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 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.

e) 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

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 resurrexct the claim of lien.

See also Section 3082.060 (“lien” defined).

§ 3083.730. Lis pendens

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”.

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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
TITLE 15. WORKS OF IMPROVEMENT

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

§ 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, and includes the person’s assigns.

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

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

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

§ 3082.105. Payment bond (private work)

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

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

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

§ 3082.106. Payment bond (public work)

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

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

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

§ 3082.125. Preliminary notice (public work)

3082.125. “Preliminary notice (public work)” means the notice required by Article 2 (commencing with Section 3089.310) of Chapter 8 as a prerequisite to use of the remedies provided in this title with respect to a public work.
Comment. Section 3082.125 supersedes former Section 3098. The substantive requirements for a preliminary notice (public work) have been relocated to Article 2 (commencing with Section 3089.310) of Chapter 8.

See also 3082.150 (“public work” defined).

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

§ 3082.140. Public entity

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

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

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

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

Article 5. Construction of and Terms and Conditions of Bonds

§ 3082.510. Application of Bond and Undertaking Law

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

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

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

§ 3082.520. Release of surety from liability

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

(a) A change to a contract, plan, specification, or agreement for a work of improvement or for labor, service, equipment or material provided for a work of improvement.
(b) A change to the terms of payment or an extension of the time for payment for a work of improvement.
(c) A rescission or attempted rescission of a contract, agreement, or bond.
(d) A condition precedent or subsequent in the bond purporting to limit the right of recovery of a claimant otherwise entitled to recover under a contract, agreement, or bond.

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

Comment. Section 3082.520 restates former Section 3225 without substantive change. See also Sections 3082.010 (“claimant” defined), 3082.022 (“contract” defined), 3083.030 (“labor, service, equipment, or material” defined), 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).

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

§ 3082.530. Construction of bond

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

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

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

Comment. Section 3082.530 restates former Section 3226 without substantive change. See also Sections 3083.210-3083.240 (who is entitled to lien). See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person” defined). Cf. Code Civ. Proc. § 995.130 (“beneficiary” defined).

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

§ 3082.540. Notice to principal and surety

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

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

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

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

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

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

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

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

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

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

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


Staff Note. This section will be reviewed in light of general provisions to be drafted on address of notices (e.g., an address “reasonably calculated to give actual notice”). Also, like the preceding section, this one appears directed primarily to the payment bond. We will revisit this matter before the project is complete.

CHAPTER 2. MECHANICS LIEN FOR PRIVATE WORK

Article 6. Priorities

§ 3083.615. Payment bond covering mechanics lien

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

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

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

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

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

§ 3083.645. Payment bond covering site improvement lien

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

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

See also Sections 3082.060 (“lien” defined), 3082.105 (“payment bond (private work)” defined), 3082.190 (“work of improvement” defined).
CHAPTER 6. PAYMENT BOND

Article 1. General Provisions Relating to Payment Bonds

§ 3087.010. Payment bond

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

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

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

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

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

§ 3087.020. Limitation on title

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

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

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

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

Article 2. Payment Bond for Private Work


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

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

See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined), 3083.030 (“labor, service, equipment, or material” defined), 3082.100 (“owner” defined), 3082.105 (“payment bond (private work)” defined), 3082.190 (“work of improvement” defined).
§ 3087.220. Limitation of owner’s liability

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

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

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

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

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

§ 3087.230. Bond required by lending institution

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

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

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

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

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

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

§ 3087.240. Provision shortening statute of limitations

3087.240. No provision in a payment bond (private work) is valid that attempts to shorten the period prescribed by Section 337 of the Code of Civil Procedure for
the commencement of an action to enforce the liability on the bond unless both of
the following conditions are satisfied:
(a) The bond is recorded before commencement of the work of improvement.
(b) The bond provides a period for commencement of action that is not shorter
than six months after completion of the work of improvement.

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

See also Sections 3082.250 (filing and recording of papers), 3089.410 (completion).
See also Sections 3082.105 (“payment bond (private work)” defined). 3082.190 (“work of
improvement” defined).
See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),
995.185 (“surety” defined).

Staff Note. We have performed radical surgery on this provision, but believe that it captures
the meaning of existing law.
Existing law appears to invalidate a limitation provision in a bond if the provision would
shorten the limitations period to less than six months. Does it make sense to read a six month
limitation into the provision, rather than invalidate it completely?

§ 3087.250. Statute of limitations against surety on recorded bond

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

Comment. Section 3087.250 restates former Section 3240 without substantive change. See also
Section 3082.250 (filing and recording of papers), completion.
See also Sections 3082.105 (“payment bond (private work)” defined). 3082.190 (“work of
improvement” defined).
See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),
995.185 (“surety” defined).

Staff Note. While this section appears at first blush to completely eclipse the preceding
section, a close reading suggests that this section protects only a surety on the bond, and not the
principal might still obtain protection under the preceding section; should the preceding section
be limited in the interest of clarity to an action against the principal?

§ 3087.260. Preliminary notice (private work) required

3087.260. A claimant may not enforce the liability on a payment bond (private
work) unless either of the following conditions is satisfied:
(a) The claimant has given a preliminary notice (private work) as provided in
Article 1 (commencing with Section 3089.110) of Chapter 8.
(b) The claimant has given written notice to the principal and surety as provided
in Section 3082.540. Notice under this subdivision shall be given within 75 days
after completion of the work of improvement or, if a notice of completion is
recorded, within 15 days after recordation.
Comment. Section 3087.260 restates former Section 3242 without substantive change. The former limitation to a contract entered into on or after January 1, 1995, is omitted as obsolete. See also Sections 14 (singular includes plural), 3082.240 (mailed notice and proof of notice), 3089.410 (completion), 3085.420 (notice of completion).

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

Article 3. Payment Bond for Public Work

§ 3087.310. Payment bond requirement

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

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

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

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

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

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

§ 3087.320. Bond requirements

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

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

(2) The bond shall provide that if the direct contractor or a subcontractor fails to pay (1) a person named in Section 3181, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, the surety will pay for those
amounts, and if an action is brought to enforce the liability on the bond, a
reasonable attorney’s fee, to be fixed by the court.

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

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

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

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

See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
3082.106 (“payment bond (public work)” defined), 3082.110 (“person” defined), 3082.180
(“subcontractor” defined).

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

§ 3087.330. Statute of limitations

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

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

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

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

§ 3087.340. Action on bond

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

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

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

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

See also Sections 3082.022 (“contract” defined), 3082.106 (“payment bond (public work)”
defined), 3082.140 (“public entity” defined).
§ 3087.350. Consequences of failure to give bond

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

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

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

Comment. Section 3087.350 restates former Section 3251 without substantive change. The former operative date provision is deleted as obsolete. See also Sections 3082.010 (“claimant” defined), 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined), 3082.10 (“payment bond (public work)” defined), 3082.140 (“public entity” defined).

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

§ 3087.360. Preliminary notice (public work) required

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

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

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

Comment. Section 3087.360 restates former Section 3252 without substantive change. See also Section 14 (singular includes plural). The former limitation to a contract entered into on or after January 1, 1995, is omitted as obsolete. See also Sections 3082.010 (“claimant” defined), 3082.106 (“payment bond (public work)” defined), 3082.125 (“preliminary notice (public work)” defined), 3082.190 (“work of 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.

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.

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

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

Comment. Section 3082.020 continues former Section 3087 without substantive change.
See also Sections 14 (present includes future), 3082.100 (“owner” defined), 3082.110 (“person”
defined), 3082.190 (“work of improvement” defined).

§ 3082.022. Contract

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

Comment. Section 3082.022 continues former Section 3088 without substantive change. This
definition does not apply if the provision or context requires otherwise. Section 3082 (application
of definitions). See, e.g., Sections 3082.100 (contract of purchase), 3082.310 (subcontract).
See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
3082.190 (“work of improvement” defined).

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

§ 3082.025. Direct contractor

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

Comment. Section 3082.025 supersedes former Section 3095 “original contractor”. A direct
contractor is not limited to a builder, and may include a surveyor, engineer, material supplier,
artisan, or other person that contracts directly with the owner.
See also Sections 3082.100 (“owner” defined), 3082.110 (“person” defined).

§ 3082.027. Express trust fund

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

Comment. Section 3082.027 continues a portion of former Section 3111 without substantive
change.
See also Sections 3082.040 (“laborer” defined), 3082.050 (“laborer’s compensation fund”
defined).
§ 3082.030. Labor, service, equipment, or material

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

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

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

§ 3082.040. Laborer

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

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

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

§ 3082.050. Laborer’s compensation fund

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

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

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

§ 3082.060. Lien

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

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

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

§ 3082.070. Material supplier

3082.070. (a) “Material supplier” means a person that provides material or supplies to be used or consumed in a work of improvement.
(b) Materials or supplies delivered to a site are presumed to have been used or consumed in the work of improvement. The presumption established by this subdivision is a presumption affecting the burden of proof.

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

Subdivision (b) is new.

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

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

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

§ 3082.090 [reserved]. Notice to withhold funds

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

§ 3082.100. Owner

3082.100. “Owner” means:

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

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

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

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

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

§ 3082.110. Person

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

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

See also Section 3082.140 (“public entity” defined).
§ 3082.120. Preliminary notice (private work)

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

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

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

§ 3082.130. Private work

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

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

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

§ 3082.140. Public entity

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

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

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

§ 3082.150. Public work

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

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

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

§ 3082.160. Site

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

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

See also Section 3082.190 (“work of improvement” defined).
§ 3082.170. Site improvement

3082.170. “Site improvement” means any of the following work on property:
(a) Demolition or removal of improvements, trees, or other vegetation.
(b) Drilling test holes.
(c) Grading, filling, or otherwise improving the property or a street, highway, or sidewalk in front of or adjoining the property.
(d) Construction or installation of sewers or other public utilities.
(e) Construction of areas, vaults, cellars, or rooms under sidewalks.
(f) Any other work or improvements to infrastructure or in preparation of the site for a work of improvement.

Comment. Section 3082.170 continues former Section 3102 without substantive change. Subdivision (f) makes clear that the reference in former law to “making any improvements” means preparatory work and does not include construction of a structure. See also Sections 3082.160 (“site” defined), 3082.190 (“work of improvement” defined).

§ 3082.180. Subcontractor

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

Comment. The first sentence of Section 3082.180 continues former Section 3104 without substantive change. The second sentence is new; it makes clear that the term “subcontractor” includes a subcontractor below the first tier. See also Section 3082.100 (“owner” defined).

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

§ 3082.190. Work of improvement

3082.190. (a) “Work of improvement” includes but is not limited to:
(1) Construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.
(2) Seeding, sodding, or planting of property for landscaping purposes.
(3) Filling, leveling, or grading of property.
(b) Except as otherwise provided in this title, “work of improvement” means the entire structure or scheme of improvement as a whole, and includes site improvement.

Comment. Section 3082.190 restates former Section 3106. The section is revised to reorganize and tabulate the different types of works falling within the definition, to expand the coverage of the definition, and to make various technical, nonsubstantive revisions. The term “property” has replaced “lot or tract of land.” A site improvement is treated under this title in the same manner as a work of improvement generally, except as specifically provided in this title. See Sections 3083.550 (claim against separate residential units), 3083.610 (priority of lien), 3083.640 (priority of site improvement lien). See also Section 3082.170 (“site improvement” defined).
Article 2. General Provisions

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

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

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

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

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

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

§ 3082.235. Written notice
3082.235. Notice under this title shall be in writing.

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

§ 3082.240. Mailed notice
3082.240. The following provisions apply to notice given by mail under this title:
(a) Notice shall be given by registered or certified mail or by another method of delivery providing for overnight delivery.
(b) Notice is complete when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.
(c) Proof that the notice was given in the manner provided in this section shall be made by (1) a return receipt or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the returned envelope itself (2) proof of mailing certified by the United States Postal Service, or (3) a tracking record or other documentation certified by an express service carrier showing delivery of the notice.

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

§ 3082.250. Filing and recording of papers

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

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

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

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

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

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

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

§ 3082.260. Co-owners

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

(b) Notice to the owner of an interest in property is effective as to a co-owner of that interest. Notice to the owner of a leasehold or other interest in property that is less than a fee is not effective as to the owner of the fee.
Comment. Section 3082.260 is new. It generalizes provisions found in former Sections 3092 (notice of cessation) and 3093 (notice of completion), and clarifies the effect of giving or receiving notice by co-owners.

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

§ 3082.270. Agency

3082.270. An act that may be done by or to a person under this title may be done by or to the person’s authorized agent to the extent the act is within the scope of the agent’s authority.

Comment. Section 3082.270 is a specific application of Section 2305 (agent may perform acts required of principal by code). This section makes clear that an agent’s authority is limited to the scope of the agency. Thus to the extent a direct contractor is deemed to be the agent of the principal for the purpose of engaging a subcontractor, the scope of the agency does not include other acts, such as compromise of litigation.

For provisions relating to the agent of an owner and to the agency authority of co-owners, see Sections 3082.100 (“owner” defined) and 380.260 (co-owners).

See also Section 3082.110 (“person” defined).

§ 3082.280. Relation to other statutes

3082.280. (a) This title does not apply to a transaction governed by the Oil and Gas Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of the Code of Civil Procedure.

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

(c) This title does not limit, and is not affected by, improvement security provided under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

Comment. Subdivision (a) of Section 3082.280 restates former Section 3266(a) without substantive change.

Subdivision (b) restates former Section 3266(b) without substantive change. This provision updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, § 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code. See Pub. Cont. Code § 20457.

Subdivision (c) is new. It clarifies the interrelation between this title and the Subdivision Map Act. For relevant provisions of that act, see Gov’t Code §§ 66499-66499.10 (improvement security).

Article 3. Construction Documents

§ 3082.310. Contract forms

3082.310. (a) A written contract entered into between an owner and a direct contractor shall provide a space for the owner to enter the following information:

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

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

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

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

§ 3082.320. Designation of construction lender on building permit

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

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

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

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

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

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

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

§ 3082.330. Construction trust deed

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

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

(2) The name and address of the owner of the property described in the instrument.
(3) A legal description of the property that secures the loan and, if known, the street address of the property.

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

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

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

Comment. Section 3082.330 continues former Section 3097(j) without substantive change. See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined), 3082.110 (“person” defined), 3082.120 (“preliminary notice (private work)” defined), 3082.190 (“work of improvement” defined).

Article 4. Laborer’s Compensation Fund

§ 3082.410. Standing to enforce laborer’s rights

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

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

Comment. Section 3082.410 continues the last two sentences of former Section 3089(b) without substantive change. See also Sections 3082.040 (“laborer” defined), 3082.050 (“laborer’s compensation fund” defined), 3082.190 (“work of improvement” defined).

§ 3082.420. Notice of overdue laborer compensation

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

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

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

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

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

(5) The amount then past due and owing.

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

Comment. Section 3082.420 restates former Section 3097(k) without substantive change. The reference to the Registrar of Contracts in the final sentence of former Section 3097(k) has been revised to refer to the Contractors’ State License Law. This is a technical, nonsubstantive change. See also Sections 3082.020 (“construction lender” defined), 3082.027 (“express trust fund” defined), 3082.040 (“laborer” defined), 3082.050 (“laborer’s compensation fund” defined), 3082.100 (“owner” defined), 3082.160 (“site” defined), 3082.180 (“subcontractor” defined), 3082.210 (application of title).

CHAPTER 2. MECHANICS LIEN FOR PRIVATE WORK

Article 1. Application of Chapter

§ 3083.110. Scope of chapter

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

Comment. Section 3083.110 continues former Section 3109 without substantive change. See also Sections 3082.130 (“private work” defined), 3082.150 (“public work” defined).

Article 2. Who Is Entitled to Lien

§ 3083.210. Persons entitled to lien

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

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

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

The reference in the introductory portion of Section 3083.210 to labor, service, equipment or material “properly authorized” replaces the references in former Section 3110 to the “instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise).” See Section 3083.240 (who may authorize work).
The type of contribution to the work of improvement that qualifies for a lien right is described in the introductory portion of Section 3083.210 as provision of “labor, service, equipment, or material.” Elimination of the former references to “bestowing skill or other necessary services” or “furnishing appliances, teams, or power” or “work done or materials furnished” is not a substantive change. See Section 3082.030 (“labor, service, equipment, or material” defined).

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

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

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

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

§ 3083.220. Lien right of express trust fund

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

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

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

§ 3083.230. Site improvement lien

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

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

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

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

Staff Note. In this draft we have used the phrase “properly authorized” in place of the phrase “pursuant to a contract” used in earlier drafts.
§ 3083.240. Who may authorize work
3083.240. For the purpose of this chapter, labor, service, equipment, or material provided for a work of improvement or for a site improvement is properly authorized if:
(a) Provided at the request of the owner.
(b) Provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the work of improvement.

Comment. Section 3083.240 restates parts of former Sections 3110 and 3112. The reference to work provided at the request of an owner in subdivision (a) includes work provided at the instance of the owner, or of a person acting by or under the owner’s authority. See Section 3082.100 (“owner” defined).
The inclusion of project managers in subdivision (b) is new. The references in former law to sub-subcontractors and builders have been omitted as surplus. A contractor either has a contract with the owner (direct contractor) or does not (subcontractor). This title does not distinguish among levels of subcontractor. The term “builder” was not defined in former law and was used only in former Section 3110. A work of improvement includes a site improvement. See Section 3082.190 (“work of improvement” defined).

See also Sections 3082.025 (“direct contractor” defined), 3082.030 (“labor, service, equipment, or material” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).

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

Article 3. Conditions to Enforcing a Lien

§ 3083.310. Preliminary notice required
3083.310. A claimant may enforce a lien only if the claimant has given a preliminary notice (private work) and made proof of service to the extent required by Article 1 (commencing with Section 3089.110) of Chapter 8.

Comment. Section 3083.310 continues former Section 3114 without substantive change. A claimant must give preliminary notice to the extent provided in the preliminary notice provisions of this titled. See Section 3089.110 et seq. A preliminary notice is not required of a direct contractor or a laborer or laborer’s compensation fund. Section 3089.110.(b) (preliminary notice prerequisite to remedies).

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

Staff Note. This provision may need to be generalized or duplicated when we get to notice to withhold funds and bond provisions.

§ 3083.320. Time for claim of lien by direct contractor
3083.320. A direct contractor may not enforce a lien unless the contractor records a claim of lien after the contractor completes the contract and before the earlier of the following times:
(a) Ninety days after completion of the work of improvement.
(b) Sixty days after the owner records a notice of completion.
Comment. Section 3083.320 restates former Section 3115. For “completion” of a work of improvement, see Section 3089.410. For recordation of a notice of completion, see Section 3089.430 (notice of completion). The notice of completion includes notice of cessation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

See also Sections 3082.010 (“claimant” defined), 3082.027 (“express trust fund” defined), 3082.060 (“lien” defined).
§ 3083.350. Claim of lien

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

(a) A statement of the claimant’s demand after deducting all just credits and offsets.
(b) The name of the owner or reputed owner, if known.
(c) A general statement of the kind of labor, service, equipment, or material provided by the claimant.
(d) The name of the person that contracted for the labor, service, equipment, or material.
(e) A description of the site sufficient for identification.

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

§ 3083.355. Notice of recordation of claim of lien

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

(1) The owner or reputed owner of property subject to the claim of lien.
(2) The direct contractor or reputed contractor, if other than the claimant.
(3) The construction lender or reputed lender, if any.

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

(1) The date of recordation.
(2) The county in which the claim of lien is recorded.
(3) The recording identification number of the claim of lien, if available.
(4) A description of the site sufficient for identification.
(5) An affidavit of mailing in the manner provided in Section 1013a of the Code of Civil Procedure, showing all persons notified of the recordation.

(c) The lien claimant shall mail notice of recordation, together with a copy of the claim of lien, to the persons notified at an address reasonably calculated to give the persons actual notice.
Comment. Section 3083.355 is new. An unenforceable lien may be expunged. Section 3083.810 (petition for release order). For proof of notice, see Section 3082.240 (mailed notice).

§ 3083.360. Forfeiture of lien for false claim

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

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

1. The claim of lien was made with intent to defraud.
2. An innocent third party, without notice, actual or constructive, became the bona fide owner of the property since recordation of the claim of lien, and the claim of lien was so deficient that it did not put the party on further inquiry in any manner.

Comment. Section 3083.360 combines former Sections 3118 and 3261. The terminology of the combined provision has been conformed to Section 3083.350 (claim of lien). See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.160 (“site” defined).

Article 4. Amount of Lien

§ 3083.410. Amount of lien

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

1. The reasonable value of the labor, service, equipment, and material provided by the claimant.
2. The price agreed to by the claimant and the person with which the claimant contracted. The lien is not limited in amount by the price stated in the contract [except as provided in Sections 3235 and 3236 (payment bond)].

(b) This section does not preclude the claimant from including in a claim of lien an amount due for labor, service, equipment, or material provided pursuant to a contract change.

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

Comment. Section 3083.410 continues subdivisions (a) and (b) of former Section 3123 and a portion of former Section 3110 without substantive change. As used in this section, the reasonable value of labor, service, equipment, and material includes the reasonable use value of appliances, equipment, teams, and power.
In subdivision (b) the term “contract change” has replaced “written modification of the contract”. This codifies the effect of Basic Modular Facilities, Inc. v. Ehsanipour, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

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

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

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

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

§ 3083.420. Lien limited to amount of contract or modification

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

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

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

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

Article 5. Property Subject to Lien

§ 3083.510. Property subject to lien

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

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

See also Sections 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined), 3082.190 (“work of improvement” defined).
§ 3083.520. Interest subject to lien

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

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

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

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

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

§ 3083.530. Notice of nonresponsibility

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

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

1. A description of the site sufficient for identification.
2. The name and nature of the owner’s title or interest.
3. The name of a purchaser under contract, if any, or lessee, if known.
4. A statement that the person giving the notice is not responsible for claims arising from the work of improvement.

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

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

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

§ 3083.540. Multiple works of improvement

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

(a) The works of improvement have or are reputed to have the same owner, or the labor, service, equipment, or material was contracted for by the same person for the works of improvement whether or not they have the same owner.
(b) The claimant in the claim of lien designates the amount due for each work of improvement. If the claimant contracted for a lump sum payment for labor, service, equipment, and material provided for the works of improvement and the contract does not segregate the amount due for each work of improvement separately, the claimant may estimate an equitable distribution of the sum due for each work of improvement based on the proportionate amount of labor, service, equipment, or material provided for each. If the claimant does not designate the amount due for each work of improvement, the lien is subordinate to other liens.

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

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

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

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

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

§ 3083.550. Claim against separate residential units

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

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

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

(2) Material provided for the work of improvement is deemed to be provided for use or consumption in each separate residential unit in which the material is actually used or consumed; but if the claimant is unable to segregate the amounts used or consumed in separate residential units, the claimant has the right to all the benefits of Section 3083.540 (multiple works of improvement).
Comment. Section 3083.550 restates the first paragraph of former Section 3131 without substantive change. The reference to “filing” a claim of lien has been changed to recording. See Sections 3083.320, 3083.330 (recording of claim of lien). For the purpose of this section, a claim of lien is not considered recorded unless done in the manner provided by Section 3082.250 (filing and recording of papers).

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

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

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

§ 3083.560. Release bond

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

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

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

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

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

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

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

See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined), 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined).
Article 6. Priorities

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

§ 3083.610. Priority of lien

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

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

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

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

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

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

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

§ 3083.620. Separate contract for site improvement

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

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

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

§ 3083.630. Priority of advances by lender

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

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

Comment. Section 3083.630 rewrites former Section 3136 for clarity.

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

§ 3083.640. Priority of site improvement lien

3083.640. Except as provided in Section 3139 (payment bond), a lien provided for in Section 3083.230 (site improvement lien) has priority over:
(a) A mortgage, deed of trust, or other encumbrance that (1) attaches after commencement of the site improvement, or (2) was unrecorded at the commencement of the site improvement and of which the claimant had no notice.

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

Comment. Section 3083.640 continues former Section 3137 without substantive change. See also Sections 3082.010 (“claimant” defined), 3082.060 (“lien” defined), 3082.170 (“site improvement” defined).

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

§ 3083.650. Amount of recovery

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

Comment. Section 3083.650 continues former Section 3140 without substantive change. See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or material” defined), 3082.060 (“lien” defined), 3082.025 (“direct contractor” defined), 3082.180 (“subcontractor” defined).

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

Article 7. Enforcement of Lien

§ 3083.710. Time for commencement of enforcement action

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

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

Comment. Section 3083.710 restates former Section 3144.
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 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.

Comment. Section 3083.720 restates former Section 3145 without substantive change. 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 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. 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).

§ 3083.740. Dismissal for lack of prosecution
3083.740. Notwithstanding Section 583.420 of the Code of Civil Procedure, the court may dismiss an action to enforce a lien that is not brought to trial within two years after commencement.

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

See also Section 3082.060 (“lien” defined).

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

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

See also Section 3082.060 (“lien” defined).

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

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

§ 3083.770. Deficiency

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

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

§ 3083.780. Personal liability

3083.780. This chapter does not affect any of the following rights of a claimant:
(a) The right to maintain a personal action to recover a debt against the person liable, either in a separate action or in an action to enforce a lien.
(b) The right to a writ of attachment. In an application for a writ of attachment, the claimant shall refer to this section. The claimant’s recording of a claim of lien does not affect the right to a writ of attachment.
(c) The right to enforce a judgment. A judgment obtained by the claimant in a personal action described in subdivision (a) does not impair or merge the claim of lien, but any amount collected on the judgment shall be credited on the amount of the lien.

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

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

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

§ 3083.790. Liability of contractor for lien enforcement

3083.790. In an action to enforce a lien for labor, service, equipment, or material provided to a contractor:
(a) The contractor shall defend the action at the contractor’s own expense. During the pendency of the action the owner may withhold from the direct contractor the amount claimed in the action.
(b) If the judgment in the action is against the owner or the owner’s property, the owner may deduct the amount of the judgment and costs from any amount owed to the direct contractor. If the amount of the judgment and costs exceeds the amount owed to the direct contractor, or if the owner has settled with the direct contractor in full, the owner may recover from the contractor, or the sureties on a bond given by the contractor for faithful performance of the contract, the amount of the
judgment and costs that exceed the contract price and for which the contractor was originally liable.

**Comment.** Section 3083.790 restates former Section 3153 without substantive change. See also Sections 3082.030 ("labor, service, equipment, or material" defined), 3082.060 ("lien" defined), 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined).

Article 8. Release Order

§ 3083.810. Petition for release order

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

1. The claimant has not commenced an action to enforce the lien within the time provided in Section 3083.710.
2. The claim of lien is invalid under Section 3083.360 or is for any other reason invalid or unenforceable.

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

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

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

Subdivision (b) continues former Section 3154(h) without substantive change. Subdivision (c) continues former Section 3154(i) without substantive change. As used in this section, the owner of property includes the owner of an interest in the property. See Section 3082.100 ("owner" defined). See also Sections 3082.010 ("claimant" defined), 3082.060 ("lien" defined).

§ 3083.820. Contents of petition

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

1. The date of recordation of the claim of lien. A certified copy of the claim of lien shall be attached to the petition.
2. The county in which the claim of lien is recorded.
3. The book and page of the place in the official records where the claim of lien is recorded.
4. The legal description of the property subject to the claim of lien.
5. The facts on which the petition is based. If the petition is based on expiration of the time to enforce the lien, the facts shall include that no extension of credit
has been recorded within the time required by Section 3083.710 and that the time
for commencement of an action to enforce the lien has expired.

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

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

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

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

§ 3083.830. Time of hearing

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

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

(1) The preliminary notice (private work) given by the claimant.

(2) The records of the Contractors’ State License Board.

(3) The contract on which the claim of lien is based.

(4) The claim of lien.

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

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

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

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

§ 3083.840. Hearing and order

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

(b) If judgment is in favor of the petitioner, the court shall order release of the
property from the claim of lien. The release order shall state:
(1) The date of recordation of the claim of lien.
(2) The county in which the claim of lien is recorded.
(3) The book and page of the place in the official records where the claim of lien is recorded.
(4) The legal description of the property.
(c) The prevailing party is entitled to reasonable attorneys fees.

Comment. Subdivision (a) of Section 3083.840 continues the last sentence of former Section 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change. Subdivision (b) continues former Section 3154(f) without substantive change. The reference to the city where the claim of lien is recorded is omitted as superfluous. Subdivision (c) continues former Section 3154(g) with the exception of the $2,000 limitation.

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

§ 3083.850. Release of property from claim of lien

3083.850. (a) A release order is a recordable instrument.
(b) On recordation of a certified copy of a release order, the property described in the order is released from the claim of lien.

Comment. Subdivision (a) of Section 3083.850 is intended to help effectuate the purpose of the lien release procedure. Subdivision (b) continues the second sentence of former Section 3154(f)(4) without substantive change. See also Section 3082.060 (“lien” defined).

CHAPTER 3. NOTICE TO WITHHOLD FUNDS FOR PRIVATE WORK

[Reserved]

CHAPTER 4. NOTICE TO WITHHOLD FUNDS FOR PUBLIC WORK

[Reserved]

CHAPTER 5. GENERAL PROVISIONS RELATING TO BONDS

[Reserved]

CHAPTER 6. PAYMENT BOND FOR PRIVATE WORK

[Reserved]

CHAPTER 7. PAYMENT BOND FOR PUBLIC WORK

[Reserved]
CHAPTER 8. MISCELLANEOUS PROVISIONS

Article 1. Preliminary Notice of Private Work

§ 3089.110. Preliminary notice prerequisite to remedies

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

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

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

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

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

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

See also Sections 3082.010 (“claimant” defined), 3082.040 (“laborer” defined), 3082.050 (“laborer’s compensation fund” defined), 3082.060 (“lien” defined), 3082.025 (“direct contractor” defined), 3082.130 (“private work” defined).

§ 3089.120. Preliminary notice requirement

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

(a) The owner or reputed owner.

(b) The direct contractor or reputed contractor.

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

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

See also Sections 3082.010 (“claimant” defined), 3082.020 (“construction lender” defined), 3082.060 (“lien” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person” defined).

§ 3089.130. Contents of preliminary notice

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

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

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

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

(5) The following statement in boldface type:

**NOTICE TO PROPERTY OWNER**

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

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

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

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

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

§ 3089.140. Effect of preliminary notice

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

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

**Comment.** Subdivision (a) of Section 3089.140 supersedes former Section 3097(d). The
provision is simplified so that it refers only to the effect of giving the preliminary notice.
Subdivision (b) restates the unnumbered paragraph preceding former Section 3097(d).
See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
material” defined), 3082.060 (“lien” defined), 3082.190 (“work of improvement” defined).

§ 3089.150. Giving preliminary notice

3089.150. (a) Subject to subdivision (b), a preliminary notice (private work)
shall be given to the person to be notified by any of the following methods:
(1) Delivering it personally.
(2) Leaving it at the person’s address of residence or place of business with a
person in charge.
(3) Mailing it to the person addressed to (i) the person’s residence or place of
business, (ii) the address shown by the building permit on file with the authority
issuing a building permit for the work of improvement, or (iii) an address recorded
under Section 3082.330 (construction trust deed).
(b) If the person to be notified does not reside in the state, a preliminary notice
(private work) shall be given by any method provided in subdivision (a) or, if the
person cannot be notified by any method provided in subdivision (a), by mail
addressed to the construction lender or the direct contractor.
(c) Proof that preliminary notice was given to a person in the manner required by
this section shall be made by the proof of notice affidavit described in subdivision
(d) and, if given by mail, shall be accompanied by proof in the manner provided in
Section 3082.240.
(d) A proof of notice affidavit shall show all of the following:
(1) The time, place, and manner of notice and facts showing that notice was
given in the manner required by this section.
(2) The name and address of the person to which the preliminary notice was
given, and, if appropriate, the title or capacity in which the person was given
notice.

**Comment.** Subdivisions (a) and (b) of Section 3089.150 continue former Section 3097(f)
without substantive change. Service of notice terminology has been changed to giving of notice
terminology.
Subdivisions (c) and (d) continue former Section 3097.1 without substantive change. Service of
notice terminology has been changed to giving of notice terminology.
For service and proof of service by mail, see Section 3082.240 (mailed notice). This expands
the permissible methods of mailing.
See also Sections 3082.020 (“construction lender” defined), 3082.025 (“direct contractor”
defined), 3082.110 (“person” defined), 3082.190 (“work of improvement” defined).
§ 3089.160. Coverage of preliminary notice
3089.160. (a) Except as provided in subdivision (b), a claimant need give only
one preliminary notice (private work) to each person to which notice must be
given under this article with respect to all labor, service, equipment, and material
provided by the claimant for a work of improvement.
(b) If a claimant provides labor, service, equipment, or material under contracts
with more than one subcontractor, the claimant shall give a separate preliminary
notice with respect to labor, service, equipment, or material provided to each
subcontractor.
(c) A preliminary notice that contains a general description of labor, service,
equipment, or material provided by the claimant before the date of the notice also
covers labor, service, equipment, or material provided by the claimant after the
date of the notice whether or not they are within the scope of the general
description contained in the notice

Comment. Section 3089.160 restates former Section 3097(g) without substantive change.
See also Sections 3082.010 (“claimant” defined), 3082.030 (“labor, service, equipment, or
material” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined), 3082.190
(“work of improvement” defined).

§ 3089.170. Direct contractor’s duty to provide information
3089.170. A direct contractor shall make available to any person seeking to give
a preliminary notice (private work) the following information:
(a) The name and residence address of the owner.
(b) The name and address of the construction lender, if any.

Comment. Section 3089.170 continues without substantive change the parts of former Section
3097(l)-(m) relating to the direct contractor’s duty to provide information. For provisions
concerning the content of contracts, see Section 3082.310 (contract forms).
See also Sections 14 (singular includes plural), 3082.020 (“construction lender” defined),
3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person”
defined).

§ 3089.180. Owner’s duty to give notice of construction loan
3089.180. If a construction loan is obtained after commencement of work, the
owner shall provide the name and address of the construction lender to each
person that has given the owner a preliminary notice (private work).

Comment. Section 3089.180 continues former Section 3097(n) without substantive change.
The reference to commencement of construction has been changed to commencement of work for
consistency with the remainder of this title.
See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),
3082.110 (“person” defined).

§ 3089.190. Waiver void
3089.190. An agreement made or entered into by an owner, whereby the owner
agrees to waive the rights conferred on the owner by this article is void and
unenforceable.
Comment. Section 3089.190 continues former Section 3097(e) without substantive change. See also Section 3082.100 (“owner” defined).

§ 3089.200. Disciplinary action
3089.200. A licensed subcontractor is subject to disciplinary action under the Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if all of the following conditions are satisfied:
(a) The subcontractor does not pay all compensation due to a laborer’s compensation fund.
(b) The subcontractor fails to give a preliminary notice (private work) or include in the notice the information required by subdivision (b) of Section 3089.130.
(c) The subcontractor’s failure results in the laborer’s compensation fund recording a claim of lien, filing a notice to withhold funds, or asserting a claim against a payment bond.
(d) The amount due the laborer’s compensation fund is not paid.

Comment. Section 3089.200 continues the substance of the second paragraph of former Section 3097(h), The first paragraph, relating to disciplinary action if a subcontractor fails to give preliminary notice on a work of improvement exceeding $400, is not continued. The reference to an “express trust fund” has been replaced by the defined term, “laborer’s compensation fund” which arguably expands the scope of the provision. See Section 3082.050 (“laborer’s compensation fund” defined). See also Sections 3082.060 (“lien” defined), 3082.120 (“preliminary notice (private work)” defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

§ 3089.210. Notices filed with county recorder
3089.210. On or after January 1, 2007, the county recorder may cause to be destroyed all documents filed under subdivision (o) of former Section 3097. Comment. Section 3089.210 supersedes former Section 3097(o) relating to filing the preliminary notice with the county recorder. This title no longer provides for filing a preliminary notice with the county recorder or for the county recorder to notify persons who filed a preliminary notice of the recording of a notice of completion or notice of cessation.

§ 3089.220. Transitional provisions
3089.220. (a) The inclusion of the language added to paragraph (5) of subdivision (c) of former Section 3097 by Chapter 795 of the Statutes of 1999 does not affect the effectiveness of a preliminary notice given on or after January 1, 2000, and before the operative date of the amendments of former Section 3097 enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise meets the requirements of that subdivision.
(b) A preliminary notice given on or after January 1, 2000, and before the operative date of the amendments to former Section 3097 enacted at the 2000 portion of the 1999-2000 Regular Session, is not ineffective because of failure to include the language added to paragraph (5) of subdivision (c) by Chapter 795 of the Statutes of 1999, if the notice otherwise complied with that subdivision.
(c) The failure to provide an affidavit form or notice of rights, or both, under the requirements of Chapter 795 of the Statutes of 1999, does not affect the validity of a preliminary notice under this article.

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

Article 2. Preliminary Notice of Public Work

§ 3089.310. [Reserved]

Article 3. Completion

§ 3089.410. Completion

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

(1) Actual completion.
(2) Occupation or use by the owner accompanied by cessation of labor.
(3) Cessation of labor for a continuous period of 60 days or, if a notice of completion is recorded, for a continuous period of 30 days.

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

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

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

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

§ 3089.430. Notice of completion

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

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

(1) The name and address of the owner and the nature of the owner’s interest.
(2) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.
(3) The name of the direct contractor, if any, for the work of improvement or, if the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 3089.440, the name of the direct
contractor under that contract and a general statement of the kind of labor, service, equipment, or material provided under the contract.

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

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

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

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

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

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

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

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

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

The reference to a successor’s “transferors” is omitted from subdivision (b)(4). See Section 14 (singular includes plural).

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

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

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

(a) The owner may record a notice of completion of a contract for a portion of the work of improvement. On recordation of the notice of completion, for the purpose of Sections 3083.320 and 3083.330 (recording of claim of lien) a direct contractor is deemed to have completed the contract for which the notice of
completion is recorded and a claimant other than a direct contractor is deemed to have ceased providing labor, service, equipment, or material.

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

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

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

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

§ 3089.450. Notice of recordation by owner

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

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

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

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

1. A person that occupies the property as a personal residence, if the dwelling contains four or fewer residential units.
2. A person that has a security interest in the property.
3. A person that obtains an interest in the property pursuant to a transfer described in subdivision (b), (c), or (d) of Section 1102.2.

Comment. Section 3089.450 restates former Section 3259.5, replacing the notice of recordation with a copy of the recorded notice. The section eliminates the former 10 day notice period and requires immediate notice. See also Section 3089.430(b)(7) and Code Civ. Proc. § 1013a(c) (affidavit of mailing). As used in this section “owner” includes a person who has an interest in property (or the person’s successor in interest on the date a notice of completion is recorded) that causes a building, improvement, or structure, to be constructed, altered, or repaired on the property), and includes a cotenant. See Section 3082.100 (“owner” defined). A notice is recorded when it is filed for record. Section 3082.250 (filing and recording of papers). The references to a “mechanic’s” lien in subdivision (a) have been deleted. Subdivision (a) is intended
to apply to a site improvement lien as well. For service and proof of service by mail, see Section 3082.240 (mailed notice).

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

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

Article 5. Waiver and Release

§ 3089.610. Terms of contract

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

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

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

§ 3089.620. Waiver and release

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

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

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

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

§ 3089.630. Statement of claimant

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

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

(2) The claimant has actually received payment in full for the claim.
Comment. Section 3089.630 continues former Section 3262(b) without substantive change. See also Section 3082.010 (“claimant” defined).

§ 3089.640. Accord and satisfaction or settlement agreement not affected

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

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

§ 3089.650. Conditional waiver and release on progress payment

3089.650. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress 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 PROGRESS 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: ___________________________________________________________

Through Date: _______________________________________________________

Conditional Waiver and Release

This document waives and releases lien, stop notice, and payment bond rights the claimant has for labor, service, equipment, and material provided to the customer on this job through the date of this document. 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) Retentions.

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

(3) 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: _________________________________________
Amount remaining unpaid: $________________________

(4) 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 3089.650 continues former Section 3262(d)(1), with the addition of language relating to progress payments covered by previous releases that have not been paid. 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.

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

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT
NOTICE TO CLAIMANT: This document waives and releases rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it, even if you have not been paid. If you have not been paid, use a conditional waiver and release form.

Identifying Information
Name of Claimant: __________________________________________________
Name of Customer: __________________________________________________
Job Location: _______________________________________________________
Owner: __________________________
Through Date: __________________________

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

Amount of payment: $________________________

Exceptions
This document does not affect any of the following:
(1) Retentions.
(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: ______________________________________
Amount remaining unpaid: $___________________________

Signature
Claimant’s Signature: ________________________________________________________
Claimant’s Title: ___________________________________________________________

Comment. Section 3089.670 continues former Section 3262(d)(3), with the addition of language relating to progress payments covered by previous releases that have not been paid, and the addition of a line for identification of the waivant’s customer. The references to a “mechanic’s” lien have been deleted from this section; it applies to a site improvement lien as well. The statutory form is recast for clarity.
See also Section 3082.010 (“claimant” defined).

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

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

Identifying Information
Name of Claimant: ________________________________________________________
Name of Customer: ________________________________________________________
Job Location: _____________________________________________________________
Owner: _________________________________________________________________
Date: __________________________________________________________________

Unconditional 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. The claimant has been paid in full.

Exceptions
This document does not affect any of the following:
(1) Disputed claims for extras in the amount of $___________________________

Signature
Claimant’s Signature: ________________________________________________________
Claimant’s Title: ___________________________________________________________
Comment. Section 3089.680 continues former Section 3262(d)(4) 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 statutory form is recast for clarity. See also Section 3082.010 (“claimant” defined).