

## Memorandum 2005-24

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

This memorandum continues the process of working through the mechanics lien law. The memorandum includes:

- Followup discussion of issues raised at previous meetings concerning expungement of a false, invalid, or unenforceable claim of mechanics lien.
- Followup discussion of issues raised at the May 2005 meeting in connection with payment bonds.
- Initial discussion and redraft of prompt payment remedies found in the mechanics lien law.
- Initial discussion and redraft of the relatively new statute on security for a large project.

As usual, policy issues are raised in the memorandum. More technical issues are raised in Staff Notes following draft statutory language in the Exhibit. The following draft statutory language is attached to this memorandum:

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Also attached to the memorandum, for convenience of reference, is a redraft of the mechanics lien law, incorporating Commission decisions made so far.

## UNENFORCEABLE CLAIM OF MECHANICS LIEN

A person who has not been paid for labor, service, equipment, or material provided for a work of improvement may record a claim of lien against the property. No preliminary judicial determination of probable validity of the claim is necessary, nor is there any security required to be posted. But the recorded claim of lien effectively ties up the property.

In some instances, a claim of lien may be unenforceable, but remains as a cloud on title. This can happen, for example, because the owner has paid off the

amount owed, but the lien claimant has not provided a release of the lien. It can also happen because the lien claimant has not acted to enforce the lien within the statutory period (90 days after recordation). Or the lien claimant may have falsely recorded the claim of lien for purposes of obtaining leverage in a dispute with the owner, or for other reasons.

We have heard a number of instances of problems of this type. In fact, we regularly receive communications from owners whose property has been burdened with an invalid claim of lien but who lack an effective remedy.

For example, before our last meeting Rodney Moss of Los Angeles wrote to us that, based on his 44 years of practice in the field of mechanics liens and related remedies, this is probably the most serious question he has encountered:

Many mechanic's liens are filed without justification and the property owner has no recourse. Let it be understood that I represent many lien claimants and I want a balanced approach so that I am not taking a position only to benefit property owners. It is a question of fairness.

The most recent communication of this type we have received is an email message from Frank Robinson, dated May 31, 2005:

In the personal instance the lien was filed on the very same day the final payment was made & for an amount in excess of the entire contract & verified by an officer of the Contractor's Corporation declaring under penalty of perjury that the facts in the mechanics lien were true.

The Commission has tentatively proposed a number of revisions to the statute to address the problem. The proposals include (1) requiring the lien claimant to notify the owner when a claim of lien is recorded, (2) allowing the owner to seek judicial relief from an invalid claim of lien immediately, and (3) protecting a good faith purchaser or encumbrancer from a stale claim of lien. However, we still have not found adequate remedies to deter a false claim of lien to begin with, or to enforce the duty to notify the owner of the recording of the lien, or to pressure the lien claimant voluntarily to release a false claim of lien.

### **Notice of Claim of Lien**

An owner is not necessarily aware that a claim of lien has been filed against the property. There is no requirement under existing law that the lien claimant notify the owner. The existence of a lien may only come to the owner's attention when the owner tries to refinance or sell the property. At that time, it may be

difficult to locate the lien claimant to obtain a release, and it will be time consuming and costly to obtain judicial relief.

Mr. Robinson emphasizes this point in his email message:

There is also no requirement for the Contractor to notify the property owner thus the property owner sits unaware until either a court action to foreclose on the lien or the problem surfaces when a sale of the property reveals the lien during title search. In the meantime the property owners credit rating is damaged all by a contractor acting in bad faith @ the total cost to him of a \$6 filing fee.

Until last year, the county recorder was required by law to notify a property owner whenever an involuntary lien of any kind (not just a mechanics lien) was recorded against the property. However, due to budgetary constraints, that requirement has been eliminated from the law. The law now encourages, but does not require, the county recorder to give the notice:

In recognition of the state and local interests served by the action made optional in subdivision (a), the Legislature encourages the county recorder to continue taking the action formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

Gov't Code § 27297.5(h).

The Commission tentatively decided to add a requirement that the lien claimant notify the owner on recording a claim of lien. This was based on the assumption that it is likely that county recorders will no longer give the voluntary notice. The draft provides:

**§ 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).

The staff has done further work on the question whether or not notice by the lien claimant would duplicate the activities of county recorders. Mr. Robinson in his email communication indicates that in Orange County it is the recorder's position and practice not to notify the property owner since there is no statutory requirement to do so.

The staff's research indicates that this information is correct. We have done a spot check of almost a dozen county recorder's offices around the state — rural and urban, north and south. Most county recorders will not send notice unless requested to do so and are paid a fee for the service by the lien claimant. We were unable to obtain information on how frequently the lien claimant makes the request and pays the fee for notification of the owner.

We came across two notable exceptions to the general practice. Orange County does not send notice at all, even on request; it is up to a lien claimant to notify the owner. Los Angeles County sends the notice automatically 10 days after filing, unless the lien claimant does not include a mailing address for the owner on the claim of lien.

We have not yet developed an appropriate remedy to enforce the proposed requirement that the lien claimant notify the owner. We considered the possibility of disciplinary action by the Contractors State License Board. Although this would not help the individual owner who fails to receive notice, the deterrent effect could help all owners. However, it would not address the situation where a lien claimant is unlicensed, such as a materials supplier.

**We could preclude recordation of a claim of lien unless accompanied by an affidavit that the claimant has given the required notice.** Such a provision might look something like this:

**§ 3083.353. Notice prerequisite to recording claim of lien**

3083.353. The county recorder shall not record a claim of lien that is filed for record unless accompanied by the claimant's affidavit showing compliance with Section 3083.355 (notice of recordation of claim of lien).

This would undoubtedly help. However, a person who files a fraudulent claim of lien probably would have no compunction about making a false affidavit of notice.

Alternatively, the Commission may wish to consider whether it makes sense to go back to the system where the county recorder gives the notice. We could provide that the recorder shall not record a claim of lien unless the lien claimant provides the owner's mailing address and pays the fee for notice by the recorder. This would require a major revision to the current scheme, which is budget-driven and may be politically impossible to reverse. However, if the Commission is interested in this approach, we could begin to make inquiries along those lines.

**Judicial Relief**

Under existing law, judicial relief to expunge a claim of lien is not available until 90 days after recordation of the claim, and the only basis for relief is failure of the lien claimant to proceed promptly. The waiting period is problematic, as is the ground for relief. If the lien was fraudulently recorded, the owner should be able to challenge it in court immediately. It was the assumption of the availability of prompt judicial relief that gave the California Supreme Court comfort in upholding the constitutionality of the mechanics lien law against a due process challenge in 1976. *Connolly Development, Inc. v. Superior Court*, 17 Cal. 3d 803, 827, 132 Cal. Rptr. 477 (1976).

The Commission's current draft would allow an immediate expungement action by the owner on the basis of the invalidity of the lien, without the 90 day delay:

**§ 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).

Reasonable attorneys fees are awarded to the prevailing party in an expungement proceeding, not exceeding \$2,000. The Commission has tentatively decided to propose elimination of the fee cap. As a practical matter, this may not help the owner much. If the owner was unable to obtain a voluntary release from the lien claimant, it is likely that the lien claimant cannot be found or is bankrupt or is otherwise judgment proof.

**At this point, the staff has no further suggestions concerning the judicial lien expungement procedure.** It appears to be a reasonably efficacious way of clearing an unenforceable claim of lien from the record.

### **BFP Protection**

The Commission has felt that the passage of time (90 days), without enforcement action, should be sufficient to allow a title insurer to insure around an unenforceable claim of lien without the need for judicial action. We have tentatively approved language that would require a lien claimant to record a lis pendens when a lien enforcement proceeding is commenced and would protect bona fide purchasers in the event the lis pendens is not recorded within the statutory period.

The key sections provide:

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

3083.710. (a) 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. If the claimant does not record notice of the pendency of an action within the time provided in this subdivision, the claim of lien expires and is unenforceable.

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

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

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

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

3083.720. All of the following provisions apply to a claim of lien that expires and is unenforceable under Section 3083.710:

(a) The rights of a purchaser or encumbrancer for value and in good faith acquired after the claim of lien expires and is unenforceable are not affected by an extension of credit, or by an extension of the lien or of the time to enforce the lien, recorded before or after the acquisition of the rights by the purchaser or encumbrancer.

(b) The claim of lien does not constitute actual or constructive notice of any of the matters contained, claimed, alleged, or contended in the claim of lien, or create a duty of inquiry in any person thereafter dealing with the affected property.

**Comment.** Subdivision (a) of Section 3083.720 supersedes former Section 3145. It makes clear that an extension of credit or of the time to enforce a lien after expiration of a claim of lien does not resurrect the claim of lien.

Subdivision (b) is drawn from Code of Civil Procedure Section 405.60 (*lis pendens*).

See also Section 3082.060 (“lien” defined).

We have sent this language to the California Land Title Association for their review. **The staff would wait until we hear back from CLTA** before proposing any further changes to this draft.

### **Other Remedies**

All of the remedies discussed above are after-the-fact efforts to cure the problem of the bad actor. We have so far been unable to devise any effective remedies to deter bad action before it occurs.

We have considered, for example, the possibility of requiring the lien claimant to give security as a condition for filing a claim of lien. While perhaps attractive in the abstract, the staff thinks such a remedy would be inadvisable. We have no data on the frequency of false claims of lien; the staff suspects it is relatively low. To require a bond in every case would add cost to the lien process (which ultimately would be passed along to owners), without a substantial benefit in the ordinary case.

Are there general remedies in the law for a false claim of lien (e.g., slander of title) that would be sufficient to address our concern? One problem with reliance on common law remedies is that under California law a claim of lien in conjunction with an enforcement action is privileged. See, e.g., *Pisano & Associates v. Hyman*, 29 Cal. App. 3d 1, 105 Cal. Rptr. 414 (1972). It would be necessary by statute to modify the law on this point. This could be done, if the Commission is interested. Whether the existence of the remedy would act as a deterrent to a false claim of lien is debatable. But it could give the owner some solace in a circumstance where the lien claimant is still in the jurisdiction and solvent.

There are statutes that penalize a person for recording a lien in other circumstances where the recordation is improper. For example, the Contractors’ State License Law prohibits a home improvement contractor on a project under \$5,000 from recording a security interest against the property, and requires construction loan funds to be disbursed through a joint account or an escrow. Bus. & Prof. Code § 7159.2. A lien imposed in violation of the statute is void and unenforceable. Bus. & Prof. Code § 7159.2(a). The statute provides actual damages plus penalties for a violation:

- Any person or entity who violates any provision of this section shall be liable for actual damages suffered by the borrower for damages that proximately result from the violation.



- Any person or entity who intentionally or as a pattern or practice violates any provision of this section shall be additionally liable for three times the contract price for the home improvement.
- Any person who is a senior citizen or disabled person, as defined in subdivisions (f) and (g) of Section 1761 of the Civil Code, as part of any action for a violation of this section, may seek and be awarded, in addition to the remedies provided in this section, up to five thousand dollars (\$5,000) as provided in subdivision (b) of Section 1780 of the Civil Code.
- The court shall award court costs and attorney's fees to a prevailing plaintiff in an action brought pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

Bus. & Prof. Code § 7159.2(c)-(f).

It is noteworthy, however, that “a mechanic’s lien or other interest in property that arises by operation of law” is exempted from the penalties provided in this section. Bus. & Prof. Code § 7159.2(a). This may suggest it could be politically unfeasible to add statutory penalties such as these to the mechanics lien law.

Again, we have been unable to find any statistics suggesting that abuse of the mechanics lien law is so prevalent or severe as to warrant statutory penalties. **The staff’s inclination is to rely on common law remedies for slander of title (or in an appropriate case, fraud), with any necessary adjustments** to make clear that the recordation of a claim of lien is not privileged and is actionable for damage caused by improper recording. A provision along these lines might read:

**§ 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 determines either of the following:

(1) The claim of lien was made with intent to disparage title or defraud. A claimant that records a claim of lien containing erroneous information with intent to disparage title or defraud is liable for damages caused by the recordation, including costs and a

reasonable attorney's fee incurred in a proceeding to invalidate the lien and recover damages.

(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).

Subdivision (b)(a) expands the bases for invalidity to include intent to disparage title. If the court finds intent to disparage title or defraud, common law damages are available, notwithstanding case law to the effect that recordation of a claim of mechanics lien is privileged. See, e.g., *Pisano & Associates v. Hyman*, 29 Cal. App. 3d 1, 105 Cal. Rptr. 414 (1972).

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).

## PAYMENT BOND

### **Limitation of owner's liability**

The owner may require the direct contractor on a work of improvement to provide a payment bond. If the owner files a copy of the contract for the work of improvement with the county recorder, and records a payment bond in an amount not less than the 50% of the contract price, the owner's liability for lien claims is limited to the contract price for the work of improvement. The bond is available as a source of recovery for unpaid claimants.

Civil Code Section 3235 provides that, if the contract is filed and bond recorded, the court "must, where it would be equitable so to do" restrict lien claims against the owner. Civil Code Section 3236, on the other hand, provides that the purpose of Section 3235 is to limit the owner's liability "in all cases".

Which is correct? Is the owner's liability limited in all cases, or is the owner's liability subject to limitation by the court based on equitable considerations?

The Commission acted at the May meeting to resolve this conflict by adopting the equitable standard, which appears to be what is used in practice:

**§ 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.

The Commission requested further information about the factors used by the court in determining whether limitation of the owner's liability would be equitable.

There are only a handful of reported cases on the issue. The cases where the court has found it equitable to allow a lien claimant to recover against the owner in excess of the contract price have involved a situation where the sureties on the bond are inadequate. See, e.g., *S.R. Frazee Co. v. Arnold*, 46 Cal. App. 74, 76, 188 P. 822 (1920) (personal sureties were family members of contractor and had insufficient assets — "it would not be equitable to restrict the recovery against the owner to the amount of the contract price"). See also *Sudden Lumber Co. v. Singer*, 103 Cal. App. 386, 284 P. 477 (1930); *Simpson v. Bergmann*, 125 Cal. App. 1, 13 P.2d 531 (1932).

Having reviewed the case law on this matter, **the staff suggests that a more direct approach would be to eliminate the equitable standard and simply state by statute the requirement of sufficient sureties.** Actually, the law already says that a statutory provision for a bond entails a bond with sufficient sureties. See Code Civ. Proc. § 995.310 ("Unless the statute providing for the bond requires execution by an admitted surety insurer, a bond shall be executed by two or more sufficient personal sureties or by one sufficient admitted surety insurer or by any combination of sufficient personal sureties and admitted surety insurers.").

However, it would not hurt to repeat the general rule in this specific context, given the history of payment bond litigation:

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

3087.220. (a) The court ~~may~~ shall 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 given by sufficient sureties 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 replaces the restriction of lien enforcement in cases where it would be equitable, with a restriction of lien enforcement in cases where the sureties are sufficient. See also Code Civ. Proc. § 995.310 (sufficient sureties on bond required). This codifies case law interpretation of former Section 3235 and is consistent with the “in all cases” language of former Section 3236. See, e.g., *Simpson v. Bergmann*, 125 Cal. App. 1, 13 P.2d 531 (1932), *Sudden Lumber Co. v. Singer*, 103 Cal. App. 386, 284 P. 477 (1930), *S.R. Frazee Co. v. Arnold*, 46 Cal. App. 74, 76, 188 P. 822 (1920). 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).

As used in this section, the limitation of the owner’s liability to the “contract price stated in the contract” should include contract changes. This is a general issue throughout the mechanics lien law that must be dealt with, probably either by a definition of “contract price” or by a substantive provision. For now, the staff will flag the matter with a Staff Note, for future work in a broader context.

## **Bond Underwriter Licensed by Department of Insurance**

Existing Civil Code Section 3237 provides that if a construction lender requires a payment bond as a condition of making the loan and accepts the bond that is offered, the lender may question the bond and go back on the loan commitment “only if the bond underwriter was licensed by the Department of Insurance.” The provision seems illogical — a bond given by a licensed surety is perhaps the one type a lender should **not** be allowed to question.

The provision was enacted in 1984. The bill that enacted it — SB 1851 (Ayala) — began as a bill to preclude a construction lender from renegeing on a loan commitment. The bill was opposed by construction lenders. The little legislative history on the bill that is available in state archives does not shed light on the last minute change in language that went into the law as enacted. It seems probable, however, that the language that went into the final version of the bill was the result of a political compromise that was inartfully executed. It is likely that the intent was to say that the lender may question the bond **unless** it is executed by a licensed surety.

In fact, *Miller & Starr* reads the provision just that way:

When a lender imposes a requirement for a payment bond as a condition for making a loan, and it accepts the bond posted in writing, the lender cannot thereafter object to the validity of the bond, or refuse to make the loan based on an objection to the bond, if the underwriter is licensed by the Department of Insurance (Civ. Code, § 3237).

*Miller & Starr, California Real Estate* § 36:4 n. 10 (3d ed. 2001).

**The staff proposes to rewrite the section in the way that was undoubtedly intended**, and flag the proposed change for comment:

### **§ 3085.230. Bond required by lending institution**

3085.230. (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 not 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~~ if the bond is given by an admitted surety insurer.

(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 3085.230 supersedes former Section 3237. It makes clear that the lender may not object to the bond if given by 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).

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).

☞ **Note.** This draft would reverse the apparent rule of existing law that a lender may object to a bond writer only if licensed by the Department of Insurance.

## PROMPT PAYMENT

The mechanics lien law includes provisions that require an owner to promptly pay money owed a direct contractor, and the direct contractor to promptly pay money owed a subcontractor or material supplier. Failure to comply with the requirements subjects the owner or direct contractor to statutory penalties.

There are many prompt payment statutes that are unique to public works projects. These are located principally in the Public Contract Code. We do not plan to relocate them here. In fact, just the opposite — we are generally going the opposite direction, relocating public works provisions from the mechanics lien law to the Public Contract Code.

### **Progress Payment**

An owner must make a progress payment to the direct contractor within 30 days after it is due, or the owner is subject to a penalty of two percent per month plus attorney’s fees and costs incurred to collect the amount due. Civ. Code § 3260.1.

A contractor on a public utility project must pass through progress payments to subcontractors within 15 working days after receipt, or the contractor is subject to a penalty of two percent per month (plus collection costs). Civ. Code § 3262.5. Why this provision applies only in a public utility project, and not a private work

of improvement generally, is not clear to the staff. However, **we are not proposing to expand the application of this provision.**

A redraft of the existing statutes on progress payments is set out at Exhibit pp. 1-2.

### **Retention**

A construction contract commonly calls for the owner to withhold a percentage from each payment (e.g., 10%). This is often referred to as a “retention”. The retention is held until satisfactory completion of the project, and then paid.

Existing law requires that on completion of the project, the owner must within 45 days pay the direct contractor, and the direct contractor must within 10 days thereafter pay subcontractors, any retention that has been withheld. The penalty for noncompliance is two percent per month. Civ. Code § 3260.

**We have modernized the drafting of these provisions** at Exhibit pp. 2-4, but have not labored over them because there is pending legislation that would substantially overhaul the retention provisions with respect to a private work of improvement. AB 1622 (Liu) has passed the Assembly and is pending in the Senate. The bill would limit a retention to 10% of progress payments until the work is 50% complete, and thereafter to 5% of progress payments; the retention must be paid, with interest, within 45 days after completion. The new law would relate only to retention withheld on a contract for a private work of improvement entered into on or after January 1, 2006.

### **Stop Work Notice**

The law provides a contractor who has not been timely paid some practical leverage — the contractor may serve notice on the owner that the contractor intends to stop work unless paid within 10 days. Thereafter, the contractor may stop work on the project without liability to the owner or to subcontractors.

This remedy was enacted in 1998 in response to case law invalidating a “pay if paid” clause in a contract between the contractor and a subcontractor or material supplier. Under *Wm. R. Clarke Corp. v. Safeco Ins. Co.*, 5 Cal. 4th 882, 938 P. 2d 372, 64 Cal. Rptr. 2d 578 (1997), a contractor that has not been paid by the owner must nonetheless pay subcontractors and material suppliers.

The new remedy enables the contractor to stop work and limit potential losses on the project.

A redraft of the statute is set out at Exhibit pp. 4-8. Existing law calls this process a stop work “order”, but we have tentatively redesignated it a “notice”. This is not only more accurate, but feeds nicely into the general notice provisions of the mechanics lien law.

The existing statute is confusing in many respects because the bill that enacted it was amended several times to expand and contract its coverage, but not all details were adjusted accordingly. **The staff in this draft has eliminated provisions that appear to address subcontractor liability.** Under the law as enacted, only the direct contractor may give a stop work notice.

#### SECURITY FOR LARGE PROJECT

Effective 2002, the mechanics lien law includes a new remedy, in addition to the classical remedies of the lien, stop notice, payment bond, and prompt payment requirements. That is a requirement that the owner of a large construction project provide security for payment of the contractor. The security may take the form of a payment bond, irrevocable letter of credit, or escrow account. The remedy relates only to a private work of improvement, not to a public work.

The provision for security for payment of the prime contractor responds to same concern as the stop work notice — case law invalidating a “pay if paid” clause in a contract between the prime contractor and a subcontractor or material supplier.

The new statute requires the owner to put up security for payment of the contractor in a large construction project.

An analysis of the new law states that it “creates considerable uncertainty for owners, contractors, and lenders. At least initially, the statute presumably will result in a significant increase in project costs for all but the most substantial developers. And construction financiers may be less inclined to finance transactions that are subject to Section 3110.5 requirements.” Spyksma and McCarthy, *New Rules on Providing Security for Construction Contracts: Civil Code Section 3110.5 Creates Uncertainty for Owners, Lenders, and Contractors*, 25 Jan. L.A. Law. 22, 25 (January 2003).

The remedy is contained in one extremely long section of the code. See Civ. Code Section 3110.5, the text of which is set out at Exhibit pp. 9-13. **We have in this memorandum drastically overhauled the provision in an effort to make it**



**more comprehensible**, including simplifying language, standardizing terminology, breaking it into smaller pieces, and reorganizing. See Exhibit pp. 14-20. Experts should review the draft carefully to ensure that we have not inadvertently changed the meaning of the statute.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

Exhibit

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**CHAPTER 6. PROMPT PAYMENT**

Article 1. Progress Payment

**§ 3088.110. Progress payment between owner and direct contractor on private work**

3088.110. (a) This section is applicable to a contract for a private work.

(b) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after receipt of a demand for payment under the contract, any progress payment due as to which there is no good faith dispute between them.

(c) If there is a good faith dispute between the owner and direct contractor, the owner may withhold from the progress payment an amount not in excess of 150 percent of the disputed amount.

(d) An owner that violates this section is liable to the direct contractor for a penalty of two percent per month on the amount wrongfully withheld, in place of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee.

(e) This section does not supersede any requirement of Article 2 (commencing with Section 3088.210) relating to the withholding of a retention.

**Comment.** Section 3088.110 restates former Section 3260.1, with the addition of a reasonableness limitation on attorney's fees. The operative date provision of subdivision (a) of former Section 3260.1 is omitted as obsolete.

See also Sections 3082.020 ("contract" defined), 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined), 3082.130 ("private work" defined).

☞ **Staff Note.** We have retained subdivision (a) limiting this section to a private work of improvement. However, the Commission has tentatively decided to cull out all provisions relating to public works and relocate them to the Public Contract Code. When this happens, we will delete subdivision (a) in reliance on a general provision restricting the mechanics lien law to private works.

We have limited the introductory proviso of subdivision (b), relating to a written agreement between the owner and contractor, to the time for payment, and have not extended the proviso to subdivisions (c) and (d). This appears to capture the intent of existing law.

**§ 3088.120. Progress payment between direct contractor and subcontractor on public utility work**

3088.120. (a) This section applies to a contract between a public utility and a direct contractor for all or part of a work of improvement.

(b) Unless the direct contractor and a subcontractor otherwise agree in writing, within 21 days after receipt of a progress payment from the public utility the direct

contractor shall pay the subcontractor the amount allowed the direct contractor on account of the work performed by the subcontractor to the extent of the subcontractor's interest in the work. If there is a good faith dispute over all or part of the amount due on a progress payment from the direct contractor to a subcontractor, the direct contractor may withhold an amount not in excess of 150 percent of the disputed amount.

(c) A direct contractor that violates this section is liable to the subcontractor for a penalty of two percent of the disputed amount due per month for every month that payment is not made. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney's fee.

(d) This section does not limit or impair a contractual, administrative, or judicial remedy otherwise available to a contractor or subcontractor in a dispute involving late payment or nonpayment by the contractor or deficient performance or nonperformance by the subcontractor.

**Comment.** Section 3088.120 restates former Section 3262.5, with the addition of a reasonableness limitation on attorney's fees. The reference to 15 "working days" is converted to 21 "days", consistent with the remainder of the mechanics lien law. Cf. Section 9 (business day).

See also Sections 3082.022 ("contract" defined), 3082.025 ("direct contractor" defined), 3082.180 ("subcontractor" defined), 3082.190 ("work of improvement" defined).

☞ **Staff Note.** Existing law makes this section applicable to a contract "to do business" with a public utility. We have limited it to a work of improvement contracted for by a public utility, consistent with placement of this section in the mechanics lien law. The larger question, of course, is why this provision is limited to a public utility project.

## Article 2. Retention Payment

### § 3088.210. Retention payment

3088.210. This article governs a retention withheld by an owner from a direct contractor or by a direct contractor from a subcontractor on a private work.

**Comment.** Section 3088.210 restates subdivision (b) of former Section 3260 without substantive change. The transitional provision found in subdivision (a) of former Section 3260, relating to contracts entered into before 1991, 1993, and 1994, are omitted as obsolete.

See also Sections 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined), 3082.130 ("private work" defined), 3082.180 ("subcontractor" defined).

☞ **Staff Note.** We have retained the provision limiting this article to a private work of improvement. However, the Commission has tentatively decided to cull out all provisions relating to public works and relocate them to the Public Contract Code. When this happens, we will delete the private work limitation in reliance on a general provision restricting the mechanics lien law to private works.

### § 3088.220. Payment of retention by owner

3088.220. (a) If an owner has withheld a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor.

(b) If part of a work of improvement ultimately will become the property of a public entity, the owner may condition payment of a retention allocable to that part on acceptance of the part by the public entity.

(c) If there is a good faith dispute between the owner and direct contractor, the owner may withhold from final payment an amount not in excess of 150 percent of the disputed amount.

**Comment.** Section 3088.220 restates subdivision (c) of former Section 3260, except that detailed provisions defining the date of completion have been eliminated in reliance on the general provisions of this title governing completion. See Section 3089.410 (completion). The right of the owner to withhold disputed amounts is made subject to a condition of good faith, consistent with other provisions of this title.

See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.140 (“public entity” defined), 3082.190 (“work of improvement” defined).

☞ **Staff Note.** We have eliminated the definition of “date of completion” found in the existing statute, in reliance on our general provisions relating to completion. See Section 3089.410 (completion). We have done this in the interest of simplification of the statute.

The staff has generalized subdivision (c), which under existing law could be read as limited to the circumstances described in subdivision (b). However the existing ambiguity appears to be the consequence of a defective amendment process, not the result of a policy decision.

It is unclear why, under existing law, the owner may withhold whether or not the dispute is in good faith. The other provisions of this chapter require a good faith dispute. The staff has incorporated the same standard here.

#### **§ 3088.230. Payment of retention by direct contractor**

3088.230. (a) If a direct contractor has withheld a retention from a subcontractor, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay the subcontractor its share of the payment.

(b) If a retention payment received by the direct contractor is specifically designated for a particular subcontractor, the direct contractor shall pay the retention to the designated subcontractor, if consistent with the terms of the subcontract.

(c) If a good faith dispute exists between the direct contractor and a subcontractor, the direct contractor may withhold from the retention payment to the subcontractor an amount not in excess of 150 percent of the estimated value of the disputed amount.

**Comment.** Section 3088.230 restates subdivisions (d) and (e) of former Section 3260 without substantive change.

See also Sections 3082.025 (“direct contractor” defined), 3082.180 (“subcontractor” defined).

#### **§ 3088.240. Payment for disputed work**

3088.240. (a) If the direct contractor gives the owner, or a subcontractor gives the direct contractor, notice that work in dispute has been completed in accordance with the terms of the contract, the owner or direct contractor shall within ten days after notice is given advise the notifying party of the acceptance or rejection of the disputed work.

(b) Within 10 days after acceptance of disputed work, the owner or direct contractor shall pay the portion of the retention relating to the disputed work.

**Comment.** Section 3088.240 restates subdivision (f) of former Section 3260 without substantive change. Notice under this title must be written. See Section 3082.235 (written notice). See also Section 3082.240 (mailed notice).

See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

#### **§ 3088.250. Penalty**

3088.250. An owner or direct contractor that does not make a retention payment within the time required by this article is liable to the person to which payment is owed for a penalty of two percent per month on the amount wrongfully withheld, in place of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney’s fee.

**Comment.** Section 3088.250 restates subdivision (g) of former Section 3260, with the addition of a reasonableness limitation on attorney’s fees.

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

#### **§ 3088.260. Waiver against public policy**

3088.260. It is against public policy by contract to waive the provisions of this article.

**Comment.** Section 3088.260 restates subdivision (h) of former Section 3260 without substantive change.

#### **§ 3088.270. Construction loan exempt**

3088.270. This article does not apply to a retention withheld by a lender pursuant to a construction loan agreement.

**Comment.** Section 3088.270 restates subdivision (i) of former Section 3260 without substantive change.

☞ **Staff Note.** It is not clear whether any lender is exempt, or only a “construction lender” as defined in the mechanics lien law. See Section 3082.020 (“construction lender” defined as secured lender or escrow holder of funds for work of improvement).

### Article 3. Stop Work Notice

#### **§ 3088.305. “Stop work notice” defined**

3088.305. “Stop work notice” means notice given under this article by a direct contractor to an owner that the contractor will stop work on a private work if the amount owed the contractor is not paid within 10 days after notice is given.

**Comment.** Section 3088.305 restates a part of the first sentence of former Section 3260.2(a) without substantive change.

See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.130 (“private work” defined).

☞ **Staff Note.** There is some confusion in the existing statute as to whether this is an “order” or a “notice” and whether it is “served” or “filed”, etc. In this draft we have standardized the stop work remedy as a notice given in the same manner as other notices under the mechanics lien law.

We have changed the terminology from “10-day stop work notice” to “stop work notice” to simplify the statute, to avoid the suggestion that work will only be stopped for ten days, and to avoid the implication that there may be other types of stop work notices with different timing requirements.

We have retained the provision of existing law limiting this section to a private work of improvement. However, the Commission has tentatively decided to cull out all provisions relating to public works and relocate them to the Public Contract Code. When this happens, we will delete this provision in reliance on a general provision restricting the mechanics lien law to private works.

It is likely we will relocate this section to the front of the mechanics lien law, along with other definitions, unless it appears on completion of our redraft of the law that this article is the only place the term is used.

#### **§ 3088.310. Stop work notice**

3088.310. If a direct contractor is not paid the amount due pursuant to a written contract within 35 days after the date payment is due, and there is no dispute as to the satisfactory performance of the contractor, the contractor may give the owner a stop work notice.

**Comment.** Section 3088.310 restates a portion of the first sentence of former Section 3260.2(a) without substantive change.

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

#### **§ 3088.320. Additional notice**

3088.320. A direct contractor that gives an owner a stop work notice shall give the following additional notice:

(a) At least five days before giving the stop work notice, the contractor shall post in a conspicuous location at the site and at the main office of the site, if one exists, notice of intent to give a stop work notice,

(b) At the same time the contractor gives the stop work notice, the contractor shall give a copy of the stop work notice to all subcontractors with which the contractor has a direct contractual relationship on the work of improvement.

**Comment.** Section 3088.320 restates the second and third sentences of former Section 3260.2(a) without substantive change.

See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.160 (“site” defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

☞ **Staff Note.** We have replaced written notice to the subcontractors with a copy of the stop work notice, consistent with other notification provisions in the mechanics lien law.

#### **§ 3088.330. Manner of notice**

3088.330. (a) Subject to subdivision (b), a direct contractor shall give a stop work notice to the person to be notified, or a copy of a stop work notice to the person to be given a copy, 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, notice 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, if any.
- (c) Proof that 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 notice was given, and, if appropriate, the title or capacity in which the person was given notice.
- (e) Notice under this section by certified mail is effective on receipt. Notice by registered mail is effective five days after mailing.

**Comment.** Section 3088.330 restates former Section 3260.2(g), incorporating the details of manner of service and proof of notice applicable to a preliminary notice (private work). See Section 3089.150 (giving preliminary notice). See also Section 3082.240 (mailed notice). Although mailed notice is complete on deposit, it is not effective for purposes of this article until the time specified in subdivision (e).

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

☞ **Staff Note.** The reference to residency appears to suggest that we are dealing with a natural person rather than with a business.

The manner of giving notice prescribed in this section is the same as the manner of giving a preliminary notice for lien purposes. We may well want to generalize the notice provisions and apply them uniformly throughout the mechanics lien law.

#### **§ 3088.340. Notification of construction lender**

3088.340. Within five days after receipt of a stop work notice from a direct contractor, the owner shall forward to the construction lender, if any, at the address provided in the construction loan agreement, a copy of the notice by first-class mail.

**Comment.** Section 3088.340 restates the fourth sentence of former Section 3260.2(a) without substantive change.

See also Sections 3082.020 ("construction lender" defined), 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined).

**§ 3088.350. Immunity from liability**

3088.350. (a) The direct contractor or the direct contractor’s surety is not liable for delay or damage that the owner or a subcontractor may suffer as a result of the direct contractor giving a stop work notice and subsequently stopping work for nonpayment, if the notice and posting requirements of this article are satisfied.

(b) The direct contractor’s liability to a subcontractor or material supplier resulting from stopping work under this article is limited to the amount of monetary damages the subcontractor or material supplier could otherwise recover under this title for labor, service, equipment, or material provided up to the date the subcontractor ceases work, subject to the following exceptions:

(1) The direct contractor’s liability continues for labor, service, equipment, or material provided up to and including the 10 day notice period and not beyond.

(2) This subdivision does not limit monetary damages for custom work, including materials that have been fabricated, manufactured, or ordered to specifications that are unique to the job.

**Comment.** Section 3088.350 restates former Section 3260.2(c), except that provisions that appear to suggest that a subcontractor may give a stop work notice have been deleted.

See also Sections 3082.025 (“direct contractor” defined), 3082.030 (“labor, service, equipment, or material” defined), 3082.070 (“material supplier” defined), 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

☞ **Staff Note.** It’s not clear what sort of surety we’re talking about in subdivision (a). Is this the contractor’s license bond surety, or is it a surety on a performance or payment bond?

**§ 3088.360. Notice of resolution of dispute or cancellation of stop work notice**

3088.360. On resolution of the dispute or the direct contractor’s cancellation of the stop work notice, the contractor shall post, in a conspicuous location at the site and at the main office, if one exists, and give a notice to inform subcontractors with which the contractor has a direct contractual relationship on the work of improvement, of the resolution or cancellation.

**Comment.** Section 3088.360 restates the second paragraph of former Section 3260.2(a) without substantive change.

See also Sections 3082.025 (“direct contractor” defined), 3082.160 (“site” defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

**§ 3088.370. Stop work remedy not exclusive**

3088.370. A direct contractor’s right to stop work pursuant to this article is in addition to other rights the direct contractor may have under the law.

**Comment.** Section 3088.370 restates former Section 3260.2(b) without substantive change.

See also Section 3082.025 (“direct contractor” defined).

**§ 3088.380. Judicial proceeding**

3088.380. If payment of the amount due is not made within 10 days after a stop work notice is given, the direct contractor or the direct contractor’s surety may, in



an expedited proceeding seek a judicial determination of liability for the amount due.

**Comment.** Section 3088.380 restates former Section 3260.2(d) without substantive change. See also section 3082.220 (jurisdiction and venue).

See also Section 3082.025 (“direct contractor” defined).

☞ **Staff Note.** It’s not clear what sort of expedited proceeding is being referred to here. Is this a trial setting preference, or something else? The statute is notably lacking in detail.

#### **§ 3088.390. Waiver against public policy**

3088.390. It is against public policy by contract to waive the provisions of this article.

**Comment.** Section 3088.390 restates former Section 3260.2(e) without substantive change.

#### **§ 3088.410. Application of article**

3088.410. (a) This article applies to a contract entered into on or after January 1, 1999.

(b) This article does not apply to a retention withheld by a lender pursuant to a construction loan agreement.

**Comment.** Section 3088.410 restates former Section 3260.2(f) without substantive change.

See also Section 3082.022 (“contract” defined).

☞ **Staff Note.** Is the transitional provision of subdivision (a) necessary? By the time this revision of the statute becomes operative, it will be January 1, 2007, at the earliest.

## **EXISTING CIVIL CODE § 3110.5**

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

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

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

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

(b) If an owner of property, whether an owner of a fee simple absolute interest or any lesser interest therein, contracts for any work of improvement for construction, alteration, addition to, or repair upon, the property, and the contracting owner is subject to the requirements of this section, as determined by subdivision (a), the

contracting owner shall supply to the original contractor, if a lending institution is providing a construction loan, a copy certified by the county recorder of the recorded construction mortgage or deed of trust that shall disclose the amount of the construction loan. In addition, if the contracting owner is not the majority owner of the original contractor, the contracting owner shall provide security for the contracting owner's payment obligations under the construction contract. The security shall be used only when the contracting owner defaults on his or her contractual obligations to the original contractor. The security for the contracting owner's payment obligations under the construction contract shall be provided by one of the following means:

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

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

(3)(A) An escrow account, designated as a "construction security escrow account," maintained with an escrow agent licensed under the Escrow Law, as set forth in Division 6 (commencing with Section 17000) of the Financial Code, or with any person exempt from the Escrow Law pursuant to paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial Code, which construction security escrow account shall be located in California and in which the contracting owner shall deposit funds in the amount provided in subparagraph (B); provided

that the original contractor shall not be obligated to accept a construction security escrow account as security unless the contracting owner establishes to the reasonable satisfaction of the original contractor (which may be established by a written opinion of legal counsel for the contracting owner), that the contracting owner has granted the original contractor a perfected, first priority security interest in the construction security escrow account and all funds deposited by the contracting owner therein and the proceeds thereof. The funds on deposit in the construction security escrow account shall be the sole property of the contracting owner, subject to the security interest in favor of the original contractor. The escrowholder shall be instructed by the contracting owner and the original contractor to hold the funds on deposit in the construction security escrow account for the purpose of perfecting the original contractor's security interest therein and to disburse those funds only upon the joint authorization of the contracting owner and the original contractor, or in accordance with an order of any court which is binding on both the owner and the original contractor. This section does not require any construction lender to agree to deposit proceeds of a construction loan in a construction security escrow account.

(B) Prior to commencement of the work under the construction contract, the contracting owner shall make an initial deposit to the construction security escrow account in the amount of either (i) not less than 25 percent of the total amount of any construction contract which is subject to this section where the construction contract provides that the work of improvement is scheduled to be substantially completed within six months following the commencement thereof, or (ii) not less than 15 percent of the total amount of any other construction contract which is subject to this section. In addition, if the construction contract provides for a so-called retainage or retention to be withheld from periodic payments to the original contractor, the contracting owner shall deposit all amounts withheld as retainage or retention in the construction security escrow account at the same time the contracting owner makes the corresponding payment to the original contractor from which the retainage or retention is withheld provided, however, that in no event shall the amount required to be maintained on deposit in the construction security escrow account exceed the total amount of future payments remaining to be due the original contractor under its construction contract (as the same may be adjusted by agreement between the contracting owner and the original contractor). If the amount of funds on deposit in the construction security escrow account equals or exceeds the total amount of future payments remaining to be due the original contractor, the contracting owner and the original contractor shall authorize the disbursement to the original contractor of funds on deposit in the construction security escrow account to pay progress payments then due the original contractor under its construction contract (in whole or in part), but in no event shall either party be obligated to authorize the disbursement of any funds that would cause the amount remaining on deposit in the construction security escrow account following that disbursement to be less than the total amount of

future payments remaining to be due the original contractor after application of any funds disbursed to the original contractor. The contracting owner and the original contractor shall authorize the disbursement to the contracting owner of any funds remaining on deposit in the construction security escrow account after the original contractor has been paid all amounts due under its construction contract. The contracting owner and the original contractor shall authorize the disbursement of funds on deposit in the construction security escrow account in accordance with the order of any court which is binding on both of them. The contracting owner and the original contractor may agree in the construction contract upon additional conditions for the disbursement of funds on deposit in the construction security escrow account provided that the conditions shall not cause the amount remaining on deposit in the construction security escrow account to be less than the amount required pursuant to this subparagraph.

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

(d) This section does not affect provisions in this code providing for mechanics' liens, stop notices, bond remedies, or prompt payment rights of a subcontractor, including the original contractor's payment responsibilities as set forth in Section 7108.5 of the Business and Professions Code and Section 10262 of the Public Contract Code.

(e) This section does not apply to the construction of single-family residences, including single-family residences located within a subdivision, and any associated fixed works that require the services of a general engineering contractor, as defined in Section 7056 of the Business and Professions Code, any public works projects, or housing developments eligible for a density bonus pursuant to Section 65915 of the Government Code. As used in this section, the term "single-family residence" means a real property improvement used or intended to be used as a dwelling unit for one family.

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

(1) Any contract where the contracting owner is either a qualified publicly traded company or a wholly owned subsidiary of a qualified publicly traded company,

provided that the obligations of the subsidiary under the construction contract are guaranteed by the parent which is a qualified publicly traded company. As used in this section, the term “qualified publicly traded company” means any company having a class of equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange or the NASDAQ stock market and the nonsubordinated debt securities thereof which are rated as “investment grade” by either Fitch IBCA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings Services or a similar statistical rating organization which is nationally recognized for rating the creditworthiness of publicly traded companies. If at any time prior to final payment of all sums due under the construction contract the nonsubordinated debt securities of the qualified publicly traded company are downgraded to below “investment grade” by one of the referenced rating agencies, the contracting owner of the property will no longer be exempt from the provisions of this section.

(2) Any contract where the contracting owner is either a qualified private company or a wholly owned subsidiary of a qualified private company, provided that the obligations of the subsidiary under the construction contract are guaranteed by the parent which is a qualified private company. As used in this section, the term “qualified private company” means any company that has no equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange or the NASDAQ stock market, and that has a net worth determined in accordance with generally accepted accounting principles in excess of fifty million dollars (\$50,000,000). If at any time prior to final payment of all sums due under the construction contract the net worth of the qualified private company is reduced below the level referenced in this section the owner of the property will no longer be exempt from the provisions of this section.

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

## CHAPTER 5. SECURITY FOR LARGE PROJECT

### Article 1. Security Requirement

#### § 3086.010. Application of chapter

3086.010. (a) This chapter applies if any of the following conditions is satisfied:

(1) The owner of the fee interest in property contracts for a work of improvement on the property with a contract price greater than five million dollars (\$5,000,000).

(2) The owner of a less than fee interest in property contracts for a work of improvement on the property with a contract price greater than one million dollars (\$1,000,000).

(b) For the purpose of this section:

(1) The owner of the fee interest in property is not deemed to be the owner of a less than fee interest by reason of a mortgage, deed of trust, ground lease, or other lien or encumbrance or right of occupancy that encumbers the fee interest.

(2) A lessee of property is deemed to be the owner of a fee interest in the property if all of the following conditions are satisfied:

(A) The initial term of the lease is at least 35 years.

(B) The lease covers one or more lawful parcels under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code, and any applicable local ordinance adopted pursuant to that Act, in their entirety, including but not limited to a parcel approved pursuant to a certificate of compliance proceeding.

**Comment.** Subdivision (a) of Section 3086.010 restates former Section 3110.5(a)(2) without substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive change.

This section standardizes terminology consistent with the remainder of the mechanics lien law. A less than fee interest includes a leasehold interest in the property. See Section 3082.100 (“owner” defined). See also Section 3082.190 (“work of improvement” defined).

Under this section, if the owner that contracts for the work of improvement owns the fee interest in the property, the owner of a less than fee interest that does not contract for the work of improvement is not required to provide security or to comply with any other obligation of an owner under this chapter.

If the owner that contracts for a work of improvement owns a less than fee interest in the property, the owner of the fee interest that does not contract for the work of improvement is not required to provide security or to comply with any other obligation of an owner under this chapter.

☞ **Staff Note.** We have replaced the ambiguous term “value of the contract” with the more precise term commonly used in the mechanics lien law — “contract price.”

#### § 3086.020. Security for owner’s payment obligation

3086.020. An owner of property to which this chapter applies shall provide the direct contractor for the work of improvement with all of the following:

(a) Security for the owner’s payment obligation pursuant to the contract. The security shall be used only if the owner defaults on the payment obligation to the direct contractor. This subdivision does not apply to an owner of property that is the majority owner of the direct contractor.

(b) A copy, certified by the county recorder, of any recorded mortgage or deed of trust that secures the construction loan of a lending institution for the work of improvement, disclosing the amount of the loan.

**Comment.** Section 3086.020 restates the first parts of subdivisions (a) and (b) of former Section 3110.5 without substantive change. As used in this section, “owner of property” includes the owner of the fee simple absolute interest or any lesser interest in the property. See Section 3082.100 (“owner” defined). The reference to a “work of improvement” includes construction, alteration, addition to, or repair upon, the property. See Section 3082.190 (“work of improvement” defined).

See also Sections 3082.235 (written notice), 3082.240 (mailed notice), 3082.330 (construction trust deed).

See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined).

☞ **Staff Note.** It is not clear what sort of “lending institution” is covered by subdivision (b). We will assume it has the same meaning as under the provisions of the mechanics lien law — the term “lending institution” includes commercial bank, savings and loan institution, credit union, or other organization or person engaged in the business of financing loans. If that is the case, it may be useful to create a general definition of the term for purposes of the entire statute. The term apparently differs from “financial institution”, used elsewhere in this chapter.

#### **§ 3086.030. Demand for security**

3086.030. If an owner of property to which this chapter applies fails to provide or maintain the security required by this chapter, the direct contractor may give the owner notice demanding security. If the owner does not provide or maintain the security within 10 days after notice demanding security is given, the direct contractor may suspend work until the owner provides or maintains the security.

**Comment.** Section 3086.030 restates the second sentence of former Section 3110.5(c) without substantive change.

See also Sections 3082.235 (written notice), 3082.240 (mailed notice).

See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined).

#### **§ 3086.040. Security not waivable**

3086.040. It is against public policy by contract to waive the provisions of this chapter.

**Comment.** Section 3086.040 restates former Section 3110.5(g) without substantive change. This chapter applies only to a contract for a private work of improvement. See Section 3086.210 (exemptions from security requirement).

See also Section 3082.022 (“contract” defined).

#### **§ 3086.050. Rights of subcontractor not affected**

3086.050. This chapter does not affect any statute providing a subcontractor the right to record a claim of lien, file a notice to withhold funds, assert a claim against a payment bond, or receive prompt payment, including the direct contractor’s



payment responsibilities under Section 7108.5 of the Business and Professions Code and Section 10262 of the Public Contract Code.

**Comment.** Section 3086.050 restates former Section 3110.5(d) without substantive change.

See also Sections 3082.025 (“direct contractor” defined), 3082.060 (“lien” defined), 3082.105 (“payment bond” defined), 3082.180 (“subcontractor” defined).

☞ **Staff Note.** The reference to a payment bond in this section will be coordinated with the Commission’s previous decision to limit the mechanics lien law to payment bonds for private work and to relocate the public work payment bond to the Public Contract Code.

## Article 2. Form of Security

### § 3086.110. Form of security

3086.110. An owner of property to which this chapter applies shall provide security by any of the following means:

- (a) A payment bond that satisfies Section 3086.120.
- (b) An irrevocable letter of credit that satisfies Section 3086.130.
- (c) An escrow account that satisfies Section 3086.140.

**Comment.** Section 3086.110 restates a part of former Section 3110.5(b) without substantive change.

See also Sections 3082.100 (“owner” defined), 3082.105 (“payment bond” defined).

☞ **Staff Note.** The reference to a payment bond in this section will be coordinated with the Commission’s previous decision to limit the mechanics lien law to payment bonds for private work and to relocate the public work payment bond to the Public Contract Code.

### § 3086.120. Payment bond

3086.120. A payment bond under this chapter shall satisfy all of the following requirements:

(a) The bond shall be executed by an admitted surety insurer that is either listed in the Department of the Treasury’s Listing of Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or better and has an underwriting limitation, pursuant to Section 12090 of the Insurance Code, greater than the amount of the bond.

(b) The bond shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.

(c) The bond shall be conditioned for payment on default by the owner of any undisputed amount under the contract that is due and payable for more than 30 days.

**Comment.** Section 3086.120 restates former Section 3110.5(b)(1) without substantive change.

See also Code Civ. Proc. § 995.120 (“admitted surety insurer” defined).

See also Sections 3082.022 (“contract” defined), 3082.100 (“owner” defined), 3082.105 (“payment bond” defined), 3082.190 (“work of improvement” defined).

☞ **Staff Note.** We have replaced the term “total amount of the contract” with the term commonly used in the mechanics lien law — “contract price.”

The reference to a payment bond in this section will be coordinated with the Commission’s previous decision to limit the mechanics lien law to payment bonds for private work and to relocate the public work payment bond to the Public Contract Code.

Existing law refers to a payment bond as defined in Civil Code Section 3096. That definition refers to the beneficiaries on the bond as “all claimants”, not limited to the direct contractor. We have not continued that provision in this draft, since the intent of this chapter appears to be protection of the director contractor rather than other claimants.

#### **§ 3086.130. Irrevocable letter of credit**

3086.130. An irrevocable letter of credit under this chapter shall satisfy all of the following requirements:

(a) The letter of credit shall be issued by a financial institution, as defined in Section 5107 of the Financial Code, inuring to the benefit of the direct contractor.

(b) The letter of credit shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.

(c) The maturity date and other terms of the letter of credit shall be determined by agreement between the owner, the direct contractor, and the financial institution, except that the owner shall maintain the letter of credit in effect until the owner has satisfied its payment obligation to the direct contractor.

**Comment.** Section 3086.130 restates former Section 3110.5(b)(2) without substantive change.

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

☞ **Staff Note.** We have replaced the term “total amount of the contract” with the term commonly used in the mechanics lien law — “contract price.”

The term “financial institution” is used elsewhere in the mechanics lien law without definition. It is our intention to generalize the definition referred to in this section — “thrift institution, commercial bank, or trust company.” The term apparently differs from “lending institution”, used elsewhere in this chapter.

#### **§ 3086.140. Escrow account**

3086.140. An escrow account under this chapter shall satisfy all of the following requirements:

(a) The account shall be designated as a “construction security escrow account”.

(b) The account shall be located in this state and maintained with an escrow agent licensed under the Escrow Law, Division 6 (commencing with Section 17000) of the Financial Code, or with any person exempt from the Escrow Law pursuant to paragraph (1) or (3) of subdivision (a) of Section 17006 of the Financial Code.

(c) The owner shall deposit funds in the account in the amount provided in Section 3086.150. This chapter does not require a construction lender to agree to deposit proceeds of a construction loan in the account.

(d) The owner shall grant the direct contractor a perfected, first priority security interest in the account and in all funds deposited by the owner in the account and in their proceeds, established to the reasonable satisfaction of the direct contractor, which may be by a written opinion of legal counsel for the owner.

(e) The funds on deposit in the account shall be the sole property of the owner, subject to the security interest of the direct contractor. The owner and the direct contractor shall instruct the escrowholder to hold the funds on deposit in the account for the purpose of perfecting the direct contractor's security interest in the account and to disburse those funds only on joint authorization of the owner and the direct contractor, or pursuant to a court order that is binding on both of them.

**Comment.** Section 3086.140 restates portions of former Section 3110.5(b)(3) without substantive change.

See also Sections 3082.020 ("construction lender" defined), 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined).

☞ **Staff Note.** It is unclear what it means for an escrow account to be "located" in this state. Do deposits to the account have to be held in the form of bullion on site? Suppose the escrowholder deposits receipts to, and issues checks drawn against, an account in a financial institution that is headquartered elsewhere? We are inclined to drop this requirement as essentially meaningless.

#### **§ 3086.150. Deposits to and disbursements from escrow account**

3086.150. The following provisions govern a deposit to or disbursement from a construction security escrow account under this chapter:

(a) Before the commencement of work the owner shall make an initial deposit to the account in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.

(b) If the contract provides for a retention to be withheld from a periodic payment to the direct contractor, the owner shall deposit the amount withheld as retention at the time the owner makes the corresponding payment to the direct contractor from which the retention is withheld.

(c) The amount required to be maintained on deposit shall not exceed the total amount remaining to be paid to the direct contractor pursuant to the contract or a contract change. If the amount on deposit equals or exceeds the total amount remaining to be paid to the direct contractor, the owner and the direct contractor shall authorize disbursement to the direct contractor for progress payments then due the direct contractor, but a party is not obligated to authorize disbursement that would cause the amount remaining on deposit following the disbursement to be less than the total amount remaining to be paid to the direct contractor.

(d) The owner and the direct contractor shall authorize the disbursement to the owner of any funds remaining on deposit after the direct contractor has been paid all amounts due under the contract. The owner and the direct contractor shall authorize the disbursement of funds on deposit pursuant to a court order that is binding on both of them. The owner and the direct contractor may agree in the

contract to additional conditions for the disbursement of funds on deposit, except that the conditions may not cause the amount remaining on deposit to be less than the amount required under this section.

**Comment.** Section 3086.150 restates portions of former Section 3110.5(b)(3) without substantive change.

See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

#### **§ 3086.160. Contract price**

3086.160. If the contract price for a work of improvement is not a fixed price, the amount of security provided under this chapter shall be the guaranteed maximum price or, if there is no guaranteed maximum price, the owner’s and direct contractor’s good faith estimate of the total cost anticipated to be incurred under the contract.

**Comment.** Section 3086.160 restates the first sentence of former Section 3110.5(c) without substantive change.

See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

### Article 3. Exemptions from Security Requirement

#### **§ 3086.210. Single-family residence, public work, and low income housing, excluded**

3086.210. This chapter does not apply to any of the following works of improvement:


(a) A single-family residence, including a single-family residence located within a subdivision, and any associated fixed work that requires the services of a general engineering contractor as defined in Section 7056 of the Business and Professions Code. As used in this subdivision, “single-family residence” means a real property improvement used or intended to be used as a dwelling unit for one family.

(b) A public work.

(c) A housing development eligible for a density bonus under Section 65915 of the Government Code.

**Comment.** Section 3086.210 restates former Section 3110.5(e) without substantive change.

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

 **Staff Note.** We have left the public work exemption here, for the time being. But the Commission has tentatively decided to limit the entire mechanics lien statute to private works of improvement, so this provision will eventually be eclipsed by an overarching provision that defines the scope of the mechanics lien law.

#### **§ 3086.220. Qualified publicly traded company and qualified private company excluded**

3086.220. This chapter does not apply to any of the following owners of property:

(a) A qualified publicly traded company or a wholly owned subsidiary of a qualified publicly traded company, if the obligations of the subsidiary under the

contract for the work of improvement are guaranteed by the parent. As used in this subdivision, “qualified publicly traded company” means a company having a class of equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ stock market, and the nonsubordinated debt securities of which are rated as “investment grade” by either Fitch ICBA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings Services, or a similar statistical rating organization that is nationally recognized for rating the creditworthiness of a publicly traded company. If at any time before final payment of all amounts due under the contract the nonsubordinated debt securities of the qualified publicly traded company are downgraded to below “investment grade” by any of those rating organizations, the owner is no longer exempt from this chapter.

(b) A qualified private company or a wholly owned subsidiary of a qualified private company, if the obligations of the subsidiary under the contract for the work of improvement are guaranteed by the parent. As used in this subdivision, “qualified private company” means a company that has no equity securities listed for trading on the New York Stock Exchange, the American Stock Exchange, or the NASDAQ stock market, and that has a net worth determined in accordance with generally accepted accounting principles in excess of fifty million dollars (\$50,000,000). If at any time before final payment of all amounts due under the contract the net worth of the qualified private company is reduced below that level, the owner is no longer exempt from this chapter.

**Comment.** Section 3086.220 restates former Section 3110.5(f) without substantive change.

See also Sections 3082.022 (“contract” defined), 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

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## CONSTRUCTION REMEDIES

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

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

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

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

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

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

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

16 TITLE 15. WORKS OF IMPROVEMENT

17 CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

18 Article 1. Definitions

19 **§ 3082. Application of definitions**

20 3082. Unless the provision or context otherwise requires, the definitions in this  
21 article govern the construction of this title.

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

23 **§ 3082.010. Claimant**

24 3082.010. “Claimant” means a person that has the right under this title to record  
25 a claim of lien, file a notice to withhold funds, or assert a claim against a payment  
26 bond, and includes the person’s assigns.

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

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

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

7 **§ 3082.020. Construction lender**

8 3082.020. “Construction lender” means either of the following:

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

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

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

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

18 **§ 3082.022. Contract**

19 3082.022. “Contract” means an agreement between an owner and a direct  
20 contractor that provides for all or part of a work of improvement.

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

24 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),  
25 3082.190 (“work of improvement” defined).

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

32 **§ 3082.025. Direct contractor**

33 3082.025. “Direct contractor” means a person that has a direct contractual  
34 relationship with an owner.

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

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

39 **§ 3082.027. Express trust fund**

40 3082.027. “Express trust fund” means a laborer’s compensation fund to which a  
41 portion of a laborer’s total compensation is to be paid under an employment  
42 agreement or a collective bargaining agreement for the provision of benefits,

1 including, but not limited to, employer payments described in Section 1773.1 of  
2 the Labor Code and implementing regulations.

3 **Comment.** Section 3082.027 continues a portion of former Section 3111 without substantive  
4 change.

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

7 **§ 3082.030. Labor, service, equipment, or material**

8 3082.030. “Labor, service, equipment, or material” includes but is not limited to  
9 labor, skills, services, material, supplies, equipment, appliances, transportation,  
10 power, surveying, construction plans, and construction management provided for a  
11 work of improvement.

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

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

19 **§ 3082.040. Laborer**

20 3082.040. “Laborer” means a person who, acting as an employee, provides  
21 labor, skill, or other necessary services for a work of improvement.

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

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

26 **§ 3082.050. Laborer’s compensation fund**

27 3082.050. “Laborer’s compensation fund” means a person, including an express  
28 trust fund, to which a portion of the compensation of a laborer is paid by  
29 agreement with the laborer or the collective bargaining agent of the laborer.

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

32 See also Sections 3082.027 (“express trust fund” defined), 3082.040 (“laborer” defined),  
33 3082.110 (“person” defined).

34 **§ 3082.060. Lien**

35 3082.060. “Lien” means a lien under Chapter 2 (commencing with Section  
36 3083.110) (mechanics lien for private work), and includes both a lien for a work of  
37 improvement under Section 3083.210 and a lien for a site improvement under  
38 Section 3083.230.

39 **Comment.** Section 3082.060 is a new definition. It is included for drafting convenience. There  
40 are instances in this title where the term is not used in its defined sense. See, e.g., Sections  
41 3083.540 (d) (multiple works of improvement), 3083.610 (a) (priority of lien).

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

1 **§ 3082.070. Material supplier**

2 3082.070. (a) “Material supplier” means a person that provides material or  
3 supplies to be used or consumed in a work of improvement.

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

7 **Comment.** Subdivision (a) of Section 3082.070 replaces the term “materialman” with the term  
8 “material supplier” to conform to contemporary usage under this title. It continues former Section  
9 3082.070 without substantive change.

10 Subdivision (b) is new.

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

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

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

18 **§ 3082.090 [reserved]. Notice to withhold funds**

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

22 **§ 3082.100. Owner**

23 3082.100. “Owner” means:

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

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

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

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

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

37 **§ 3082.105. Payment bond (private work)**

38 3082.105. “Payment bond (private work)” means a bond given under Article 2  
39 (commencing with 3085.210) of Chapter 4 in a private work.

40 **Comment.** Section 3082.105 supersedes former Section. 3096. Cf. Section 3082.106  
41 (“payment bond (public work)” defined). See also Section 3085.010 (payment bond).

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

1    **§ 3082.110. Person**

2       3082.110. “Person” means an individual, corporation, public entity, business  
3 trust, estate, trust, partnership, limited liability company, association, or other  
4 entity.

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

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

8    **§ 3082.120. Preliminary notice (private work)**

9       3082.120. “Preliminary notice (private work)” means the notice provided for in  
10 Article 1 (commencing with 3089.110) of Chapter 7, relating to preliminary notice  
11 of private work.

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

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

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

19    **§ 3082.130. Private work**

20       3082.130. “Private work” means a work of improvement other than a public  
21 work.

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

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

27    **§ 3082.140. Public entity**

28       3082.140. “Public entity” means the state, Regents of the University of  
29 California, a county, city, district, public authority, public agency, and any other  
30 political subdivision or public corporation in the state.

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

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

35    **§ 3082.150. Public work**

36       3082.150. “Public work” means a work of improvement contracted for by a  
37 public entity.

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

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

1    **§ 3082.160. Site**

2    3082.160. “Site” means the property on which a work of improvement is  
3    situated.

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

6    **§ 3082.170. Site improvement**

7    3082.170. “Site improvement” means any of the following work on property:

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

9    (b) Drilling test holes.

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

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

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

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

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

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

20   **§ 3082.180. Subcontractor**

21   3082.180. “Subcontractor” means a contractor that does not have a direct  
22   contractual relationship with an owner. The term includes a contractor that has a  
23   contractual relationship with a direct contractor or with another subcontractor.

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

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

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

30   **§ 3082.190. Work of improvement**

31   3082.190. (a) “Work of improvement” includes but is not limited to:

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

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

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

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

40   **Comment.** Section 3082.190 restates former Section 3106. The section is revised to reorganize  
41   and tabulate the different types of works falling within the definition, to expand the coverage of

1 the definition, and to make various technical, nonsubstantive revisions. The term “property” has  
2 replaced “lot or tract of land.”

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

## 7 Article 2. General Provisions

### 8 § 3082.210. Application of title

9 3082.210. Except as otherwise provided in this title, this title applies to both a  
10 private work and a public work. This title does not apply to a work of  
11 improvement governed by federal law.

12 **Comment.** Section 3082.210 is new. Chapter 2 (commencing with Section 3083.110) relating  
13 to mechanics liens applies only to a private work and does not apply to a public work. See Section  
14 3083.110 (scope of chapter).

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

### 16 § 3082.220. Jurisdiction and venue

17 3082.220. The proper court for proceedings under this title is the superior court  
18 in the county in which a work of improvement, or part of it, is situated.

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

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

### 22 § 3082.230. Rules of practice

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

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

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

### 34 § 3082.235. Written notice

35 3082.235. Notice under this title shall be in writing.

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

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



1    **§ 3082.240. Mailed notice**

2    3082.240. The following provisions apply to notice given by mail under this  
3 title:

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

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

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

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

19    **§ 3082.250. Filing and recording of papers**

20    3082.250. (a) If this title provides for filing a contract, plan, or other paper with  
21 the county recorder the provision is satisfied by filing the paper in the office of the  
22 county recorder of the county in which the work of improvement or part of it is  
23 situated.

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

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

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

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

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

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

1    **§ 3082.260. Co-owners**

2       3082.260. (a) An owner may give a notice or execute or file a document under  
3 this title on behalf of a co-owner if the owner acts on the co-owner’s behalf and  
4 includes in the notice or document the name and address of the co-owner on whose  
5 behalf the owner acts.

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

9       **Comment.** Section 3082.260 is new. It generalizes provisions found in former Sections 3092  
10 (notice of cessation) and 3093 (notice of completion), and clarifies the effect of giving or  
11 receiving notice by co-owners.

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

13    **§ 3082.270. Agency**

14       3082.270. An act that may be done by or to a person under this title may be done  
15 by or to the person’s authorized agent to the extent the act is within the scope of  
16 the agent’s authority.

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

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

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

25    **§ 3082.280. Relation to other statutes**

26       3082.280. (a) This title does not apply to a transaction governed by the Oil and  
27 Gas Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3  
28 of the Code of Civil Procedure.

29       (b) This title does not apply to a transaction governed by Sections 20457 to  
30 20464, inclusive, of the Public Contract Code (street work bond).

31       (c) This title does not limit, and is not affected by, improvement security  
32 provided under the Subdivision Map Act, Division 2 (commencing with Section  
33 66410) of Title 7 of the Government Code.

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

36       Subdivision (b) restates former Section 3266(b) without substantive change. This provision  
37 updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which  
38 were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, §  
39 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See  
40 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under  
41 Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code.  
42 See Pub. Cont. Code § 20457.

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

1

## Article 3. Construction Documents

2 **§ 3082.310. Contract forms**

3 3082.310. (a) A written contract entered into between an owner and a direct  
4 contractor shall provide a space for the owner to enter the following information:

5 (1) The owner's name and residence address, and place of business if any.

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

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

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

20 See also Sections 3082.020 ("construction lender" defined), 3082.025 ("direct contractor"  
21 defined), 3082.100 ("owner" defined), 3082.180 ("subcontractor" defined).

22 **§ 3082.320. Designation of construction lender on building permit**

23 3082.320. (a) A public entity that issues building permits shall, in its application  
24 form for a building permit, provide space and a designation for the applicant to  
25 enter the name, branch designation, if any, and address of the construction lender  
26 and shall keep the information on file open for public inspection during the regular  
27 business hours of the public entity.

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

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

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

34 See also Sections 3082.020 ("construction lender" defined), 3082.110 ("person" defined),  
35 3082.120 ("preliminary notice (private work)" defined), 3082.140 ("public entity" defined).

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

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

1    **§ 3082.330. Construction trust deed**

2       3082.330. (a) A mortgage, deed of trust, or other instrument securing a loan, any  
3 of the proceeds of which may be used for a work of improvement, shall bear the  
4 designation “Construction Trust Deed” prominently on its face and shall state all  
5 of the following:

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

7       (2) The name and address of the owner of the property described in the  
8 instrument.

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

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

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

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

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

19       See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),  
20 3082.110 (“person” defined), 3082.120 (“preliminary notice (private work)” defined), 3082.190  
21 (“work of improvement” defined).

22                                   Article 4. Laborer’s Compensation Fund

23    **§ 3082.410. Standing to enforce laborer’s rights**

24       3082.410. (a) A laborer’s compensation fund that has standing under applicable  
25 law to maintain a direct legal action in its own name or as an assignee to collect  
26 any portion of compensation owed for a laborer, has standing to enforce rights  
27 under this title to the same extent as the laborer.

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

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

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

35    **§ 3082.420. Notice of overdue laborer compensation**

36       3082.420. (a) A contractor or subcontractor that employs a laborer and fails to  
37 pay the full compensation due the laborer or laborer’s compensation fund shall,  
38 not later than the date the compensation became delinquent, give the laborer, the  
39 laborer’s bargaining representative, if any, and the construction lender or reputed  
40 construction lender, if any, written notice containing all of the following  
41 information:

- 1 (1) The name of the owner and the contractor.
- 2 (2) A description of the site sufficient for identification.
- 3 (3) The name and address of any express trust fund to which employer payments
- 4 are due.
- 5 (4) The total number of straight time and overtime hours on each job.
- 6 (5) The amount then past due and owing.
- 7 (b) Failure to give the notice required by subdivision (a) constitutes grounds for
- 8 disciplinary action under the Contractors' State License Law, Chapter 9
- 9 (commencing with Section 7000) of Division 3 of the Business and Professions
- 10 Code.

11 **Comment.** Section 3082.420 restates former Section 3097(k) without substantive change. The

12 reference to the Registrar of Contracts in the final sentence of former Section 3097(k) has been

13 revised to refer to the Contractors' State License Law. This is a technical, nonsubstantive change.

14 See also Sections 3082.020 ("construction lender" defined), 3082.027 ("express trust fund"

15 defined), 3082.040 ("laborer" defined), 3082.050 ("laborer's compensation fund" defined),

16 3082.100 ("owner" defined), 3082.160 ("site" defined), 3082.180 ("subcontractor" defined),

17 3082.210 (application of title).

## 18 Article 5. Construction of and Terms and Conditions of Bonds

### 19 § 3082.510. Application of Bond and Undertaking Law

20 3082.510. The Bond and Undertaking Law, Chapter 2 (commencing with

21 Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a

22 bond given under this title.

23 **Comment.** Section 3082.510 is new. It is a specific application of Code of Civil Procedure

24 Section 995.020 (application of Bond and Undertaking Law).

25 ☞ **Staff Note.** A provision like this is not strictly necessary, since the Bond and Undertaking

26 Law applies by its own terms. But the cross-reference may be helpful to nonattorneys having

27 occasion to use the mechanics lien law.

### 28 § 3082.520. Release of surety from liability

29 3082.520. None of the following releases a surety from liability on a bond given

30 under this title:

31 (a) A change to a contract, plan, specification, or agreement for a work of

32 improvement or for labor, service, equipment or material provided for a work of

33 improvement.

34 (b) A change to the terms of payment or an extension of the time for payment for

35 a work of improvement.

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

37 (d) A condition precedent or subsequent in the bond purporting to limit the right

38 of recovery of a claimant otherwise entitled to recover under a contract,

39 agreement, or bond.

40 (e) In the case of a bond given for the benefit of claimants, the fraud of a person

41 other than the claimant seeking to recover on the bond.

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

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

7       **§ 3082.530. Construction of bond**

8       3082.530. (a) A bond given under this title shall be construed most strongly  
9 against the surety and in favor of the beneficiary.

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

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

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

18       See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),  
19 3082.100 (“owner” defined), 3082.110 (“person” defined).

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

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

24       **§ 3082.540. Notice to principal and surety**

25       3082.540. (a) This section governs notice to a principal or a surety on a bond  
26 given under this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 13 CHAPTER 2. MECHANICS LIEN FOR PRIVATE WORK

### 14 Article 1. Application of Chapter

#### 15 § 3083.110. Scope of chapter

16 3083.110. This chapter applies only to a private work and does not apply to a  
17 public work.

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

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

### 20 Article 2. Who Is Entitled to Lien

#### 21 § 3083.210. Persons entitled to lien

22 3083.210. A person that provides labor, service, equipment, or material properly  
23 authorized for a work of improvement, including but not limited the following  
24 persons, has a lien right under this chapter:

25 (a) Direct contractor.

26 (b) Subcontractor.

27 (c) Material supplier.

28 (d) Equipment lessor.

29 (e) Laborer.

30 (f) Architect.

31 (g) Registered engineer.

32 (h) Licensed land surveyor.

33 (i) Builder.

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

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

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

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

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

16 See also Sections 3082.025 (“direct contractor” defined), 3082.030 (“labor, service, equipment,  
17 or material” defined), 3082.040 (“laborer” defined), 3082.060 (“lien” defined), 3082.070  
18 (“material supplier” defined), 3082.110 (“person” defined), 3082.180 (“subcontractor” defined),  
19 3082.190 (“work of improvement” defined).

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

## 22 § 3083.220. Lien right of express trust fund

23 3083.220. An express trust fund has the same lien right under this chapter as a  
24 laborer on a work of improvement, to the extent of the compensation agreed to be  
25 paid to the express trust fund for labor on that work of improvement only.

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

29 See also Sections 3082.027 (“express trust fund” defined), 3082.040 (“laborer” defined),  
30 3082.060 (“lien” defined).

## 31 § 3083.230. Site improvement lien

32 3083.230. A person that provides labor, service, equipment, or material properly  
33 authorized for a site improvement has a lien right under this chapter.

34 **Comment.** Section 3083.230 supersedes former Section 3112. The reference to work done or  
35 material furnished is superseded by the reference to labor, service, equipment, or material. See  
36 Section 3082.030 (“labor, service, equipment, or material” defined). The reference to work at the  
37 instance or request of the owner or any person acting by or under authority of the owner as  
38 contractor or otherwise is replaced by the reference to work properly authorized. See Section  
39 3083.240 (who may authorize work).

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

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

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





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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§ 3083.350. Claim of lien**

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

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

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

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

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

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

12 [(f) The claimant's address.]

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

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

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

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

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

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

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

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

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

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

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

36 (1) The date of recordation.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

### 32 Article 5. Property Subject to Lien

#### 33 § 3083.510. Property subject to lien

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

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

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

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

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

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

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

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

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

15 **§ 3083.530. Notice of nonresponsibility**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 27 § 3083.550. Claim against separate residential units

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

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

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

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

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

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

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

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

### 11   § 3083.560. Release bond

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

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

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

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

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

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

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

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



1 Article 6. Priorities

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

5 **§ 3083.610. Priority of lien**

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

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

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

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

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

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

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

20 **§ 3083.615. Payment bond covering mechanics lien**

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

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

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

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

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

33 **§ 3083.620. Separate contract for site improvement**

34 3083.620. If a site improvement is provided for in a contract separate from the  
35 contract for the remainder of the work of improvement, the site improvement is  
36 deemed a separate work of improvement and commencement of the site  
37 improvement is not commencement of the remainder of the work of improvement.

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

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

1    **§ 3083.630. Priority of advances by lender**

2       3083.630. (a) This section applies to a construction loan secured by a mortgage  
3 or deed of trust that has priority over a lien under this chapter.

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

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

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

10   **§ 3083.640. Priority of site improvement lien**

11       3083.640. Except as provided in Section 3139 (payment bond), a lien provided  
12 for in Section 3083.230 (site improvement lien) has priority over:

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

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

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

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

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

30   **§ 3083.645. Payment bond covering site improvement lien**

31       3083.645. A mortgage or deed of trust, otherwise subordinate to a lien under  
32 Section 3083.640, has priority over a lien provided for in Section 3083.230 (site  
33 improvement lien) if a payment bond (private work) in an amount not less than 50  
34 percent of the principal amount of the mortgage or deed of trust is recorded before  
35 completion of the work of improvement.

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

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



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

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

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

7       **§ 3083.740. Dismissal for lack of prosecution**

8       3083.740. Notwithstanding Section 583.420 of the Code of Civil Procedure, the  
9 court may dismiss an action to enforce a lien that is not brought to trial within two  
10 years after commencement.

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

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

16       **§ 3083.750. Dismissal of action or judgment of no lien**

17       3083.750. Dismissal of an action to enforce a lien, unless the dismissal is  
18 expressly stated to be without prejudice, or a judgment that no lien exists, is  
19 equivalent to cancellation of the lien and its removal from the record.

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

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

23       **§ 3083.760. Costs**

24       3083.760. In addition to any other costs allowed by law, the court in an action to  
25 enforce a lien shall allow as costs to each claimant whose lien is established the  
26 amount paid to verify and record the claim of lien, whether the claimant is a  
27 plaintiff or defendant.

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

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

30       **§ 3083.770. Deficiency**

31       3083.770. If there is a deficiency of proceeds from the sale of property on a  
32 judgment for enforcement of a lien, a deficiency judgment may be entered against  
33 a party personally liable for the deficiency in same the manner and with the same  
34 effect as in an action to foreclose a mortgage.

35       **Comment.** Section 3083.770 restates former Section 3151 without substantive change.

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

37       **§ 3083.780. Personal liability**

38       3083.780. This chapter does not affect any of the following rights of a claimant:

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

1 (b) The right to a writ of attachment. In an application for a writ of attachment,  
2 the claimant shall refer to this section. The claimant's recording of a claim of lien  
3 does not affect the right to a writ of attachment.

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

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

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

13 See also Sections 3082.010 ("claimant" defined), 3082.060 ("lien" defined), 3082.110  
14 ("person" defined).

### 15 § 3083.790. Liability of contractor for lien enforcement

16 3083.790. In an action to enforce a lien for labor, service, equipment, or material  
17 provided to a contractor:

18 (a) The contractor shall defend the action at the contractor's own expense.  
19 During the pendency of the action the owner may withhold from the direct  
20 contractor the amount claimed in the action.

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

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

30 See also Sections 3082.030 ("labor, service, equipment, or material" defined), 3082.060 ("lien"  
31 defined), 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined).

## 32 Article 8. Release Order

### 33 § 3083.810. Petition for release order

34 3083.810. (a) The owner of property subject to a claim of lien may petition the  
35 court for an order to release the property from the claim of lien for any of the  
36 following causes:

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

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

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

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

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

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

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

#### 18 § 3083.820. Contents of petition

19 3083.820. A petition for a release order shall be verified and shall allege all of  
20 the following:

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

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

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

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

27 (e) The facts on which the petition is based. If the petition is based on expiration  
28 of the time to enforce the lien, the facts shall include that no extension of credit  
29 has been recorded within the time required by Section 3083.710 and that the time  
30 for commencement of an action to enforce the lien has expired.

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

33 **Comment.** Section 3083.820 supersedes subdivision (b) of former Section 3154. As used in  
34 this section, the owner of property includes the owner of an interest in the property. See Section  
35 3082.100 (“owner” defined).

36 The information included in the petition is intended to facilitate the court’s order under Section  
37 3083.840 (hearing and order).

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

#### 39 § 3083.830. Time of hearing

40 3083.830. (a) On the filing of a petition for a release order, the clerk shall set a  
41 hearing date. The date shall be not more than 30 days after the filing of the  
42 petition. The court may continue the hearing beyond the 30-day period on a  
43 showing of good cause, but in any event the court shall rule and make any

1 necessary orders on the petition not later than 75 days after the filing of the  
2 petition.

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

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

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

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

10 (4) The claim of lien.

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

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

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

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

#### 22 § 3083.840. Hearing and order

23 3083.840. (a) At the hearing both the petition and the issue of compliance with  
24 the service requirements of this article are deemed controverted by the claimant.  
25 The petitioner has the burden of proof that service was made in compliance with  
26 this article.

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

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

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

31 (3) The book and page of the place in the official records where the claim of lien  
32 is recorded.

33 (4) The legal description of the property.

34 (c) The prevailing party is entitled to reasonable attorneys fees.

35 **Comment.** Subdivision (a) of Section 3083.840 continues the last sentence of former Section  
36 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change.  
37 Subdivision (b) continues former Section 3154(f) without substantive change. The reference to  
38 the city where the claim of lien is recorded is omitted as superfluous. Subdivision (c) continues  
39 former Section 3154(g) with the exception of the \$2,000 limitation.

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

#### 41 § 3083.850. Release of property from claim of lien

42 3083.850. (a) A release order is a recordable instrument.

1 (b) On recordation of a certified copy of a release order, the property described  
2 in the order is released from the claim of lien.

3 **Comment.** Subdivision (a) of Section 3083.850 is intended to help effectuate the purpose of  
4 the lien release procedure.

5 Subdivision (b) continues the second sentence of former Section 3154(f)(4) without substantive  
6 change.

7 See also Section 3082.060 (“lien” defined).  
8

9 CHAPTER 3. NOTICE TO WITHHOLD FUNDS FOR PRIVATE  
10 WORK

11 [Reserved]

12 CHAPTER 4. PAYMENT BOND

13 Article 1. General Provisions Relating to Payment Bonds

14 § 3085.010. Payment bond

15 3085.010. (a) A payment bond given under this chapter shall be conditioned for  
16 the payment in full of the claims of all claimants and shall by its terms inure to the  
17 benefit of all claimants so as to give a claimant a right of action to enforce the  
18 liability on the bond.

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

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

23 **Comment.** Section 3085.010 restates former Section 3096 without substantive change. See also  
24 Section 3082.510 (application of Bond and Undertaking Law). The statute has been relocated to  
25 the general provisions on payment bonds because it states substantive rules.

26 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),  
27 3082.060 (“lien” defined), 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

28 § 3085.020. Limitation on title

29 3085.020. (a) This title does not give a claimant a right to recover on a direct  
30 contractor’s payment bond given under this chapter unless the claimant provided  
31 labor, service, equipment or material to the direct contractor or one of the direct  
32 contractor’s subcontractors pursuant to a contract between the direct contractor  
33 and the owner.

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

37 **Comment.** Section 3085.020 restates former Section 3267 without substantive change.



1 See also Sections 3082.010 (“claimant” defined), 3082.022 (“contract” defined), 3082.025  
2 (“direct contractor” defined), 3083.030 (“labor, service, equipment, or material” defined),  
3 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

## 4 Article 2. Payment Bond for Private Work

### 5 § 3085.210. Public policy of payment bond

6 3085.210. An owner may require a payment bond (private work) or other  
7 security as protection against a direct contractor’s failure to perform the contract or  
8 to make full payment for all labor, service, equipment and material provided for a  
9 work of improvement.

10 **Comment.** Section 3085.210 restates the second sentence of former Section 3236 without  
11 substantive change.

12 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),  
13 3083.030 (“labor, service, equipment, or material” defined), 3082.100 (“owner” defined),  
14 3082.105 (“payment bond (private work)” defined), 3082.190 (“work of improvement” defined).

### 15 § 3085.220. Limitation of owner’s liability

16 3085.220. (a) The court may limit an owner’s liability to the contract price  
17 between the owner and direct contractor pursuant to subdivision (b) if, before the  
18 commencement of work, the owner in good faith files the contract with the county  
19 recorder and records a payment bond (private work) of the direct contractor in an  
20 amount not less than 50 percent of the contract price stated in the contract.

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

27 **Comment.** Subdivision (a) of Section 3085.220 restates the first part of former Section 3235  
28 and the first sentence of former Section 3236 without substantive change. It makes clear that the  
29 bond, as well as the contract, must be recorded before the commencement of work. See also  
30 Section 3082.250 (filing and recording of papers).

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

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

### 37 § 3085.230. Bond required by lending institution

38 3085.230. (a) If a lending institution requires that a payment bond (private work)  
39 be given as a condition of lending money to finance a work of improvement, and  
40 accepts in writing as sufficient a bond given in fulfillment of the requirement, the  
41 lending institution may thereafter object to the borrower as to the validity of the

1 bond or refuse to make the loan based on an objection to the bond only if the bond  
2 underwriter was licensed by the Department of Insurance.

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

6 **Comment.** Section 3085.230 restates former Section 3237 without substantive change.

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

9 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),  
10 995.185 (“surety” defined).

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

### 15 § 3085.250. Statute of limitations against surety on recorded bond

16 3085.250. If a payment bond (private work) is recorded before completion of a  
17 work of improvement, an action to enforce the liability on the bond may not be  
18 commenced later than six months after completion of the work of improvement.

19 **Comment.** Section 3085.250 restates former Section 3240, and broadens it to cover enforcement  
20 of any liability on the bond, not limited to the liability of the surety. Cf. Code Civ. Proc. §  
21 996.440 (judgment on bond against principal and sureties). It supersedes former Section 3239  
22 (provision shortening statute of limitations). See also Section 3082.250 (filing and recording of  
23 papers), completion.

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

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

### 27 § 3085.260. Preliminary notice (private work) required

28 3085.260. A claimant may not enforce the liability on a payment bond (private  
29 work) unless either of the following conditions is satisfied:

30 (a) The claimant has given a preliminary notice (private work) as provided in  
31 Article 1 (commencing with Section 3089.110) of Chapter 7.

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

36 **Comment.** Section 3085.260 restates former Section 3242 without substantive change. The  
37 former limitation to a contract entered into on or after January 1, 1995, is omitted as obsolete.

38 See also Sections 14 (singular includes plural), 3082.240 (mailed notice and proof of notice),  
39 3089.410 (completion), 3085.420 (notice of completion).

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

1 CHAPTER 5. SECURITY FOR LARGE PROJECT

2 [Reserved]

3 CHAPTER 6. PROMPT PAYMENT

4 [Reserved]

5 CHAPTER 7. MISCELLANEOUS PROVISIONS

6 Article 1. Preliminary Notice of Private Work

7 **§ 3089.110. Preliminary notice prerequisite to remedies**

8 3089.110. (a) Except as otherwise provided in this section, a preliminary notice  
9 (private work) is a necessary prerequisite to the validity of a lien, notice to  
10 withhold funds, or claim against a payment bond with respect to a private work.

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

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

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

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

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

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

25 **§ 3089.120. Preliminary notice requirement**

26 3089.120. Before recording a claim of lien, filing a notice to withhold funds, or  
27 asserting a claim against a payment bond, the claimant shall give a preliminary  
28 notice (private work) to each of the following persons:

29 (a) The owner or reputed owner.

30 (b) The direct contractor or reputed contractor.

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

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

36 See also Sections 3082.010 ("claimant" defined), 3082.020 ("construction lender" defined),  
37 3082.060 ("lien" defined), 3082.025 ("direct contractor" defined), 3082.100 ("owner" defined),  
38 3082.110 ("person" defined).

1 § 3089.130. Contents of preliminary notice

2 3089.130. (a) A preliminary notice (private work) shall be in writing and shall  
3 contain all of the following information:

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

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

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

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

11 (5) The following statement in boldface type:

12 **NOTICE TO PROPERTY OWNER**

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

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

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

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

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

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

1    **§ 3089.140. Effect of preliminary notice**

2       3089.140. (a) A claimant may record a claim of lien, file a notice to withhold  
3 funds, or assert a claim against a payment bond only for labor, service, equipment,  
4 or material provided within 20 days before giving a preliminary notice (private  
5 work) and at any time thereafter.

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

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

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

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

17    **§ 3089.150. Giving preliminary notice**

18       3089.150. (a) Subject to subdivision (b), a preliminary notice (private work)  
19 shall be given to the person to be notified by any of the following methods:

20       (1) Delivering it personally.

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

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

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

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

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

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

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

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

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

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

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

7 **§ 3089.160. Coverage of preliminary notice**

8 3089.160. (a) Except as provided in subdivision (b), a claimant need give only  
9 one preliminary notice (private work) to each person to which notice must be  
10 given under this article with respect to all labor, service, equipment, and material  
11 provided by the claimant for a work of improvement.

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

16 (c) A preliminary notice that contains a general description of labor, service,  
17 equipment, or material provided by the claimant before the date of the notice also  
18 covers labor, service, equipment, or material provided by the claimant after the  
19 date of the notice whether or not they are within the scope of the general  
20 description contained in the notice

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

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

25 **§ 3089.170. Direct contractor’s duty to provide information**

26 3089.170. A direct contractor shall make available to any person seeking to give  
27 a preliminary notice (private work) the following information:

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

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

30 **Comment.** Section 3089.170 continues without substantive change the parts of former Section  
31 3097(l)-(m) relating to the direct contractor’s duty to provide information. For provisions  
32 concerning the content of contracts, see Section 3082.310 (contract forms).

33 See also Sections 14 (singular includes plural), 3082.020 (“construction lender” defined),  
34 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person”  
35 defined).

36 **§ 3089.180. Owner’s duty to give notice of construction loan**

37 3089.180. If a construction loan is obtained after commencement of work, the  
38 owner shall provide the name and address of the construction lender to each  
39 person that has given the owner a preliminary notice (private work).

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

1 See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),  
2 3082.110 (“person” defined).

3 **§ 3089.190. Waiver void**

4 3089.190. An agreement made or entered into by an owner, whereby the owner  
5 agrees to waive the rights conferred on the owner by this article is void and  
6 unenforceable.

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

9 **§ 3089.200. Disciplinary action**

10 3089.200. A licensed subcontractor is subject to disciplinary action under the  
11 Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of  
12 Division 3 of the Business and Professions Code, if all of the following conditions  
13 are satisfied:

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

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

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

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

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

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

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

30 **§ 3089.210. Notices filed with county recorder**

31 3089.210. On or after January 1, 2007, the county recorder may cause to be  
32 destroyed all documents filed under subdivision (o) of former Section 3097.

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

37 **§ 3089.220. Transitional provisions**

38 3089.220. (a) The inclusion of the language added to paragraph (5) of  
39 subdivision (c) of former Section 3097 by Chapter 795 of the Statutes of 1999  
40 does not affect the effectiveness of a preliminary notice given on or after January  
41 1, 2000, and before the operative date of the amendments of former Section 3097

1 enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise  
2 meets the requirements of that subdivision.

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

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

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

### 13 Article 3. Completion

#### 14 § 3089.410. Completion

15 3089.410. (a) For the purpose of this title, completion of a private work occurs at  
16 the earliest of the following times:

17 (1) Actual completion.

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

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

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

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

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

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

#### 31 § 3089.430. Notice of completion

32 3089.430. (a) On or after completion of a work of improvement an owner may  
33 record a notice of completion.

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

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

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



1 (3) The name of the direct contractor, if any, for the work of improvement or, if  
2 the notice is given only of completion of a contract for a particular portion of the  
3 work of improvement as provided in Section 3089.440, the name of the direct  
4 contractor under that contract and a general statement of the kind of labor, service,  
5 equipment, or material provided under the contract.

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

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

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

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

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

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

23 This section eliminates the 10-day period for recording a notice of completion under former  
24 law. A claim of lien must be filed within 30 or 60 days after recording a notice of completion  
25 (depending on the nature of the claimant), subject to a maximum of 90 days after actual  
26 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the  
27 effect of existing law. See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58  
28 (1959).

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

33 As used in this section, the owner is the person who causes a building, improvement, or  
34 structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of  
35 a notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee  
36 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a  
37 cotenant. A notice of completion may be signed and verified by the owner's agent. See Sections  
38 3082.100 ("owner" defined), 3082.260 (co-owners).

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

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

44 **§ 3089.440. Notice of completion of contract for portion of work of improvement**

45 3089.440. If a work of improvement is made under two or more contracts, each  
46 covering a portion of the work of improvement:

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

7 (b) If the owner does not record a notice of completion under this section, the  
8 period for recording a claim of lien is that provided in Sections 3083.320 and  
9 3083.330.

10 **Comment.** Section 3089.440 continues the substance of former Section 3117, but eliminates  
11 the 10-day period for recording a notice of completion. A claim of lien must be filed within 60  
12 days after recording a notice of completion, subject to a maximum of 90 days after actual  
13 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the  
14 effect of existing law, See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58  
15 (1959).

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

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

#### 24 § 3089.450. Notice of recordation by owner

25 3089.450. (a) An owner of a private work that records a notice of completion  
26 shall at the time of recordation give a copy of the notice by mail to all of the  
27 following persons:

28 (1) A direct contractor.

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

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

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

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

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

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

41 **Comment.** Section 3089.450 restates former Section 3259.5, replacing the notice of  
42 recordation with a copy of the recorded notice. The section eliminates the former 10 day notice  
43 period and requires immediate notice. See also Section 3089.430(b)(7) and Code Civ. Proc. §  
44 1013a(c) (affidavit of mailing). As used in this section “owner” includes a person who has an  
45 interest in property (or the person’s successor in interest on the date a notice of completion is

1 recorded) that causes a building, improvement, or structure, to be constructed, altered, or repaired  
2 on the property), and includes a cotenant. See Section 3082.100 (“owner” defined). A notice is  
3 recorded when it is filed for record. Section 3082.250 (filing and recording of papers). The  
4 references to a “mechanic’s” lien in subdivision (a) have been deleted. Subdivision (a) is intended  
5 to apply to a site improvement lien as well. For service and proof of service by mail, see Section  
6 3082.240 (mailed notice).

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

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

## 12 Article 5. Waiver and Release

### 13 § 3089.610. Terms of contract

14 3089.610. (a) An owner or direct contractor may not, by contract or otherwise,  
15 waive, affect, or impair a claimant’s rights under this title, whether with or without  
16 notice, except with the claimant’s written consent, and any term of a contract that  
17 purports to do so is void and unenforceable.

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

20 **Comment.** Section 3089.610 continues the first and second sentences of former Section  
21 3262(a) without substantive change. See Section 3082.010 (“claimant” defined).

22 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),  
23 3082.100 (“owner” defined).

### 24 § 3089.620. Waiver and release

25 3089.620. A claimant’s waiver and release does not release the owner,  
26 construction lender, or surety on a payment bond from a claim or lien unless both  
27 of the following conditions are satisfied:

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

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

34 **Comment.** Section 3089.620 continues the third and fourth sentences of former Section  
35 3262(a) without substantive change. The waiver and release may be signed by the claimant’s  
36 agent. See Section 3082.270 (agency). The term “financial institution” has replaced “bank” in  
37 subdivision (b) and in the forms provided in this article.

38 See also Sections 3082.010 (“claimant” defined), 3082.020 (“construction lender” defined),  
39 3082.060 (“lien” defined), 3082.100 (“owner” defined).

### 40 § 3089.630. Statement of claimant

41 3089.630. An oral or written statement purporting to waive, release, impair or  
42 otherwise adversely affect a claim or lien is void and unenforceable and does not

1 create an estoppel or impairment of the claim or lien unless either of the following  
2 conditions is satisfied:

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

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

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

7 **§ 3089.640. Accord and satisfaction or settlement agreement not affected**

8 3089.640. This article does not affect the enforceability of either an accord and  
9 satisfaction concerning a good faith dispute or an agreement made in settlement of  
10 an action pending in court if the accord and satisfaction or agreement and  
11 settlement make specific reference to the claim or lien.

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

14 **§ 3089.650. Conditional waiver and release on progress payment**

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

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

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

24 **Identifying Information**

25 Name of Claimant: \_\_\_\_\_

26 Name of Customer: \_\_\_\_\_

27 Job Location: \_\_\_\_\_

28 Owner: \_\_\_\_\_

29 Through Date: \_\_\_\_\_

30 **Conditional Waiver and Release**

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

36 Maker of Check: \_\_\_\_\_

37 Amount of Check: \$ \_\_\_\_\_

38 Check Payable to: \_\_\_\_\_

39 **Exceptions**

40 This document does not affect any of the following:

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

5 Date of waiver and release: \_\_\_\_\_

6 Amount remaining unpaid: \$ \_\_\_\_\_

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

10 **Signature**

11 Claimant's Signature: \_\_\_\_\_

12 Claimant's Title: \_\_\_\_\_

13

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

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

20 **§ 3089.660. Unconditional waiver and release on progress payment**

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

25 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

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

30 **Identifying Information**

31 Name of Claimant: \_\_\_\_\_

32 Name of Customer: \_\_\_\_\_

33 Job Location: \_\_\_\_\_

34 Owner: \_\_\_\_\_

35 Through Date: \_\_\_\_\_

36 **Unconditional Waiver and Release**

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

41 Amount of payment: \$ \_\_\_\_\_

42 **Exceptions**

1 This document does not affect any of the following:

2 (1) Retentions.

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

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

7 **Signature**

8 Claimant's Signature: \_\_\_\_\_

9 Claimant's Title: \_\_\_\_\_

10  
11 **Comment.** Section 3089.660 continues former Section 3262(d)(2) without substantive change.  
12 The references to a "mechanic's" lien have been deleted from this section; it applies to a site  
13 improvement lien as well. The term "contract change" has replaced "written change order". The  
14 statutory form is recast for clarity.

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

16 **§ 3089.670. Conditional waiver and release on final payment**

17 3089.670. If the claimant is required to execute a waiver and release in exchange  
18 for, or in order to induce the payment of, a final payment and the claimant is not,  
19 in fact, paid in exchange for the waiver and release or a single payee check or joint  
20 payee check is given in exchange for the waiver and release, the waiver and  
21 release shall be in substantially the following form:

22 **CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

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

26 **Identifying Information**

27 Name of Claimant: \_\_\_\_\_

28 Name of Customer: \_\_\_\_\_

29 Job Location: \_\_\_\_\_

30 Owner: \_\_\_\_\_

31 Date: \_\_\_\_\_

32 **Conditional Waiver and Release**

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

37 Maker of Check: \_\_\_\_\_

38 Amount of Check: \$ \_\_\_\_\_

39 Check Payable to: \_\_\_\_\_

40 **Exceptions**

41 This document does not affect any of the following:

42 (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: \_\_\_\_\_

