

First Supplement to Memorandum 2005-31
First Supplement to Memorandum 2005-38

Mechanics Lien (Material Received at Meeting)

The following material was received by the Commission at the meeting on September 30, 2005, in connection with Study H-821 on mechanics lien law, and is attached as an Exhibit:

	<i>Exhibit p.</i>
1. Comments of Sam Abdulaziz.....	1
2. Comments of Dick Nash	3

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

COMMENTS OF SAM ABDULAZIZ

September 12, 2005

SENT VIA EMAIL!
sterling@clrc.ca.gov

CALIFORNIA LAW REVISION COMMISSION
ATTN: NATHANIEL STERLING
4000 MIDDLEFIELD RD. ROOM D-1
PALO ALTO, CA 94303-4739

RE: MECHANIC'S LIEN STUDY, MEMORANDA 2005-31 AND 2005-38

Dear Mr. Sterling:

I have had the opportunity to read your memoranda 2005 – 31 and 2005 – 38 very quickly. I am going on vacation and wanted to provide you with my thoughts. I read them without any research whatsoever. Further, I have not read the draft statutory language but I will do so prior to the meeting.

I agree with you, that the term “ Stop Notice” is confusing. Many contractors believe that a Stop Notice is a red tag where the building department is stopping work.

With respect to amounts of the “claim” whether it be under a Mechanic’s Lien or a Stop Notice (as an aside, a Public Works Stop Notice has been held to be a substitute for a Private Works Mechanic’s Lien). I agree with both you and Mr. Hunt that the amount of a Stop Notice claim should be the same as for a claim on a Mechanic’s Lien claim.

With respect to your requests for comments on page 11, I believe that the owner should always be informed of the Notice to Withhold Funds, because it directly effects the owner. However, if the owner is not the one holding the construction funds, then a notice should be served on both the holder of the construction funds and the owner. That does not seem too much to ask.

Going to your Memorandum 2005 – 38, and the “False Claim of Lien,” I agree that there should be a speedy remedy and some “punishment” for a real false claim and not one that is just disputed, such as the amount of the lien. However, I do not see it as something that happens frequently. I have been handling Mechanic’s Liens for over thirty years and cannot remember how many such matters have crossed my desk. I would estimate the number of such liens in this office, over time to be six. The issue of whether it is in fact a “false claim” is a troubling one because it could be a matter of degree.

I agree with you with respect to the fact that the owner should be given notice of the

recording of the Claim of Lien. I also agree that the process should be similar to how one serves the Preliminary Notice because that is well known in the industry.

This is a quick and dirty analysis. I wanted to give you my thoughts and I am leaving on vacation.

Very truly yours,
ABDULAZIZ & GROSSBART

SAM K. ABDULAZIZ

SKA:msa

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Law Offices of
Abdulaziz & Grossbart
P.O. Box 15458
North Hollywood, CA 91615-5458
(818)760-2000 FAX (818)760-3908
Email: info@aglaw.net
Please visit our website at <http://www.aglaw.net>
Emphasizing Construction Law

COMMENTS OF DICK NASH

September 27, 2005

Nathaniel Sterling
Executive Secretary
California Law Revision Commission

Re: Responses to Memos 2005-31 & 2005-38

Dear Nathaniel,

On behalf of the members of the Building Industry Credit Association, I would like to comment on the code sections listed below as follows:

3082.260 Co-Owner

We are concerned about the second sentence of (b) which states that “notice to the owner of a leasehold or other interest in property that is less than a fee is not effective as to the owner of the fee”. We believe this provision would run counter to the preliminary notice provision set forth in 3089.120 which requires that the claimant give the preliminary notice to the “owner or reputed owner”. The reputed owner option has always been available and normally it would be up to a court to determine if a claimant used due diligence to establish the owner’s name and address or reputed name and address. The second sentence of paragraph (b) requires that complete accuracy be achieved in environment where complete accuracy is not achievable without undue expense. We believe the second sentence of paragraph (b) should be eliminated.

3089.430 Notice of Completion

3083.320 Time for claim of lien by direct contractor

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

In order to identify our next concern I ask that you consider together the provisions regarding the filing of a notice of completion (3089.430) which would no longer require that the Notice of Completion be recorded within 10 days of completion and the language of 3083.320 and 3083.330 which would provide that a lien is to be filed before the EARLIER OF (1) 90 days after completion or (2) 30 or 60 days after the owner records the notice of completion. In the comment section for 3089.430 you explain that the effect of eliminating the 10 day requirement for recording the notice of completion, codifies existing law in *Doherty v. Carruthers*. Our understanding of that case is that if a notice of completion was filed late then the claimant was allowed 30 or 60 days from the recording date of the notice of completion and the claimant was not held to the earlier date arrived at by counting 90 days from completion. We suggest that if there is good reason to lift the 10 day requirement for filing the notice of completion, that the existing time requirement be continued when the notice of completion is recorded more

than 10 after completion. Under the proposed language if an owner recorded a notice of completion on the 80th day, claimants would have only 10 days to record their liens. When a notice of completion is recorded more than 10 days after completion, we believe that only the recording date of the notice of completion should operate to trigger the 30 or 60 day lien period . This could be accomplished by striking "the earlier of " and replacing it with "either of".

3083.355 Notice of recordation of claim of lien

Paragraph (b) requires that the lien include a statement of the date and place where the claim of lien is to be recorded. We have no problem with identifying the place where the lien is to be recorded but we are concerned that a claimant may not be able to accurately state the exact date when the lien will be recorded. If this section provided that the claimant give a date when the lien was sent to the recorder rather than giving the date the document will be recorded, the claimant could make an accurate statement in this regard. Also paragraph (c) calling for the claimant to mail the “notice of recordation” suggests that the claimant has possession of a copy of the mechanics’ lien stamped by the county recorder on the day of recording. That is rarely the case. We believe that sending the owner a copy of the lien prior to it being recorded would facilitate compliance with the section..

3083.360 Forfeiture of lien for false claim

Since this code section represents a significant change in the law, we suggest that (b)(1) be modified to make it clear that the owner is required to send a written demand to the claimant demanding that the claimant record a release of lien and, as part of that written demand, require that the owner set forth the facts upon which the owner bases his or her belief that the lien was recorded with intent to slander title or defraud the owner or identify what erroneous information he or she claims was used by the claimant when recording the lien. Once the owner has given such a notice to the claimant then a period of time should be specified (say 15 days) for the claimant to provide either written response to the owner’s charges or else release the lien.

We are concerned about how this provision might be used to intimidate small subcontractors or suppliers on large commercial jobs and would suggest that this provision be limited to projects where you have a residential homeowner of a dwelling containing four or fewer units.

The language in (b)(1) calls for the owner to make written demand that the claimant record an “unconditional waiver and release of lien rights”. We believe that it might be less confusing to describe the document demanded by the owner to be recorded as a "Release of Mechanic's Lien". The document title of “unconditional waiver and release of lien rights” is used to describe a waiver given under 3089.650.

3083.820 Contents of Petition

Here we would suggest that if the grounds for the petition are based upon

section 3083.360 that the owner be required to allege that he gave written notice to the claimant specifying the grounds on which he believes the lien was recorded with intent to slander title or defraud the owner or identify what erroneous information he claims was used by the claimant when recording the lien and attach a copy of the lien claimant's response, if any, to the petition.

Very truly yours,

H. Richard Nash
Vice President
213-251-1179