

Memorandum 2005-19

Mechanics Lien Law (Discussion of Issues)

BACKGROUND

The Commission has been engaged in a comprehensive review of the mechanics lien law, at the request of the Assembly Judiciary Committee.

The Commission made an initial effort to resolve the double payment problem under the mechanics lien law. Under the law, a property owner who pays the prime contractor for a work of improvement remains subject to the liens of subcontractors and material suppliers if the prime contractor fails to pay them. The effort to correct this problem failed in the Legislature.

The failure has convinced the Commission that the best we can hope to accomplish in this project is to modernize and clarify the law, without making significant substantive changes. What changes are proposed must be part of a balanced package if they are to succeed in the Legislature.

Consistent with this approach, the Commission is in the process of revamping the mechanics lien law. We have largely completed initial work on the "lien" part of the statute. There are a few outstanding issues, one of which is addressed in this memorandum.

A copy of the lien draft is attached to this memorandum for convenience of reference. However, we do not plan to review or discuss issues in the lien draft at this meeting, unless a Commission member or other interested person wishes to raise an issue.

Remaining to be done are the "stop notice," "payment bond," and "prompt payment" remedies found in the mechanics lien law. This memorandum addresses the payment bond remedy.

A more or less plain English redraft of the existing payment bond statute is set out in the Exhibit to this memorandum. A number of technical issues are raised in staff notes interspersed throughout the draft. A few more substantive issues are addressed in this memorandum. We particularly solicit input of

experts interested in this matter on the technical issues, as well as on the larger issues and on problems in the staff draft generally.

Please note that the numbering of sections in the staff draft is preliminary, intended to facilitate relocation or insertion of provisions in a logical sequence as the draft develops. When we finalize the draft we will need to decide on a permanent location and numbering scheme.

Our objective is to develop a tentative recommendation on the matter, which can be circulated to interested persons and organizations for review and comment. We will take their comments into consideration in preparing a final recommendation for the Governor and Legislature. Our goal is to complete work on this project and have proposed legislation ready for introduction by January 1, 2007.

MECHANICS LIENS

Cancellation of Invalid Lien

A recorded claim of lien may be invalid for a number of reasons, such as (1) the claim is filed with fraudulent intent, (2) the claim is not enforced within the time required by statute, or (3) the claim has been paid. If the lien claimant fails to release an invalid claim of lien, a court procedure is available to obtain an order releasing the property from the claim of lien. Civ. Code § 3154.

A claim of lien is also expunged by operation of law, without the need for a court order, if no enforcement action has been commenced within the statutory time limits. Civ. Code § 3144(b). The Commission has been informed that this is not an efficacious remedy because (1) the commencement of an enforcement action is an off-record event that a title insurer cannot readily determine from inspection of the record, and (2) there is a possibility of an extension of credit that extends enforceability of the lien.

We could address these problems by providing that a lien expires and is unenforceable if no *lis pendens* or extension of credit is recorded within the statutory period for enforcement:

Article 7. Enforcement of Lien

§ 3083.710. Time for commencement of enforcement action

3083.710. (a) ~~Except as provided in subdivision (b), the~~ The claimant shall commence an action to enforce a lien and record

either a notice of the pendency of the action or of an extension of credit under subdivision (b) within 90 days after recordation of the claim of lien. If the claimant does not record either notice of the pendency of an action or an extension of credit within the time provided in this subdivision, the claim of lien expires and is unenforceable.

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

(c) If improvement. If the claimant does not record notice of the pendency of an action to enforce a lien is not commenced within the time provided in this section subdivision, the claim of lien expires and is unenforceable.

Comment. Section 3083.710 restates former Section 3144 and adds the requirement that a claim of lien is unenforceable if a lis pendens is not recorded within the statutory periods.

For completion of a work of improvement, see Section 3089.410.

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

§ 3083.720. Bona fide purchaser or encumbrancer

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

Comment. Section 3083.720 ~~restates former Section 3145 without substantive change~~ supersedes former Section 3145. An extension of credit or of the time to enforce a lien recorded after expiration of a claim of lien does not resurrect the claim of lien.

See also Section 3082.060 (“lien” defined).

§ 3083.730. Lis pendens

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

Comment. Section 3083.730 restates former Section 3146 ~~without substantive change~~ but makes the lis pendens mandatory rather than permissive. Failure to record a lis pendens makes the lien unenforceable. Section 3083.710 (time for commencement of enforcement action). The reference to the lis pendens statute has been corrected, to reflect the repeal of Code of Civil Procedure 409. See 1992 Cal. Stat. ch. 883, § 1. See also Section 3082.230 (rules of practice).

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

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

Under this scheme, if a lien claimant commences an enforcement action but neglects to record a lis pendens, the enforcement action would be subject to dismissal. We could add a provision that would allow the claimant to cure the defect if no intervening interest in the property has been recorded. It is not clear what effect such a provision might have on the willingness of a title insurer to guarantee clear title.

If the Commission approves this approach, we will circulate the draft among title insurers to see whether it would accomplish the goal of enabling them to insure title immediately on expiration of the statutory enforcement period without having to wait for a full year after a lien is recorded.

PAYMENT BOND FOR PRIVATE WORK

Under the mechanics lien law, the owner may avoid the full impact of a lien, and particularly the potential for double payment liability, by having the contractor give a payment bond. Subcontractors, material suppliers, and others who are not paid by the contractor may supplement their lien remedies by recovering on the payment bond.

A bond covering 50% of the contract price protects the owner against having to pay more than the contract price if the bond is recorded before commencement of work. A bond covering 75% of the contract price gives a construction lender’s security interest a priority over liens.

A payment bond is relatively inexpensive, and it would seem to be a simple solution for many of the complexities of the mechanics lien law. But we understand that many contractors are unbondable, making the remedy largely

illusory. We do not have statistics on the number of payment bonds that are actually recorded pursuant to construction contracts.

Other Bonds

The principal bond under the mechanics lien law is the payment bond. There are other bonds under the mechanics lien law, however, including a performance bond, a lien release bond, and a bonded stop notice.

Also noteworthy is a recently enacted statute that requires a form of security in larger commercial projects. See Civ. Code § 3110.5. Under the statute if the owner of the fee builds a project valued over \$5 million or if the owner of a leasehold builds a project valued over \$1 million, the owner must provide security to cover any default to the prime contractor. The security may take the form of a payment bond, an irrevocable letter of credit, or an escrow account.

These other bonds are not dealt with directly in this memorandum, but it should be noted that the attached draft includes general provisions on the construction of and terms and conditions of bonds that would apply to other bonds besides payment bonds.

Terminology

There is not a lot of overlap between the statutes governing a payment bond given in a private work and those governing a payment bond given in a public work. For clarity and convenience, we have created new terminology for this draft — a “payment bond (private work)” is one given for a private work of improvement, and a “payment bond (public work)” is one given for a public work of improvement. This parallels the existing drafting convention of the mechanics lien law that distinguishes between a “preliminary 20-day notice (private work)” and a “preliminary 20-day notice (public work).”

Limitation on Liability of Owner

Civil Code Section 3235 provides that, on recording a payment bond, the court “must, where it would be equitable” restrict the owner’s liability on mechanics lien claims to the contract price (i.e., no double liability). That provision seems to make the protection the bond affords the owner discretionary with the court.

On the other hand, Section 3236 provides that it is the intent and purpose of Section 3235 to limit the owner’s liability “in all cases”.

Which is right? It appears that the discretionary standard is applied in practice, and our redraft omits the “in all cases” language. See proposed Section 3087.220 (limitation of owner’s liability).

Sending Copies of Payment Bond

Commission consultant Gordon Hunt has proposed the addition of a requirement that the owner provide a copy of a payment bond to any claimant that serves a preliminary notice on the owner. Mr. Hunt observes that sometimes an owner will acquire a payment bond on a private work of improvement and not record it. Moreover, even if recorded, it is difficult for a subcontractor or material supplier to search the records of the County Recorder’s office to ascertain whether or not a payment bond has been recorded.

Mr. Hunt notes that Arizona’s preliminary notice statute requires that the owner provide a copy of any payment bond. See Ariz. Rev. Stat. § 33-992.01. Under that statute, if the owner does not provide the bond information within ten days after receipt of a preliminary notice, a lien claimant preserves lien and stop notice rights that would otherwise need to be satisfied out of the payment bond.

Sam Abdulaziz agrees that it is often a problem for a subcontractor or materials supplier to obtain a copy of the payment bond. He thinks the statute should require the owner to provide a copy of the payment bond, or at a minimum, the name, address, telephone number, and bond number of the payment bond surety so that the mechanics’ lien or stop notice claimant can obtain a copy of the bond.

According to Commission consultant James Acret, a payment bond is often unrecorded, merely held in the owner’s file. He indicates it is good practice for a potential lien or stop notice claimant to inquire of the owner and lender whether a payment bond has been given by the contractor. Armed with that information, before recording a claim of lien or filing a stop notice, the claimant may file a claim against the surety.

There are two issues here — recorded bonds and unrecorded bonds. As James Stiepan of the Irvine Company has pointed out, the law only limits the owner’s liability exposure in the case of a recorded bond. And of course a recorded bond is a public record and gives constructive notice to potential lien claimants. The staff would be concerned about unnecessarily adding more technical duties and

paperwork and increasing the complexity of an already complex statute, for something that is a matter of public record.

In the case of an unrecorded bond, we could provide that, on request, the owner must provide the bond information to the claimant. This would put the burden of acting on the claimant rather than the owner. Of course, the likely result would be boilerplate in the preliminary notice requesting payment bond information. What should be the consequence of failure to provide the information?

As the staff has pointed out on a number of occasions, the thrust of most of the changes we are tentatively proposing to the mechanics lien law would benefit a claimant at the expense of an owner. We do not think an unbalanced package will get very far in the Legislature. We must limit the statutory improvements that favor a claimant to those that are most critical. And we must balance them with equally significant benefits for an owner, if this project is to come to anything.

PAYMENT BOND FOR PUBLIC WORK

In a public work, lien remedies are not available. The principal remedies for a subcontractor or material supplier that has not been paid by the prime contractor are the payment bond and the stop notice (notice to withhold funds).

Civil Code Section 3247 states the basic requirement that the contractor awarded a public work contract that exceeds \$25,000 must give a payment bond, with the exception of a contract awarded by a public entity “as provided in subdivision (d) of Section 7103 of the Public Contract Code.”

We have restated this provision in proposed Section 3087.310 (payment bond requirement). Although the section could use a more radical overhaul in the interest of clarity, we have minimized changes to it because Public Contract Code Section 7103 is modeled after it, and more significant wording changes could be read to imply a change in the law.

The interaction of Civil Code Section 3247 with Public Contract Code Section 7103 is confusing. The Public Contract Code provision is similar, except that it requires a payment bond in a public work contract awarded by a “state entity” where the amount of the contract exceeds \$5,000. Section 7103(d) defines “state entity” to mean every state office department, division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the

judicial branch of government, or the University of California. “All other public entities shall be governed by the provisions of Section 3247 of the Civil Code.”

Civil Code Section 3247, by its terms, applies to all public entities “except as provided in subdivision (d) of Section 7103 of the Public Contract Code.” Presumably this means that it does not apply to a “state entity” but does apply to a public entity other than the state.

Evidently the intent is that the two sections work in tandem — a state entity contract requires a payment bond if the contract exceeds \$5,000, a local entity contract requires a payment bond if the contract exceeds \$25,000. It is probably also intended that the legislative and judicial branches of state government, and the University of California, not be subject to any payment bond requirement.

The staff is inclined to make this explicit in the statute, rather than do it implicitly by the veiled reference to a public entity “except as provided” in Section 7103.

This also raises the question of whether these provisions should be kept in the mechanics lien law at all, or whether they ought to be relocated to the Public Contract Code. We have raised this question in the past, and practitioners have told us it is helpful to keep the public work provisions in the mechanics lien law because it is convenient for a person providing labor, service, equipment, or material on a construction project, whether public or private, to have the relevant law all in one place.

But it is clear that the law is not all in one place right now. Section 7103, relating to payment bonds in state entity contracts, is located in the Public Contract Code. It would appear to the staff more logical to put the local entity payment bond provisions in the Public Contract Code with the state agency bond provisions than in the mechanics lien law.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

3 Exhibit
4

5 TITLE 15. WORKS OF IMPROVEMENT

6 CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

7 Article 1. Definitions

8 **§ 3082.010. Claimant**

9 3082.010. “Claimant” means a person that has the right under this title to record
10 a claim of lien, file a notice to withhold funds, or assert a claim against a payment
11 bond, and includes the person’s assigns.

12 **Comment.** Section 3082.010 restates former Section 3085 without substantive change. The
13 reference to assigns is included for drafting convenience. Cf. former Sections 3248-3249
14 (claimant or assigns).

15 See also Sections 3082.060 (“lien” defined), 3082.110 (“person” defined).

16 ☞ **Staff Note.** We have added a reference to “assigns” to simplify redrafting of provisions that
17 currently refer to a payment bond recovery right by a claimant or the claimant’s assigns.
18 Presumably a claimant under the mechanics lien law can (and often does) assign the claim, and
19 the law still operates properly. Probably the only reason to address the issue at all is the fact that
20 two payment bond sections happen to refer to a claimant’s assigns, and people may get nervous if
21 we simply delete the references.

22 **§ 3082.105. Payment bond (private work)**

23 3082.105. “Payment bond (private work)” means a bond given under Article 2
24 (commencing with 3087.210) of Chapter 6 in a private work.

25 **Comment.** Section 3082.105 supersedes former Section. 3096. Cf. Section 3082.106
26 (“payment bond (public work)” defined). See also Section 3087.010 (payment bond).

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

28 **§ 3082.106. Payment bond (public work)**

29 3082.105. “Payment bond” means a bond given under Article 3 (commencing
30 with Section 3087.310) of Chapter 6 in a public work.

31 **Comment.** Section 3082.106 supersedes former Section. 3096. Cf. Section 3082.105
32 (“payment bond (private work)” defined). See also Section 3087.010 (payment bond).

33 See also Section 3082.150 (“public work” defined).

34 **§ 3082.125. Preliminary notice (public work)**

35 3082.125. “Preliminary notice (public work)” means the notice required by
36 Article 2 (commencing with Section 3089.310) of Chapter 8 as a prerequisite to
37 use of the remedies provided in this title with respect to a public work.

1 **Comment.** Section 3082.125 supersedes former Section 3098. The substantive requirements
2 for a preliminary notice (public work) have been relocated to Article 2 (commencing with Section
3 3089.310) of Chapter 8.

4 See also 3082.150 (“public work” defined).

5 ☞ **Staff Note.** The current preliminary 20-day notice (public work) is located at Civil Code
6 Section 3098. We have not yet redrafted that provision, but we have inserted here a cross-
7 reference to the place in the structure of the revised mechanics lien law where it will go.

8 **§ 3082.140. Public entity**

9 3082.140. “Public entity” means the state, Regents of the University of
10 California, a county, city, district, public authority, public agency, and any other
11 political subdivision or public corporation in the state, and includes an officer
12 acting for the public entity.

13 **Comment.** Section 3082.140 continues former Section 3099 without substantive change. This
14 title does not apply to a work of improvement governed by federal law. See Section 3082.210
15 (application of title). The reference to an officer of the public entity is included for drafting
16 convenience. Cf. former Sections 3247, 3250, 3251 (public entity or officer).

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

18 ☞ **Staff Note.** We have added a reference to an “officer” to simplify redrafting of provisions that
19 currently refer to a contract awarded by a public entity “or officer”. This addition is probably
20 unnecessary, but people may get nervous if we simply delete it from the provisions in which it
21 occurs.

22 Article 5. Construction of and Terms and Conditions of Bonds

23 **§ 3082.510. Application of Bond and Undertaking Law**

24 3082.510. The Bond and Undertaking Law, Chapter 2 (commencing with
25 Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a
26 bond given under this title.

27 **Comment.** Section 3082.510 is new. It is a specific application of Code of Civil Procedure
28 Section 995.020 (application of Bond and Undertaking Law).

29 ☞ **Staff Note.** A provision like this is not strictly necessary, since the Bond and Undertaking
30 Law applies by its own terms. But the cross-reference may be helpful to nonattorneys having
31 occasion to use the mechanics lien law.

32 **§ 3082.520. Release of surety from liability**

33 3082.520. None of the following releases a surety from liability on a bond given
34 under this title:

35 (a) A change to a contract, plan, specification, or agreement for a work of
36 improvement or for labor, service, equipment or material provided for a work of
37 improvement.

38 (b) A change to the terms of payment or an extension of the time for payment for
39 a work of improvement.

40 (c) A rescission or attempted rescission of a contract, agreement, or bond.

1 (d) A condition precedent or subsequent in the bond purporting to limit the right
2 of recovery of a claimant otherwise entitled to recover under a contract,
3 agreement, or bond.

4 (e) In the case of a bond given for the benefit of claimants, the fraud of a person
5 other than the claimant seeking to recover on the bond.

6 **Comment.** Section 3082.520 restates former Section 3225 without substantive change.

7 See also Sections 3082.010 (“claimant” defined), 3082.022 (“contract” defined), 3083.030
8 (“labor, service, equipment, or material” defined), 3082.110 (“person” defined), 3082.190 (“work
9 of improvement” defined).

10 ☞ **Staff Note.** This section seems to distinguish between a contract and an agreement. Are these
11 distinct concepts under construction law, or is it simply loose use of language?

12 § 3082.530. Construction of bond

13 3082.530. (a) A bond given under this title shall be construed most strongly
14 against the surety and in favor of the beneficiary.

15 (b) A surety is not released from liability to the beneficiary by reason of a breach
16 of the contract between the owner and direct contractor or on the part of the
17 beneficiary.

18 (c) The sole conditions of recovery on the bond are that the beneficiary is a
19 person described in Article 2 (commencing with Section 3083.210) of Chapter 2
20 and has not been paid the full amount of the claim.

21 **Comment.** Section 3082.530 restates former Section 3226 without substantive change. See also
22 Sections 3083.210-3083.240 (who is entitled to lien).

23 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
24 3082.100 (“owner” defined), 3082.110 (“person” defined).

25 Cf. Code Civ. Proc. § 995.130 (“beneficiary” defined).

26 ☞ **Staff Note.** Although this section purports to be a general provision applicable to all bonds
27 under the mechanics lien law, much of it appears to be aimed at the payment bond. We will
28 revisit this issue after we complete work on the other bonds under the mechanics lien law.

29 § 3082.540. Notice to principal and surety

30 3082.540. (a) This section governs notice to a principal or a surety on a bond
31 given under this title.

32 (b) Notice shall include all of the following information:

33 (1) The kind of labor, service, equipment, or material provided or to be provided
34 by the claimant.

35 (2) The name of the person to or for which the labor, service, equipment, or
36 material was provided.

37 (3) The amount in value, as near as may be determined, of any labor, service,
38 equipment, or material already provided or to be provided.

39 (c) Notice shall be given by mail, personal delivery, or service in the manner
40 provided by law for the service of a summons in a civil action.

41 (d) Notice given by mail shall be at the following address:

42 (1) If given to the principal, at the principal’s last known address.

1 (2) If given to an admitted surety insurer, at the office of or in care of (i) the
2 statutory agent of the surety in this state, (ii) an officer of the surety in this state, or
3 (iii) the agent designated by the surety in the bond as the address at which notice is
4 to be given.

5 (3) If given to a personal surety, at the surety’s residence or place of business, if
6 known; or if not known, in care of the clerk of the county in which the bond is
7 recorded.

8 **Comment.** Section 3082.540 restates former Section 3227 without substantive change. See also
9 Sections 3082.235 (written notice), 3082.240 (mailed notice).

10 See also Sections 3082.010 (“claimant” defined), 3083.030 (“labor, service, equipment, or
11 material” defined), 3082.110 (“person” defined).

12 Cf. Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.170 (“principal” defined).

13  **Staff Note.** This section will be reviewed in light of general provisions to be drafted on
14 address of notices (e.g., an address “reasonably calculated to give actual notice”).

15 Also, like the preceding section, this one appears directed primarily to the payment bond. We
16 will revisit this matter before the project is complete.

17 CHAPTER 2. MECHANICS LIEN FOR PRIVATE WORK

18 Article 6. Priorities

19 § 3083.615. Payment bond covering mechanics lien

20 3083.615. A mortgage or deed of trust, otherwise subordinate to a lien under
21 Section 3083.610, has priority over a lien for labor, service, equipment, or material
22 provided after recordation of a payment bond (private work) that satisfies all of the
23 following requirements:

24 (a) The bond refers to the mortgage or deed of trust.

25 (b) The bond is in an amount not less than 75 percent of the principal amount of
26 the mortgage or deed of trust.

27 **Comment.** Section 3083.615 continues former Section 3138 without substantive change. See
28 also Section 3082.250 (recordation of payment bond in county in which work of improvement is
29 situated).

30 See also Sections 3083.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien”
31 defined), 3082.105 (“payment bond (private work)” defined).

32 § 3083.645. Payment bond covering site improvement lien

33 3083.645. A mortgage or deed of trust, otherwise subordinate to a lien under
34 Section 3083.640, has priority over a lien provided for in Section 3083.230 (site
35 improvement lien) if a payment bond (private work) in an amount not less than 50
36 percent of the principal amount of the mortgage or deed of trust is recorded before
37 completion of the work of improvement.

38 **Comment.** Section 3083.645 continues former Section 3139 without substantive change. See
39 also Section 3082.250 (filing and recording of papers).

40 See also Sections 3082.060 (“lien” defined), 3082.105 (“payment bond (private work)”
41 defined), 3082.190 (“work of improvement” defined).

1 CHAPTER 6. PAYMENT BOND

2 Article 1. General Provisions Relating to Payment Bonds

3 **§ 3087.010. Payment bond**

4 3087.010. (a) A payment bond given under this chapter shall be conditioned for
5 the payment in full of the claims of all claimants and shall by its terms inure to the
6 benefit of all claimants so as to give a claimant a right of action to enforce the
7 liability on the bond.

8 (b) An owner, direct contractor, or subcontractor may be the principal on the
9 bond.

10 (c) A claimant may enforce the liability on the bond in an action to enforce a lien
11 under this title or in a separate action on the bond.

12 **Comment.** Section 3087.010 restates former Section 3096 without substantive change. See also
13 Section 3082.510 (application of Bond and Undertaking Law). The statute has been relocated to
14 the general provisions on payment bonds because it states substantive rules.

15 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
16 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

17 **§ 3087.020. Limitation on title**

18 3087.020. (a) This title does not give a claimant a right to recover on a direct
19 contractor’s payment bond given under this chapter unless the claimant provided
20 labor, service, equipment or material to the direct contractor or one of the direct
21 contractor’s subcontractors pursuant to a contract between the direct contractor
22 and the owner.

23 (b) Nothing in this section affects the notice to withhold funds right of, and
24 relative priorities among, architects, registered engineers, or licensed land
25 surveyors and holders of secured interests in the property.

26 **Comment.** Section 3087.020 restates former Section 3267 without substantive change.

27 See also Sections 3082.010 (“claimant” defined), 3082.022 (“contract” defined), 3082.025
28 (“direct contractor” defined), 3083.030 (“labor, service, equipment, or material” defined),
29 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

30 Article 2. Payment Bond for Private Work

31 **§ 3087.210. Public policy of payment bond**

32 3087.210. An owner may require a payment bond (private work) or other
33 security as protection against a direct contractor’s failure to perform the contract or
34 make full payment for all labor, service, equipment and material provided for a
35 work of improvement.

36 **Comment.** Section 3087.210 restates the second sentence of former Section 3236 without
37 substantive change.

38 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
39 3083.030 (“labor, service, equipment, or material” defined), 3082.100 (“owner” defined),
40 3082.105 (“payment bond (private work)” defined), 3082.190 (“work of improvement” defined).

1 **§ 3087.220. Limitation of owner’s liability**

2 3087.220. (a) The court may limit an owner’s liability to the contract price
3 between the owner and direct contractor pursuant to subdivision (b) if, before the
4 commencement of work, the owner in good faith files the contract with the county
5 recorder and records a payment bond (private work) of the direct contractor in an
6 amount not less than 50 percent of the contract price stated in the contract.

7 (b) If the conditions of subdivision (a) are satisfied and where it is equitable to
8 do so, the court shall restrict lien enforcement under this title to the aggregate
9 amount due from the owner to the direct contractor and shall enter judgment
10 against the direct contractor and surety on the bond for any deficiency that remains
11 between the amount due to the direct contractor and the whole amount due to
12 claimants.

13 **Comment.** Subdivision (a) of Section 3087.220 restates the first part of former Section 3235
14 and the first sentence of former Section 3236 without substantive change. It makes clear that the
15 bond, as well as the contract, must be recorded before the commencement of work. See also
16 Section 3082.250 (filing and recording of papers).

17 Subdivision (b) restates the last part of former Section 3235. It makes clear that restriction of
18 lien enforcement is limited to cases where it would be equitable, notwithstanding the “in all
19 cases” language of former Section 3236. See also Section 14 (singular includes plural).

20 See also Sections 3082.010 (“claimant” defined), 3082.022 (“contract” defined), 3082.025
21 (“direct contractor” defined), 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.105
22 (“payment bond (private work)” defined).

23 **§ 3087.230. Bond required by lending institution**

24 3087.230. (a) If a lending institution requires that a payment bond (private work)
25 be given as a condition of lending money to finance a work of improvement, and
26 accepts in writing as sufficient a bond given in fulfillment of the requirement, the
27 lending institution may thereafter object to the borrower as to the validity of the
28 bond or refuse to make the loan based on an objection to the bond only if the bond
29 underwriter was licensed by the Department of Insurance.

30 (b) As used in this section, “lending institution” includes commercial bank,
31 savings and loan institution, credit union, or other organization or person engaged
32 in the business of financing loans.

33 **Comment.** Section 3087.230 restates former Section 3237 without substantive change.

34 See also Sections 3082.105 (“payment bond (private work)” defined), 3082.110 (“person”
35 defined), 3082.190 (“work of improvement” defined).

36 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),
37 995.185 (“surety” defined).

38 ☞ **Staff Note.** This is an odd provision. Should it be reversed? The phrase “bond underwriter
39 licensed by the Department of Insurance” evidently refers to an admitted surety insurer. Cf. Code
40 Civ. Proc. § 995.120 (“admitted surety insurer” means corporate insurer to which Insurance
41 Commissioner has issued certificate of authority to transact surety insurance in state).

42 **§ 3087.240. Provision shortening statute of limitations**

43 3087.240. No provision in a payment bond (private work) is valid that attempts
44 to shorten the period prescribed by Section 337 of the Code of Civil Procedure for

1 the commencement of an action to enforce the liability on the bond unless both of
2 the following conditions are satisfied:

3 (a) The bond is recorded before commencement of the work of improvement.

4 (b) The bond provides a period for commencement of action that is not shorter
5 than six months after completion of the work of improvement.

6 **Comment.** Section 3087.240 restates former Section 3239 without substantive change. See also
7 Section 3082.250 (filing and recording of papers). This section provides an exception to the rule
8 stated in Code of Civil Procedure Section 996.450 (provision attempting to shorten limitation
9 period on bond is invalid).

10 See also Sections 3082.250 (filing and recording of papers), 3089.410 (completion).

11 See also Sections 3082.105 (“payment bond (private work)” defined), 3082.190 (“work of
12 improvement” defined).

13 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),
14 995.185 (“surety” defined).

15 ☞ **Staff Note.** We have performed radical surgery on this provision, but believe that it captures
16 the meaning of existing law.

17 Existing law appears to invalidate a limitation provision in a bond if the provision would
18 shorten the limitations period to less than six months. Does it make sense to read a six month
19 limitation into the provision, rather than invalidate it completely?

20 § 3087.250. Statute of limitations against surety on recorded bond

21 3087.250. Notwithstanding Section 3087.240, if a payment bond (private work)
22 is recorded before completion of a work of improvement, an action to enforce the
23 liability of a surety on the bond may not be commenced later than six months after
24 completion of the work of improvement.

25 **Comment.** Section 3087.250 restates former Section 3240 without substantive change. See also
26 Section 3082.250 (filing and recording of papers), completion.

27 See also Sections 3082.105 (“payment bond (private work)” defined), 3082.190 (“work of
28 improvement” defined).

29 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),
30 995.185 (“surety” defined).

31 ☞ **Staff Note.** While this section appears at first blush to completely eclipse the preceding
32 section, a close reading suggests that this section protects only a surety on the bond, and not the
33 principal. Cf. Code Civ. Proc. § 996.440 (judgment on bond against principal and sureties). The
34 principal might still obtain protection under the preceding section; should the preceding section
35 be limited in the interest of clarity to an action against the principal?

36 § 3087.260. Preliminary notice (private work) required

37 3087.260. A claimant may not enforce the liability on a payment bond (private
38 work) unless either of the following conditions is satisfied:

39 (a) The claimant has given a preliminary notice (private work) as provided in
40 Article 1 (commencing with Section 3089.110) of Chapter 8.

41 (b) The claimant has given written notice to the principal and surety as provided
42 in Section 3082.540. Notice under this subdivision shall be given within 75 days
43 after completion of the work of improvement or, if a notice of completion is
44 recorded, within 15 days after recordation.

1 **Comment.** Section 3087.260 restates former Section 3242 without substantive change. The
2 former limitation to a contract entered into on or after January 1, 1995, is omitted as obsolete.

3 See also Sections 14 (singular includes plural), 3082.240 (mailed notice and proof of notice),
4 3089.410 (completion), 3085.420 (notice of completion).

5 See also Sections 3082.010 (“claimant” defined), 3082.105 (“payment bond (private work)”
6 defined), 3082.120 (“preliminary notice (private work)” defined), 3082.190 (“work of
7 improvement” defined).

8 Article 3. Payment Bond for Public Work

9 § 3087.310. Payment bond requirement

10 3087.310. (a) A direct contractor that is awarded a contract by a public entity,
11 except as provided in subdivision (d) of Section 7103 of the Public Contract Code,
12 involving an expenditure in excess of twenty-five thousand dollars (\$25,000) for a
13 public work shall, before the commencement of work, file a payment bond (public
14 work) with and approved by the public entity.

15 A public entity shall state in its call for bids for the contract that the bond is
16 required in the case of an expenditure in excess of twenty-five thousand dollars
17 (\$25,000).

18 (b) A bond filed and approved under this section is sufficient to permit
19 performance of work pursuant to a contract that supplements the contract for
20 which the bond was filed, if the requirement of a new bond is waived by the public
21 entity.

22 (c) For the purpose of this section, a provider of architectural, engineering, or
23 land surveying services pursuant to a contract with a public entity for a public
24 work is not deemed a direct contractor and is not required to file the bond required
25 in this section.

26 **Comment.** Section 3087.310 restates former Section 3247 without substantive change. The
27 transitional provisions of the former section are omitted as obsolete.

28 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
29 3082.106 (“payment bond (public work)” defined), 3082.140 (“public entity” defined), 3082.150
30 (“public work” defined).

31 § 3087.320. Bond requirements

32 3087.320. (a) A payment bond (public work) shall satisfy all of the following
33 requirements:

34 (1) The bond shall be in an amount not less than one hundred percent of the total
35 amount payable under the terms of the contract.

36 (2) The bond shall provide that if the direct contractor or a subcontractor fails to
37 pay (1) a person named in Section 3181, (2) amounts due under the
38 Unemployment Insurance Code with respect to work or labor performed under the
39 contract, or (3) for any amounts required to be deducted, withheld, and paid over
40 to the Employment Development Department from the wages of employees of the
41 contractor and subcontractors pursuant to Section 13020 of the Unemployment
42 Insurance Code with respect to the work and labor, the surety will pay for those

1 amounts, and if an action is brought to enforce the liability on the bond, a
2 reasonable attorney's fee, to be fixed by the court.

3 (3) The bond shall, by its terms, inure to the benefit of any person named in
4 Section 3181 so as to give a right of action to that person or that person's assigns
5 in an action to enforce the liability on the bond.

6 (4) The bond shall be in the form of a bond and not a deposit in lieu of bond.

7 (b) The direct contractor may require that a subcontractor give a bond to
8 indemnify the direct contractor for any loss sustained by the direct contractor
9 because of any default of the subcontractor under this section.

10 **Comment.** Section 3087.320 restates former Section 3248 without substantive change. See also
11 Section 14 (singular includes plural).

12 See also Sections 3082.022 ("contract" defined), 3082.025 ("direct contractor" defined),
13 3082.106 ("payment bond (public work)" defined), 3082.110 ("person" defined), 3082.180
14 ("subcontractor" defined).

15 ☞ **Staff Note.** Section 3181, referred to in this section, defines the persons entitled to serve a
16 stop notice (notice to withhold funds). The Commission has not yet reviewed that provision.

17 § 3087.330. Statute of limitations

18 3087.330. An action by a claimant against a surety to enforce the liability on a
19 payment bond (public work) may be commenced at any time after the claimant
20 ceases to provide labor, service, equipment, or material, but may not be
21 commenced after the expiration of six months after the period in which a notice to
22 withhold funds may be filed as provided in Section 3184.

23 **Comment.** Section 3087.330 restates former Section 3249 without substantive change.

24 See also Sections 3082.010 ("claimant" defined), 3083.030 ("labor, service, equipment, or
25 material" defined), 3082.106 ("payment bond (public work)" defined).

26 ☞ **Staff Note.** The Commission has not yet reviewed the period in which a stop notice (notice to
27 withhold funds) must be filed under Section 3184, referred to in this section.

28 § 3087.340. Action on bond

29 3087.340. (a) The filing of a notice to withhold funds is not a condition
30 precedent to an action to enforce the liability of a surety on a payment bond
31 (public work).

32 (b) An action to enforce the liability on the bond may be maintained separately
33 from and without the filing of an action against the public entity that awarded the
34 contract.

35 (c) In an action to enforce the liability on the bond, the court shall award the
36 prevailing party a reasonable attorney's fee, to be taxed as costs.

37 **Comment.** Section 3087.340 restates former Section 3250 without substantive change.

38 See also Sections 3082.022 ("contract" defined), 3082.106 ("payment bond (public work)"
39 defined), 3082.140 ("public entity" defined).

1 **§ 3087.350. Consequences of failure to give bond**

2 3087.350. If a payment bond (public work) is not filed and approved under this
3 article:

4 (a) The public entity awarding the contract shall not audit, allow, or pay a claim
5 of the direct contractor pursuant to the contract.

6 (b) A claimant shall receive payment of a claim in the manner provided by
7 Chapter 4 (commencing with Section 3179) upon complying with that chapter.

8 **Comment.** Section 3087.350 restates former Section 3251 without substantive change. The
9 former operative date provision is deleted as obsolete.

10 See also Sections 3082.010 (“claimant” defined), 3082.022 (“contract” defined), 3082.025
11 (“direct contractor” defined), 3082.10 (“payment bond (public work)” defined), 3082.140
12 (“public entity” defined).

13 ☞ **Staff Note.** The Commission has not yet reviewed the Chapter 4 (commencing with Section
14 3179), referred to in this section, relating to a stop notice (notice to withhold funds) for public
15 work. Subdivision (b) of this section evidently relates to the claim of a subcontractor or material
16 supplier and not the claim of the direct contractor.

17 **§ 3087.360. Preliminary notice (public work) required**

18 3087.360. A claimant may not enforce the liability on a payment bond (public
19 work) unless either of the following conditions is satisfied:

20 (a) The claimant has given a preliminary notice (public work) as provided in
21 Article 2 (commencing with Section 3089.310) of Chapter 8.

22 (b) The claimant has given written notice to the principal and surety as provided
23 in Section 3082.540. Notice under this subdivision shall be given within 75 days
24 after completion of the work of improvement or, if a notice of completion is
25 recorded, within 15 days after recordation.

26 **Comment.** Section 3087.360 restates former Section 3252 without substantive change. See also
27 Section 14 (singular includes plural). The former limitation to a contract entered into on or after
28 January 1, 1995, is omitted as obsolete.

29 See also Sections 3082.010 (“claimant” defined), 3082.106 (“payment bond (public work)”
30 defined), 3082.125 (“preliminary notice (public work)” defined), 3082.190 (“work of
31 improvement” defined).
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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.

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 notice to withhold funds, 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 **§ 3082.022. Contract**

11 3082.022. “Contract” means an agreement between an owner and a direct
12 contractor that provides for all or part of a work of improvement.

13 **Comment.** Section 3082.022 continues former Section 3088 without substantive change. This
14 definition does not apply if the provision or context requires otherwise. Section 3082 (application
15 of definitions). See, e.g., Sections 3082.100 (contract of purchase), 3082.310 (subcontract).

16 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
17 3082.190 (“work of improvement” defined).

18 ☞ **Staff Note.** Existing law defines “contract” as an agreement between an owner and direct or
19 original contractor. That definition is problematic since the defined term is often used in the
20 statute in an undefined sense (e.g., agreement between contractor and subcontractor). It is also
21 unclear whether the term includes contract changes. Cf. Section 3083.420. We have in this draft
22 preserved the definition, relying on context to determine whether the definition applies or not.

23 **Does the definition serve a useful purpose?**

24 **§ 3082.025. Direct contractor**

25 3082.025. “Direct contractor” means a person that has a direct contractual
26 relationship with an owner.

27 **Comment.** Section 3082.025 supersedes former Section 3095 “original contractor”. A direct
28 contractor is not limited to a builder, and may include a surveyor, engineer, material supplier,
29 artisan, or other person that contracts directly with the owner.

30 See also Sections 3082.100 (“owner” defined), 3082.110 (“person” defined).

31 **§ 3082.027. Express trust fund**

32 3082.027. “Express trust fund” means a laborer’s compensation fund to which a
33 portion of a laborer’s total compensation is to be paid under an employment
34 agreement or a collective bargaining agreement for the provision of benefits,
35 including, but not limited to, employer payments described in Section 1773.1 of
36 the Labor Code and implementing regulations.

37 **Comment.** Section 3082.027 continues a portion of former Section 3111 without substantive
38 change.

39 See also Sections 3082.040 (“laborer” defined), 3082.050 (“laborer’s compensation fund”
40 defined).

1 **§ 3082.030. Labor, service, equipment, or material**

2 3082.030. “Labor, service, equipment, or material” includes but is not limited to
3 labor, skills, services, material, supplies, equipment, appliances, transportation,
4 power, surveying, construction plans, and construction management provided for a
5 work of improvement.

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

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

13 **§ 3082.040. Laborer**

14 3082.040. “Laborer” means a person who, acting as an employee, provides
15 labor, skill, or other necessary services for a work of improvement.

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

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

20 **§ 3082.050. Laborer’s compensation fund**

21 3082.050. “Laborer’s compensation fund” means a person, including an express
22 trust fund, to which a portion of the compensation of a laborer is paid by
23 agreement with the laborer or the collective bargaining agent of the laborer.

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

26 See also Sections 3082.027 (“express trust fund” defined), 3082.040 (“laborer” defined),
27 3082.110 (“person” defined).

28 **§ 3082.060. Lien**

29 3082.060. “Lien” means a lien under Chapter 2 (commencing with Section
30 3083.110) (mechanics lien for private work), and includes both a lien for a work of
31 improvement under Section 3083.210 and a lien for a site improvement under
32 Section 3083.230.

33 **Comment.** Section 3082.060 is a new definition. It is included for drafting convenience. There
34 are instances in this title where the term is not used in its defined sense. See, e.g., Sections
35 3083.540 (d) (multiple works of improvement), 3083.610 (a) (priority of lien).

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

38 **§ 3082.070. Material supplier**

39 3082.070. (a) “Material supplier” means a person that provides material or
40 supplies to be used or consumed in a work of improvement.

1 (b) Materials or supplies delivered to a site are presumed to have been used or
2 consumed in the work of improvement. The presumption established by this
3 subdivision is a presumption affecting the burden of proof.

4 **Comment.** Subdivision (a) of Section 3082.070 replaces the term “materialman” with the term
5 “material supplier” to conform to contemporary usage under this title. It continues former Section
6 3082.070 without substantive change.

7 Subdivision (b) is new.

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

9 ☞ **Staff Note.** At this point, the defined term is used in only one section — 3083.210 (persons
10 entitled to lien). We have preserved the definition for the time being, since it may be used in the
11 notice to withhold funds and payment bond provisions, when we get there. Otherwise, this
12 provision should be relocated to Section 3083.210.

13 Addition of subdivision (b), creating a presumption in favor of a material supplier, is contingent
14 on development of a balanced package that provides offsetting benefits to other persons affected.

15 § 3082.090 [reserved]. Notice to withhold funds

16 ☞ **Staff Note.** The Commission has tentatively decided to replace the term “stop notice” with the
17 term “notice to withhold funds.” Notice to withhold was the term used in the statute prior to the
18 current stop notice terminology. This section will be fleshed out later.

19 § 3082.100. Owner

20 3082.100. “Owner” means:

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

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

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

29 **Comment.** Section 3082.100 is a new definition. It is included for drafting convenience. For
30 the authority of an owner to act on behalf of co-owners, and for the effect of notice to a co-owner
31 or the owner of a lesser interest, see Section 3082.260 (co-owners). For general provisions on the
32 authority of an agent, see Section 3082.270 (agency).

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

34 § 3082.110. Person

35 3082.110. “Person” means an individual, corporation, public entity, business
36 trust, estate, trust, partnership, limited liability company, association, or other
37 entity.

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

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

1 **§ 3082.120. Preliminary notice (private work)**

2 3082.120. “Preliminary notice (private work)” means the notice provided for in
3 Article 1 (commencing with 3089.110) of Chapter 8, relating to preliminary notice
4 of private work.

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

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

8 ☞ **Staff Note.** The current draft does not make reference to the preliminary notice for public
9 work, since the mechanics lien remedy is available only for private work. When we incorporate
10 the notice to withhold funds and payment bond remedies into the draft, we will review
11 terminology relating to both private work and public work preliminary notices.

12 **§ 3082.130. Private work**

13 3082.130. “Private work” means a work of improvement other than a public
14 work.

15 **Comment.** Section 3082.130 is a new definition. It is included for drafting convenience. This
16 title does not apply to a work of improvement governed by federal law. See Section 3082.210
17 (application of title).

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

20 **§ 3082.140. Public entity**

21 3082.140. “Public entity” means the state, Regents of the University of
22 California, a county, city, district, public authority, public agency, and any other
23 political subdivision or public corporation in the state.

24 **Comment.** Section 3082.140 continues former Section 3099 without substantive change. This
25 title does not apply to a work of improvement governed by federal law. See Section 3082.210
26 (application of title).

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

28 **§ 3082.150. Public work**

29 3082.150. “Public work” means a work of improvement contracted for by a
30 public entity.

31 **Comment.** Section 3082.150 continues former Section 3100 without substantive change. This
32 title does not apply to a work of improvement governed by federal law. See Section 3082.210
33 (application of title).

34 See also Sections 3082.140 (“public entity” defined), 3082.190 (“work of improvement”
35 defined).

36 **§ 3082.160. Site**

37 3082.160. “Site” means the property on which a work of improvement is
38 situated.

39 **Comment.** Section 3082.160 continues former Section 3101 without substantive change.

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

1 **§ 3082.170. Site improvement**

2 3082.170. “Site improvement” means any of the following work on property:

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

4 (b) Drilling test holes.

5 (c) Grading, filling, or otherwise improving the property or a street, highway, or
6 sidewalk in front of or adjoining the property.

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

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

9 (f) Any other work or improvements to infrastructure or in preparation of the site
10 for a work of improvement.

11 **Comment.** Section 3082.170 continues former Section 3102 without substantive change.
12 Subdivision (f) makes clear that the reference in former law to “making any improvements”
13 means preparatory work and does not include construction of a structure.

14 See also Sections 3082.160 (“site” defined), 3082.190 (“work of improvement” defined).

15 **§ 3082.180. Subcontractor**

16 3082.180. “Subcontractor” means a contractor that does not have a direct
17 contractual relationship with an owner. The term includes a contractor that has a
18 contractual relationship with a direct contractor or with another subcontractor.

19 **Comment.** The first sentence of Section 3082.180 continues former Section 3104 without
20 substantive change. The second sentence is new; it makes clear that the term “subcontractor”
21 includes a subcontractor below the first tier.

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

23 ☞ **Staff Note.** We have added the second sentence to this section to make clear that the term
24 “subcontractor” includes subcontractors below the first tier.

25 **§ 3082.190. Work of improvement**

26 3082.190. (a) “Work of improvement” includes but is not limited to:

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

30 (2) Seeding, sodding, or planting of property for landscaping purposes.

31 (3) Filling, leveling, or grading of property.

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

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

39 A site improvement is treated under this title in the same manner as a work of improvement
40 generally, except as specifically provided in this title. See Sections 3083.550 (claim against
41 separate residential units), 3083.610 (priority of lien), 3083.640 (priority of site improvement
42 lien). See also Section 3082.170 (“site improvement” defined).

1 Article 2. General Provisions

2 **§ 3082.210. Application of title**

3 3082.210. Except as otherwise provided in this title, this title applies to both a
4 private work and a public work. This title does not apply to a work of
5 improvement governed by federal law.

6 **Comment.** Section 3082.210 is new. Chapter 2 (commencing with Section 3083.110) relating
7 to mechanics liens applies only to a private work and does not apply to a public work. See Section
8 3083.110 (scope of chapter).

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

10 **§ 3082.220. Jurisdiction and venue**

11 3082.220. The proper court for proceedings under this title is the superior court
12 in the county in which a work of improvement, or part of it, is situated.

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

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

16 **§ 3082.230. Rules of practice**

17 3082.230. Except as otherwise provided in this title, Part 2 (commencing with
18 Section 307) of the Code of Civil Procedure provides the rules of practice in
19 proceedings under this title.

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

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

28 **§ 3082.235. Written notice**

29 3082.235. Notice under this title shall be in writing.

30 **Comment.** Section 3082.235 generalizes various provisions of existing law. See, e.g., former
31 Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3094 (notice of
32 nonresponsibility), 3097 (preliminary notice (private work)), 3098 (preliminary notice (public
33 work)), 3103 (stop notice).

34 See also Section 14 (writing includes printing and typewriting).

35 **§ 3082.240. Mailed notice**

36 3082.240. The following provisions apply to notice given by mail under this
37 title:

38 (a) Notice shall be given by registered or certified mail or by another method of
39 delivery providing for overnight delivery.

40 (b) Notice is complete when deposited in the mail or with an express service
41 carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

1 (c) Proof that the notice was given in the manner provided in this section shall be
2 made by (1) a return receipt or a photocopy of the record of delivery and receipt
3 maintained by the United States Postal Service, showing the date of delivery and
4 to whom delivered, or in the event of nondelivery, by the returned envelope itself
5 (2) proof of mailing certified by the United States Postal Service, or (3) a tracking
6 record or other documentation certified by an express service carrier showing
7 delivery of the notice.

8 **Comment.** Section 3082.240 is a new provision included for drafting convenience. It
9 generalizes a number of provisions of former law, expands the methods of proof to include a
10 certification of the mailing by the United States Postal Service, and expands the methods of
11 giving notice to include delivery by express service carrier.

12 § 3082.250. Filing and recording of papers

13 3082.250. (a) If this title provides for filing a contract, plan, or other paper with
14 the county recorder the provision is satisfied by filing the paper in the office of the
15 county recorder of the county in which the work of improvement or part of it is
16 situated.

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

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

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

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

33 Subdivisions (c) and (d) continue former Section 3258 without substantive change.

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

35 § 3082.260. Co-owners

36 3082.260. (a) An owner may give a notice or execute or file a document under
37 this title on behalf of a co-owner if the owner acts on the co-owner’s behalf and
38 includes in the notice or document the name and address of the co-owner on whose
39 behalf the owner acts.

40 (b) Notice to the owner of an interest in property is effective as to a co-owner of
41 that interest. Notice to the owner of a leasehold or other interest in property that is
42 less than a fee is not effective as to the owner of the fee.

1 (2) The name and address of the construction lender if any. This paragraph does
2 not apply to a home improvement contract or swimming pool contract subject to
3 Article 10 (commencing with Section 7150) of Chapter 9 of Division 3 of the
4 Business and Professions Code.

5 (b) A written contract entered into between a direct contractor and subcontractor,
6 or between subcontractors, shall provide a space for the name and address of the
7 owner, direct contractor, and construction lender if any.

8 **Comment.** Section 3082.310 continues without substantive change the parts of former Section
9 3097(l)-(m) relating to the content of contracts. The reference to “written” contract has been
10 added to subdivision (b) for consistency with subdivision (a). The reference to “lender or lenders”
11 in subdivision (a) has been shortened to “lender” for consistency with subdivision (b). See
12 Section 14 (singular includes plural, and plural includes singular). These and other minor wording
13 changes are technical, nonsubstantive revisions. For the direct contractor’s duty to provide
14 information to persons seeking to serve a preliminary notice, see Section 397.070.

15 See also Sections 3082.020 (“construction lender” defined), 3082.025 (“direct contractor”
16 defined), 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

17 **§ 3082.320. Designation of construction lender on building permit**

18 3082.320. (a) A public entity that issues building permits shall, in its application
19 form for a building permit, provide space and a designation for the applicant to
20 enter the name, branch designation, if any, and address of the construction lender
21 and shall keep the information on file open for public inspection during the regular
22 business hours of the public entity.

23 (b) If there is no known construction lender, the applicant shall note that fact in
24 the designated space.

25 (c) Failure of the applicant to indicate the name and address of the construction
26 lender on the application does not relieve a person required to give the
27 construction lender a preliminary notice (private work) from that duty.

28 **Comment.** Section 3082.320 continues former Section 3097(i) without substantive change.

29 See also Sections 3082.020 (“construction lender” defined), 3082.110 (“person” defined),
30 3082.120 (“preliminary notice (private work)” defined), 3082.140 (“public entity” defined).

31 ☞ **Staff Note.** The staff in this draft has corrected a typographical error in the existing statute,
32 which includes a stray comma between the words “branch” and “designation” in subdivision (a).

33 In any event, a random sampling of building permit application forms indicates that half the
34 cities don’t provide any space for construction lender information at all, and those that do provide
35 space don’t inquire about branches. There may be provisions of the stop notice procedure that
36 involve branch offices. We will deal with this provision in that context.

37 **§ 3082.330. Construction trust deed**

38 3082.330. (a) A mortgage, deed of trust, or other instrument securing a loan, any
39 of the proceeds of which may be used for a work of improvement, shall bear the
40 designation “Construction Trust Deed” prominently on its face and shall state all
41 of the following:

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

43 (2) The name and address of the owner of the property described in the
44 instrument.

1 (3) A legal description of the property that secures the loan and, if known, the
2 street address of the property.

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

5 (c) Failure to comply with subdivision (a) does not relieve a person required to
6 give a preliminary notice (private work) from that duty.

7 (d) The county recorder of the county in which the instrument is recorded shall
8 indicate in the general index of the official records of the county that the
9 instrument secures a construction loan.

10 **Comment.** Section 3082.330 continues former Section 3097(j) without substantive change.

11 See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),
12 3082.110 (“person” defined), 3082.120 (“preliminary notice (private work)” defined), 3082.190
13 (“work of improvement” defined).

14 Article 4. Laborer’s Compensation Fund

15 § 3082.410. Standing to enforce laborer’s rights

16 3082.410. (a) A laborer’s compensation fund that has standing under applicable
17 law to maintain a direct legal action in its own name or as an assignee to collect
18 any portion of compensation owed for a laborer, has standing to enforce rights
19 under this title to the same extent as the laborer.

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

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

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

27 § 3082.420. Notice of overdue laborer compensation

28 3082.420. (a) A contractor or subcontractor that employs a laborer and fails to
29 pay the full compensation due the laborer or laborer’s compensation fund shall,
30 not later than the date the compensation became delinquent, give the laborer, the
31 laborer’s bargaining representative, if any, and the construction lender or reputed
32 construction lender, if any, written notice containing all of the following
33 information:

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

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

36 (3) The name and address of any express trust fund to which employer payments
37 are due.

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

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

40 (b) Failure to give the notice required by subdivision (a) constitutes grounds for
41 disciplinary action under the Contractors’ State License Law, Chapter 9

1 (commencing with Section 7000) of Division 3 of the Business and Professions
2 Code.

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

6 See also Sections 3082.020 ("construction lender" defined), 3082.027 ("express trust fund"
7 defined), 3082.040 ("laborer" defined), 3082.050 ("laborer's compensation fund" defined),
8 3082.100 ("owner" defined), 3082.160 ("site" defined), 3082.180 ("subcontractor" defined),
9 3082.210 (application of title).

10 CHAPTER 2. MECHANICS LIEN FOR PRIVATE WORK

11 Article 1. Application of Chapter

12 § 3083.110. Scope of chapter

13 3083.110. This chapter applies only to a private work and does not apply to a
14 public work.

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

16 See also Sections 3082.130 ("private work" defined), 3082.150 ("public work" defined).

17 Article 2. Who Is Entitled to Lien

18 § 3083.210. Persons entitled to lien

19 3083.210. A person that provides labor, service, equipment, or material properly
20 authorized for a work of improvement, including but not limited the following
21 persons, has a lien right under this chapter:

22 (a) Direct contractor.

23 (b) Subcontractor.

24 (c) Material supplier.

25 (d) Equipment lessor.

26 (e) Laborer.

27 (f) Architect.

28 (g) Registered engineer.

29 (h) Licensed land surveyor.

30 (i) Builder.

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

37 The reference in the introductory portion of Section 3083.210 to labor, service, equipment or
38 material "properly authorized" replaces the references in former Section 3110 to the "instance or
39 request of the owner (or any other person acting by his authority or under him, as contractor or
40 otherwise)." See Section 3083.240 (who may authorize work).

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

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

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

12 See also Sections 3082.025 (“direct contractor” defined), 3082.030 (“labor, service, equipment,
13 or material” defined), 3082.040 (“laborer” defined), 3082.060 (“lien” defined), 3082.070
14 (“material supplier” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined),
15 3082.190 (“work of improvement” defined).

16 ☞ **Staff Note.** In this draft we have used the phrase “properly authorized” in place of the phrase
17 “pursuant to a contract” used in earlier drafts.

18 § 3083.220. Lien right of express trust fund

19 3083.220. An express trust fund has the same lien right under this chapter as a
20 laborer on a work of improvement, to the extent of the compensation agreed to be
21 paid to the express trust fund for labor on that work of improvement only.

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

25 See also Sections 3082.027 (“express trust fund” defined), 3082.040 (“laborer” defined),
26 3082.060 (“lien” defined).

27 § 3083.230. Site improvement lien

28 3083.230. A person that provides labor, service, equipment, or material properly
29 authorized for a site improvement has a lien right under this chapter.

30 **Comment.** Section 3083.230 supersedes former Section 3112. The reference to work done or
31 material furnished is superseded by the reference to labor, service, equipment, or material. See
32 Section 3082.030 (“labor, service, equipment, or material” defined). The reference to work at the
33 instance or request of the owner or any person acting by or under authority of the owner as
34 contractor or otherwise is replaced by the reference to work properly authorized. See Section
35 3083.240 (who may authorize work).

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

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

42 ☞ **Staff Note.** In this draft we have used the phrase “properly authorized” in place of the phrase
43 “pursuant to a contract” used in earlier drafts.

1 **Comment.** Section 3083.320 restates former Section 3115. For “completion” of a work of
2 improvement, see Section 3089.410. For recordation of a notice of completion, see Section
3 3089.430 (notice of completion). The notice of completion includes notice of cessation.

4 See also Sections 3082.025 (“direct contractor” defined), 3082.060 (“lien” defined), 3082.100
5 (“owner” defined), 3082.190 (“work of improvement” defined).

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

10 The Commission also will consider the possibility of harmonizing the time for recording a
11 claim of lien with the times for filing a notice to withhold funds and the time for making a claim
12 against a payment bond.

13 **§ 3083.330. Time for claim of lien by claimant other than direct contractor**

14 3083.330. A claimant other than a direct contractor may not enforce a lien unless
15 the claimant records a claim of lien after the claimant ceases to provide labor,
16 service, equipment, or material and before the earlier of the following times:

17 (a) Ninety days after completion of the work of improvement.

18 (b) Thirty days after the owner records a notice of completion.

19 **Comment.** Section 3083.330 restates former Section 3116. For “completion” of a work of
20 improvement, see Section 3089.410. For recordation of a notice of completion, see Section
21 3089.430 (notice of completion). The notice of completion includes notice of cessation.

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

24 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
25 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien” defined), 3082.100
26 (“owner” defined), 3082.190 (“work of improvement” defined).

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

31 The Commission also will consider the possibility of harmonizing the time for recording a
32 claim of lien with the times for filing a notice to withhold funds and the time for making a claim
33 against a payment bond.

34 **§ 3083.340. Special rule for express trust fund claim on separate residential unit in** 35 **condominium**

36 3083.340. Notwithstanding any other provision of this chapter, completion of a
37 separate residential unit within the meaning of Section 3083.550 does not operate
38 in any manner to impair the lien right of an express trust fund under Section
39 3083.220 if the claim of lien is recorded within 120 days after completion of the
40 separate residential unit.

41 **Comment.** Section 3083.340 continues the last paragraph of former Section 3131 without
42 substantive change.

43 See also Sections 3082.010 (“claimant” defined), 3082.027 (“express trust fund” defined),
44 3082.060 (“lien” defined).

1 **§ 3083.350. Claim of lien**

2 3083.350. A claim of lien shall be in writing, signed and verified by the
3 claimant, and shall contain all of the following information:

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

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

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

9 (d) The name of the person that contracted for the labor, service, equipment, or
10 material.

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

12 [(f) The claimant’s address.]

13 **Comment.** Subdivisions (a)-(e) of Section 3083.350 continue former Section 3084 without
14 substantive change. The claim of lien may be executed by the claimant’s authorized agent. See
15 Section 3082.270 (agency).

16 Subdivision (d) requires the name of the person that “contracted for” the labor, service,
17 equipment, or material, rather than who “employed” the claimant. See Section 3083.240 (who
18 may authorize work). See also Section 3082.250 (filing and recording of papers).

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

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

24 ☞ **Staff Note.** We have bracketed subdivision (f) for now. It may be more important for a notice
25 to withhold funds than a claim of lien. It may be that in the case of a claim of lien, the address
26 included in the recorder’s information is sufficient. We will evaluate the need for subdivision (f)
27 as the statute evolves.

28 **§ 3083.355. Notice of recordation of claim of lien**

29 3083.355. (a) At the time of recordation of a claim of lien the claimant shall give
30 notice of the recordation to all of the following persons:

31 (1) The owner or reputed owner of property subject to the claim of lien.

32 (2) The direct contractor or reputed contractor, if other than the claimant.

33 (3) The construction lender or reputed lender, if any.

34 (b) Notice of recordation of a claim of lien shall include all of the following
35 information:

36 (1) The date of recordation.

37 (2) The county in which the claim of lien is recorded.

38 (3) The recording identification number of the claim of lien, if available.

39 (4) A description of the site sufficient for identification.

40 (5) An affidavit of mailing in the manner provided in Section 1013a of the Code
41 of Civil Procedure, showing all persons notified of the recordation.

42 (c) The lien claimant shall mail notice of recordation, together with a copy of the
43 claim of lien, to the persons notified at an address reasonably calculated to give the
44 persons actual notice.

1 In subdivision (b) the term “contract change” has replaced “written modification of the
2 contract”. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App.
3 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

4 The provision of former Section 3123(c) that required an owner to give notice of a change of 5
5 percent or more) is not continued.

6 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
7 material” defined), 3082.060 (“lien” defined), 3082.110 (“person” defined), Section 3083.350
8 (claim of lien).

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

11 Likewise, notice to withhold funds provisions will be reviewed in light of this section.
12 Presumably the amount recoverable pursuant to a notice to withhold funds would be the same as
13 the amount recoverable pursuant to a lien. We will look at this issue separately.

14 § 3083.420. Lien limited to amount of contract or modification

15 3083.420. (a) A lien does not extend to labor, service, equipment, or material not
16 included in a contract between the owner and direct contractor or a modification of
17 the contract if the labor, service, equipment, or material was contracted for by the
18 direct contractor or subcontractor and the claimant had actual knowledge or
19 constructive notice of the contract or modification before providing the labor,
20 service, equipment, or material.

21 (b) The filing of a contract or of a modification of the contract with the county
22 recorder, before the commencement of work, is equivalent to giving actual notice
23 of the provisions of the contract or modification by the owner to a person
24 providing labor, service, equipment, or material.

25 **Comment.** Section 3083.420 restates former Section 3124 without substantive change. “Direct
26 contractor” is substituted for the undefined “contractor” in subdivision (a). The concept of
27 “contracted for” is substituted for “employed” in subdivision (a). See Section 3083.240 (who may
28 authorize work).

29 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
30 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien” defined), 3082.100
31 (“owner” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

32 Article 5. Property Subject to Lien

33 § 3083.510. Property subject to lien

34 3083.510. A lien attaches to the work of improvement and property on which the
35 work of improvement is situated, together with a convenient space about the work
36 of improvement or as much space as is required for the convenient use and
37 occupation of the work of improvement.

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

41 See also Sections 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined),
42 3082.190 (“work of improvement” defined).

1 **§ 3083.520. Interest subject to lien**

2 3083.520. A lien attaches to the following interests in the property on which the
3 work of improvement is situated:

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

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

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

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

15 **§ 3083.530. Notice of nonresponsibility**

16 3083.530. (a) An owner of property on which a work of improvement is situated
17 that did not contract for the work of improvement may give notice of
18 nonresponsibility.

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

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

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

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

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

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

29 **Comment.** Section 3083.530 restates former Section 3094 without substantive change. The
30 notice of nonresponsibility may be signed and verified by the owner or person owning or
31 claiming an interest in the property, or by the owner or other person’s agent. See Section
32 3082.100 (“owner” defined). A notice of nonresponsibility is recorded in the office of the county
33 recorder of the county in which the work of improvement or part of it is situated. Section
34 3082.250 (filing and recording of papers).

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

37 **§ 3083.540. Multiple works of improvement**

38 3083.540. A claimant may record one claim of lien on two or more works of
39 improvement, subject to the following conditions:

40 (a) The works of improvement have or are reputed to have the same owner, or
41 the labor, service, equipment, or material was contracted for by the same person
42 for the works of improvement whether or not they have the same owner.

1 (b) The claimant in the claim of lien designates the amount due for each work of
2 improvement. If the claimant contracted for a lump sum payment for labor,
3 service, equipment, and material provided for the works of improvement and the
4 contract does not segregate the amount due for each work of improvement
5 separately, the claimant may estimate an equitable distribution of the sum due for
6 each work of improvement based on the proportionate amount of labor, service,
7 equipment, or material provided for each. If the claimant does not designate the
8 amount due for each work of improvement, the lien is subordinate to other liens.

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

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

17 **Comment.** Section 3083.540 restates former Section 3130 without substantive change. The
18 concept of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section
19 3083.240 (who may authorize work).

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

23 ☞ **Staff Note.** Subdivision (a) refers to recording one claim of lien against multiple works of
24 improvement that have, or are “reputed” to have, the same owner. **If in fact they do not have the**
25 **same owner, how can a claim of lien against a reputed owner bind another person who is an**
26 **actual owner?**

27 § 3083.550. Claim against separate residential units

28 3083.550. (a) As used in this section, “separate residential unit” means one
29 residential structure, including a residential structure containing multiple
30 condominium units, together with any common area, garage, or other appurtenant
31 improvements.

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

34 (1) Each unit is deemed a separate work of improvement, and completion of
35 each unit is determined separately for purposes of the time for recording a claim of
36 lien on that unit. This paragraph does not affect any lien right under Section
37 3083.230 (site improvement lien) or 3083.540 (multiple works of improvement).

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

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

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

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

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

11 **§ 3083.560. Release bond**

12 3083.560. (a) An owner of property subject to a recorded claim of lien or a direct
13 contractor or subcontractor affected by the claim of lien that disputes the
14 correctness or validity of the claim may obtain release of the property from the
15 claim of lien by recording a lien release bond. The principal on the bond may be
16 the owner of the property or the contractor or subcontractor.

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

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

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

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

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

37 The owner of an interest in property may obtain a release bond. See Section 3082.100 (“owner”
38 defined). The reference to recordation of the bond in the county in which the claim of lien is
39 recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office
40 of the county recorder of the county in which the work of improvement or part of it is situated.
41 Section 3082.250 (filing and recording of papers).

42 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
43 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

1 Article 6. Priorities

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

5 **§ 3083.610. Priority of lien**

6 3083.610. (a) A lien under this chapter has priority over a lien, mortgage, deed
7 of trust, or other encumbrance on the work of improvement or the property on
8 which the work of improvement is situated, that (1) attaches after commencement
9 of the work of improvement, or (2) was unrecorded at the commencement of the
10 work of improvement and of which the claimant had no notice.

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

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

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

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

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

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

20 **§ 3083.620. Separate contract for site improvement**

21 3083.620. If a site improvement is provided for in a contract separate from the
22 contract for the remainder of the work of improvement, the site improvement is
23 deemed a separate work of improvement and commencement of the site
24 improvement is not commencement of the remainder of the work of improvement.

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

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

28 **§ 3083.630. Priority of advances by lender**

29 3083.630. (a) This section applies to a construction loan secured by a mortgage
30 or deed of trust that has priority over a lien under this chapter.

31 (b) An optional advance of funds by the construction lender that is used for
32 construction costs has the same priority as a mandatory advance of funds by the
33 construction lender, provided that the total of all advances does not exceed the
34 amount of the original construction loan.

35 **Comment.** Section 3083.630 rewrites former Section 3136 for clarity.

36 See also Sections 3082.020 (“construction lender” defined), 3082.060 (“lien” defined).

37 **§ 3083.640. Priority of site improvement lien**

38 3083.640. Except as provided in Section 3139 (payment bond), a lien provided
39 for in Section 3083.230 (site improvement lien) has priority over:

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

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

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

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

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

18 § 3083.650. Amount of recovery

19 3083.650. A direct contractor or a subcontractor may enforce a lien only for the
20 amount due under the terms of the contract after deducting all claims of other
21 claimants for labor, service, equipment, and material provided and embraced
22 within the contract.

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

24 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
25 material” defined), 3082.060 (“lien” defined), 3082.025 (“direct contractor” defined), 3082.180
26 (“subcontractor” defined).

27 ☞ **Staff Note.** The wording of this section needs to be correlated with the wording of Section
28 3083.420 (amount of lien).

29 Article 7. Enforcement of Lien

30 § 3083.710. Time for commencement of enforcement action

31 3083.710. (a) Except as provided in subdivision (b), the claimant shall
32 commence an action to enforce a lien within 90 days after recordation of the claim
33 of lien.

34 (b) If the claimant extends credit, and notice of the fact and terms of the
35 extension of credit is recorded within 90 days after recordation of the claim of lien,
36 the claimant shall commence an action to enforce the lien within 90 days after the
37 expiration of the credit, but in no case later than one year after completion of the
38 work of improvement.

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

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

1 For completion of a work of improvement, see Section 3089.410.
2 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.190 (“work
3 of improvement” defined).

4 **§ 3083.720. Bona fide purchaser or encumbrancer**

5 3083.720. The rights of a purchaser or encumbrancer for value and in good faith
6 acquired after expiration of the time within which to commence an action to
7 enforce a lien under Section 3083.710 are not affected by an extension of credit, or
8 by an extension of the lien or of the time to enforce the lien, unless evidenced by a
9 notice or agreement recorded before the acquisition of the rights by the purchaser
10 or encumbrancer.

11 **Comment.** Section 3083.720 restates former Section 3145 without substantive change.
12 See also Section 3082.060 (“lien” defined).

13 **§ 3083.730. Lis pendens**

14 3083.730. After commencement of an action to enforce a lien, the claimant may
15 record a notice of the pendency of action under Title 4.5 (commencing with
16 Section 405) of Part 2 of the Code of Civil Procedure.

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

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

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

23 **§ 3083.740. Dismissal for lack of prosecution**

24 3083.740. Notwithstanding Section 583.420 of the Code of Civil Procedure, the
25 court may dismiss an action to enforce a lien that is not brought to trial within two
26 years after commencement.

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

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

32 **§ 3083.750. Dismissal of action or judgment of no lien**

33 3083.750. Dismissal of an action to enforce a lien, unless the dismissal is
34 expressly stated to be without prejudice, or a judgment that no lien exists, is
35 equivalent to cancellation of the lien and its removal from the record.

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

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

39 **§ 3083.760. Costs**

40 3083.760. In addition to any other costs allowed by law, the court in an action to
41 enforce a lien shall allow as costs to each claimant whose lien is established the

1 amount paid to verify and record the claim of lien, whether the claimant is a
2 plaintiff or defendant.

3 **Comment.** Section 3083.760 continues former Section 3150 without substantive change.
4 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

5 **§ 3083.770. Deficiency**

6 3083.770. If there is a deficiency of proceeds from the sale of property on a
7 judgment for enforcement of a lien, a deficiency judgment may be entered against
8 a party personally liable for the deficiency in same the manner and with the same
9 effect as in an action to foreclose a mortgage.

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

12 **§ 3083.780. Personal liability**

13 3083.780. This chapter does not affect any of the following rights of a claimant:

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

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

19 (c) The right to enforce a judgment. A judgment obtained by the claimant in a
20 personal action described in subdivision (a) does not impair or merge the claim of
21 lien, but any amount collected on the judgment shall be credited on the amount of
22 the lien.

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

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

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

30 **§ 3083.790. Liability of contractor for lien enforcement**

31 3083.790. In an action to enforce a lien for labor, service, equipment, or material
32 provided to a contractor:

33 (a) The contractor shall defend the action at the contractor’s own expense.
34 During the pendency of the action the owner may withhold from the direct
35 contractor the amount claimed in the action.

36 (b) If the judgment in the action is against the owner or the owner’s property, the
37 owner may deduct the amount of the judgment and costs from any amount owed to
38 the direct contractor. If the amount of the judgment and costs exceeds the amount
39 owed to the direct contractor, or if the owner has settled with the direct contractor
40 in full, the owner may recover from the contractor, or the sureties on a bond given
41 by the contractor for faithful performance of the contract, the amount of the

1 judgment and costs that exceed the contract price and for which the contractor was
2 originally liable.

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

4 See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien”
5 defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined).

6 Article 8. Release Order

7 § 3083.810. Petition for release order

8 3083.810. (a) The owner of property subject to a claim of lien may petition the
9 court for an order to release the property from the claim of lien for any of the
10 following causes:

11 (1) The claimant has not commenced an action to enforce the lien within the
12 time provided in Section 3083.710.

13 (2) The claim of lien is invalid under Section 3083.360 or is for any other reason
14 invalid or unenforceable.

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

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

23 **Comment.** Subdivision (a)(1) of Section 3083.810 continues former Section 3154(a) without
24 substantive change. Subdivision (a)(2) is new. The owner need not wait until expiration of the
25 time to commence an enforcement action before bringing a petition to release an invalid claim of
26 lien. Cf. Section 3083.360 (forfeiture of lien for false claim).

27 Subdivision (b) continues former Section 3154(h) without substantive change. Subdivision (c)
28 continues former Section 3154(i) without substantive change. As used in this section, the owner
29 of property includes the owner of an interest in the property. See Section 3082.100 (“owner”
30 defined).

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

32 § 3083.820. Contents of petition

33 3083.820. A petition for a release order shall be verified and shall allege all of
34 the following:

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

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

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

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

41 (e) The facts on which the petition is based. If the petition is based on expiration
42 of the time to enforce the lien, the facts shall include that no extension of credit

1 has been recorded within the time required by Section 3083.710 and that the time
2 for commencement of an action to enforce the lien has expired.

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

5 **Comment.** Section 3083.820 supersedes subdivision (b) of former Section 3154. As used in
6 this section, the owner of property includes the owner of an interest in the property. See Section
7 3082.100 (“owner” defined).

8 The information included in the petition is intended to facilitate the court’s order under Section
9 3083.840 (hearing and order).

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

11 **§ 3083.830. Time of hearing**

12 3083.830. (a) On the filing of a petition for a release order, the clerk shall set a
13 hearing date. The date shall be not more than 30 days after the filing of the
14 petition. The court may continue the hearing beyond the 30-day period on a
15 showing of good cause, but in any event the court shall rule and make any
16 necessary orders on the petition not later than 75 days after the filing of the
17 petition.

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

- 22 (1) The preliminary notice (private work) given by the claimant.
23 (2) The records of the Contractors’ State License Board.
24 (3) The contract on which the claim of lien is based.
25 (4) The claim of lien.

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

28 **Comment.** Section 3083.830 continues subdivisions (c), (d), and the first sentence of (e) of
29 former Section 3154, with the addition of the requirement that the court act no later than 75 days
30 after the petition is filed. The reference to “if there is no clerk, the judge” has been deleted. All
31 courts now have a clerk. See also Section 3082.220 (proper court).

32 For service and proof of service by mail, see. Section 3082.240 (mailed notice). However, the
33 time when service by mail is complete under this section is governed by subdivision (c) and not
34 by Section 3082.240.

35 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.120
36 (“preliminary notice (private work)” defined).

37 **§ 3083.840. Hearing and order**

38 3083.840. (a) At the hearing both the petition and the issue of compliance with
39 the service requirements of this article are deemed controverted by the claimant.
40 The petitioner has the burden of proof that service was made in compliance with
41 this article.

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

- 1 (1) The date of recordation of the claim of lien.
2 (2) The county in which the claim of lien is recorded.
3 (3) The book and page of the place in the official records where the claim of lien
4 is recorded.
5 (4) The legal description of the property.
6 (c) The prevailing party is entitled to reasonable attorneys fees.
7 **Comment.** Subdivision (a) of Section 3083.840 continues the last sentence of former Section
8 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change.
9 Subdivision (b) continues former Section 3154(f) without substantive change. The reference to
10 the city where the claim of lien is recorded is omitted as superfluous. Subdivision (c) continues
11 former Section 3154(g) with the exception of the \$2,000 limitation.
12 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined).

13 **§ 3083.850. Release of property from claim of lien**

- 14 3083.850. (a) A release order is a recordable instrument.
15 (b) On recordation of a certified copy of a release order, the property described
16 in the order is released from the clam of lien.
17 **Comment.** Subdivision (a) of Section 3083.850 is intended to help effectuate the purpose of
18 the lien release procedure.
19 Subdivision (b) continues the second sentence of former Section 3154(f)(4) without substantive
20 change.
21 See also Section 3082.060 (“lien” defined).
22

23 CHAPTER 3. NOTICE TO WITHHOLD FUNDS FOR PRIVATE
24 WORK
25 [Reserved]

26 CHAPTER 4. NOTICE TO WITHHOLD FUNDS FOR PUBLIC WORK
27 [Reserved]

28 CHAPTER 5. GENERAL PROVISIONS RELATING TO BONDS
29 [Reserved]

30 CHAPTER 6. PAYMENT BOND FOR PRIVATE WORK
31 [Reserved]

32 CHAPTER 7. PAYMENT BOND FOR PUBLIC WORK
33 [Reserved]

1 CHAPTER 8. MISCELLANEOUS PROVISIONS

2 Article 1. Preliminary Notice of Private Work

3 **§ 3089.110. Preliminary notice prerequisite to remedies**

4 3089.110. (a) Except as otherwise provided in this section, a preliminary notice
5 (private work) is a necessary prerequisite to the validity of a lien, notice to
6 withhold funds, or claim against a payment bond with respect to a private work.

7 (b) A preliminary notice (private work) is not required of a laborer or laborer's
8 compensation fund.

9 (c) A preliminary notice (private work) is not required of a direct contractor
10 except with respect to a construction lender.

11 **Comment.** Subdivision (a) of Section 3089.110 restates part of the introductory clause of
12 former Section 3097 without substantive change.

13 Subdivision (b) restates part of former Section 3097(a) without substantive change.

14 Subdivision (c) restates parts of former Section 3097(a) and (b), omitting the exception of "the
15 contractor". Although a direct contractor is generally excused from the preliminary notice
16 requirement, the direct contractor must give preliminary notice to the construction lender pursuant
17 to Section 3089.120(c).

18 See also Sections 3082.010 ("claimant" defined), 3082.040 ("laborer" defined), 3082.050
19 ("laborer's compensation fund" defined), 3082.060 ("lien" defined), 3082.025 ("direct
20 contractor" defined), 3082.130 ("private work" defined).

21 **§ 3089.120. Preliminary notice requirement**

22 3089.120. Before recording a claim of lien, filing a notice to withhold funds, or
23 asserting a claim against a payment bond, the claimant shall give a preliminary
24 notice (private work) to each of the following persons:

25 (a) The owner or reputed owner.

26 (b) The direct contractor or reputed contractor.

27 (c) The construction lender or reputed lender, if any.

28 **Comment.** Section 3089.120 restates parts of the introductory clause and subdivision (a) of
29 former Section 3097, without substantive change. Some repetitive detail has been omitted in
30 reliance on defined terms and other substantive provisions. The preliminary notice must be in
31 writing. Section 3089.130 (contents of preliminary notice).

32 See also Sections 3082.010 ("claimant" defined), 3082.020 ("construction lender" defined),
33 3082.060 ("lien" defined), 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined),
34 3082.110 ("person" defined).

35 **§ 3089.130. Contents of preliminary notice**

36 3089.130. (a) A preliminary notice (private work) shall be in writing and shall
37 contain all of the following information:

38 (1) A general description of the labor, service, equipment, or material provided,
39 or to be provided, and an estimate of the total price.

40 (2) The name and address of the person providing the labor, service, equipment,
41 or material.

1 (3) The name of the person that contracted for the labor, service, equipment, or
2 material.

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

4 (5) The following statement in boldface type:

5 **NOTICE TO PROPERTY OWNER**

6 **If the person or firm that has given you this notice is not paid in full for**
7 **labor, service, equipment, or material provided or to be provided to your**
8 **construction project, a lien may be placed on your property. Foreclosure of**
9 **the lien may lead to loss of all or part of your property, even though you have**
10 **paid your contractor in full. You may wish to protect yourself against this by**
11 **(1) requiring your contractor to provide a signed release by the person or**
12 **firm that has given you this notice before making payment to your contractor,**
13 **or (2) any other method that is appropriate under the circumstances.**

14 **If you record a notice of completion of your construction project, you must**
15 **within 10 days after recording send a copy of the notice of completion to your**
16 **contractor and the person or firm that has given you this notice. The notice**
17 **must be sent by registered or certified mail. Failure to send the notice will**
18 **extend the deadlines to record a claim of lien. You are not required to send**
19 **the notice if you are a residential homeowner of a dwelling containing four or**
20 **fewer units.**

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

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

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

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

36 **§ 3089.140. Effect of preliminary notice**

37 3089.140. (a) A claimant may record a claim of lien, file a notice to withhold
38 funds, or assert a claim against a payment bond only for labor, service, equipment,
39 or material provided within 20 days before giving a preliminary notice (private
40 work) and at any time thereafter.

41 (b) Notwithstanding subdivision (a), a certificated architect, registered engineer,
42 or licensed land surveyor may record a claim of lien, file a notice to withhold
43 funds, or assert a claim against a payment bond for architectural, engineering, or

1 surveying services provided for the design of the work of improvement if the
2 claimant gives a preliminary notice (private work) not later than 20 days after the
3 work of improvement has commenced.

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

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

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

9 **§ 3089.150. Giving preliminary notice**

10 3089.150. (a) Subject to subdivision (b), a preliminary notice (private work)
11 shall be given to the person to be notified by any of the following methods:

12 (1) Delivering it personally.

13 (2) Leaving it at the person’s address of residence or place of business with a
14 person in charge.

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

19 (b) If the person to be notified does not reside in the state, a preliminary notice
20 (private work) shall be given by any method provided in subdivision (a) or, if the
21 person cannot be notified by any method provided in subdivision (a), by mail
22 addressed to the construction lender or the direct contractor.

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

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

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

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

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

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

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

40 See also Sections 3082.020 (“construction lender” defined), 3082.025 (“direct contractor”
41 defined), 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

1 **§ 3089.160. Coverage of preliminary notice**

2 3089.160. (a) Except as provided in subdivision (b), a claimant need give only
3 one preliminary notice (private work) to each person to which notice must be
4 given under this article with respect to all labor, service, equipment, and material
5 provided by the claimant for a work of improvement.

6 (b) If a claimant provides labor, service, equipment, or material under contracts
7 with more than one subcontractor, the claimant shall give a separate preliminary
8 notice with respect to labor, service, equipment, or material provided to each
9 contractor.

10 (c) A preliminary notice that contains a general description of labor, service,
11 equipment, or material provided by the claimant before the date of the notice also
12 covers labor, service, equipment, or material provided by the claimant after the
13 date of the notice whether or not they are within the scope of the general
14 description contained in the notice

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

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

19 **§ 3089.170. Direct contractor’s duty to provide information**

20 3089.170. A direct contractor shall make available to any person seeking to give
21 a preliminary notice (private work) the following information:

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

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

24 **Comment.** Section 3089.170 continues without substantive change the parts of former Section
25 3097(l)-(m) relating to the direct contractor’s duty to provide information. For provisions
26 concerning the content of contracts, see Section 3082.310 (contract forms).

27 See also Sections 14 (singular includes plural), 3082.020 (“construction lender” defined),
28 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person”
29 defined).

30 **§ 3089.180. Owner’s duty to give notice of construction loan**

31 3089.180. If a construction loan is obtained after commencement of work, the
32 owner shall provide the name and address of the construction lender to each
33 person that has given the owner a preliminary notice (private work).

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

37 See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),
38 3082.110 (“person” defined).

39 **§ 3089.190. Waiver void**

40 3089.190. An agreement made or entered into by an owner, whereby the owner
41 agrees to waive the rights conferred on the owner by this article is void and
42 unenforceable.

1 **Comment.** Section 3089.190 continues former Section 3097(e) without substantive change.
2 See also Section 3082.100 (“owner” defined).

3 **§ 3089.200. Disciplinary action**

4 3089.200. A licensed subcontractor is subject to disciplinary action under the
5 Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of
6 Division 3 of the Business and Professions Code, if all of the following conditions
7 are satisfied:

8 (a) The subcontractor does not pay all compensation due to a laborer’s
9 compensation fund.

10 (b) The subcontractor fails to give a preliminary notice (private work) or include
11 in the notice the information required by subdivision (b) of Section 3089.130.

12 (c) The subcontractor’s failure results in the laborer’s compensation fund
13 recording a claim of lien, filing a notice to withhold funds, or asserting a claim
14 against a payment bond.

15 (d) The amount due the laborer’s compensation fund is not paid.

16 **Comment.** Section 3089.200 continues the substance of the second paragraph of former
17 Section 3097(h), The first paragraph, relating to disciplinary action if a subcontractor fails to give
18 preliminary notice on a work of improvement exceeding \$400, is not continued.

19 The reference to an “express trust fund” has been replaced by the defined term, “laborer’s
20 compensation fund” which arguably expands the scope of the provision. See Section 3082.050
21 (“laborer’s compensation fund” defined).

22 See also Sections 3082.060 (“lien” defined), 3082.120 (“preliminary notice (private work)”
23 defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

24 **§ 3089.210. Notices filed with county recorder**

25 3089.210. On or after January 1, 2007, the county recorder may cause to be
26 destroyed all documents filed under subdivision (o) of former Section 3097.

27 **Comment.** Section 3089.210 supersedes former Section 3097(o) relating to filing the
28 preliminary notice with the county recorder. This title no longer provides for filing a preliminary
29 notice with the county recorder or for the county recorder to notify persons who filed a
30 preliminary notice of the recording of a notice of completion or notice of cessation.

31 **§ 3089.220. Transitional provisions**

32 3089.220. (a) The inclusion of the language added to paragraph (5) of
33 subdivision (c) of former Section 3097 by Chapter 795 of the Statutes of 1999
34 does not affect the effectiveness of a preliminary notice given on or after January
35 1, 2000, and before the operative date of the amendments of former Section 3097
36 enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise
37 meets the requirements of that subdivision.

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

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

4 **Comment.** Section 3089.220 continues former Section 3097(p)(2) without substantive change.
5 The transitional provision of former Section 3097(p)(1) is not continued due to lapse of time.

6 Article 2. Preliminary Notice of Public Work

7 **§ 3089.310. [Reserved]**

8 Article 3. Completion

9 **§ 3089.410. Completion**

10 3089.410. (a) For the purpose of this title, completion of a private work occurs at
11 the earliest of the following times:

12 (1) Actual completion.

13 (2) Occupation or use by the owner accompanied by cessation of labor.

14 (3) Cessation of labor for a continuous period of 60 days or, if a notice of
15 completion is recorded, for a continuous period of 30 days.

16 (b) Notwithstanding subdivision (a), if a private work is subject to acceptance by
17 a public entity, completion occurs on acceptance.

18 **Comment.** Section 3089.410 restates former Section 3086, but omits the provision of the
19 former law that defined completion to include “acceptance” by the owner. References to
20 occupation or use by an owner include those actions by the owner’s agent. See Section 3082.100
21 (“owner” defined).

22 See also Sections 3082.130 (“private work” defined), 3082.140 (“public entity” defined).

23 ☞ **Staff Note.** We have simplified the draft of this section by limiting it to private works of
24 improvement. We will expand it, or draft a parallel provision for public works, when we start
25 working on remedies for public works. The lien remedy is not available on a public work.

26 **§ 3089.430. Notice of completion**

27 3089.430. (a) On or after completion of a work of improvement an owner may
28 record a notice of completion.

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

31 (1) The name and address of the owner and the nature of the owner’s interest.

32 (2) A description of the site sufficient for identification, including the street
33 address of the site, if any. If a sufficient legal description of the site is given, the
34 effectiveness of the notice is not affected by the fact that the street address is
35 erroneous or is omitted.

36 (3) The name of the direct contractor, if any, for the work of improvement or, if
37 the notice is given only of completion of a contract for a particular portion of the
38 work of improvement as provided in Section 3089.440, the name of the direct

1 contractor under that contract and a general statement of the kind of labor, service,
2 equipment, or material provided under the contract.

3 (4) If signed by the owner's successor in interest, the names and addresses of the
4 successor's transferor.

5 (5) The date of completion. An erroneous statement of the date of completion
6 does not affect the effectiveness of the notice if the true date of completion is on or
7 before the date of recordation of the notice.

8 (6) If the notice is based on cessation of labor, the date on or about which labor
9 ceased, and that cessation of labor has been continuous until recordation of the
10 notice.

11 (7) An affidavit of mailing in the manner provided in Section 1013a of the Code
12 of Civil Procedure, showing all persons notified under Section 3089.450.

13 **Comment.** Section 3089.430 combines former Section 3093 (notice of completion) with
14 former Section 3092 (notice of cessation). For date of completion of a work of improvement, see
15 Section 3089.410. For the effect of a notice of completion, see Sections 3083.320-3083.330 (time
16 for claim of lien), 3083.710 (time for commencement of enforcement action).

17 A notice of completion is ineffective to shorten the time for a claim of lien unless notice of
18 recordation is given to the person whose claim of lien is affected. See Section 3089.450 (notice of
19 recordation by owner). The requirement of an affidavit of mailing in subdivision (b)(7) is new.

20 This section eliminates the 10-day period for recording a notice of completion under former
21 law. A claim of lien must be filed within 30 or 60 days after recording a notice of completion
22 (depending on the nature of the claimant), subject to a maximum of 90 days after actual
23 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the
24 effect of existing law. See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58
25 (1959).

26 A notice of completion is recorded in the office of the county recorder of the county in which
27 the work of improvement or part of it is situated. Section 3082.250 (filing and recording of
28 papers). A notice of completion is recorded when it is filed for record. Section 3082.250 (filing
29 and recording of papers).

30 As used in this section, the owner is the person who causes a building, improvement, or
31 structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of
32 a notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee
33 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a
34 cotenant. A notice of completion may be signed and verified by the owner's agent. See Sections
35 3082.100 ("owner" defined), 3082.260 (co-owners).

36 The reference to a successor's "transferors" is omitted from subdivision (b)(4). See Section 14
37 (singular includes plural).

38 See also Sections 3082.030 ("labor, service, equipment, or material" defined), 3082.025
39 ("direct contractor" defined), 3082.160 ("site" defined), 3082.190 ("work of improvement"
40 defined), Section 3082.250 (filing and recording of papers).

41 **§ 3089.440. Notice of completion of contract for portion of work of improvement**

42 3089.440. If a work of improvement is made under two or more contracts, each
43 covering a portion of the work of improvement:

44 (a) The owner may record a notice of completion of a contract for a portion of
45 the work of improvement. On recordation of the notice of completion, for the
46 purpose of Sections 3083.320 and 3083.330 (recordation of claim of lien) a direct
47 contractor is deemed to have completed the contract for which the notice of

1 completion is recorded and a claimant other than a direct contractor is deemed to
2 have ceased providing labor, service, equipment, or material.

3 (b) If the owner does not record a notice of completion under this section, the
4 period for recording a claim of lien is that provided in Sections 3083.320 and
5 3083.330.

6 **Comment.** Section 3089.440 continues the substance of former Section 3117, but eliminates
7 the 10-day period for recording a notice of completion. A claim of lien must be filed within 60
8 days after recording a notice of completion, subject to a maximum of 90 days after actual
9 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the
10 effect of existing law, See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58
11 (1959).

12 This section omits the rules found in former law governing the time for recording a claim of
13 lien after a notice of completion for a portion of a work of improvement. The general rules
14 governing the time for recording do not distinguish among types of notice of completion, and
15 appear to be satisfactory for purposes of this section, with the clarification set out in subdivision
16 (a). See Sections 3083.320 and 3083.330 (recordation of claim of lien).

17 See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
18 material” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.190
19 (“work of improvement” defined).

20 § 3089.450. Notice of recordation by owner

21 3089.450. (a) An owner of a private work that records a notice of completion
22 shall at the time of recordation give a copy of the notice by mail to all of the
23 following persons:

24 (1) A direct contractor.

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

26 (b) If the owner fails to give notice to a person under subdivision (a), the notice
27 of completion is ineffective to shorten the time within which the person may
28 record a claim of lien under Sections 3083.320 and 3083.330. The ineffectiveness
29 of the notice of completion is the sole liability of the owner for failure to give
30 notice to a person under subdivision (a).

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

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

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

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

37 **Comment.** Section 3089.450 restates former Section 3259.5, replacing the notice of
38 recordation with a copy of the recorded notice. The section eliminates the former 10 day notice
39 period and requires immediate notice. See also Section 3089.430(b)(7) and Code Civ. Proc. §
40 1013a(c) (affidavit of mailing). As used in this section “owner” includes a person who has an
41 interest in property (or the person’s successor in interest on the date a notice of completion is
42 recorded) that causes a building, improvement, or structure, to be constructed, altered, or repaired
43 on the property), and includes a cotenant. See Section 3082.100 (“owner” defined). A notice is
44 recorded when it is filed for record. Section 3082.250 (filing and recording of papers). The
45 references to a “mechanic’s” lien in subdivision (a) have been deleted. Subdivision (a) is intended

1 to apply to a site improvement lien as well. For service and proof of service by mail, see Section
2 3082.240 (mailed notice).

3 Subdivision (b) is phrased in terms of the ineffectiveness of the notice of completion, in place
4 of the existing references to extension of time.

5 See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.025 (“direct
6 contractor” defined), 3082.110 (“person” defined), 3082.120 (“preliminary notice (private work)”
7 defined), 3082.130 (“private work” defined).

8 Article 5. Waiver and Release

9 § 3089.610. Terms of contract

10 3089.610. (a) An owner or direct contractor may not, by contract or otherwise,
11 waive, affect, or impair a claimant’s rights under this title, whether with or without
12 notice, except with the claimant’s written consent, and any term of a contract that
13 purports to do so is void and unenforceable.

14 (b) A claimant’s written consent is void and unenforceable unless and until the
15 claimant executes and delivers a waiver and release under this article.

16 **Comment.** Section 3089.610 continues the first and second sentences of former Section
17 3262(a) without substantive change. See Section 3082.010 (“claimant” defined).

18 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
19 3082.100 (“owner” defined).

20 § 3089.620. Waiver and release

21 3089.620. A claimant’s waiver and release does not release the owner,
22 construction lender, or surety on a payment bond from a claim or lien unless both
23 of the following conditions are satisfied:

24 (a) The waiver and release is in substantially the form provided in this article and
25 is signed by the claimant.

26 (b) If the release is a conditional release, there is evidence of payment to the
27 claimant. Evidence of payment may be (i) the claimant’s endorsement on a single
28 or joint payee check that has been paid by the financial institution on which it was
29 drawn or (ii) written acknowledgment of payment by the claimant.

30 **Comment.** Section 3089.620 continues the third and fourth sentences of former Section
31 3262(a) without substantive change. The waiver and release may be signed by the claimant’s
32 agent. See Section 3082.270 (agency). The term “financial institution” has replaced “bank” in
33 subdivision (b) and in the forms provided in this article.

34 See also Sections 3082.010 (“claimant” defined), 3082.020 (“construction lender” defined),
35 3082.060 (“lien” defined), 3082.100 (“owner” defined).

36 § 3089.630. Statement of claimant

37 3089.630. An oral or written statement purporting to waive, release, impair or
38 otherwise adversely affect a claim or lien is void and unenforceable and does not
39 create an estoppel or impairment of the claim or lien unless either of the following
40 conditions is satisfied:

41 (1) The statement is pursuant to a waiver and release under this article.

42 (2) The claimant has actually received payment in full for the claim.

1 **Comment.** Section 3089.630 continues former Section 3262(b) without substantive change.
2 See also Section 3082.010 (“claimant” defined).

3 **§ 3089.640. Accord and satisfaction or settlement agreement not affected**

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

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

10 **§ 3089.650. Conditional waiver and release on progress payment**

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

16 **CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

17 **NOTICE.** This document waives the claimant’s lien and other rights effective on
18 receipt of payment. A person should not rely on this document unless satisfied that
19 the claimant has received payment.

20 **Identifying Information**

21 Name of Claimant: _____
22 Name of Customer: _____
23 Job Location: _____
24 Owner: _____
25 Through Date: _____

26 **Conditional Waiver and Release**

27 This document waives and releases lien, stop notice, and payment bond rights the
28 claimant has for labor, service, equipment, and material provided to the customer
29 on this job through the date of this document. This document is effective only on
30 the claimant’s receipt of payment from the financial institution on which the
31 following check is drawn:

32 Maker of Check: _____
33 Amount of Check: \$ _____
34 Check Payable to: _____

35 **Exceptions**

36 This document does not affect any of the following:

- 37 (1) Retentions.
38 (2) Extras for which the claimant has not received payment.
39 (3) The following progress payments for which the claimant has previously given
40 a conditional waiver and release but has not received payment:

41 Date of waiver and release: _____

1 Amount remaining unpaid: \$ _____
2 (4) Contract rights, including (i) a right based on rescission, abandonment, or
3 breach of contract, and (ii) the right to recover compensation for labor, service,
4 equipment, or material not compensated by the payment.

5 **Signature**

6 Claimant's Signature: _____

7 Claimant's Title: _____

8
9 **Comment.** Section 3089.650 continues former Section 3262(d)(1), with the addition of
10 language relating to progress payments covered by previous releases that have not been paid. The
11 references to a "mechanic's" lien have been deleted from this section; it applies to a site
12 improvement lien as well. The term "contract change" has replaced "written change order". The
13 statutory form is recast for clarity.

14 See also Section 3082.010 ("claimant" defined).

15 **§ 3089.660. Unconditional waiver and release on progress payment**

16 3089.660. If the claimant is required to execute a waiver and release in exchange
17 for, or in order to induce payment of, a progress payment and the claimant asserts
18 in the waiver it has, in fact, been paid the progress payment, the waiver and release
19 shall be in substantially the following form:

20 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

21 NOTICE TO CLAIMANT: This document waives and releases rights
22 unconditionally and states that you have been paid for giving up those rights. This
23 document is enforceable against you if you sign it, even if you have not been paid.
24 If you have not been paid, use a conditional waiver and release form.

25 **Identifying Information**

26 Name of Claimant: _____

27 Name of Customer: _____

28 Job Location: _____

29 Owner: _____

30 Through Date: _____

31 **Unconditional Waiver and Release**

32 This document waives and releases lien, stop notice, and payment bond rights the
33 claimant has for labor, service, equipment, and material provided to the customer
34 on this job through the date of this document. The claimant has received the
35 following payment:

36 Amount of payment: \$ _____

37 **Exceptions**

38 This document does not affect any of the following:

39 (1) Retentions.

40 (2) Extras for which the claimant has not received payment.

(3) Contract rights, including (i) a right based on rescission, abandonment, or breach of contract, and (ii) the right to recover compensation for labor, service, equipment, or material not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Comment. Section 3089.660 continues former Section 3262(d)(2) without substantive change. The references to a "mechanic's" lien have been deleted from this section; it applies to a site improvement lien as well. The term "contract change" has replaced "written change order". The statutory form is recast for clarity.

See also Section 3082.010 ("claimant" defined).

§ 3089.670. Conditional waiver and release on final payment

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

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE. This document waives the claimant's lien and other rights effective on receipt of payment. A person should not rely on this document unless satisfied that the claimant has received payment.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop notice, and payment bond rights the claimant has for all labor, service, equipment, and material provided to the customer on this job. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____

Amount of Check: \$ _____

Check Payable to: _____

Exceptions

This document does not affect any of the following:

(1) Disputed claims for extras in the amount of \$ _____

(2) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date of waiver and release: _____

1 Amount remaining unpaid: \$ _____

2 **Signature**

3 Claimant's Signature: _____

4 Claimant's Title: _____

5
6 **Comment.** Section 3089.670 continues former Section 3262(d)(3), with the addition of
7 language relating to progress payments covered by previous releases that have not been paid, and
8 the addition of a line for identification of the waivant's customer. The references to a
9 "mechanic's" lien have been deleted from this section; it applies to a site improvement lien as
10 well. The statutory form is recast for clarity.

11 See also Section 3082.010 ("claimant" defined).

12 **§ 3089.680. Unconditional waiver and release on final payment**

13 3089.680. If the claimant is required to execute a waiver and release in exchange
14 for, or in order to induce payment of, a final payment and the claimant asserts in
15 the waiver it has, in fact, been paid the final payment, the waiver and release shall
16 be in substantially the following form:

17 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

18
19 NOTICE TO CLAIMANT: This document waives and releases rights
20 unconditionally and states that you have been paid for giving up those rights. This
21 document is enforceable against you if you sign it, even if you have not been paid.
22 If you have not been paid, use a conditional waiver and release form.

23 **Identifying Information**

24 Name of Claimant: _____

25 Name of Customer: _____

26 Job Location: _____

27 Owner: _____

28 Date: _____

29 **Unconditional Waiver and Release**

30 This document waives and releases lien, stop notice, and payment bond rights the
31 claimant has for all labor, service, equipment, and material provided to the
32 customer on this job. The claimant has been paid in full.

33 **Exceptions**

34 This document does not affect any of the following:

35 (1) Disputed claims for extras in the amount of \$ _____

36 **Signature**

37 Claimant's Signature: _____

38 Claimant's Title: _____

- 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. The statutory form is recast for clarity.
4 See also Section 3082.010 (“claimant” defined).
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