early notice of completion and thus take a potential claimant by surprise. Mr. Hunt observes that the

provision protects an owner-builder who contracts with various trade contractors directly. It allows the owner-builder to isolate the lien period for each contractor as that contractor's work is completed.

#### *Notice of Cessation*

Under existing law the owner may record a notice of cessation of labor, which is deemed completion. Civil Code §§ 3086, 3092. The notice of cessation and notice of completion are treated in tandem in the statute. There appears to be quite a bit of overlap between the two notices. The staff will explore the possibility of merging the notices in the interest of simplification.

Mr. Hunt identifies an issue to be addressed if the statute is revised. There is confusion in the industry as to what happens if a notice of cessation is filed and then the job starts up again. Mr. Hunt would make clear that if the project resumes construction, the notice of cessation is of no force or effect. We will take a look at this issue as we work through the draft.

#### *Duty of County Recorder to Give Notice of Recording*

If an owner records a notice of completion or cessation, the owner must notify any claimant that has given the owner a preliminary notice. The owner's failure to give the notice tolls the period within which the claimant must record a claim of lien. Civ. Code § 3259.5.

When the owner records a notice of completion or cessation, the county recorder also must notify any claimant that has filed with the recorder a copy of the preliminary notice. The recorder's failure to notify a claimant does not affect the period within which the claimant must record a claim of lien. Civ. Code § 3097(o).

It appears to the staff that the whole process for a claimant to file a preliminary notice with the county recorder and for the county recorder to notify claimants when a notice of completion or cessation is recorded is redundant, pointless, and complicates the statute. Mr. Acret says that the provision is superfluous and unused. Mr. Hunt says that, while it is not used to a great extent, some companies do use it on a regular basis; it increases the likelihood of their being notified of a notice of completion or cessation. The staff would eliminate the provision in the interest of simplifying mechanics lien law.

If the Commission concludes this procedure should be preserved, the Commission may want to review the existing provision that allows the county

recorder to destroy filed preliminary notices after two years. Mr. Hunt indicates that some private works projects can take more than two years, and perhaps the county recorder should be precluded from destroying notices until after four years. Otherwise the statutory scheme becomes ineffective.

### **Expungement of False Claim of Lien**

We have received communications complaining about a contractor's false claim of lien and the difficulty of expungement of the claim of lien.

One correspondent — homeowner Curtis Felt — relates his experience with a contractor who he hired to do some insurance repair work. The contractor was paid by the insurance company in advance. The contractor failed to obtain a building permit and after some run around, the owner fired the contractor from the job. The contractor retaliated with a claim of lien against the owner's home for seven times the amount of the contract, even though the contractor had already been paid in full by the insurance company (and without ever having served a preliminary 20 day notice). "So now I am stuck with a load of bureaucratic and legal mess to get the lien removed, that in my opinion, was fraudulent in the first place. I had to wait 90 days. I got an attorney to prepare legal documents. I may have to go in front of a judge to get the lien removed, because I figure the contractor will ignore the request for removal."

Another writer — homeowner Paula Gelber Dromi — has a similar tale to tell. Her contractor did shoddy work, they reached an impasse, and the contractor filed a claim of lien. The homeowner attempted mediation; the contractor refused. The homeowner got the Contractor's State License Board involved, and won \$4,000 in arbitration. When the contractor failed to pay, his license was revoked. There ensued a long saga of the homeowner trying to get the lien removed through small claims court, and failing after several orders. "I haven't taken the next step of getting it certified and going back to the County recorder's office which has said it will only accept a form stating the lien has been satisfied from the contractor. ... This has been a continuing nightmare."

The owner does have some remedies under existing law:

- (1) A claim of lien made with intent to defraud is invalid. Civ. Code § 3118.
- (2) An owner may post a release bond. Civ. Code § 3143.
- (3) An owner may obtain a release order if the lien claimant fails to enforce the lien within statutory time limits. Civ. Code § 3154.

- (4) Under case law, an owner may seek declaratory and injunctive relief against an invalid claim immediately on receipt of a preliminary notice or on the filing of a claim of lien.

Whether any of these remedies is efficacious is another question. A determination that a claim of lien has been made with intent to defraud requires a court proceeding. A release bond may be unavailable or too costly for many owners. The release order process is not available for immediate attack on a fraudulent lien, but must await the lien claimant's inaction for the statutory period. Court remedies are costly and time consuming. It is easy to impose a lien but hard to clear the record of it.

It appears to the staff that existing release remedies are susceptible of improvement. The following changes might help:

- (1) If the lien claimant has failed to take action to enforce the lien within statutory time limits, the owner should be able to eliminate the lien by filing a notice of expungement. A court order should be unnecessary for that purpose.
- (2) The law should make clear that the court release procedure is available for immediate challenge to an invalid claim.
- (3) If the claim of lien is within small claims or limited civil jurisdiction amounts, a release order should be obtainable pursuant to small claims or limited civil procedures.
- (4) The statute should make clear that a release or expungement notice or order issued pursuant to the statute is a recordable instrument.

Should penalties be increased for recordation of a fraudulent claim of lien? Under existing law the lien is invalid. There may also be consequences under the Contractors State License Law. But that does not necessarily make the owner whole. The staff would expand the circumstances in which attorneys fees are awarded in an expungement or release proceeding. Cf. Civ. Code § 3154(b)(5). Also, the contractor's license bond might be made accessible on a showing of damages caused by a fraudulent claim of lien.

Mr. Hunt believes that currently existing remedies are adequate. He sees no need for further amendment of the statute.

### **Dismissal for Lack of Prosecution**

Under general rules of civil practice the court has discretionary authority to dismiss an action not brought to trial within three years after commencement of the action. Code Civ. Proc. § 583.420. The mechanics lien law contains a unique

discretionary dismissal provision that allows the court to dismiss if a lien enforcement action is not brought to trial within two years after commencement.

The staff is not sure why we need a special rule here. On the surface it would seem to provide the owner an expedited remedy against a dilatory lien claimant. But as a practical matter is the provision actually beneficial to the owner? Will it simply force the lien claimant's hand to start foreclosure proceedings when the lien claimant might otherwise be inclined to let the matter ride?

If the claim of lien is false the owner has available the release order remedy. The provision for discretionary dismissal by the court does not appear to be particularly helpful, and it adds to the complexity of the mechanics lien law. The staff thinks it could be deleted in reliance on the general civil procedure statutes governing dismissal for lack of prosecution. Mr. Hunt concurs.

### **Attorneys Fees**

Mr. Hunt indicates that the treatment of attorneys fees in the mechanics lien law is not consistent. He notes that the statutes allow attorneys fees in some types of stop notice and payment bond enforcement actions, but there is no attorneys fee provision for enforcement of a mechanics lien, and in fact the courts have held that attorneys fees are not recoverable for a mechanics lien. *Abbett Elec. Corp. v. California Fed. Sav. & Loan Ass'n*, 230 Cal. App. 3d 355 (1991).

There appears to Mr. Hunt to be no rational basis to allow attorneys fees in an action on a stop notice on a private work but not to allow attorneys fees in an action to foreclose a mechanics lien. "The provision for attorney's fees is important in that it quite often results in serious settlement negotiations between the parties and enhances the possibility of settlement where the parties know that the prevailing party will be entitled to recover attorney's fees. A recent California Supreme Court case [*Scott Co. of Cal. v. Blount, Inc.*, 20 Cal. 4th 1103, 979 P.2d 974, 86 Cal. Rptr. 2d 614 (1999)] highlights the importance of attorney's fees and the interplay with the statutory offers of settlement that can be made under Code of Civil Procedure Section 998 coupled with the provisions of Civil Code Section 1717 allowing the prevailing party to recover attorney's fees where attorney's fees are provided for."

On attorneys fee issues generally, the Commission has typically resisted departing from the American Rule, which requires each party to bear its own attorney's fees. We have sometimes added an attorney's fee provision to a statutory scheme where it appeared that a particular incentive was needed. That

does not appear to be the case here. There's plenty of incentive for an owner to settle a dispute when a lien gets slapped on the property. And in fact, our understanding is that for this reason mechanics liens rarely reach the foreclosure stage.

We might want to consider the possibility of adding an attorneys fee provision as a tradeoff for an offsetting benefit to the owner, such as protection from double payment liability.

## OPPORTUNITIES FOR SIGNIFICANT SIMPLIFICATION

### **Site Improvement Lien**

The mechanics lien is not the only construction lien provided for in the statute. There is also a separate "site improvement" lien. See Civ. Code § 3112. The site improvement lien is for the benefit of a claimant who has done work or provided materials for demolition, grading, utilities, and other work to the site. Civ. Code § 3102.

The site improvement lien is treated the same as the mechanics lien, with a few exceptions:

- (1) If site improvement work is done on a separate contract from structural work, the lien priority for the site improvement work is separate from the lien priority for the structural work, and runs from the date of commencement of the site improvement work. Civ. Code § 3135.
- (2) The holder of a subordinate mortgage or deed of trust may obtain priority over a site improvement lien by recording a payment bond that is 50% of the principal of the mortgage or deed of trust, whereas a 75% bond would be required to obtain priority over a mechanics lien. Compare Civ. Code § 3139 with Civ. Code § 3138. (There are other differences concerning a payment bond as well. For example, a site improvement lien payment bond must be recorded before completion of the work of improvement but a mechanics lien payment bond need not. The holder of the mortgage or deed of trust gains priority over all site improvement work but only over work done after recording of the bond in the case of a mechanics lien.)
- (3) A site improvement lien has priority over a mortgage, deed of trust, or other encumbrance recorded before commencement of site improvement work given for the purpose of financing the site improvement. The priority does not apply if the lender retains control of the loan proceeds under a binding agreement to apply

the proceeds to the payment of claimants and not to pay proceeds to the borrower until all claims have been paid. Civ. Code § 3137(c).

The statute could be simplified somewhat if the site improvement lien were eliminated as a separate lien, and persons doing site improvement work simply used the mechanics lien remedy. This is already the situation where site improvement work is done as part of the general construction contract. Why should the rules differ where the site improvement work is done as part of a separate contract?

Although a lien remedy for site improvement work has been part of California law since the 19th century, special treatment for site improvements was first introduced into the law 1949. See 1949 Cal. Stat. ch. 1547. It is not clear why it was felt necessary to provide special treatment for a site-improvement lien at that time. The one modern case construing Section 3137 — *Schmitt v. Tri Counties Bank*, 70 Cal. App. 4th 1234, 83 Cal. Rptr. 2d 257 (1999) — provides little insight into the rationale behind the special priority rules.

The consensus among commentators is that there is no compelling reason for the special priority granted a site-improvement lien. See, e.g., Acret, *California Construction Law Manual* (5th Ed. 1990), § 6.40, p. 434 (“The reason for this reversal of the normal rules of priority is not clear.”); John J. Hopkins, *Selected Mechanics’ Lien Priority Problems*, 16 *Hastings L.J.* 155, 161 (1964) (“No good reason can be found for this special rule.”).

On the other hand, it can be argued that the site-improvement lien may serve a “civic” purpose. See *Deason v. Costa Tierra Ltd.*, 2 Cal. App. 3d, 742, 752, 83 Cal. Rptr. 105 (1969). Site-improvement work such as grading, sidewalk construction, road work, and the like may be quasi-public in nature. A governmental authority may have a “continuing concern” in the completion of site-improvement work because it can affect other properties and public governmental functions.

It has also been noted that the special priority rules for site improvement liens may have little practical effect. Site-improvement liens appear to be rare. That is probably because site-improvement work takes place at the beginning of a project — when there is usually still enough money and optimism about the project to pay claims.

The staff suggests that the Commission consider recommending elimination of the special site improvement rules in favor of the general mechanics lien rules, in the interest of simplification.

## **Laborer's Compensation Fund**

The law gives lien rights to a laborer's employment benefits fund that is not paid the amount due. These provisions have been heavily litigated and the subject of significant legislative fine tuning. A key issue has been federal preemption under ERISA. It appears for now that the current version of the statute is free of ERISA preemption. See *Betancourt v. Storke Housing Investors*, 31 Cal. 4th 1157, 82 P. 3d 286, 8 Cal. Rptr. 3d 259 (2003). The staff would allow events in this area to continue to unfold.

Meanwhile, the statute itself is confusing. For example, it defines "laborer" to include such a benefit fund, but generally ignores the definition in favor of specific statutes prescribing rights and duties relating to the fund.

In this draft, we have tried to simplify things somewhat by creating a new term — "laborer's compensation fund" — and using the term consistently whenever rights and duties relating to such a fund are in issue. See Staff Draft § 3082.050 ("laborer's compensation fund" defined).

One problem is the differing treatment the existing statute appears to give to some types of laborer's compensation funds. The basic definition of a laborer's compensation fund is broad, but it includes within it an entity described as an "express trust fund". Existing Section 3089(a) provides:

"Laborer" also includes any person or entity, including an express trust fund described in Section 3111, to whom a portion of the compensation of a laborer as defined in subdivision (a) is paid by agreement with that laborer or the collective bargaining agent of that laborer.

This definition may or may not be broader than the definition of an express trust fund under Section 3111:

[A]n express trust fund to which a portion of a laborer's total compensation is to be paid pursuant to an applicable employment agreement or a collective bargaining agreement for the provision of benefits, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder.

The statute grants extensive remedies to a laborer's compensation fund (existing Section 3089(b)), but appears to limit the lien right of an express trust fund (existing Section 3111). The preliminary notice statutes refer sometimes to an express trust fund, sometimes to an express trust fund as described in Section

3111, and sometimes to a “laborer” in its broadly defined sense including a laborer’s compensation fund. See existing Section 3097. It is not clear that these differences in treatment are actually intended, or are simply the result of inconsistent drafting over several legislative sessions.

We have made some modest efforts in this draft to harmonize the provisions in cases where it is reasonably apparent that different treatment is not intended.

One provision we have not touched is Section 3097(k), which requires a contractor who fails to pay the full compensation due a laborer or laborer’s compensation fund to notify the laborer, the laborer’s bargaining representative, and the construction lender with detailed information. Failure to give the notice is grounds for disciplinary action by the Contractors State License Board. Mr. Hunt believes the provision should be eliminated — it is not complied with and adds nothing to the law. “That really should be covered in the Labor Code, not in the Mechanic’s Lien Law.” The staff has no problem with relocating the provision.

Mr. Hunt would likewise delete from the law the requirement that the preliminary notice include the name and address of any laborer on the job and any express trust fund to which the subcontractor has failed to pay all compensation due. Section 3097(c)(6). The staff is not sure that this provision is meaningless. Since both a laborer and a laborer’s compensation fund may assert a claim of lien without giving any preliminary notice, that information may be useful to the owner.

### **Preliminary Notice**

To a significant degree the complexity of the existing statute is attributable to the preliminary notice and its ramifications. The preliminary notice system is designed to alert the owner to the possibility of double payment liability so that the owner can take whatever protective measures appear appropriate.

Based on our legislative experience with our double payment proposal, the staff thinks it is unlikely we will ever be able to return to the mechanics lien law system that prevailed in the last century under which an owner’s liability exposure was limited to the amount of the contract.

Therefore, although the preliminary notice scheme is complex, we have not made an effort to significantly modify or eliminate it. However, a question remains whether the preliminary notice actually achieves its intended goal, or

whether it simply adds a lot of paperwork (and a defense to enforcement in case of a failure to comply with the technicalities of the notice).

Mr. Hunt believes the preliminary notice serves a useful purpose. Persons making monthly progress payments use it as a means to determine who they should receive conditional waivers from each month and who they should put on joint checks or pay direct. Also, the existence of the preliminary notice helps ensure that the mechanics lien system satisfies due process, by providing advance notice to the owner and lender.

A divided Supreme Court in *Connolly Development v. Superior Court*, 17 Cal.3d 803, 553 P.2d 637, 132 Cal.Rptr. 477 (1976), decided that the mechanics lien system satisfies due process of law because it provides the property owner notice and an opportunity to be heard before the owner's rights are impaired. The notice is the preliminary notice; the opportunity to be heard is the right to go to court and seek declaratory and injunctive relief against the claim of lien.

But if that is the basis for the court's decision, what are the implications for the validity of the mechanics lien process when used by an original contractor, laborer, or laborer's compensation fund? Each of these claimants is permitted by the mechanics lien law to record a claim of lien against the owner's property without the need to give the owner a preliminary notice.

Meanwhile, there are improvements to the existing preliminary notice system that can be made. We have in the current draft restricted ourselves to the preliminary notice (private work), since a mechanics lien is only available for a private work. We will look at the preliminary notice (public work) when we get to the remedies available for a public work (stop notice and payment bond).

### *Busting Up the Section*

The preliminary notice statute runs to several pages and is located among the mechanics lien definitions. The statute is substantive, and in this draft we have relocated it to general provisions. We have also broken it into bite size pieces for easier digestion. And we have tried to significantly streamline and simplify the language.

### *Notice From Original Contractor to Construction Lender*

Section 3097(b) appears to both require an original contractor to give a preliminary notice to the construction lender and exempt an original contractor from the requirement:

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

Mr. Hunt, has recommended that the provision be eliminated. He notes that other sections make adequate provision for notice, and that as a practical matter, the construction lender will have knowledge of subcontractors and require waiver and release forms anyway. Mr. Abdulaziz agrees that (b) should be omitted.

The provision appears to the staff to duplicate other provisions. See Civ. Code § 3089(a). We have omitted the provision from the current draft.

#### *Disciplinary Action Against Subcontractor who Fails To Give Preliminary Notice*

The existing statute provides that if a subcontractor fails to give a preliminary notice where the contract price exceeds \$400, the subcontractor is subject to disciplinary action under the Contractors State License Law. Civ. Code § 3097(h), ¶ 1. Why?

The \$400 threshold was set in 1968. That would be the equivalent of \$2,000 in today's dollars. If we keep this section at all, the threshold should be adjusted upward.

The staff proposes to eliminate this provision. Should a subcontractor be forced to the trouble and expense of serving a preliminary notice in every case? The contract amount may be small enough that the subcontractor is willing to skip enforcement remedies if not paid. Or the subcontractor may simply be willing to take a risk with a responsible contractor.

There is an argument that the requirement is necessary to protect the interest of an express trust fund. See Civ. Code § 3097(h), ¶ 2. However, an express trust fund may exercise lien rights without the need for a preliminary notice. Civ. Code § 3097(a). Moreover, a subcontractor's giving of a preliminary notice does

not guarantee that the subcontractor will ever take any further steps to record a claim of lien or to enforce the lien.

Mr. Hunt agrees that the provision should be eliminated. He believes it serves no useful purpose at present .

#### *Notice of Preliminary Notice Mistakes*

If a lien claimant makes an error in the preliminary notice, the recipient of the notice may use the inaccuracy as a defense in the lien foreclosure action.

Mr. Hunt suggests that the recipient of the preliminary notice should be required to notify the lien claimant of the error. The proposal is patterned after Arizona law, which requires the recipient to identify any inaccuracies within 10 days or lose any defense to the inaccuracies. See Ariz. Rev. Stat. § 33-992.01(i).

Mr. Abdulaziz agrees with this proposal. “We do not feel that the responsibilities placed upon the owner create a burden or hardship. If the comments are correct that owners will use the inaccuracies placed in the Preliminary Notices as a defense, then it is clear that early on those owners have found and recognized those mistakes — those owners should not be able to profit from those mistakes by their own inaction.”

Mr. Stiepan finds this proposal “troubling” and urges that it be “quickly jettisoned.” He writes:

First, as a practical matter, my experience is that minor non-substantive errors that would not prejudice the recipient are not deemed by the courts to vitiate lien rights. Second, the proposed language imposes a sweeping burden on the recipient of the Preliminary Notice to perform a clinical analysis of that Notice within ten days, regardless of whether any inaccuracy should have been known to the claimant or could have been discovered with reasonable care....

The staff is not convinced that this proposal is desirable or fair. The law should not place additional burdens on the owner that do not provide commensurate benefits. There could conceivably be a place for such a provision in a package that provides offsetting benefits to the owner.

#### *Discipline for Contractor’s Failure to Provide Information*

Civil Code Section 3097(l) provides that the original contractor must make available to any person wanting to serve a preliminary notice the name and address of the owner and lender as shown in their contract.

Mr. Hunt says that even though the statute uses the word “shall,” there are no teeth in it. “As a practical matter, many times when potential claimants (subcontractors and material suppliers) contact the ‘original contractor’ to obtain the name and address of the owner and lender as shown in the original contractor’s contract with the owner, the original contractor is uncooperative and either fails to furnish the information or furnishes inaccurate information.”

He recommends making the failure or refusal of the original contractor to make the information available as required by statute grounds for disciplinary action by the Contractors State License Board.

Mr. Abdulaziz agrees there is a problem but doesn’t agree that disciplinary action will solve it. “Subcontractors and material suppliers need the information as to the owner, lender, etc. This information is critical to the processing of the preliminary notice, which is critical to preserving the mechanic’s lien and stop notice rights of subcontractors and material suppliers.”

He would provide that the prime contractor is liable to any material supplier or subcontractor for the harm caused to them by their knowing or willful failure to provide accurate information as to the owner, lender, etc. “However, even this suggestion may have no ‘teeth,’ as if the contractor is not paying those persons (or has himself or herself filed bankruptcy), there may be nothing to collect in such a suit.” Another suggestion could be a civil penalty of an amount sufficient to send a message, e.g., \$2,000.

The staff has no recommendation on these suggestions. We are not in a position to assess whether it is useful to add this duty or whether making it a ground for discipline would be effective.

It does raise the general question of what in the mechanic’s lien law should provide a ground for disciplinary action? Should the statute pick and choose, or should there be a general provision making violation of any duty imposed on a licensee a ground for discipline?

### **Waiver and Release**

Section 3262 prescribes four forms that must be used in order for a lien claimant to execute a valid waiver and release — conditional release for a progress payment, unconditional release for a progress payment, conditional release for a final payment, and unconditional release for a final payment.

These forms have been the subject of substantial criticism. Mr. Hunt points out ambiguities in them, including language in Section 3262(d)(1) reading:

This release of any mechanics' lien stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

He states that the language, if interpreted in accordance with its plain terms, seems to convert the conditional waiver and release upon progress payment to a mere receipt.

Mr. Hunt observes that the industry operates on the assumption that if the claimant is paid a certain amount through a given date, then all of its liens, stop notices, and bond rights through that date are waived with the exceptions noted in the release form. Most people in the industry believe that they are giving full releases when in fact they are not. "It is clear that the forms in Section 3262 need to be revised or the statute itself revised. In light of the fact that these waiver and release forms have become common practice in their usage in the construction industry, it is recommended that the forms be revised."

Mr. Acret agrees:

Compensation for work or material "not compensated by the progress payment": this language is flagrantly ambiguous. At minimum, it means the claimant preserves all personal causes of action and releases only Mechanics Lien, Stop Notice, and bond rights. This would include the contract rights discussed above. Thus, the language seems duplicative unless it also (under a broader interpretation) preserves the claimant's Mechanics Lien, Stop Notice, and bond rights for all work or materials 'not compensated by the progress payment'. But such an interpretation seems absurd. It would nullify the effectiveness of the release in the only circumstances under which it could be of any practical value, since it is only 'unpaid' claimants who assert Mechanics Lien, Stop Notice, and payment bond rights to begin with.

The amendments to the unconditional release on progress payment track the amendments to the conditional release on progress payment, but one provision of the Unconditional Waiver and Release moves from the Byzantine to the Rococo: it is the notice that this release is enforceable against you if you sign it even if you have not been paid. Wait a minute! Didn't we just read that this release does not cover claims that were not compensated by the progress payment?

Mr. Stiepan terms the entire lien release process regarding progress payments to be “little more than a meaningless exercise.” He finds Mr. Hunt’s revisions a step in the right direction, but advocates additional clarifications.

Mr. Abdulaziz has a different view:

We agree that the language in the statutory notice creates an ambiguity, which may preserve contract rights, even though the document itself waives any rights to a mechanic’s lien, stop notice, or payment bond claim for the same amount. One must remember, however, that the purpose of the statutory lien release is to protect persons not in privity with releasor. As an example, subcontractors and material suppliers provide the conditional and unconditional release forms to their customer, and ultimately, those get passed on to the owner. Subcontractors and material suppliers have no contract rights against an owner. There is no ambiguity in the mind of the courts who strictly construe a statutory release against the releasor’s lien rights. As between the prime contractor and the owner, that is the situation where the language may need to be cleaned up. However, that may be best left for another time.

Some of these positions may be tempered by a recent case construing the Section 3262(d)(1) language to provide for a release of a lien with respect to all labor, service, equipment and material to the date of the release, but not to waive other legal remedies to the extent labor, service, equipment or material has not been paid for. *Tesco Controls v. Monterey Mechanical Co.*, 2004 DJDAR 12524, 2004 WL 2288219 (Cal.App. 3 Dist. Oct. 12, 2004).

Regardless of whether the rules are imbedded in mandatory form language or are stated in substantive provisions, the statute should be cleaned up. Mr. Hunt has offered us suggested form revisions, which may be helpful, depending on the approach the Commission decides to take.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

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## CONSTRUCTION REMEDIES

### **Cal. Const. Art 14, § 3 (unchanged). Lien on property for labor and material**

SEC. 3. Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

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### **Civ. Code §§ 3082-3267 (repealed). Works of improvement**

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

**Comment.** Former Title 15 (former Sections 3082-3267) is replaced by new Title 15 (new Sections 3082-3089.680). For the disposition of the provisions of former Title 15, see [Table, to be provided.] The source of each section in the new law is indicated in its Comment.

### **Civ. Code §§ 3082-3089.680 (added). Works of improvement**

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

## TITLE 15. WORKS OF IMPROVEMENT

### CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

#### Article 1. Definitions

#### **§ 3082. Application of definitions**

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

**Comment.** Section 3082 continues former Section 3082 without substantive change.

#### **§ 3082.010. Claimant**

3082.010. “Claimant” means a person that has the right under this title to record a claim of lien, file a stop notice, or assert a claim against a payment bond.

**Comment.** Section 3082.010 restates former Section 3085 without substantive change. See also Sections 3082.060 (“lien” defined), 3082.110 (“person” defined).

#### **§ 3082.020. Construction lender**

3082.020. “Construction lender” means either of the following:

1 (a) A mortgagee or beneficiary under a deed of trust lending funds for payment  
2 of construction costs for all or part of a work of improvement, or the assignee or  
3 successor in interest of the mortgagee or beneficiary.

4 (b) An escrow holder or other person holding funds provided by an owner,  
5 lender, or another person as a fund for payment of construction costs for all or part  
6 of a work of improvement.

7 **Comment.** Section 3082.020 continues former Section 3087 without substantive change.

8 See also Sections 14 (present includes future), 3082.100 (“owner” defined), 3082.110 (“person”  
9 defined), 3082.190 (“work of improvement” defined).

10 **§ 3082.030. Labor, service, equipment, or material**

11 3082.030. “Labor, service, equipment, or material” includes but is not limited to  
12 labor, skills, services, material, supplies, equipment, appliances, transportation,  
13 power, surveying, construction plans, and construction management provided to a  
14 work of improvement.

15 **Comment.** Section 3082.030 is a new definition. It is included for drafting convenience. The  
16 phrase is intended to encompass all things of value provided for a work of improvement, and  
17 replaces various phrases used throughout the former law, including “labor or material,” “labor,  
18 services, equipment, or materials,” “appliances, teams, or power,” and the like. The definition  
19 applies to variant grammatical forms of the phrase used in this title, such as “labor, service,  
20 equipment, *and* material.”

21 See also Section 3082.190 (“work of improvement” defined).

22 ☞ **Staff Note.** We have not yet integrated the Design Professionals’ Lien (Civ. Code §§ 3081.1-  
23 3081.10) with this material.

24 **§ 3082.040. Laborer**

25 3082.040. “Laborer” means a person who, acting as an employee, provides  
26 labor, skill, or other necessary services for a work of improvement.

27 **Comment.** Section 3082.040 continues former Section 3089(a) without substantive change.  
28 “Laborer” is no longer defined to include a compensation fund, which is treated separately in this  
29 title. Cf. Section 3082.050 (“laborer’s compensation fund” defined).

30 See also Section 3082.190 (“work of improvement” defined).

31 ☞ **Staff Note.** In this draft we have not defined “laborer” to include a compensation fund. The  
32 rights of a laborer’s compensation fund are dealt with directly in the statute, rather than by  
33 definition. See Sections 3082.050 (“laborer’s compensation fund” defined), 3082.410 (standing to  
34 enforce laborer’s rights), 3083.220 (lien right of express trust fund), 3089.120 (preliminary notice  
35 prerequisite to remedies).

36 **§ 3082.050. Laborer’s compensation fund**

37 3082.050. “Laborer’s compensation fund” means a person, including an express  
38 trust fund described in Section 3083.220, to which a portion of the compensation  
39 of a laborer is paid by agreement with the laborer or the collective bargaining  
40 agent of the laborer.

41 **Comment.** Section 3082.050 continues the first sentence of former Section 3089(b) without  
42 substantive change. See also Section 3082.410 (standing to enforce laborer’s rights).

43 See also Sections 3082.040 (“laborer” defined), 3082.110 (“person” defined).

1    **§ 3082.060. Lien**

2    3082.060. “Lien” means a lien under Chapter 2 (commencing with Section  
3    3083.110) (mechanics lien for private work), and includes both a lien for a work of  
4    improvement under Section 3083.210 and a lien for a site improvement under  
5    Section 3083.230.

6    **Comment.** Section 3082.060 is a new definition. It is included for drafting convenience. There  
7    are instances in this title where the term is not used in its defined sense. See, e.g., Sections  
8    3083.540 (d) (multiple works of improvement), 3083.610 (a). (priority of lien).

9    See also Sections 3082.170 (“site improvement” defined), 3082.190 (“work of improvement”  
10   defined).

11   **§ 3082.070. Material supplier**

12   3082.070. “Material supplier” means a person that provides material or supplies  
13   to be used or consumed in a work of improvement.

14   **Comment.** Section 3082.070 replaces the term “materialman” with the term “material supplier”  
15   to conform to contemporary usage under this title. It continues former Section 3082.070 without  
16   substantive change.

17   See also Sections 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

18   ☞ **Staff Note.** At this point, the defined term is used in only one section — 3083.210 (persons  
19   entitled to lien). We preserve the definition for the time being, since it may be used in the stop  
20   notice and payment bond provisions, when we get there.

21   **§ 3082.080. Original contract**

22   3082.080. “Original contract” means an agreement between an owner and an  
23   original contractor that provides for all or part of a work of improvement.

24   **Comment.** Section 3082.080 is a new definition. It is included for drafting convenience. It  
25   supersedes former Section 3088 (“contract” defined).

26   See also Sections 3082.090 “original contractor” defined), 3082.100 (“owner” defined),  
27   3082.190 (“work of improvement” defined).

28   ☞ **Staff Note.** Existing Section 3088 defines “contract” as an agreement between an owner and  
29   original contractor. That definition is problematic since the defined term is used more commonly  
30   in the statute in an undefined sense (agreement between contractor and subcontractor) than in its  
31   defined sense. It is also unclear whether the term includes change orders. Cf. Section 3083.420.  
32   The staff has come up with this new definition for use in the statute where a distinction is called  
33   for. See, e.g., Sections 3083.410 (amount of lien), 3083.420 (lien limited to amount of contract).

34   **§ 3082.090. Original contractor**

35   3082.090. “Original contractor” means a contractor that has a direct contractual  
36   relationship with an owner.

37   **Comment.** Section 3082.090 continues former Section 3095 without substantive change.

38   See also Section 3082.100 (“owner” defined).

39   **§ 3082.100. Owner**

40   3082.100. “Owner” means:

41   (a) With respect to a work of improvement, a person that contracts for the work  
42   of improvement.

1 (b) With respect to property on which a work of improvement is situated, a  
2 person that owns the fee or a lesser interest in the property, including but not  
3 limited to an interest as lessee or as vendee under a contract of purchase.

4 (c) A successor in interest of a person described in subdivision (a) or (b), or an  
5 agent or person acting pursuant to authority of a person described in subdivision  
6 (a) or (b).

7 **Comment.** Section 3082.100 is a new definition. It is included for drafting convenience. For  
8 the authority of an owner to act on behalf of co-owners, see Section 3082.260 (acts of co-owner).  
9 See also Sections 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

10 **§ 3082.110. Person**

11 3082.110. “Person” means an individual, corporation, public entity, business  
12 trust, estate, trust, partnership, limited liability company, association, or other  
13 entity.

14 **Comment.** Section 3082.110 is a new definition. It is included for drafting convenience. It  
15 supplements Section 14 (“person” includes corporation as well as natural person).

16 See also Section 3082.140 (“public entity” defined).

17 **§ 3082.120. Preliminary notice (private work)**

18 3082.120. “Preliminary notice (private work)” means the notice provided for in  
19 Article 1 (commencing with 3089.110) of Chapter 8, relating to preliminary notice  
20 of private work.

21 **Comment.** Section 3082.120 supersedes former Section 3097. The substantive requirements  
22 for a preliminary notice (private work) have been relocated to Section 3089.110 *et seq.*

23 See also Section 3082.130 (“private work” defined).

24 ☞ **Staff Note.** The current draft does not make reference to the preliminary notice for public  
25 work, since the mechanics lien remedy is available only for private work. When we incorporate  
26 the stop notice and payment bond remedies into the draft, we will review terminology relating to  
27 both private work and public work preliminary notices.

28 **§ 3082.130. Private work**

29 3082.130. “Private work” means a work of improvement other than a public  
30 work.

31 **Comment.** Section 3082.130 is a new definition. It is included for drafting convenience.

32 See also Sections 3082.150 (“public work” defined), 3082.190 (“work of improvement”  
33 defined).

34 **§ 3082.140. Public entity**

35 3082.140. “Public entity” means the state, Regents of the University of  
36 California, a county, city, district, public authority, public agency, and any other  
37 political subdivision or public corporation in the state.

38 **Comment.** Section 3082.140 continues former Section 3099 without substantive change.

39 See also Section 14 (“county” includes city and county).

1    **§ 3082.150. Public work**

2    3082.150. “Public work” means a work of improvement contracted for by a  
3    public entity.

4    **Comment.** Section 3082.150 continues former Section 3100 without substantive change.  
5    See also Sections 3082.140 (“public entity” defined), 3082.190 (“work of improvement”  
6    defined).

7    **§ 3082.160. Site**

8    3082.160. “Site” means the property on which a work of improvement is  
9    situated.

10   **Comment.** Section 3082.160 continues former Section 3101 without substantive change.  
11   See also Section 3082.190 (“work of improvement” defined).

12   **§ 3082.170. Site improvement**

13   3082.170. “Site improvement” means any of the following work on property:

- 14   (a) Demolition or removal of improvements, trees, or other vegetation.
- 15   (b) Drilling test holes.
- 16   (c) Grading, filling, or otherwise improving the property or a street, highway, or  
17   sidewalk in front of or adjoining the property.
- 18   (d) Construction or installation of sewers or other public utilities.
- 19   (e) Construction of areas, vaults, cellars, or rooms under sidewalks.
- 20   (f) Making any other improvements.

21   **Comment.** Section 3082.170 continues former Section 3102 without substantive change.

22   **§ 3082.180. Subcontractor**

23   3082.180. “Subcontractor” means a contractor that does not have a direct  
24   contractual relationship with an owner.

25   **Comment.** Section 3082.180 continues former Section 3104 without substantive change.  
26   See also Section 3082.100 (“owner” defined).

27   **§ 3082.190. Work of improvement**

28   3082.190. (a) “Work of improvement” includes but is not limited to:

- 29   (1) Construction, alteration, repair, demolition, or removal, in whole or in part,  
30   of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel,  
31   fence, machinery, railroad, or road.
- 32   (2) Seeding, sodding, or planting of property for landscaping purposes.
- 33   (3) Filling, leveling, or grading of property.

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

37   **Comment.** Section 3082.190 restates former Section 3106. The section is revised to reorganize  
38   and tabulate the different types of works falling within the definition, to expand the coverage of  
39   the definition, and to make various technical, nonsubstantive revisions. The term “property” has  
40   replaced “lot or tract of land.”

1 A site improvement is treated under this title in the same manner as a work of improvement  
2 generally, except as specifically provided in this title. See Sections 3083.550 (claim against  
3 separate residential units), 3083.610 (priority of lien), 3083.640 (priority of site improvement  
4 lien.)

5 See also Section 3082.170 (“site improvement” defined).

## 6 Article 2. General Provisions

### 7 § 3082.210. Application of title

8 3082.210. Except as otherwise provided in this title, this title applies to both a  
9 private work and a public work.

10 **Comment.** Section 3082.210 is new. Chapter 2 (commencing with Section 3083.110) relating  
11 to mechanics’ liens applies only to a private work and does not apply to a public work. See  
12 Section 3083.110 (scope of chapter).

13 See also Sections 3082.130 (“private work” defined), 3082.150 (“public work” defined).

### 14 § 3082.220. Jurisdiction and venue

15 3082.220. The proper court for proceedings under this title is the superior court  
16 in the county in which a work of improvement, or part of it, is situated.

17 **Comment.** Section 3082.220 is a new provision included for drafting convenience. It  
18 generalizes a number of provisions of former law.

19 See also Section 3082.190 (“work of improvement” defined).

### 20 § 3082.230. Rules of practice

21 3082.230. Except as otherwise provided in this title, Part 2 (commencing with  
22 Section 307) of the Code of Civil Procedure provides the rules of practice in  
23 proceedings under this title.

24 **Comment.** Section 3082.230 continues the first sentence of former Section 3259 without  
25 substantive change. The second sentence of former Section 3259 is not continued; this title does  
26 not include special provisions relating to new trials or appeals.

27 Section 3082.230 makes former Section 3149, relating to consolidation of actions, unnecessary.  
28 Part 2 of the Code of Civil Procedure enables persons claiming liens on the same property to join  
29 in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive joinder). If  
30 separate actions are commenced the court may consolidate them. See Code Civ. Proc. § 1048  
31 (consolidation of actions).

### 32 § 3082.240. Mailed notice

33 3082.240. The following provisions apply to notice given by mail under this  
34 title:

35 (a) Notice shall be given by registered or certified mail.

36 (b) Notice is complete when deposited in the mail.

37 (c) Proof that the notice was given in the manner provided in this section shall be  
38 made by a return receipt or a photocopy of the record of delivery and receipt  
39 maintained by the post office, showing the date of delivery and to whom delivered,  
40 or in the event of nondelivery, by the returned envelope itself.

1 **Comment.** Section 3082.240 is a new provision included for drafting convenience. It  
2 generalizes a number of provisions of former law.

3 **§ 3082.250. Filing and recording of papers**

4 3082.250. (a) If this title provides for filing a contract, plan, preliminary notice,  
5 or other paper with the county recorder the provision is satisfied by filing the paper  
6 in the office of the county recorder of the county in which the work of  
7 improvement or part of it is situated.

8 (b) If this title provides for recording a notice, claim of lien, payment bond, or  
9 other paper, the provision is satisfied by filing the paper for record in the office of  
10 the county recorder of the county in which the work of improvement or part of it is  
11 situated. A paper in otherwise proper form, verified and containing the information  
12 required by this title, shall be accepted by the recorder for recording and is deemed  
13 duly recorded without acknowledgment.

14 (c) The county recorder shall number, index, and preserve a contract, plan,  
15 preliminary notice or other paper presented for filing under this title, and shall  
16 number, index, and transcribe into the official records, in the same manner as a  
17 conveyance of real property, a notice, claim of lien, payment bond, or other paper  
18 recorded under this title.

19 (d) The county recorder shall charge and collect the fees provided in Article 5  
20 (commencing with Section 27360) of Chapter 6 of Part 3 of Division 2 of Title 3  
21 of the Government Code for performing duties under this section.

22 **Comment.** Subdivisions (a) and (b) of Section 3082.250 are new. They generalize a number of  
23 provisions of former law.

24 Subdivisions (c) and (d) continue former Section 3258 without substantive change. The  
25 reference to preliminary notice in this section relates to Section 3089.190 (filing notice with  
26 county recorder).

27 See also Sections 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined).

28 **§ 3082.260. Acts of co-owner**

29 3082.260. An owner may give a notice or execute or file a document under this  
30 title on behalf of a co-owner if the owner acts on the co-owner’s behalf and  
31 includes in the notice or document the name and address of the co-owner on whose  
32 behalf the owner acts.

33 **Comment.** Section 3082.260 is new. It generalizes provisions found in former Sections 3092  
34 (notice of cessation) and 3093 (notice of completion).

35 See also Sections 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

36 **§ 3082.270. Relation to other statutes**

37 3082.270. (a) This title does not apply to a transaction governed by the Oil and  
38 Gas Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3  
39 of the Code of Civil Procedure.

40 (b) This title does not apply to a transaction governed by Sections 20457 to  
41 20464, inclusive, of the Public Contract Code (street work bond).





1 compensation fund has standing to enforce rights under this title to the same extent  
2 as the laborer.

3 (b) This section is intended to give effect to the long-standing public policy of  
4 the state to protect the entire compensation of a laborer on a work of improvement,  
5 regardless of the form in which the compensation is to be paid.

6 **Comment.** Section 3082.410 continues the last two sentences of former Section 3089(b)  
7 without substantive change.

8 See also Sections 3082.040 (“laborer” defined), 3082.050 (“laborer’s compensation fund”  
9 defined), 3082.190 (“work of improvement” defined).

10 **§ 3082.420. Notice of overdue laborer compensation**

11 3082.420. (a) A contractor or subcontractor that employs a laborer and fails to  
12 pay the full compensation due the laborer or laborer’s compensation fund shall,  
13 not later than the date the compensation became delinquent, give the laborer, the  
14 laborer’s bargaining representative, if any, and the construction lender or reputed  
15 construction lender, if any, written notice containing all of the following  
16 information:

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

18 (2) A description of the site sufficient for identification.

19 (3) The name and address of any express trust fund described in Section  
20 3083.220 to which employer payments are due.

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

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

23 (b) Failure to give the notice required by subdivision (a) constitutes grounds for  
24 disciplinary action under the Contractors’ State License Law, Chapter 9  
25 (commencing with Section 7000) of Division 3 of the Business and Professions  
26 Code.

27 **Comment.** Section 3082.420 restates former Section 3097(k) without substantive change. The  
28 reference to the Registrar of Contracts in the final sentence of former Section 3097(k) has been  
29 revised to refer to the Contractors’ State License Law. This is a technical, nonsubstantive change.

30 See also Sections 3082.020 (“construction lender” defined), 3082.040 (“laborer” defined),  
31 3082.050 (“laborer’s compensation fund” defined), 3082.100 (“owner” defined), 3082.160 (“site”  
32 defined), 3082.180 (“subcontractor” defined), 3082.210 (application of title).

33 **CHAPTER 2. MECHANICS LIEN FOR PRIVATE WORK**

34 **Article 1. Application of Chapter**

35 **§ 3083.110. Scope of chapter**

36 3083.110. This chapter applies only to a private work and does not apply to a  
37 public work.

38 **Comment.** Section 3083.110 continues former Section 3109 without substantive change.

39 See also Sections 3082.130 (“private work” defined), 3082.150 (“public work” defined).

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## Article 2. Who Is Entitled to Lien

### § 3083.210. Persons entitled to lien

3083.210. (a) A person that provides labor, service, equipment, or material under a contract for a work of improvement, including but not limited the following persons, has a lien right under this chapter:

- (a) Original contractor.
- (b) Subcontractor.
- (c) Material supplier.
- (d) Equipment lessor.
- (e) Laborer.
- (f) Architect.
- (g) Registered engineer.
- (h) Licensed land surveyor.
- [(i) Builder.]

**Comment.** Section 3083.210 supersedes the part of former Section 3110 providing a lien for contributions to a work of improvement. It implements the directive of Article XIV, Section 3, of the California Constitution that, “Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.”

The reference in the introductory portion of Section 3083.210 to labor, service, equipment or material provided “under a contract” replaces the references in former Section 3110 to the “instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise).” See Section 3083.240 (who may authorize work).

The type of contribution to the work of improvement that qualifies for a lien right is described in the introductory portion of Section 3083.210 as provision of “labor, service, equipment, or material.” Elimination of the former references to “bestowing skill or other necessary services” or “furnishing appliances, teams, or power” or “work done or materials furnished” is not a substantive change. See Section 3082.030 (“labor, service, equipment, or material” defined).

The listing of classes of persons with lien rights in subdivisions (a)-(h) restates without substantive change the comparable part of former Section 3110. This provision does not continue the former listing of types of contractors, subcontractors, and laborers, such as mechanics, artisans, machinists, builders, teamsters, and draymen. This is not a substantive change; these classes are included in the defined terms used in this section.

For provisions concerning architects, engineers, and surveyors, see Section 3181.1 *et seq.*

See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.040 (“laborer” defined), 3082.060 (“lien” defined), 3082.070 (“material supplier” defined), 3082.090 (“original contractor” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

☞ **Staff Note.** We have not yet integrated the Design Professionals’ Lien (Civ. Code §§ 3081.1-3081.10) with this material.

We have bracketed subdivision (i). The term “builder” was not defined in former law and was used only in former Section 3110. Can there be a builder who is not either an original contractor or subcontractor, or a laborer, by definition?

1    **§ 3083.220. Lien right of express trust fund**

2    3083.220. An express trust fund to which a portion of a laborer’s total  
3    compensation is to be paid under an employment agreement or a collective  
4    bargaining agreement for the provision of benefits, including, but not limited to,  
5    employer payments described in Section 1773.1 of the Labor Code and  
6    implementing regulations, has the same lien right under this chapter as a laborer,  
7    to the extent of the compensation agreed to be paid to the express trust fund for  
8    labor on that improvement only.

9    **Comment.** Section 3083.220 continues former Section 3111 without substantive change. The  
10    duplicative description of the laborer’s lien right and other unneeded language is omitted. These  
11    are technical, nonsubstantive changes.

12    See also Sections 3082.040 (“laborer” defined), 3082.060 (“lien” defined).

13    ☞ **Staff Note.** Is this section redundant to the general provision of Section 3082.410 (standing to  
14    enforce laborer’s rights? The staff would appreciate input from knowledgeable sources.

15    **§ 3083.230. Site improvement lien**

16    3083.230. A person that provides labor, service, equipment, or material under a  
17    contract for a site improvement has a lien right under this chapter.

18    **Comment.** Section 3083.230 supersedes former Section 3112. The reference to work done or  
19    material furnished is superseded by the reference to labor, service, equipment, or material. See  
20    Section 3082.030 (“labor, service, equipment, or material” defined). The reference to work at the  
21    instance or request of the owner or any person acting by or under authority of the owner as  
22    contractor or otherwise is replaced by the reference to work done under a contract. See Section  
23    3083.240 (who may authorize work).

24    A site improvement is treated in the same manner as a work of improvement under this chapter,  
25    except as provided in Sections 3083.550 (claim against separate residential units), 3083.610  
26    (priority of lien), 3083.640 (priority of site improvement lien). See also Section 3082.190 (“work  
27    of improvement” defined).

28    See also Sections 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.170 (“site  
29    improvement” defined).

30    **§ 3083.240. Who may authorize work**

31    3083.240. For the purpose of this chapter, labor, service, equipment, or material  
32    is provided under a contract for a work of improvement if:

33    (a) Provided at the request of the owner.

34    (b) Provided or authorized by an original contractor, subcontractor, architect, or  
35    other person having charge of all or part of the work of improvement.

36    **Comment.** Section 3083.240 restates parts of former Sections 3110 and 3112.

37    The reference to work provided at the request of an owner in subdivision (a) includes work  
38    provided at the instance of the owner, or of a person acting by or under the owner’s authority. See  
39    Section 3082.100 (“owner” defined).

40    The references in former law to sub-subcontractors and builders have been omitted as surplus.  
41    A contractor either has a contract with the owner (original contractor) or does not (subcontractor).  
42    This title does not distinguish among levels of subcontractor. The term “builder” was not defined  
43    in former law and was used only in former Section 3110. A work of improvement includes a site  
44    improvement. See Section 3082.190 (“work of improvement” defined).

45    See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.090  
46    “original contractor” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

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## Article 3. Conditions to Enforcing a Lien

### § 3083.310. Preliminary notice required

3083.310. A claimant may enforce a lien only if the claimant has given a preliminary notice (private work) and made proof of service as provided in Article 1 (commencing with Section 3089.110) of Chapter 8.

**Comment.** Section 3083.310 continues former Section 3114 without substantive change. See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.120 (“preliminary notice (private work)” defined).

☞ **Staff Note.** This provision may need to be generalized or duplicated when we get to stop notice and bond provisions.

### § 3083.320. Time for claim of lien by original contractor

3083.320. An original contractor may not enforce a lien unless the contractor records a claim of lien after the contractor completes the contract and before the earlier of the following times:

- (a) Ninety days after the date of completion of the work of improvement.
- (b) Sixty days after the owner records a notice of completion or notice of cessation.

**Comment.** Section 3083.320 restates former Section 3115. For “completion” of a work of improvement, see Section 3089.410. For recordation of a notice of completion or cessation, see Sections 3089.420 (notice of cessation) and 3089.430 (notice of completion).

See also Sections 3082.060 (“lien” defined), 3082.090 “original contractor” defined), 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

☞ **Staff Note.** The Commission has approved the concept of making this provision applicable to stop notices. How this will be done mechanically (so to speak) will be determined when we start work on the stop notice and bond provisions. We may duplicate it for those purposes.

### § 3083.330. Time for claim of lien by claimant other than original contractor

3083.330. A claimant other than an original contractor may not enforce a lien unless the claimant records a claim of lien after the claimant ceases to provide labor, service, equipment, or material and before the earlier of the following times:

- (a) Ninety days after the date of completion of the work of improvement.
- (b) Thirty days after the owner records a notice of completion or notice of cessation.

**Comment.** Section 3083.330 restates former Section 3116. For “completion” of a work of improvement, see Section 3089.410. For recordation of a notice of completion or cessation, see Sections 3089.420 (notice of cessation) and 3089.430 (notice of completion).

An express trust fund may have a longer period in the case of a claim against a separate residential unit. See Section 3083.340.

See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien” defined), 3082.090 “original contractor” defined), 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

☞ **Staff Note.** The Commission has approved the concept of making this provision applicable to stop notices. How this will be done mechanically (so to speak) will be determined when we start work on the stop notice and bond provisions. We may duplicate it for those purposes.

1    **§ 3083.340. Special rule for express trust fund claim on separate residential unit in**  
2       **condominium**

3       3083.340. Notwithstanding any other provision of this chapter, completion of a  
4       separate residential unit within the meaning of Section 3083.550 does not operate  
5       in any manner to impair the lien right of an express trust fund under Section  
6       3083.220 if the claim of lien is recorded within 120 days after the date of  
7       completion of the separate residential unit.

8       **Comment.** Section 3083.340 continues the last paragraph of former Section 3131 without  
9       substantive change.

10      See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

11    **§ 3083.350. Claim of lien**

12      3083.350. A claim of lien shall be in writing, signed and verified by the claimant  
13      or the claimant’s agent, and shall contain all of the following information:

14      (a) A statement of the claimant’s demand after deducting all just credits and  
15      offsets.

16      (b) The name of the owner or reputed owner, if known.

17      (c) A general statement of the kind of labor, service, equipment, or material  
18      provided by the claimant.

19      (d) The name of the person that engaged the claimant or to which the claimant  
20      provided the labor, service, equipment, or material.

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

22      [(f) The claimant’s address.]

23      **Comment.** Subdivisions (a)-(e) of Section 3083.350 continue former Section 3084 without  
24      substantive change. The word “engaged” is substituted for “employed” in subdivision (d) to  
25      eliminate the implication that the provision is limited to an employee. See also Sections 3083.240  
26      (who may authorize work), 3082.250 (filing and recording of papers).

27      [Subdivision (f) is new. It implements other provisions that invoke a claimant’s address. Cf.  
28      Sections 3083.560 (release bond), 3083.830 (notice of hearing).]

29      See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
30      material” defined), 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.110 (“person”  
31      defined), 3082.160 (“site” defined).

32      ☞ **Staff Note.** We have bracketed subdivision (f) for now. It may be more important for a stop  
33      notice than a claim of lien. We will evaluate its need for the mechanics lien as the statute evolves.

34    **§ 3083.360. Forfeiture of lien for false claim**

35      3083.360. (a) Except as provided in subdivision (b), erroneous information  
36      contained in a claim of lien relating to the claimant’s demand, credits and offsets  
37      deducted, the labor, service, equipment, or material provided, or the description of  
38      the site, does not invalidate the lien.

39      (b) Erroneous information contained in a claim of lien relating to the claimant’s  
40      demand, credits and offsets deducted, or the labor, service, equipment, or material  
41      provided, invalidates the lien if the court finds either of the following:

42      (1) The claim of lien was made with intent to defraud.

1 (2) An innocent third party, without notice, actual or constructive, became the  
2 bona fide owner of the property since recordation of the claim of lien, and the  
3 claim of lien was so deficient that it did not put the party on further inquiry in any  
4 manner.

5 **Comment.** Section 3083.360 combines former Sections 3118 and 3261. The terminology of the  
6 combined provision has been conformed to Section 3083.350 (claim of lien).

7 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
8 material” defined), 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.160 (“site”  
9 defined).

## 10 Article 4. Amount of Lien

### 11 § 3083.410. Amount of lien

12 3083.410. (a) The lien is a direct lien for the lesser of the following amounts:

13 (1) The reasonable value of the labor, service, equipment, and material provided  
14 by the claimant.

15 (2) The price agreed to by the claimant and the person with which the claimant  
16 contracted. The lien is not limited in amount by the price stated in the original  
17 contract except as provided in Section 3082.340 (notification of change order)  
18 [and except as provided in Sections 3235 and 3236 (payment bond)].

19 (b) This section does not preclude the claimant from including in a claim of lien  
20 an amount due for labor, service, equipment, or material provided based on a  
21 written modification of the contract.

22 (c) This section does not preclude the claimant from including in a claim of lien  
23 an amount due as a result of rescission, abandonment, or breach of the contract. In  
24 the event of rescission, abandonment, or breach of the contract, the amount of the  
25 lien may not exceed the reasonable value of the labor, service, equipment, and  
26 material provided by the claimant.

27 **Comment.** Section 3083.410 continues subdivisions (a) and (b) of former Section 3123 and a  
28 portion of former Section 3110 without substantive change. As used in this section, the  
29 reasonable value of labor, service, equipment, and material includes the reasonable use value of  
30 appliances, equipment, teams, and power.

31 The provision of former Section 3123(c) that required an owner to give notice of a change of 5  
32 percent or more) is continued in Section 3082.340 (notification of change order).

33 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
34 material” defined), 3082.060 (“lien” defined), 3082.080 (“original contract” defined), 3082.110  
35 (“person” defined), Section 3083.350 (claim of lien).

36  **Staff Note.** The reference in subdivision (a)(2) to Sections 3235 and 3236 relates to a  
37 payment bond. We will review this provision in connection with our review of payment bonds.

38 Likewise, stop notice provisions will be reviewed in light of this section. Presumably the  
39 amount recoverable pursuant to a stop notice would be the same as the amount recoverable  
40 pursuant to a lien. We will look at this issue separately.

### 41 § 3083.420. Lien limited to amount of original contract or modification

42 3083.420. (a) A lien does not extend to labor, service, equipment, or material not  
43 included in an original contract or a modification of the contract if the claimant

1 was engaged by an original contractor or subcontractor and had actual knowledge  
2 or constructive notice of the original contract or modification before providing the  
3 labor, service, equipment, or material.

4 (b) The filing of an original contract or of a modification of the contract with the  
5 county recorder, before the commencement of work, is equivalent to giving actual  
6 notice of the provisions of the contract or modification by the owner to a person  
7 providing labor, service, equipment, or material.

8 **Comment.** Section 3083.420 restates former Section 3124 without substantive change. The  
9 word “engaged” is substituted for “employed” in subdivision (a) to eliminate the implication that  
10 the provision is limited to an employee of the contractor or subcontractor. “Original contractor” is  
11 substituted for the undefined “contractor” in subdivision (a).

12 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
13 material” defined), 3082.060 (“lien” defined), 3082.080 (“original contract” defined), 3082.090  
14 “original contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person” defined),  
15 3082.180 (“subcontractor” defined).

## 16 Article 5. Property Subject to Lien

### 17 § 3083.510. Property subject to lien

18 3083.510. A lien attaches to the work of improvement and property on which the  
19 work of improvement is situated, together with a convenient space about the work  
20 of improvement or as much space as is required for the convenient use and  
21 occupation of the work of improvement.

22 **Comment.** Section 3083.510 restates the parts of former Sections 3128 and 3112 (site  
23 improvement lien on lot or tract of land) that described property subject to the lien, without  
24 substantive change. References to “property” have been substituted for references to “land.”

25 See also Sections 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined),  
26 3082.190 (“work of improvement” defined).

### 27 § 3083.520. Interest subject to lien

28 3083.520. A lien attaches to the following interests in the property on which the  
29 work of improvement is situated:

30 (a) The interest of a person that contracted for the work of improvement.

31 (b) The interest of a person that did not contract for the work of improvement, if  
32 labor, service, equipment, or material for which the lien is claimed was provided  
33 with the knowledge of the person. This subdivision does not apply to the interest  
34 of a person that gives notice of nonresponsibility under Section 3083.530.

35 **Comment.** Section 3083.520 restates former Section 3129 and the last portion of former  
36 Section 3128. A reference to “labor, service, equipment, or material” has been substituted for the  
37 former reference to “commencement of the work or of the furnishing of the materials”. Cf.  
38 Section 3082.030 (“labor, service, equipment, or material” defined).

39 See also Sections 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.190 (“work of  
40 improvement” defined).

1    **§ 3083.530. Notice of nonresponsibility**

2       3083.530. (a) An owner of property on which a work of improvement is situated  
3 that did not contract for the work of improvement may give notice of  
4 nonresponsibility.

5       (b) A notice of nonresponsibility shall be in writing, signed and verified by the  
6 owner, and shall contain all of the following information:

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

8           (2) The name and nature of the owner’s title or interest.

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

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

12       (c) A notice of nonresponsibility is not effective unless, within 10 days after the  
13 person giving notice has knowledge of the work of improvement, the person posts  
14 the notice in a conspicuous place on the site and records the notice.

15       **Comment.** Section 3083.530 restates former Section 3094 without substantive change. The  
16 notice of nonresponsibility may be signed and verified by the owner or person owning or  
17 claiming an interest in the property, or by the owner or other person’s agent. See Section  
18 3082.100 (“owner” defined). A notice of nonresponsibility is recorded in the office of the county  
19 recorder of the county in which the site or part of it is situated. Section 3082.250 (filing and  
20 recording of papers).

21       See also Sections 3082.110 (“person” defined), 3082.160 (“site” defined), 3082.190 (“work of  
22 improvement” defined).

23    **§ 3083.540. Multiple works of improvement**

24       3083.540. A claimant may record one claim of lien on two or more works of  
25 improvement, subject to the following conditions:

26       (a) The works of improvement have or are reputed to have the same owner, or  
27 the claimant has been engaged by the same person for the works of improvement  
28 whether or not they have the same owner.

29       (b) The claimant in the claim of lien designates the amount due for each work of  
30 improvement. If the claimant was engaged under a contract providing for a lump  
31 sum payment for labor, service, equipment, and material provided for the works of  
32 improvement and the contract does not segregate the amount due for each work of  
33 improvement separately, the claimant may estimate an equitable distribution of the  
34 sum due for each work of improvement based on the proportionate amount of  
35 labor, service, equipment, or material provided for each. If the claimant does not  
36 designate the amount due for each work of improvement, the lien is subordinate to  
37 other liens.

38       (c) If there is a single structure on property of different owners, the claimant  
39 need not segregate the proportion of labor, service, equipment, or material  
40 provided for the portion of the structure situated on property of each owner. In the  
41 lien enforcement action the court may, if it determines it equitable to do so,  
42 designate an equitable distribution of the lien among the property of the owners.

1 (d) The lien does not extend beyond the amount designated as against other  
2 creditors having liens, by judgment, mortgage, or otherwise, on either the works of  
3 improvement or the property on which the works of improvement are situated.

4 **Comment.** Section 3083.540 restates former Section 3130 without substantive change. The  
5 word “engaged” is substituted for “employed” in subdivisions (a) and (b) to eliminate the  
6 implication that the provision is limited to an employee.

7 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
8 material” defined), 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.110 (“person”  
9 defined), 3082.190 (“work of improvement” defined).

10 **§ 3083.550. Claim against separate residential units**

11 3083.550. (a) As used in this section, “separate residential unit” means one  
12 residential structure, including a residential structure containing multiple  
13 condominium units, together with any common area, garage, or other appurtenant  
14 improvements.

15 (b) If a work of improvement consists of the construction of two or more  
16 separate residential units:

17 (1) Each unit is deemed a separate work of improvement, and the time for  
18 recording a claim of lien on each unit commences to run on the date of completion  
19 of that unit. This paragraph does not affect any lien right under Section 3083.230  
20 (site improvement lien) or 3083.540 (multiple works of improvement).

21 (2) Material provided for the work of improvement is deemed to be provided for  
22 use or consumption in each separate residential unit in which the material is  
23 actually used or consumed; but if the claimant is unable to segregate the amounts  
24 used or consumed in separate residential units, the claimant has the right to all the  
25 benefits of Section 3083.540 (multiple works of improvement).

26 **Comment.** Section 3083.550 restates the first paragraph of former Section 3131 without  
27 substantive change. The reference to “filing” a claim of lien has been changed to recording. See  
28 Sections 3083.320, 3083.330 (recordation of claim of lien). For the purpose of this section, a  
29 claim of lien is not considered recorded unless done in the manner provided by Section 3082.250  
30 (filing and recording of papers).

31 The second paragraph of former Section 3131 is continued in Section 3083.340 (special rule for  
32 express trust fund claim on separate residential unit in condominium).

33 For “completion” of a work of improvement, see Section 3089.410.

34 See also Sections 3083.350 (claim of lien), 3082.010 (“claimant” defined), 3082.060 (“lien”  
35 defined), 3082.190 (“work of improvement” defined).

36 ☞ **Staff Note.** As phrased, this section appears to deny the effect of the owner’s recordation of a  
37 notice of completion or notice of cessation.

38 **§ 3083.560. Release bond**

39 3083.560. (a) An owner of property subject to a recorded claim of lien or an  
40 original contractor or subcontractor affected by the lien that disputes the  
41 correctness or validity of the lien may obtain release of the property from the lien  
42 by recording a lien release bond. The principal on the bond may be the owner of  
43 the property or the contractor or subcontractor.

1 (b) The bond shall be conditioned on payment of any judgment and costs the  
2 claimant recovers on the lien. The bond shall be in an amount equal to 1-1/2 times  
3 the amount of the claim of lien or 1-1/2 times the amount allocated in the claim of  
4 lien to the property to be released. The bond shall be executed by an admitted  
5 surety insurer.

6 (c) The bond may be recorded either before or after commencement of an action  
7 to enforce the lien. On recordation of the bond the property is released from the  
8 lien and from any action to enforce the lien.

9 (d) A person that obtains and records a lien release bond shall give notice to the  
10 claimant by mailing a copy of the bond to the claimant at the address on the claim  
11 of lien. Failure to give the notice required by this section does not affect the  
12 validity of the bond, but the statute of limitations for an action on the bond is  
13 tolled until notice is given. The claimant shall commence an action on the bond  
14 within six months after notice is given.

15 **Comment.** Subdivisions (a)-(c) of Section 3083.560 continue former Section 3143 without  
16 substantive change. The language of the section has been harmonized with the Bond and  
17 Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the  
18 Code of Civil Procedure.

19 Subdivision (d) continues former Section 3144.5 without substantive change. For service and  
20 proof of service by mail, see. Section 3082.240 (mailed notice).

21 The owner of an interest in property may obtain a release bond. See Section 3082.100 (“owner”  
22 defined). The reference to recordation of the bond in the county in which the claim of lien is  
23 recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office  
24 of the county recorder of the county in which the site or part of it is situated. Section 3082.250  
25 (filing and recording of papers).

26 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.090 “original  
27 contractor” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

## 28 Article 6. Priorities

29  **Staff Note.** A payment bond affects priorities among parties. Civ. Code §§ 3138, 3139. We  
30 have not included these provisions in this draft, but will integrate them in connection with our  
31 review of payment bond provisions generally.

### 32 § 3083.610. Priority of lien

33 3083.610. (a) A lien under this chapter is superior to a lien, mortgage, deed of  
34 trust, or other encumbrance on the work of improvement or the property on which  
35 the work of improvement is situated, that (1) attaches after commencement of the  
36 work of improvement, or (2) was unrecorded at the commencement of the work of  
37 improvement and of which the claimant had no notice.

38 (b) Subdivision (a) does not apply to either of the following:

39 (1) A lien provided for in Section 3083.230 (site improvement lien).

40 (2) The exception provided for in Section 3138 (payment bond).

41 **Comment.** Section 3083.610 continues former Section 3134 without substantive change. For a  
42 site improvement lien, see Section 3083.640 (priority of site improvement lien).

43 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.170 (“site  
44 improvement” defined), 3082.190 (“work of improvement” defined).

1 ☞ **Staff Note.** Subdivision (b)(2) refers to the effect of a payment bond. We will review payment  
2 bond provisions later in this project.

3 **§ 3083.620. Separate contract for site improvement**

4 3083.620. If a site improvement is provided for in an original contract separate  
5 from the contract for the remainder of the work of improvement, the site  
6 improvement is deemed a separate work of improvement and commencement of  
7 the site improvement is not commencement of the remainder of the work of  
8 improvement.

9 **Comment.** Section 3083.620 restates former Section 3135 without substantive change.

10 See also Sections 3082.080 (“original contract” defined), 3082.170 (“site improvement”  
11 defined), 3082.190 (“work of improvement” defined).

12 **§ 3083.630. Priority of advances by lender**

13 3083.630. (a) A mortgage or deed of trust that is superior to a lien under this  
14 chapter as to an obligatory advance made in accordance with the commitment of  
15 the lender is also superior to the lien as to any other advance secured by the  
16 mortgage or deed of trust used to pay a claim of lien recorded at the date of the  
17 advance and thereafter in payment of costs of the work of improvement.

18 (b) The priority provided in subdivision (a) is limited to the original obligatory  
19 commitment of the lender as shown in the mortgage or deed of trust.

20 **Comment.** Section 3083.630 restates former Section 3136 without substantive change.

21 See also Sections 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined).

22 ☞ **Staff Note.** This could perhaps be more clearly and simply stated if only we knew what it  
23 meant.

24 **§ 3083.640. Priority of site improvement lien**

25 3083.640. Except as provided in Section 3139 (payment bond), a lien provided  
26 for in Section 3083.230 (site improvement lien) is superior to:

27 (a) A mortgage, deed of trust, or other encumbrance that (1) attaches after  
28 commencement of the site improvement, or (2) was unrecorded at the  
29 commencement of the site improvement and of which the claimant had no notice.

30 (b) A mortgage, deed of trust, or other encumbrance that was recorded before  
31 commencement of the site improvement, if given for the sole or primary purpose  
32 of financing the site improvement. This subdivision does not apply if the loan  
33 proceeds are, in good faith, placed in the control of the lender under a binding  
34 agreement with the borrower to the effect that (1) the proceeds are to be applied to  
35 the payment of claimants and (2) no portion of the proceeds will be paid to the  
36 borrower in the absence of satisfactory evidence that all claims have been paid or  
37 that the time for recording a claim of lien has expired and no claim of lien has  
38 been recorded.

39 **Comment.** Section 3083.640 continues former Section 3137 without substantive change.

40 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.170 (“site  
41 improvement” defined).

1 ☞ **Staff Note.** The introductory clause refers to the effect of a payment bond. We will review  
2 payment bond provisions later in this project.

3 **§ 3083.650. Amount of recovery**

4 3083.650. An original contractor or a subcontractor may enforce a lien only for  
5 the amount due under the terms of the contract after deducting all claims of other  
6 claimants for labor, service, equipment, and material provided and embraced  
7 within the contract.

8 **Comment.** Section 3083.650 continues former Section 3140 without substantive change.

9 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
10 material” defined), 3082.060 (“lien” defined), 3082.090 “original contractor” defined), 3082.180  
11 (“subcontractor” defined).

12 **Article 7. Enforcement of Lien**

13 **§ 3083.710. Time for commencement of enforcement action**

14 3083.710. (a) Except as provided in subdivision (b), the claimant shall  
15 commence an action to enforce a lien within 90 days after recordation of the claim  
16 of lien.

17 (b) If the claimant extends credit, and notice of the fact and terms of the  
18 extension of credit is recorded within 90 days after recordation of the claim of lien,  
19 the claimant shall commence an action to enforce the lien within 90 days after the  
20 expiration of the credit, but in no case later than one year after the date of  
21 completion of the work of improvement.

22 (c) If an action to enforce a lien is not commenced within the time provided in  
23 this section, the lien expires and is unenforceable.

24 **Comment.** Section 3083.710 restates former Section 3144.

25 For the date of completion of a work of improvement, see Section 3089.410.

26 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.190 (“work  
27 of improvement” defined).

28 **§ 3083.720. Bona fide purchaser or encumbrancer**

29 3083.720. The rights of a purchaser or encumbrancer for value and in good faith  
30 acquired after expiration of the time within which to commence an action to  
31 enforce a lien under Section 3083.710 are not affected by an extension of credit, or  
32 by an extension of the lien or of the time to enforce the lien, unless evidenced by a  
33 notice or agreement recorded before the acquisition of the rights by the purchaser  
34 or encumbrancer.

35 **Comment.** Section 3083.720 restates former Section 3145 without substantive change.

36 See also Section 3082.060 (“lien” defined).

1    **§ 3083.730. Lis pendens**

2       3083.730. After commencement of an action to enforce a lien, the claimant may  
3 record a notice of the pendency of action under Title 4.5 (commencing with  
4 Section 405) of Part 2 of the Code of Civil Procedure.

5       **Comment.** Section 3083.730 restates former Section 3146 without substantive change. The  
6 reference to the lis pendens statute has been corrected, to reflect the repeal of Code of Civil  
7 Procedure 409. See 1992 Cal. Stat. ch. 883, § 1. See also Section 3082.230 (rules of practice).

8       The second sentence of former Section 3146 is omitted because it is unnecessary. See Code  
9 Civ. Proc. § 405.24 (constructive notice).

10       See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

11       ☞ **Staff Note.** It is arguable that this section can be omitted altogether in reliance on Section  
12 3082.230 (rules of practice). On the other hand, Code of Civil Procedure Section 405.4 now limits  
13 the lis pendens statute to actions that affect title to, or the right to possession of, property. The  
14 new language probably covers a lien enforcement action, but there is not yet case law on the  
15 point. It probably doesn’t hurt to include express language here.

16    **§ 3083.740. Dismissal for lack of prosecution**

17       3083.740. Notwithstanding Section 583.420 of the Code of Civil Procedure, the  
18 court may dismiss an action to enforce a lien that is not brought to trial within two  
19 years after commencement.

20       **Comment.** Section 3083.740 continues former Section 3147 without substantive change. The  
21 cross-reference to the Code of Civil Procedure is added to make clear that this section modifies  
22 the general three-year period for discretionary dismissal. See also Section 3082.230 (rules of  
23 practice).

24       See also Section 3082.060 (“lien” defined).

25    **§ 3083.750. Dismissal of action or judgment of no lien**

26       3083.750. Dismissal of an action to enforce a lien, unless the dismissal is  
27 expressly stated to be without prejudice, or a judgment that no lien exists, is  
28 equivalent to cancellation of the lien and its removal from the record.

29       **Comment.** Subdivision (a) of Section 3083.750 continues former Section 3148 without  
30 substantive change.

31       See also Section 3082.060 (“lien” defined).

32    **§ 3083.760. Costs**

33       3083.760. In addition to any other costs allowed by law, the court in an action to  
34 enforce a lien shall allow as costs to each claimant whose lien is established the  
35 amount paid to verify and record the claim of lien, whether the claimant is a  
36 plaintiff or defendant.

37       **Comment.** Section 3083.760 continues former Section 3150 without substantive change.

38       See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

39    **§ 3083.770. Deficiency**

40       3083.770. If there is a deficiency of proceeds from the sale of property on a  
41 judgment for enforcement of a lien, a deficiency judgment may be entered against

1 a party personally liable for the deficiency in same the manner and with the same  
2 effect as in an action to foreclose a mortgage.

3 **Comment.** Section 3083.770 restates former Section 3151 without substantive change.  
4 See also Section 3082.060 (“lien” defined).

5 **§ 3083.780. Personal liability**

6 3083.780. This chapter does not affect any of the following rights of a claimant:

7 (a) The right to maintain a personal action to recover a debt against the person  
8 liable, either in a separate action or in an action to enforce a lien.

9 (b) The right to a writ of attachment. In an application for a writ of attachment,  
10 the claimant shall refer to this section. The claimant’s recording of a claim of lien  
11 does not affect the right to a writ of attachment.

12 (c) The right to enforce a judgment. A judgment obtained by the claimant in a  
13 personal action described in subdivision (a) does not impair or merge the  
14 claimant’s lien, but any amount collected on the judgment shall be credited on the  
15 amount of the lien.

16 **Comment.** Section 3083.780 restates former Section 3152 without substantive change. The  
17 reference in the introductory portion of the section to “this title” has been changed to “this  
18 chapter” consistent with the scope of the chapter.

19 For provisions relating to attachment, see Code Civ. Proc. § 481.010 *et seq.* For provisions  
20 relating to enforcement of a money judgment, see Code Civ. Proc. § 681.010 *et seq.*

21 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.110  
22 (“person” defined).

23 **§ 3083.790. Enforcement of lien of contractor**

24 3083.790. In an action to enforce a lien for labor, service, equipment, or material  
25 provided to a contractor:

26 (a) The contractor shall defend the action at the contractor’s own expense.  
27 During the pendency of the action the owner may withhold from the original  
28 contractor the amount claimed in the action.

29 (b) If the judgment in the action is against the owner or the owner’s property, the  
30 owner may deduct the amount of the judgment and costs from any amount owed to  
31 the original contractor. If the amount of the judgment and costs exceeds the  
32 amount owed to the original contractor, or if the owner has settled with the  
33 original contractor in full, the owner may recover from the contractor, or the  
34 sureties on a bond given by the contractor for faithful performance of the contract,  
35 the amount of the judgment and costs that exceed the contract price and for which  
36 the contractor was originally liable.

37 **Comment.** Section 3083.790 restates former Section 3153 without substantive change.

38 See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien”  
39 defined), 3082.090 “original contractor” defined), 3082.100 (“owner” defined).

40 ☞ **Staff Note.** Should this section be limited to an action for labor, service, equipment, or  
41 material provided to an original contractor? Given the fact that the owner can be held liable for  
42 amounts in excess of the original contract, the section might well be applied to an action for labor,

1 service, equipment, or material provided to a subcontractor. The term “contractor” could be  
2 defined to mean an original contractor or a subcontractor.

3 Article 8. Release Order

4 **§ 3083.810. Petition for release order**

5 3083.810. (a) If the claimant does not commence an action to enforce a lien  
6 within the time provided in Section 3083.710, the owner of property subject to the  
7 lien may petition the court for an order to release the property from the lien.

8 (b) This article does not bar any other cause of action or claim for relief by the  
9 owner of the property, nor does a release order bar any other cause of action or  
10 claim for relief by the claimant, other than an action to enforce the lien. However,  
11 another action or claim for relief may not be joined with a petition under this  
12 article.

13 (c) Notwithstanding Section 3082.230 (rules of practice), Chapter 2.5  
14 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil  
15 Procedure does not apply to a proceeding under this article.

16 **Comment.** Subdivision (a) of Section 3083.810 continues former Section 3154(a) without  
17 substantive change. Subdivision (b) continues former Section 3154(h) without substantive  
18 change. Subdivision (c) continues former Section 3154(i) without substantive change. As used in  
19 this section, the owner of property includes the owner of an interest in the property. See Section  
20 3082.100 (“owner” defined).

21 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

22 **§ 3083.820. Contents of petition**

23 3083.820. A petition for a release order shall be verified and shall allege all of  
24 the following:

25 (a) The date of recordation of the claim of lien. A certified copy of the claim of  
26 lien shall be attached to the petition.

27 (b) The county in which the claim of lien is recorded.

28 (c) The book and page of the place in the official records where the claim of lien  
29 is recorded.

30 (d) The legal description of the property subject to the lien.

31 (e) That no action to enforce the lien is pending, no extension of credit has been  
32 recorded within the time required by Section 3083.710, and the time for  
33 commencement of an action to enforce the lien has expired.

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

36 (g) That the owner of the property has not filed for relief under any law  
37 governing bankruptcy, and there exists no other restraint to prevent the claimant  
38 from commencing an action to enforce the lien.

39 **Comment.** Subdivisions (a) and (d)-(g) of Section 3083.820 continues subdivision (b) of  
40 former Section 3154 without substantive change. As used in this section, the owner of property  
41 includes the owner of an interest in the property. See Section 3082.100 (“owner” defined).

1 Subdivisions (b) and (c) are new. They are intended to facilitate the court's order under Section  
2 3083.840 (hearing and order).

3 See also Sections 3082.010 ("claimant" defined), 3082.060 ("lien" defined).

4 ☞ **Staff Note.** We have expanded the contents of the petition consistent with the contents of the  
5 court's order in Section 3083.840.

6 **§ 3083.830. Notice of hearing**

7 3083.830. (a) On the filing of a petition for a release order, the clerk shall set a  
8 hearing date. The date shall be not more than 30 days after the filing of the  
9 petition. The court may continue the hearing beyond the 30-day period on a  
10 showing of good cause.

11 (b) The petitioner shall serve a copy of the petition and notice of hearing on the  
12 claimant at least 10 days before the hearing. Service shall be made in the same  
13 manner as service of summons, or by mail addressed to the claimant at the  
14 claimant's address as shown in any of the following:

- 15 (1) The preliminary notice (private work) given by the claimant.
- 16 (2) The records of the Contractors' State License Board.
- 17 (3) The contract on which the lien is based.
- 18 (4) The claim of lien.

19 (c) Notwithstanding Section 3082.240, when service is made by mail, service is  
20 complete on the fifth day following deposit of the petition and notice in the mail.

21 **Comment.** Section 3083.830 continues subdivisions (c), (d), and the first sentence of (e) of  
22 former Section 3154 without substantive change. The reference to "if there is no clerk, the judge"  
23 has been deleted. All courts now have a clerk. See also Section 3082.220 (proper court).

24 For service and proof of service by mail, see. Section 3082.240 (mailed notice). This expands  
25 the permissible methods of mailing. However, the time when service by mail is complete under  
26 this section is governed by subdivision (c) and not by Section 3082.240.

27 See also Sections 3082.010 ("claimant" defined), 3082.060 ("lien" defined), 3082.120  
28 ("preliminary notice (private work)" defined).

29 **§ 3083.840. Hearing and order**

30 3083.840. (a) At the hearing both the petition and the issue of compliance with  
31 the service requirements of this article are deemed controverted by the claimant.  
32 The petitioner has the burden of proof that service was made in compliance with  
33 this article.

34 (b) If judgment is in favor of the petitioner, the court shall order release of the  
35 property from the lien. The release order shall state:

- 36 (1) The date of recordation of the claim of lien.
- 37 (2) The county in which the claim of lien is recorded.
- 38 (3) The book and page of the place in the official records where the claim of lien  
39 is recorded.
- 40 (4) The legal description of the property.

41 (c) The prevailing party is entitled to attorneys fees not to exceed two thousand  
42 dollars (\$2,000).

1       **Comment.** Subdivision (a) of Section 3083.840 continues the last sentence of former Section  
2 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change.  
3 Subdivision (b) continues former Section 3154(f) without substantive change. The reference to  
4 the city where the claim of lien is recorded is omitted as superfluous. Subdivision (c) continues  
5 former Section 3154(g) without substantive change.

6       See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

7       **§ 3083.850. Release of property from lien**

8       3083.850. On recordation of a certified copy of a release order, the property  
9 described in the order is released from the lien.

10       **Comment.** Section 3083.850 continues the second sentence of former Section 3154(f)(4)  
11 without substantive change.

12       See also Section 3082.060 (“lien” defined).

13                               CHAPTER 3. STOP NOTICE FOR PRIVATE WORK

14   [Reserved]

15                               CHAPTER 4. STOP NOTICE FOR PUBLIC WORK

16   [Reserved]

17                               CHAPTER 5. GENERAL PROVISIONS RELATING TO BONDS

18   [Reserved]

19                               CHAPTER 6. PAYMENT BOND FOR PRIVATE WORK

20   [Reserved]

21                               CHAPTER 7. PAYMENT BOND FOR PUBLIC WORK

22   [Reserved]

23                               CHAPTER 8. MISCELLANEOUS PROVISIONS

24                               Article 1. Preliminary Notice of Private Work

25       **§ 3089.110. Preliminary notice prerequisite to remedies**

26       3089.110. (a) Except as provided in subdivision (b), a preliminary notice (private  
27 work) is a necessary prerequisite to the validity of a lien, stop notice, or payment  
28 bond claim with respect to a private work.

29       (b) A preliminary notice (private work) is not required of any of the following  
30 claimants:

31       (1) An original contractor.

32       (2) A laborer or laborer’s compensation fund.



1 loss of all or part of your property, even though you have paid your contractor in  
2 full. You may wish to protect yourself against this by (1) requiring your contractor  
3 to provide a signed release by the person or firm that has given you this notice  
4 before making payment to your contractor, or (2) any other method that is  
5 appropriate under the circumstances.

6 If you record a notice of completion or notice of cessation of your construction  
7 project, you must within 10 days after recording notify your contractor and the  
8 person or firm that has given you this notice. Notification must be by registered  
9 mail, certified mail, or first-class mail evidenced by a certificate of mailing, return  
10 receipt requested. Failure to give the notification will extend the deadlines to  
11 record a claim of lien. You are not required to give the notification if you are a  
12 residential homeowner of a dwelling containing four or fewer units,

13 (b) If a preliminary notice (private work) is given by a subcontractor that has not  
14 paid all compensation due to a laborer or laborer's compensation fund, the notice  
15 shall contain the name and address of the laborer and any laborer's compensation  
16 fund to which payments are due.

17 (c) If an invoice for material or certified payroll contains the information  
18 required by this section, a copy of the invoice or payroll, given in the manner  
19 provided by this article for giving of notice, is sufficient.

20 **Comment.** Section 3089.130 continues the substance of former Section 3097(c)(1)-(6) and the  
21 unnumbered paragraph following paragraph (6) without substantive change. The reference to an  
22 "express trust fund" has been replaced by the defined term, "laborer's compensation fund," See  
23 Section 3082.050 ("laborer's compensation fund" defined). It also continues the requirement of  
24 former Section 3097(a) that the preliminary notice be written.

25 See also Sections 3082.030 ("labor, service, equipment, or material" defined), 3082.040  
26 ("laborer" defined), 3082.060 ("lien" defined), 3082.110 ("person" defined), 3082.160 ("site"  
27 defined), 3082.180 ("subcontractor" defined).

#### 28 **§ 3089.140. Effect of preliminary notice**

29 3089.140. (a) A claimant may record a claim of lien, file a stop notice, or assert a  
30 claim against a payment bond only for labor, service, equipment, or material  
31 provided within 20 days before giving a preliminary notice (private work) and at  
32 any time thereafter.

33 (b) Notwithstanding subdivision (a), a certificated architect, registered engineer,  
34 or licensed land surveyor may record a claim of lien, file a stop notice, or assert a  
35 claim against a payment bond for architectural, engineering, or surveying services  
36 provided for the design of the work of improvement if the claimant gives a  
37 preliminary notice (private work) not later than 20 days after the work of  
38 improvement has commenced.

39 **Comment.** Subdivision (a) of Section 3089.140 supersedes former Section 3097(d). The  
40 provision is simplified so that it refers only to the effect of giving the preliminary notice.

41 Subdivision (b) restates the unnumbered paragraph preceding former Section 3097(d).

42 See also Sections 3082.010 ("claimant" defined), 3082.030 ("labor, service, equipment, or  
43 material" defined), 3082.060 ("lien" defined), 3082.190 ("work of improvement" defined).

1 ☞ **Staff Note.** We have not yet integrated the Design Professionals' Lien (Civ. Code §§ 3081.1-  
2 3081.10) with this material.

3 **§ 3089.150. Giving preliminary notice**

4 3089.150. (a) Subject to subdivision (b), a preliminary notice (private work)  
5 shall be given to the person to be notified by any of the following methods:

6 (1) Delivering it personally.

7 (2) Leaving it at the person's address of residence or place of business with a  
8 person in charge.

9 (3) Mailing it to the person addressed to (i) the person's residence or place of  
10 business, (ii) the address shown by the building permit on file with the authority  
11 issuing a building permit for the work of improvement, or (iii) an address recorded  
12 under Section 3082.330 (construction trust deed).

13 (b) If the person to be notified does not reside in the state, a preliminary notice  
14 (private work) shall be given by any method provided in subdivision (a) or, if the  
15 person cannot be notified by any method provided in subdivision (a), by mail  
16 addressed to the construction lender or the original contractor.

17 (c) Proof that preliminary notice was given to a person in the manner required by  
18 this section shall be made by the proof of notice affidavit described in subdivision  
19 (d) and, if given by mail, shall be accompanied by proof in the manner provided in  
20 Section 3082.240.

21 (d) A proof of notice affidavit shall show all of the following:

22 (1) The time, place, and manner of notice and facts showing that notice was  
23 given in the manner required by this section.

24 (2) The name and address of the person to which the preliminary notice was  
25 given, and, if appropriate, the title or capacity in which the person was given  
26 notice.

27 **Comment.** Subdivisions (a) and (b) of Section 3089.150 continue former Section 3097(f)  
28 without substantive change. Service of notice terminology has been changed to giving of notice  
29 terminology.

30 Subdivisions (c) and (d) continue former Section 3097.1 without substantive change. Service of  
31 notice terminology has been changed to giving of notice terminology.

32 For service and proof of service by mail, see. Section 3082.240 (mailed notice). This expands  
33 the permissible methods of mailing.

34 See also Sections 3082.020 ("construction lender" defined), 3082.090 "original contractor"  
35 defined), 3082.110 ("person" defined), 3082.190 ("work of improvement" defined).

36 **§ 3089.160. Coverage of preliminary notice**

37 3089.160. (a) Except as provided in subdivision (b), a claimant need give only  
38 one preliminary notice (private work) to each person to which notice must be  
39 given under this article with respect to all labor, service, equipment, and material  
40 provided by the claimant for a work of improvement.

41 (b) If a claimant provides labor, service, equipment, or material under contracts  
42 with more than one subcontractor, the claimant shall give a separate preliminary

1 notice with respect to labor, service, equipment, or material provided to each  
2 contractor.

3 (c) A preliminary notice that contains a general description of labor, service,  
4 equipment, or material provided by the claimant before the date of the notice also  
5 covers labor, service, equipment, or material provided by the claimant after the  
6 date of the notice whether or not they are within the scope of the general  
7 description contained in the notice

8 **Comment.** Section 3089.160 restates former Section 3097(g) without substantive change.

9 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
10 material” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined), 3082.190  
11 (“work of improvement” defined).

12 ☞ **Staff Note.** It is unclear whether the references to contractor and subcontractor in subdivision  
13 (b) are proper.

14 **§ 3089.170. Original contractor’s duty to provide information**

15 3089.170. The original contractor shall make available to any person seeking to  
16 give a preliminary notice (private work) the following information:

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

18 (b) The name and address of the construction lender, if any.

19 **Comment.** Section 3089.170 continues without substantive change the parts of former Section  
20 3097(l)-(m) relating to the original contractor’s duty to provide information. For provisions  
21 concerning the content of contracts, see Section 3082.310 (contract forms).

22 See also Sections 14 (singular includes plural), 3082.020 (“construction lender” defined),  
23 3082.090 (“original contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person”  
24 defined).

25 **§ 3089.180. Owner’s duty to give notice of construction loan**

26 3089.180. If a construction loan is obtained after commencement of work, the  
27 owner shall provide the name and address of the construction lender to each  
28 person that has given the owner a preliminary notice (private work).

29 **Comment.** Section 3089.180 continues former Section 3097(n) without substantive change.  
30 The reference to commencement of construction has been changed to commencement of work for  
31 consistency with the remainder of this title.

32 See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),  
33 3082.110 (“person” defined).

34 **§ 3089.190. Filing notice with county recorder**

35 3089.190. (a) A person that gives a preliminary notice (private work) under this  
36 article may file the notice with the county recorder. The filing of a preliminary  
37 notice with the county recorder is for the limited purpose of facilitating the mailing  
38 of notice by the county recorder under Section 3089.460 that a notice of  
39 completion or notice of cessation has been recorded.

40 (b) The filed notice is not a recordable instrument and shall not be entered into  
41 the official records of the county that by law impart constructive notice.  
42 Notwithstanding any other provision of law, the index maintained by the recorder

1 of filed preliminary notices shall be separate and distinct from indexes maintained  
2 by the county recorder of official records of the county that by law impart  
3 constructive notice. The filing of a preliminary notice with the county recorder  
4 does not give actual or constructive notice to any person of the existence or  
5 contents of the preliminary notice nor to any duty of inquiry by any person as to  
6 the existence or contents of the preliminary notice.

7 (c) The county recorder may cause to be destroyed all documents filed under this  
8 section two years after the date of filing.

9 **Comment.** Section 3089.190 continues provisions of former Section 3097(o) relating to filing  
10 the preliminary notice with the county recorder. For the provisions of former Section 3097(o)  
11 relating to notice by the county recorder to persons who have filed a preliminary notice, see  
12 Section 3089.460.

13 The provision for the contents of the filed preliminary notice in former Section 3097(o)(1) is  
14 omitted in reliance on the provision governing the contents of the preliminary notice generally.  
15 Section 3089.130. The 1988 operative date provision in the first sentence of former Section  
16 3097(o)(4) is omitted as obsolete.

17 See also Section 3082.110 (“person” defined).

#### 18 § 3089.200. Waiver void

19 3089.200. An agreement made or entered into by an owner, whereby the owner  
20 agrees to waive the rights conferred on the owner by this article is void and  
21 unenforceable.

22 **Comment.** Section 3089.200 continues former Section 3097(e) without substantive change.  
23 See also Section 3082.100 (“owner” defined).

#### 24 § 3089.210. Transitional provisions

25 3089.210. (a) The inclusion of the language added to paragraph (5) of  
26 subdivision (c) of former Section 3097 by Chapter 795 of the Statutes of 1999  
27 does not affect the effectiveness of a preliminary notice given on or after January  
28 1, 2000, and before the operative date of the amendments of former Section 3097  
29 enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise  
30 meets the requirements of that subdivision.

31 (b) A preliminary notice given on or after January 1, 2000, and before the  
32 operative date of the amendments to former Section 3097 enacted at the 2000  
33 portion of the 1999-2000 Regular Session, is not ineffective because of failure to  
34 include the language added to paragraph (5) of subdivision (c) by Chapter 795 of  
35 the Statutes of 1999, if the notice otherwise complied with that subdivision.

36 (c) The failure to provide an affidavit form or notice of rights, or both, under the  
37 requirements of Chapter 795 of the Statutes of 1999, does not affect the validity of  
38 a preliminary notice under this article.

39 **Comment.** Section 3089.210 continues former Section 3097(p)(2) without substantive change.  
40 The transitional provision of former Section 3097(p)(1) is not continued due to lapse of time.

41 ☞ **Staff Note.** It is likely that these provisions will not have continued relevance by the time any  
42 Commission-proposed revisions would become effective — July 1, 2007, at the earliest.



1    **§ 3089.420. Notice of cessation**

2       3089.420. (a) An owner may record a notice of cessation. A notice of cessation  
3 is not effective unless there has been a continuous cessation of labor for at least 30  
4 days on the date of recordation.

5       (b) A notice of cessation shall be in writing, signed and verified by the owner.  
6 The notice shall contain all of the following information:

7       (1) The date on or about which labor ceased, and that cessation of labor has been  
8 continuous until recordation of the notice.

9       (2) The name and address of the owner and the nature of the owner’s interest.

10       (3) A description of the site sufficient for identification, including the street  
11 address of the site, if any. If a sufficient legal description of the site is given, the  
12 effectiveness of the notice is not affected by the fact that the street address is  
13 erroneous or is omitted.

14       (4) The name of the original contractor, if any, for the work of improvement.

15       **Comment.** Section 3089.420 restates former Section 3092 without substantive change. As used  
16 in this section, the owner is the person who causes a building, improvement, or structure, to be  
17 constructed, altered, or repaired (or the owner’s successor in interest at the date of a notice of  
18 cessation from labor is recorded) whether the interest or estate of the owner is in fee, as vendee  
19 under a contract of purchase, as lessee, or other interest or estate less than the fee. A notice of  
20 cessation may be executed by the owner’s agent or by a cotenant on behalf of other cotenants. See  
21 Sections 3082.100 (“owner” defined), 3082.260 (acts of co-owner). A notice of cessation is  
22 recorded when it is filed for record. Section 3082.250 (filing and recording of papers).

23       See also Sections 3082.090 (“original contractor” defined), 3082.160 (“site” defined), 3082.190  
24 (“work of improvement” defined).

25    **§ 3089.430. Notice of completion**

26       3089.430. (a) An owner may record a notice of completion. A notice of  
27 completion is not effective unless recorded within 10 days after the date of  
28 completion.

29       (b) A notice of completion shall be in writing, signed and verified by the owner.  
30 The notice shall contain all of the following information:

31       (1) The date of completion, other than a cessation of labor. An erroneous  
32 statement of the date of completion does not affect the effectiveness of the notice  
33 if the true date of completion is within 10 days preceding the date of recordation of  
34 the notice.

35       (2) The name and address of the owner and the nature of the owner’s interest.

36       (3) A description of the site sufficient for identification, containing the street  
37 address of the site, if any. If a sufficient legal description of the site is given, the  
38 effectiveness of the notice is not affected by the fact that the street address is  
39 erroneous or is omitted.

40       (4) The name of the original contractor, if any, for the work of improvement or,  
41 if the notice is given only of completion of a contract for a particular portion of the  
42 work of improvement as provided in Section 3089.440, the name of the original  
43 contractor under that contract and a general statement of the kind of labor, service,  
44 equipment, or material provided under the contract.

1 (5) If signed by the owner’s successor in interest, the names and addresses of  
2 successor’s transferor.

3 **Comment.** Section 3089.430 restates former Section 3093 without substantive change. As used  
4 in this section, the owner is the person who causes a building, improvement, or structure, to be  
5 constructed, altered, or repaired (or the owner’s successor in interest at the date of a notice of  
6 cessation from labor is recorded) whether the interest or estate of the owner is in fee, as vendee  
7 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a  
8 cotenant. A notice of completion may be signed and verified by the owner’s agent. See Sections  
9 3082.100 (“owner” defined), 3082.260 (acts of co-owner). A notice of completion is recorded in  
10 the office of the county recorder of the county in which the site or part of it is situated. Section  
11 3082.250 (filing and recording of papers).

12 The reference to a successor’s “transferors” in subdivision (b)(5) has been omitted. See Section  
13 14 (singular includes plural).

14 For “completion” of a work of improvement, see Section 3089.410. In the case of completion  
15 deemed to result from a cessation of labor, the owner may file for record a notice of cessation.  
16 See Section 3089.420.

17 See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.090  
18 “original contractor” defined), 3082.160 (“site” defined), 3082.190 (“work of improvement”  
19 defined), Section 3082.250 (filing and recording of papers).

20 **§ 3089.440. Notice of completion of contract for portion of work of improvement**

21 3089.440. If a work of improvement is made under two or more original  
22 contracts, each covering a portion of the work of improvement:

23 (a) The owner may record a notice of completion of a contract for a portion of  
24 the work of improvement. The notice of completion is not effective unless  
25 recorded within 10 days after the date of completion of the contract. On  
26 recordation of the notice of completion, for the purpose of Sections 3083.320 and  
27 3083.330 (recordation of claim of lien) an original contractor is deemed to have  
28 completed the contract for which the notice of completion is recorded and a  
29 claimant other than an original contractor is deemed to have ceased providing  
30 labor, service, equipment, or material.

31 (b) If the owner does not record a notice of completion under this section, the  
32 period for recording a claim of lien is that provided in Sections 3083.320 and  
33 3083.330.

34 **Comment.** Section 3089.440 continues the substance of former Section 3117.

35 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or  
36 material” defined), 3082.080 (“original contract” defined), 3082.090 (“original contractor”  
37 defined), 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

38 ☞ **Staff Note.** We have deleted the duplicative rules governing the time for recording a claim of  
39 lien after a notice of completion for a portion of a work of improvement. The general rules  
40 governing the time for recording do not distinguish among types of notice of completion, and  
41 appear to be satisfactory for purposes of this section, with the clarification set out in subdivision  
42 (a). See Sections 3083.320 and 3083.330 (recordation of claim of lien).

1    **§ 3089.450. Notice of recordation by owner**

2    3089.450. (a) An owner of a private work that records a notice of completion or  
3    notice of cessation shall within 10 days after recordation give notice of the  
4    recordation by mail to all of the following persons:

5    (1) An original contractor.

6    (2) A claimant that has given the owner a preliminary notice (private work).

7    (b) Failure of the owner to give notice to a person under subdivision (a) extends  
8    the time in which that person may record a claim of lien or file a stop notice to 90  
9    days after the date of recordation of the notice of completion or notice of  
10   cessation. The extension of time is the sole liability of the owner for failure to give  
11   notice to a person under subdivision (a).

12   (c) This section does not apply to any of the following owners:

13   (1) A person that occupies the property as a personal residence, if the dwelling  
14   contains four or fewer residential units.

15   (2) A person that has a security interest in the property.

16   (3) A person that obtains an interest in the property pursuant to a transfer  
17   described in subdivision (b), (c), or (d) of Section 1102.2.

18    **Comment.** Section 3089.450 restates former Section 3259.5 without substantive change. As  
19    used in this section “owner” includes a person who has an interest in property (or the person’s  
20    successor in interest on the date a notice of completion or notice of cessation from labor is  
21    recorded) that causes a building, improvement, or structure, to be constructed, altered, or repaired  
22    on the property), and includes a cotenant. See Section 3082.100 (“owner” defined). A notice is  
23    recorded when it is filed for record. Section 3082.250 (filing and recording of papers). The  
24    references to a “mechanic’s” lien in subdivision (a) have been deleted. Subdivision (a) is intended  
25    to apply to a site improvement lien as well. For service and proof of service by mail, see. Section  
26    3082.240 (mailed notice).

27    See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.090 “original  
28    contractor” defined), 3082.110 (“person” defined), 3082.120 (“preliminary notice (private work)”  
29    defined), 3082.130 (“private work” defined).

30    **§ 3089.460. Notice of recordation by county recorder**

31    3089.460. (a) On acceptance for recording of a notice of completion or notice of  
32    cessation, the county recorder shall mail to persons that have filed a preliminary  
33    notice with the county recorder notification that a notice of completion or notice of  
34    cessation has been recorded with respect to the property, and shall affix the date of  
35    recordation of the notice of completion or notice of cessation.

36    (b) Section 3082.240 does not govern mailed notice under this section. The  
37    failure of the county recorder to mail the notification to a person that filed a  
38    preliminary notice with the county recorder, or the failure of a person to receive  
39    the notification or to receive complete notification, does not affect the period  
40    within which a claim of lien is required to be recorded. However, the county  
41    recorder shall make a good faith effort to mail notification to a person that filed a  
42    preliminary notice and to do so within five days after recordation of a notice of  
43    completion or notice of cessation.



1 **§ 3089.640. Accord and satisfaction or settlement agreement not affected**

2 3089.640. This article does not affect the enforceability of either an accord and  
3 satisfaction concerning a bona fide dispute or an agreement made in settlement of  
4 an action pending in court if the accord and satisfaction or agreement and  
5 settlement make specific reference to the lien, stop notice, or bond claim.

6 **Comment.** Section 3089.640 continues former Section 3262(c) without substantive change.  
7 See also Section 3082.060 (“lien” defined).

8 **§ 3089.650. Conditional waiver and release on progress payment**

9 3089.650. If a claimant is required to execute a waiver and release in exchange  
10 for, or in order to induce the payment of, a progress payment and the claimant is  
11 not, in fact, paid in exchange for the waiver and release or a single payee check or  
12 joint payee check is given in exchange for the waiver and release, the waiver and  
13 release shall be in substantially the following form:

14 **CONDITIONAL WAIVER AND RELEASE ON**  
15 **PROGRESS PAYMENT**

16 On receipt by the undersigned of a check from

17 \_\_\_\_\_  
18 (Maker of Check)

19 in the sum of \$ \_\_\_\_\_  
20 (Amount of Check)

21 payable to \_\_\_\_\_  
22 (Payee or Payees of Check)

23 and when the check has been properly endorsed and has  
24 been paid by the financial institution on which it is drawn,  
25 this document shall become effective to release any lien,  
26 stop notice, or bond right the undersigned has on the job of

27 \_\_\_\_\_  
28 (Owner)

29 located at \_\_\_\_\_  
30 (Job Description)

31 to the following extent. This release covers a progress  
32 payment for labor, service, equipment, or material provided  
33 to \_\_\_\_\_

34 (Your Customer)

35 through \_\_\_\_\_ only and  
36 (Date)

37 does not cover any retentions retained before or after the  
38 release date; extras provided before the release date for  
39 which payment has not been received; extras or items  
40 provided after the release date. Rights based on work  
41 performed or items provided under a written change order  
42 which has been fully executed by the parties before the  
43 release date are covered by this release unless specifically  
44 reserved by the claimant in this release. This release of any  
45 lien, stop notice, or bond right shall not otherwise affect the  
46 contract rights of the parties, including rights between

1 parties to the contract based on a rescission, abandonment,  
2 or breach of the contract, or the right of the undersigned to  
3 recover compensation for provided labor, service,  
4 equipment, or material covered by this release if that  
5 provided labor, service, equipment, or material was not  
6 compensated by the progress payment. Before any recipient  
7 of this document relies on it, the recipient should verify  
8 evidence of payment to the undersigned.

9 Dated: \_\_\_\_\_  
10 (Company Name)  
11 By \_\_\_\_\_  
12 (Title)

13 **Comment.** Section 3089.650 continues former Section 3262(d)(1) without substantive change.  
14 The references to a “mechanic’s” lien have been deleted from this section; it applies to a site  
15 improvement lien as well.

16 See also Section 3082.010 (“claimant” defined).

17 **§ 3089.660. Unconditional waiver and release on progress payment**

18 3089.660. (a) If the claimant is required to execute a waiver and release in  
19 exchange for, or in order to induce payment of, a progress payment and the  
20 claimant asserts in the waiver it has, in fact, been paid the progress payment, the  
21 waiver and release shall be in substantially the following form:

22 UNCONDITIONAL WAIVER AND RELEASE ON  
23 PROGRESS PAYMENT

24 The undersigned has been paid and has received a  
25 progress payment in the sum of \$\_\_\_\_\_ for labor, service,

26 equipment, or material provided to

27 \_\_\_\_\_  
28 (Your Customer)

29 on the job of \_\_\_\_\_  
30 (Owner)

31 located at \_\_\_\_\_  
32 (Job Description)

33 and does hereby release any lien, stop notice, or bond right  
34 that the undersigned has on the above referenced job to the  
35 following extent. This release covers a progress payment  
36 for labor, service, equipment, or material provided to

37 \_\_\_\_\_ through  
38 (Your Customer)

39 \_\_\_\_\_ only and does not cover  
40 (Date)

41 any retentions retained before or after the release date;  
42 extras provided before the release date for which payment  
43 has not been received; extras or items provided after the  
44 release date. Rights based on work performed or items

1 provided under a written change order which has been fully  
2 executed by the parties before the release date are covered  
3 by this release unless specifically reserved by the claimant  
4 in this release. This release of any lien, stop notice, or bond  
5 right shall not otherwise affect the contract rights of the  
6 parties, including rights between parties to the contract  
7 based on a rescission, abandonment, or breach of the  
8 contract, or the right of the undersigned to recover  
9 compensation for provided labor, service, equipment, or  
10 material covered by this release if that provided labor,  
11 service, equipment, or material was not compensated by the  
12 progress payment.

13 Dated: \_\_\_\_\_  
14 (Company Name)  
15 By \_\_\_\_\_  
16 (Title)

17 (b) Each unconditional waiver under this section shall contain the following  
18 language, in at least as large a type as the largest type otherwise on the document:

19 NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY  
20 AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE  
21 RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU  
22 SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN  
23 PAID, USE A CONDITIONAL RELEASE FORM.

24 **Comment.** Section 3089.660 continues former Section 3262(d)(2) without substantive change.  
25 The references to a “mechanic’s” lien have been deleted from this section; it applies to a site  
26 improvement lien as well.

27 See also Section 3082.010 (“claimant” defined).

28 **§ 3089.670. Conditional waiver and release on final payment**

29 3089.670. If the claimant is required to execute a waiver and release in exchange  
30 for, or in order to induce the payment of, a final payment and the claimant is not,  
31 in fact, paid in exchange for the waiver and release or a single payee check or joint  
32 payee check is given in exchange for the waiver and release, the waiver and  
33 release shall be in substantially the following form:

34 **CONDITIONAL WAIVER AND RELEASE ON**  
35 **FINAL PAYMENT**

36 On receipt by the undersigned of a check from  
37 \_\_\_\_\_ in the sum of \$\_\_\_\_\_  
38 payable to \_\_\_\_\_ and when the check  
39 has been properly endorsed and has been paid by the  
40 financial institution on which it is drawn, this document  
41 shall become effective to release any lien, stop notice, or  
42 bond right the undersigned has on the job of  
43 \_\_\_\_\_  
44 (Owner)  
45 located at \_\_\_\_\_  
46 (Job Description)

1 This release covers the final payment to the undersigned for  
2 all labor, service, equipment, or material provided on the  
3 job, except for disputed claims for additional work in the  
4 amount of \$\_\_\_\_. Before any recipient of this document  
5 relies on it, the recipient should verify evidence of payment  
6 to the undersigned.

7 Dated: \_\_\_\_\_  
8 (Company Name)  
9 By \_\_\_\_\_  
10 (Title)

11 **Comment.** Section 3089.670 continues former Section 3262(d)(3) without substantive change.  
12 The references to a “mechanic’s” lien have been deleted from this section; it applies to a site  
13 improvement lien as well.

14 See also Section 3082.010 (“claimant” defined).

15 **§ 3089.680. Unconditional waiver and release on final payment**

16 3089.680. (a) If the claimant is required to execute a waiver and release in  
17 exchange for, or in order to induce payment of, a final payment and the claimant  
18 asserts in the waiver it has, in fact, been paid the final payment, the waiver and  
19 release shall be in substantially the following form:

20 UNCONDITIONAL WAIVER AND RELEASE ON  
21 FINAL PAYMENT

22 The undersigned has been paid in full for all labor,  
23 service, equipment or material provided to  
24 \_\_\_\_\_  
25 (Your Customer)

26 on the job of \_\_\_\_\_  
27 (Owner)

28 located at \_\_\_\_\_  
29 (Job Description)

30 and does hereby waive and release any right to a lien, stop  
31 notice, or any right against a labor and material bond on the  
32 job, except for disputed claims for extra work in the amount  
33 of \$\_\_\_\_.

34 Dated: \_\_\_\_\_  
35 (Company Name)  
36 By \_\_\_\_\_  
37 (Title)

38 (b) Each unconditional waiver under this section shall contain the following  
39 language, in at least as large a type as the largest type otherwise on the document:

40 NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY  
41 AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE  
42 RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU  
43 SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN  
44 PAID, USE A CONDITIONAL RELEASE FORM.

- 1     **Comment.** Section 3089.680 continues former Section 3262(d)(4) without substantive change.  
2     The references to a “mechanic’s” lien have been deleted from this section; it applies to a site  
3     improvement lien as well.  
4     See also Section 3082.010 (“claimant” defined).
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