

Memorandum 2005-38

Mechanics Lien Law: Invalid Lien

This memorandum addresses issues relating to a fraudulent or otherwise invalid claim of mechanics lien. The following material is attached to this memorandum as an Exhibit and is discussed in the memorandum:

Exhibit p.

- 1. Tom and Shari Fulton, Cool1

Also attached to this memorandum is the staff’s compilation of provisions we have reviewed to date in the mechanics lien law. The draft includes provisions referred to in this memorandum.

BACKGROUND

The Commission has focused over the past few meetings on issues surrounding a fraudulent claim of mechanics lien. The Commission has been exploring a number of approaches to the problem, including (1) requiring notice to the property owner when a claim of lien is recorded so that the owner can take any necessary protective action, (2) providing an expeditious lien expungement procedure, (3) enhancing the ability of a title insurer to insure around a claim of lien that on the record is unenforceable, (4) clarifying the common law liability of a fraudulent lien claimant, and (5) seeking other ways to deter a lien claimant from falsely recording a claim of lien to begin with.

MAGNITUDE OF PROBLEM

The Commission has heard conflicting reports of how common the problem is that we are concerned with and how extensive the remedies need to be.

We have no statistics concerning how common it is for a lien claimant to make a fraudulent recording, or for a legitimate lien claimant that has been paid to fail or refuse to record a release. Participants at Commission meetings who represent lien claimants have informed the Commission that it does happen. The

Commission also regularly receives communications from property owners detailing their unhappy experiences.

The latest communication we have received from a property owner victimized by a contractor's false claim of lien is attached at Exhibit pp. 1-2. Tom and Shari Fulton of Cool state:

We have recently had a false lien filed against us, and it is costing us plenty. Our general contractor filed a lien where there is no valid debt. We were in a construction loan, and now our bank, GMAC, will not convert our loan to a permanent mortgage. This is causing us to incur over \$1400 in interest penalties every 30 days until the lien is removed. We are now incurring costs to hire a lawyer to fight this. So it is more than an inconvenience for us.

We had no idea how easy it was for our contractor to do this to us. He paid \$20 and filled out a simple one-page form. No proof of debt was required. No signed approvals, no proof of invoice, nothing. He never made any claim to us of charges, and the lien came as a total surprise. He bid on our home as a fixed cost/lump sum contract, and there are no change orders for our project. This is very unfair for the consumer, and will cost us thousands of dollars.

These comments speak not only to the fact that a problem exists, but to the need for an effective remedy.

NOTICE OF CLAIM OF LIEN

The Commission's current draft would require that as a condition of recording a claim of lien, the claimant must satisfy the county recorder that the claimant has notified the property owner. See proposed Section 3083.353 (notice prerequisite to recording claim of lien). At the July Commission meeting the issue arose whether proof that the property owner has been notified should be made by affidavit, declaration, or certificate.

Code of Civil Procedure Section 1013a prescribes the following methods for proof of service by mail:

- An affidavit of an individual who deposited the document in the mail.
- A certificate of an attorney who deposited the document in the mail.
- An affidavit of an individual using the ordinary course of business to process the document for mailing.
- A certificate of a clerk of court using the ordinary course of business to process the document for mailing.

These provisions have marginal relevance to notice under the mechanics lien law, since they govern service by mail of documents in a civil action or proceeding. The mechanics lien law generally provides for notice by registered or certified mail, and for proof of service by Postal Service documentation. See proposed Section 3082.240 (mailed notice).

The existing mechanics lien law provides for proof of service of a preliminary 20-day notice by “proof of service affidavit.” Civ. Code § 3097.1.

Under general principles of the Code of Civil Procedure, “Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury ...” Code Civ. Proc. § 2015.5.

What does this all mean for proof that a lien claimant has given the property owner the required notification of the recordation that a claim of lien has been recorded? The staff believes that we cannot rely on a Postal Service certification in this situation, because a lien claimant must satisfy the county recorder immediately of proof of service in order to record the claim of lien.

Lien claimants are familiar with the existing procedure under the mechanics lien law for an affidavit of preliminary 20-day notice. For this reason, **the staff thinks it is preferable to stick with “affidavit” terminology.** That would not invalidate a declaration or certificate made under penalty of perjury. The staff has added a cross-reference to Code of Civil Procedure Section 2015.5 in the Comments to provisions calling for an affidavit of service. See, e.g., proposed Section 3083.353 Comment:

§ 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 the Section 3083.355 (notice of recordation of claim of lien).

Comment. Section 3083.353 is new. Cf. Gov't Code § 27297.5 (notification by county recorder of person against which involuntary lien is recorded). See also Code Civ. Proc. § 2015.5 (declaration or certificate under penalty of perjury).

EXPUNGEMENT OF UNENFORCEABLE OR INVALID CLAIM OF LIEN

Existing law provides an expedited procedure for expungement of a claim of lien from the record where the claim of lien is unenforceable because neither a lis pendens nor an extension of credit has been recorded within the 90-day enforceability period.

Grounds For Expungement

The Commission has tentatively decided to expand the grounds for the expedited expungement procedure to include (1) the claim was made with intent to defraud, (2) the claim has been paid in full, or (3) no work has been done.

Here is the redrafted provision:

§ 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.

(3) The claimant's demand stated in the claim of lien has been paid in full.

(4) None of the labor, service, equipment, or material stated in the claim of lien has been provided.

(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. Subdivisions (a)(2)-(4) are 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 under this section. 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).

The hearing on the petition must be held within 30 days after its filing. Section 3083.830.

Dick Nash has brought to our attention a comparable Nevada statute that provides an expeditious order to show cause procedure. See Nev. Rev. Stat. § 108.2275. The grounds for expungement under that statute are “the notice of lien is frivolous and was made without reasonable cause.” The Nevada annotations do not suggest any particular problem in making that sort of a determination on an expedited basis. The staff notes, however, that the statute as originally enacted in 1995 required a hearing on the order to show cause within 20 days. That was lengthened to 30 days in 2003.

Extension of Credit

A principal ground for expungement under California law is that the lien claimant has failed to commence an enforcement action on the lien within the statutorily required 90 days. A lien claimant may extend the 90-day enforceability period for up to a year by recording an extension of credit.

The question arose at the July Commission meeting whether a lien claimant may unilaterally record an extension of credit, thereby buying additional time to enforce the lien and avoid expungement. The Commission requested research on the issue.

The core statute is Civil Code Section 3144, which states that:

No lien provided for in this chapter binds any property for a longer period of time than 90 days after the recording of the claim of lien, unless within that time an action to foreclose the lien is commenced in a proper court, except that, if credit is given and notice of the fact and terms of such credit is recorded in the office of the county recorder subsequent to the recording of such claim of lien and prior to the expiration of such 90-day period, then such lien continues in force until 90 days after the expiration of such credit, but in no case longer than one year from the time of completion of the work of improvement.

The passive phrasing — “if credit is given” — is not helpful. The statute contains no other detail concerning the manner in which an extension of credit is to be executed.

Under case law, an extension of credit can be granted only by mutual agreement between the lien claimant and the debtor. The claimant may not unilaterally grant an extension. *Richards v. Hillside Development Co*, 177 Cal. App. 2d 776, 780, 2 Cal. Rptr. 693, 696 (1960).

A curious question is, who is considered “the debtor” for purposes agreeing to an extension? Consider the situation where the property owner has paid the direct contractor, but the direct contractor has failed to pay a subcontractor. Is the debtor of the unpaid subcontractor the property owner, or is it the direct contractor?

The issue was raised in *Dorer v. McKinsey*, 188 Cal. App. 2d 199, 200, 10 Cal. Rptr. 287, 288 (1961). In that case the lien claimant was a subcontractor who had not been paid by the direct contractor. The lien claimant recorded an extension of credit without the property owner’s consent. The court held the property owner’s consent was not necessary. The court distinguished *Richards v. Hillside Development* — “In that case the owner of the property against which the lien was claimed was the principal debtor. Not so herein. The [owner] did not incur the indebtedness and it does not appear that [the owner] assumed the obligation. Consequently, [the lien claimant] could not extend credit to the [owner].” 188 Cal. App. 2d at 200-201.

The policy embraced by *Dorer v. McKinsey* is questionable. The statutory limitation on enforceability of the mechanics lien embodied in the law is intended to protect the property owner. It would seem to defeat the purpose of the law to allow the direct contractor to waive a protection intended for the owner. See also 10 Miller & Starr: California Real Estate § 28:68 (3rd ed. 2001) (the conclusion of *Dorer v. McKinsey* is “bizarre and of questionable value as future precedent”).

On the other hand, the direct contractor is in theory the owner’s agent in engaging a subcontractor to provide labor or materials. Whether the scope of the agency should be considered to extend to waiver of the owner’s statutory rights is doubtful, though.

The staff recommends that this matter be clarified by statute. We would suggest:

§ 3083.710. Time for commencement of enforcement action

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

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

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

Comment. Section 3083.710 restates former Section 3144. It makes clear that the owner must be a party to the extension of credit. This codifies the rule in *Richards v. Hillside Development Co.*, 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960) and overrules *Dorer v. McKinsey*, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961).

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).

COMMON LAW REMEDIES

Current Draft

The Commission at the July meeting considered common law remedies against a lien claimant that records a false claim of lien against property. The Commission decided that relief should be conditioned on the lien claimant’s failure to release the lien in response to the owner’s request. Moreover, the burden of proof should be on the owner that the claim of lien was made with intent to defraud or disparage title.

A draft to implement these decisions would 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 if, after the owner's written demand that the claimant record an unconditional waiver and release of lien rights, the claimant fails promptly to do so. The owner has the burden of proof of all elements of an action for damages under this paragraph.

(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)(1) 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).

Disparagement of Title

The Commission requested additional information on the common law cause of action for disparagement of title. Isn't recordation of a claim of lien necessarily intended to disparage title, even if legitimate?

Slander of title is the **false and unprivileged** disparagement of title to property resulting in pecuniary damage. 5 B. Witkin, Summary of California Law, Torts § 642 (10th ed. 2005). The terms slander of title and disparagement of title have been used somewhat interchangeably in the cases. See, e.g., *Gudger v. Manton*, 21 Cal. 2d 537, 541, 134 P.2d 217, 220 (1943); *Seeley v. Seymour*, 190 Cal. App. 3d 844, 857, 237 Cal. 282, 288 (1987). However, it would be technically more accurate to refer in the statute to the tort of slander title rather than the tort of disparagement of title, since slander includes the element of falsity.

Existing California statutes identify the tort in only one instance, and refer to it as slander rather than disparagement of title. Code Civ. Proc. § 338(g) (three year statute of limitations). The staff would conform our draft:

§ 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~~ slander title or defraud. A claimant that records a claim of lien containing erroneous information with intent to ~~disparage~~ slander 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 if, after the owner's written demand that the claimant record an unconditional waiver and release of lien rights, the claimant fails promptly to do so. The owner has the burden of proof of all elements of an action for damages under this paragraph.

(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)(1) expands the bases for invalidity to include intent to ~~disparage~~ slander title. If the court finds intent to ~~disparage~~ slander (i.e., falsely 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).

BFP PROTECTION

Constructive Notice

Under existing law, a recorded claim of lien does not bind an innocent third party that acquires the property after recordation, if the recorded claim is "so deficient" that the recordation does not put the party on further inquiry in any

manner. Civ. Code § 3261. The Commission requested further information about what sort of recordation would be so deficient that it does not put a person on further inquiry “in any manner”.

California courts have been lenient in excusing a defect in a recorded claim of lien, at least as between the claimant and the owner. The mechanics lien law is viewed as remedial, designed to facilitate collection of just debts by a laborer, artisan, or other person not schooled in the niceties of real property law. That policy is embodied in Civil Code Section 3261, excusing significant inaccuracies in the recorded claim of lien. The courts have gone well beyond the literal wording of Section 3261 and have routinely upheld defective lien claims when the defect caused no harm to the property owner. See, e.g., *Jarvis v. Frey*, 175 Cal. 687, 689-690, 166 P. 997, 999 (1917); Bottomley, *Mechanics’ Lien Notice Requirements*, 16 Hastings L.J. 163, 168 (1964). The only significant exceptions to the policy of giving effect to a defective claim of lien are those involving fraud and the rights of innocent third parties. See, e.g., *Los Angeles Board of Adjusters v. Bailes*, 116 Cal. App. 316, 2 P. 2d 557 (1931).

When an innocent third party becomes the owner of lien property, the calculus perhaps should change. *Trout v. State Mutual Building & Loan Assoc.*, 202 Cal. 706, 262 P. 320 (1927), is one of the few cases to speak to this point. In *Trout*, lien property was passed from the original owner through several transactions to State Mutual Building & Loan Association. State Mutual attempted to invalidate the lien on the ground that the claim of lien did not contain a sufficient statement as to the kind of work done or materials furnished. The court upheld the lien because there was no possible injury that could or did result to the original owner or State Mutual from the misdescription. Additionally, and perhaps more importantly, the owner would have had no difficulty investigating the merits of the claim from the description of the building in the notice of lien and from an inspection of the premises on which it was constructed.

Trout thus picks up on a thread that is present in cases involving an owner and applies it to a transferee. There is, however, no bright-line rule when it comes to this issue because the sufficiency of notice is ultimately a question of fact and the owner has the burden of proof when it comes to both fraud and actual prejudice.

Title Insurance

The California Land Title Association is reviewing the draft to determine whether the provisions on automatic invalidity of an unenforceable claim of lien are sufficient to allow insuring around the cloud on title. We will report the results of that review when they become available.

PREVENTION OF FALSE CLAIM OF LIEN

Are there any other practical deterrents to a fraudulent claim of lien, aside from the threat of costs and attorneys fees for removal, and potential tort liability? Tom and Shari Fulton suggest some sort of “due diligence” requirement:

For a mechanic's lien to be recorded, the form should include some sort of due diligence to validate the claim. Even a list of the items owed, and the amount for each line item, and a copy of the approved invoice for said items. Our contractor doesn't have any of these.

The staff is dubious about how practical such a requirement would be. It is one thing to require the county recorder to make sure the claim of lien is accompanied by an affidavit of notice; it's another to require the county recorder to inspect an itemization of charges. Attractive as the concept is in principle, the staff does not think it is feasible.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

COMMUNICATIONS FROM TOM AND SHARI FULTON

August 1, 2005

My husband and I would be very interested in contributing feedback to this study, as well as inquiring about it. We have recently had a false lien filed against us, and it is costing us plenty. Our general contractor filed a lien where there is no valid debt. We were in a construction loan, and now our bank, GMAC, will not convert our loan to a permanent mortgage. This is causing us to incur over \$1400 in interest penalties every 30 days until the lien is removed. We are now incurring costs to hire a lawyer to fight this. So it is more than an inconvenience for us.

We had no idea how easy it was for our contractor to do this to us. He paid \$20 and filled out a simple one-page form. No proof of debt was required. No signed approvals, no proof of invoice, nothing. He never made any claim to us of charges, and the lien came as a total surprise. He bid on our home as a fixed cost/lump sum contract, and there are no change orders for our project. This is very unfair for the consumer, and will cost us thousands of dollars.

Also, I agree that if he does nothing in 90 days, the lien should automatically become invalid. Since it only cost him \$20, he sees this as an easy way to extort money from us, but he won't remove it, and he won't litigate. But we'll have to pay an attorney to pursue getting it removed. Where are the consumer rights in this case?

Please let me know how our story can be heard, and where we are in getting this archaic law changed!

August 2, 2005

One thing I noticed in the comments from Sam K. Abdulaziz is his statement that:

False Claims

I have some problems with your false claims issues. My experience is that although one may file a false claim in a minor amount, that same person is not going to litigate it. Therefore, the 90-day requirement would be sufficient to protect the public.

This is absurd. **I thought we lived in a country where you are innocent until proven guilty.** The fact that the homeowner is **required** to wait 90 days to dispute a false lien is ridiculous. Also, **the 90 day requirement doesn't do anything if the claimant doesn't remove it.** As I stated below, in the circumstance of a new home construction, my construction loan now has to be extended. This unscrupulous contractor knows all he had to do is pay \$20 to record a one page form that will cost of thousands of dollars to dispute. He mismanaged the construction of our home and is hoping to extort the money from us. We have no choice but to wait the 90 days (At \$1400 in fines from the bank per month), then pursue legal means to force him to remove it (which could take up to a year). On top of that, we will have legal fees that I assume will go into the thousands. Even if we sue him and win, the chances of us actually getting any money out of him are questionable. The current lien law assumes we can re-coup that money. What he is doing amounts to no less than extortion. He is hoping we'll pay him off just to make the matter go away. Easy and inexpensive for him - costly, time consuming, complicated, and extremely

stressful for us. We are not wealthy people with extra money to throw at this. Maybe many of Mr. Abdulaziz's clients are wealthy enough that this is not a big deal for them.

I read an article on findlaw.com that stated:

"Many general contractors are inexperienced and others mass produce thousands of houses. The home construction industry is intensely competitive. Many builders respond to the competition with low bids for contracts, then cut corners, and frequently employ unskilled or overworked subcontractors and poorly supervise subcontracted work. At a time when government regulation is more important than ever, government inspection departments do not have the funding to adequately inspect homes and often approve below-par construction. The combination of these factors results in homes that are built with serious defects"

In our case, this contractor also is trying to make up for his low bid and construction defects by this extortion technique.

I am appalled that Mr. Abdulaziz takes the homeowner's rights and consumer protection so flippantly. We have already stretched our credit to pay for the completion of items our contractor didn't finish - or finished poorly. We have no money left to pay a year's worth of construction loan extension fines and lawyer's fees, with little hope of recovering them from the claimant, just to prove the claim was invalid to begin with. There is also no consideration for the stress to the homeowner as to the extreme impact this has on us.

I contacted our contractor's bond company to understand what the process is to recover our out-of-pocket costs from his bond, and was sent a 12 page form that required additional supporting documentation. Once this is sent in, it will be reviewed and assessed **prior** to any action. Its amazing how many hoops we'll have to jump through to even get this looked at, let alone any action taken. Yet, it was so simple for him to destroy our finances, credit standing, and personal sanity.

Again, as you do your revisions:

1) **For a mechanic's lien to be recorded, the form should include some sort of due diligence to validate the claim.** Even a list of the items owed, and the amount for each line item, and a copy of the approved invoice for said items. Our contractor doesn't have any of these.

2) **If a lien is recorded, the homeowner should have an immediate time period to dispute the lien if he believes it to be invalid before damage is done to the title of the property.** This hit us totally out of the blue. The guy stood next to my husband as the county inspector passed our home, and told my husband he would go to the title co. to file the Notice of Completion. We thought everything was done until our bank called us to say a lien had been filed. The next day he filed the notice of completion. He would not communicate with us, and we were forced into a situation where we have to hire a lawyer.

Our lien amount is for \$25K, which is not what I would call a minor amount, as stated by Mr. Abdulaziz. I agree the entire mechanics lien law needs to be overhauled as a package. Just please remember there are a lot of good, honest people suffering under the current one. As a side note, I looked up other lien recordings on the El Dorado County site, and found two other individuals our contractor has done this to. He filed a notice of completion on the same day he filed a lien. He has a history of this, and will probably do it again. We will be more than happy to provide more information if additional research is needed.

Sincerely,

Tom and Shari Fulton
5040 Majestic View Road
Cool, CA 95614

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1

CONSTRUCTION REMEDIES

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

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

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

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

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

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

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

17 TITLE 15. WORKS OF IMPROVEMENT

18 CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

19 Article 1. Definitions

20 § 3082. Application of definitions

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

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

24 § 3082.010. Claimant

25 3082.010. “Claimant” means a person that has a right under this title to record a
26 claim of lien, file a notice to withhold funds, or assert a claim against a payment
27 bond.

28 **Comment.** Section 3082.010 restates former Section 3085, omitting reference to the claimant’s
29 “right” and to the combination of remedies as unnecessary.

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

31 **Staff Note.** In the context of a public work payment bond, it may be appropriate to expand
32 the meaning of “claimant” to include a claimant’s assignee. See existing Sections 3248-3249
33 (claimant or assigns).

1 **§ 3082.020. Construction lender**

2 3082.020. “Construction lender” means either of the following:

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

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

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

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

12 **§ 3082.022. Contract**

13 3082.022. “Contract” means an agreement between an owner and a direct
14 contractor that provides for all or part of a work of improvement.

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

18 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
19 3082.190 (“work of improvement” defined).

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

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

26 **§ 3082.025. Direct contractor**

27 3082.025. “Direct contractor” means a person that has a direct contractual
28 relationship with an owner.

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

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

33 **§ 3082.027. Express trust fund**

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

39 **Comment.** Section 3082.027 continues a portion of former Section 3111 without substantive
40 change.

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

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

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

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

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

13 **§ 3082.040. Laborer**

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

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

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

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

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

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

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

28 **§ 3082.060. Lien**

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

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

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

38 **§ 3082.070. Material supplier**

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

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

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

7 Subdivision (b) is new.

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

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

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

16 **§ 3082.090 [reserved]. Notice to withhold funds**

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

20 **§ 3082.100. Owner**

21 3082.100. “Owner” means:

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

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

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

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

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

35 **§ 3082.105. Payment bond (private work)**

36 3082.105. “Payment bond (private work)” means a bond given under Article 2
37 (commencing with 3085.210) of Chapter 4 in a private work.

38 **Comment.** Section 3082.105 supersedes former Section. 3096. Cf. Section 3082.106
39 (“payment bond (public work)” defined). See also Section 3085.110 (payment bond).

40 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
15 site 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
14 Section 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,
30 unnecessary. Part 2 of the Code of Civil Procedure enables persons claiming liens on the same
31 property to join in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive
32 joinder). If separate actions are commenced the court may consolidate them. See Code Civ. Proc.
33 § 1048 (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
9 be 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
28 information required by this title, shall be accepted by the recorder for recording
29 and is deemed 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
5 whose 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).

Article 3. Construction Documents

§ 3082.310. Contract forms

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

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

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

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

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

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

§ 3082.320. Designation of construction lender on building permit

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

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

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

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

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

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

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

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, notice containing all of the following information:

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

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

10 **Comment.** Section 3082.420 restates former Section 3097(k) without substantive change. Cf.
11 Section 3082.235 (written notice). The reference to the Registrar of Contracts in the final
12 sentence of former Section 3097(k) has been revised to refer to the Contractors' State License
13 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
35 for 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
11 breach 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
17 also 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
5 also 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.”

40 The reference in the introductory portion of Section 3083.210 to labor, service, equipment or
41 material “properly authorized” replaces the references in former Section 3110 to the “instance or

1 request of the owner (or any other person acting by his authority or under him, as contractor or
2 otherwise).” See Section 3083.240 (who may authorize work).

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

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

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

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

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

20 § 3083.220. Lien right of express trust fund

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

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

27 See also Sections 3082.027 (“express trust fund” defined), 3082.040 (“laborer” defined),
28 3082.060 (“lien” defined).

29 § 3083.230. Site improvement lien

30 3083.230. A person that provides labor, service, equipment, or material properly
31 authorized for a site improvement has a lien right under this chapter.

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

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

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

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

1 § 3083.240. Who may authorize work

2 3083.240. For the purpose of this chapter, labor, service, equipment, or material
3 provided for a work of improvement or for a site improvement is properly
4 authorized if:

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

6 (b) Provided or authorized by a direct contractor, subcontractor, architect,
7 project manager, or other person having charge of all or part of the work of
8 improvement.

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

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

13 The inclusion of project managers in subdivision (b) is new.

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

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

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

23 Article 3. Conditions to Enforcing a Lien

24 § 3083.310. Preliminary notice required

25 3083.310. A claimant may enforce a lien only if the claimant has given a
26 preliminary notice (private work) and made proof of service to the extent required
27 by Article 1 (commencing with Section 3089.110) of Chapter 7.

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

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

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

37 § 3083.320. Time for claim of lien by direct contractor

38 3083.320. A direct contractor may not enforce a lien unless the contractor
39 records a claim of lien after the contractor completes the contract and before the
40 earlier of the following times:

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

42 (b) Sixty days after the owner records a notice of completion.

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
15 unless the claimant records a claim of lien after the claimant ceases to provide
16 labor, 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 **§ 3083.353. Notice prerequisite to recording claim of lien**

29 3083.353. The county recorder shall not record a claim of lien that is filed for
30 record unless accompanied by the claimant’s affidavit showing compliance with
31 the Section 3083.355 (notice of recordation of claim of lien).

32 **Comment.** Section 3083.353 is new. Cf. Gov’t Code § 27297.5 (notification by county
33 recorder of person against which involuntary lien is recorded). See also Code Civ. Proc. § 2015.5
34 (declaration or certificate under penalty of perjury).

35 **§ 3083.355. Notice of recordation of claim of lien**

36 3083.355. (a) At the time of recordation of a claim of lien the claimant shall give
37 notice of recordation to the owner or reputed owner of property subject to the
38 claim of lien.

39 (b) Notice of recordation shall include a copy of the claim of lien and a
40 statement of the date and place where the claim of lien is to be recorded.

41 (c) The claimant shall mail notice of recordation to the owner at an address
42 reasonably calculated to give the owner 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
35 the work of improvement is situated, together with a convenient space about the
36 work of improvement or as much space as is required for the convenient use and
37 occupation of the work of improvement.

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

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

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

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

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

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

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

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

15 **§ 3083.530. Notice of nonresponsibility**

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

19 (b) A notice of nonresponsibility shall be signed and verified by the owner, and
20 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. Cf.
30 Section 3082.235 (written notice). The notice of nonresponsibility may be signed and verified by
31 the owner or person owning or claiming an interest in the property, or by the owner or other
32 person’s agent. See Section 3082.100 (“owner” defined). A notice of nonresponsibility is
33 recorded in the office of the county recorder of the county in which the work of improvement or
34 part of it is situated. Section 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 amount due
6 for each work of improvement based on the proportionate amount of labor,
7 service, equipment, or material provided for each. If the claimant does not
8 designate the amount due for each work of improvement, the lien is subordinate to
9 other liens.

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

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

18 **Comment.** Section 3083.540 restates former Section 3130 without substantive change. The
19 concept of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section
20 3083.240 (who may authorize work).

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), 3082.190 (“work of improvement” defined).

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

28 § 3083.550. Claim against separate residential units

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

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

35 (1) Each unit is deemed a separate work of improvement, and completion of
36 each unit is determined separately for purposes of the time for recording a claim of
37 lien on that unit. This paragraph does not affect any lien right under Section
38 3083.230 (site improvement lien) or 3083.540 (multiple works of improvement).

39 (2) Material provided for the work of improvement is deemed to be provided for
40 use or consumption in each separate residential unit in which the material is
41 actually used or consumed; but if the claimant is unable to segregate the amounts
42 used or consumed in separate residential units, the claimant has the right to all the
43 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
7 for 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
13 direct 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
38 (“owner” defined). The reference to recordation of the bond in the county in which the claim of
39 lien is recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the
40 office of the county recorder of the county in which the work of improvement or part of it is
41 situated. 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
19 payment 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.

40 (3) The claimant's demand stated in the claim of lien has been paid in full.

1 (4) None of the labor, service, equipment, or material stated in the claim of lien
2 has been provided.

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

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

11 **Comment.** Subdivision (a)(1) of Section 3083.810 continues former Section 3154(a) without
12 substantive change. Subdivisions (a)(2)-(4) are new. The owner need not wait until expiration of
13 the time to commence an enforcement action before bringing a petition to release an invalid claim
14 of lien under this section. Cf. Section 3083.360 (forfeiture of lien for false claim).

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

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

20 **§ 3083.820. Contents of petition**

21 3083.820. A petition for a release order shall be verified and shall allege all of
22 the following:

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

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

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

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

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

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

35 **Comment.** Section 3083.820 supersedes subdivision (b) of former Section 3154. As used in
36 this section, the owner of property includes the owner of an interest in the property. See Section
37 3082.100 (“owner” defined).

38 The information included in the petition is intended to facilitate the court’s order under Section
39 3083.840 (hearing and order).

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

41 **§ 3083.830. Time of hearing**

42 3083.830. (a) On the filing of a petition for a release order, the clerk shall set a
43 hearing date. The date shall be not more than 30 days after the filing of the

1 petition. The court may continue the hearing beyond the 30-day period on a
2 showing of good cause, but in any event the court shall rule and make any
3 necessary orders on the petition not later than 75 days after the filing of the
4 petition.

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

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

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

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

12 (4) The claim of lien.

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

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

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

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

24 § 3083.840. Hearing and order

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

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

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

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

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

35 (4) The legal description of the property.

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

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

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

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
8 or to make full payment for all labor, service, equipment and material provided for
9 a 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 shall 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 given
20 by sufficient sureties in an amount not less than 50 percent of the contract price
21 stated in the contract.

22 (b) If the conditions of subdivision (a) are satisfied, the court shall restrict lien
23 enforcement under this title to the aggregate amount due from the owner to the
24 direct contractor and shall enter judgment against the direct contractor and surety
25 on the bond for any deficiency that remains between the amount due to the direct
26 contractor and the whole amount due to 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 replaces the restriction of lien
32 enforcement in cases where it would be equitable, with a restriction of lien enforcement in cases
33 where the sureties are sufficient. See also Code Civ. Proc. § 995.310 (sufficient sureties on bond
34 required). This codifies case law interpretation of former Section 3235 and is consistent with the
35 “in all cases” language of former Section 3236. See, e.g., *Simpson v. Bergmann*, 125 Cal. App. 1,
36 13 P.2d 531 (1932), *Sudden Lumber Co. v. Singer*, 103 Cal. App. 386, 284 P. 477 (1930), *S.R.*
37 *Frazer Co. v. Arnold*, 46 Cal. App. 74, 76, 188 P. 822 (1920). See also Section 14 (singular
38 includes plural).

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

42 **Staff Note.** We plan to treat the effect of contract changes on “contract price” systematically
43 throughout the statute.

1 **§ 3085.230. Bond required by lending institution**

2 3085.230. (a) If a lending institution requires that a payment bond (private work)
3 be given as a condition of lending money to finance a work of improvement, and
4 accepts in writing as sufficient a bond given in fulfillment of the requirement, the
5 lending institution may not thereafter object to the borrower as to the validity of
6 the bond or refuse to make the loan based on an objection to the bond if the bond
7 is given by an admitted surety insurer.

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

11 **Comment.** Section 3085.230 supersedes former Section 3237. It makes clear that the lender
12 may not object to the bond if given by an admitted surety insurer. Cf. Code Civ. Proc. § 995.120
13 (“admitted surety insurer” means corporate insurer to which Insurance Commissioner has issued
14 certificate of authority to transact surety insurance in state).

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

17 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),
18 995.185 (“surety” defined).

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

21 **§ 3085.250. Statute of limitations against surety on recorded bond**

22 3085.250. If a payment bond (private work) is recorded before completion of a
23 work of improvement, an action to enforce the liability on the bond may not be
24 commenced later than six months after completion of the work of improvement.

25 **Comment.** Section 3085.250 restates former Section 3240, and broadens it to cover
26 enforcement of any liability on the bond, not limited to the liability of the surety. Cf. Code Civ.
27 Proc. § 996.440 (judgment on bond against principal and sureties). It supersedes former Section
28 3239 (provision shortening statute of limitations). See also Section 3082.250 (filing and recording
29 of papers), completion.

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

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

33 **§ 3085.260. Preliminary notice (private work) required**

34 3085.260. A claimant may not enforce the liability on a payment bond (private
35 work) unless either of the following conditions is satisfied:

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

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

42 **Comment.** Section 3085.260 restates former Section 3242 without substantive change. Cf.
43 Section 3082.235 (written notice). The former limitation to a contract entered into on or after
44 January 1, 1995, is omitted as obsolete.

1 See also Sections 14 (singular includes plural), 3082.240 (mailed notice and proof of notice),
2 3089.410 (completion), 3085.420 (notice of completion).

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

6 CHAPTER 5. SECURITY FOR LARGE PROJECT

7 Article 1. Application of Chapter

8 § 3086.110. Application of chapter

9 3086.110. (a) This chapter applies if any of the following conditions is satisfied:

10 (1) The owner of the fee interest in property contracts for a work of
11 improvement on the property with a contract price greater than five million dollars
12 (\$5,000,000).

13 (2) The owner of a less than fee interest in property contracts for a work of
14 improvement on the property with a contract price greater than one million dollars
15 (\$1,000,000).

16 (b) For the purpose of this section:

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

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

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

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

28 **Comment.** Subdivision (a) of Section 3086.110 restates former Section 3110.5(a)(2) without
29 substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive
30 change.

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

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

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

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

1 **§ 3086.120. Single-family residence, public work, and low income housing, excluded**

2 3086.120. This chapter does not apply to any of the following works of
3 improvement:

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

9 (b) A public work.

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

12 **Comment.** Section 3086.120 restates former Section 3110.5(e) without substantive change.
13 See also Section 3082.150 (“public work” defined).

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

18 **§ 3086.130. Qualified publicly traded company and qualified private company excluded**

19 3086.130. This chapter does not apply to any of the following owners of
20 property:

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

35 (b) A qualified private company or a wholly owned subsidiary of a qualified
36 private company, if the obligations of the subsidiary under the contract for the
37 work of improvement are guaranteed by the parent. As used in this subdivision,
38 “qualified private company” means a company that has no equity securities listed
39 for trading on the New York Stock Exchange, the American Stock Exchange, or
40 the NASDAQ stock market, and that has a net worth determined in accordance
41 with generally accepted accounting principles in excess of fifty million dollars
42 (\$50,000,000). If at any time before final payment of all amounts due under the

1 contract the net worth of the qualified private company is reduced below that
2 level, the owner is no longer exempt from this chapter.

3 **Comment.** Section 3086.130 restates former Section 3110.5(f) without substantive change.

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

6 Article 2. Security Requirement

7 § 3086.210. Security for owner’s payment obligation

8 3086.210. An owner of property to which this chapter applies shall provide the
9 direct contractor all of the following:

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

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

17 **Comment.** Section 3086.210 restates the first parts of subdivisions (a) and (b) of former
18 Section 3110.5 without substantive change. As used in this section, “owner of property” includes
19 the owner of the fee simple absolute interest or any lesser interest in the property. See Section
20 3082.100 (“owner” defined). The reference to a “work of improvement” includes construction,
21 alteration, addition to, or repair upon, the property. See Section 3082.190 (“work of
22 improvement” defined).

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

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

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

32 § 3086.220. Demand for security

33 3086.220. If an owner of property to which this chapter applies fails to provide or
34 maintain the security required by this chapter, the direct contractor may give the
35 owner notice demanding security. If the owner does not provide or maintain the
36 security within 10 days after notice demanding security is given, the direct
37 contractor may suspend work until the owner provides or maintains the security.

38 **Comment.** Section 3086.220 restates the second sentence of former Section 3110.5(c) without
39 substantive change.

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

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

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

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

8 **Comment.** Section 3086.320 restates former Section 3110.5(b)(1) without substantive change.

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

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

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

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

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

21 **§ 3086.330. Irrevocable letter of credit**

22 3086.330. An irrevocable letter of credit under this chapter shall satisfy all of the
23 following requirements:

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

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

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

34 **Comment.** Section 3086.330 restates former Section 3110.5(b)(2) without substantive change.

35 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
36 3082.190 (“work of improvement” defined).

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

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

1 **§ 3086.340. Escrow account**

2 3086.340. An escrow account under this chapter shall satisfy all of the following
3 requirements:

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

5 (b) The account shall be located in this state and maintained with an escrow
6 agent licensed under the Escrow Law, Division 6 (commencing with Section
7 17000) of the Financial Code, or with any person exempt from the Escrow Law
8 pursuant to paragraph (1) or (3) of subdivision (a) of Section 17006 of the
9 Financial Code.

10 (c) The owner shall deposit funds in the account in the amount provided in
11 Section 3086.350. This chapter does not require a construction lender to agree to
12 deposit proceeds of a construction loan in the account.

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

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

23 **Comment.** Section 3086.340 restates portions of former Section 3110.5(b)(3) without
24 substantive change.

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

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

31 **§ 3086.350. Deposits to and disbursements from escrow account**

32 3086.350. The following provisions govern a deposit to or disbursement from a
33 construction security escrow account under this chapter:

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

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

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

9 (d) The owner and the direct contractor shall authorize the disbursement to the
10 owner of any funds remaining on deposit after the direct contractor has been paid
11 all amounts due under the contract. The owner and the direct contractor shall
12 authorize the disbursement of funds on deposit pursuant to a court order that is
13 binding on both of them. The owner and the direct contractor may agree in the
14 contract to additional conditions for the disbursement of funds on deposit, except
15 that the conditions may not cause the amount remaining on deposit to be less than
16 the amount required under this section.

17 **Comment.** Section 3086.350 restates portions of former Section 3110.5(b)(3) without
18 substantive change.

19 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
20 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

21 **§ 3086.360. Contract price**

22 3086.360. If the contract price for a work of improvement is not a fixed price,
23 the amount of security provided under this chapter shall be the guaranteed
24 maximum price or, if there is no guaranteed maximum price, the owner’s and
25 direct contractor’s good faith estimate of the total cost anticipated to be incurred
26 under the contract.

27 **Comment.** Section 3086.360 restates the first sentence of former Section 3110.5(c) without
28 substantive change.

29 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
30 3082.100 (“owner” defined), 3082.190 (“work of improvement” defined).

31 **CHAPTER 6. PROMPT PAYMENT**

32 **Article 1. Progress Payment**

33 **§ 3088.110. Progress payment between owner and direct contractor on private work**

34 3088.110. (a) This section is applicable to a contract for a private work.

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

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

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

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

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

13 See also Sections 3082.022 ("contract" defined), 3082.025 ("direct contractor" defined),
14 3082.100 ("owner" defined), 3082.130 ("private work" defined).

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

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

23 **§ 3088.120. Progress payment between direct contractor and subcontractor on public utility**
24 **work**

25 3088.120. (a) This section applies to a contract between a public utility and a
26 direct contractor for all or part of a work of improvement.

27 (b) Unless the direct contractor and a subcontractor otherwise agree in writing,
28 within 21 days after receipt of a progress payment from the public utility the direct
29 contractor shall pay the subcontractor the amount allowed the direct contractor on
30 account of the work performed by the subcontractor to the extent of the
31 subcontractor's interest in the work. If there is a good faith dispute over all or part
32 of the amount due on a progress payment from the direct contractor to a
33 subcontractor, the direct contractor may withhold an amount not in excess of 150
34 percent of the disputed amount.

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

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

1 **Comment.** Section 3088.120 restates former Section 3262.5, with the addition of a
2 reasonableness limitation on attorney’s fees. The reference to 15 “working days” is converted to
3 21 “days”, consistent with the remainder of the mechanics lien law. Cf. Section 9 (business day).

4 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
5 3082.180 (“subcontractor” defined), 3082.190 (“work of improvement” defined).

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

10 Article 2. Retention Payment

11 § 3088.210. Application of article

12 3088.210. This article governs a retention withheld by an owner from a direct
13 contractor or by a direct contractor from a subcontractor on a private work.

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

17 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
18 3082.130 (“private work” defined), 3082.180 (“subcontractor” defined).

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

24 § 3088.220. Payment of retention by owner

25 3088.220. (a) If an owner has withheld a retention from a direct contractor, the
26 owner shall, within 45 days after completion of the work of improvement, pay the
27 retention to the contractor.

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

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

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

39 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
40 3082.140 (“public entity” defined), 3082.190 (“work of improvement” defined).

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

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

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

7 **§ 3088.230. Payment of retention by direct contractor**

8 3088.230. (a) If a direct contractor has withheld a retention from a
9 subcontractor, the direct contractor shall, within 10 days after receiving all or part
10 of a retention payment, pay the subcontractor its share of the payment.

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

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

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

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

22 **§ 3088.240. Payment for disputed work**

23 3088.240. (a) If the direct contractor gives the owner, or a subcontractor gives
24 the direct contractor, notice that work in dispute has been completed in accordance
25 with the terms of the contract, the owner or direct contractor shall within ten days
26 after notice is given advise the notifying party of the acceptance or rejection of the
27 disputed work.

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

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

33 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
34 3082.100 (“owner” defined), 3082.180 (“subcontractor” defined).

35 **§ 3088.250. Penalty**

36 3088.250. An owner or direct contractor that does not make a retention payment
37 within the time required by this article is liable to the person to which payment is
38 owed for a penalty of two percent per month on the amount wrongfully withheld,
39 in place of any interest otherwise due. In an action for collection of the amount
40 wrongfully withheld, the prevailing party is entitled to costs and a reasonable
41 attorney’s fee.

1 **§ 3088.310. Stop work notice**

2 3088.310. If a direct contractor is not paid the amount due pursuant to a written
3 contract within 35 days after the date payment is due, and there is no dispute as to
4 the satisfactory performance of the contractor, the contractor may give the owner a
5 stop work notice.

6 **Comment.** Section 3088.310 restates a portion of the first sentence of former Section
7 3260.2(a) without substantive change.

8 See also Sections 3082.022 (“contract” defined), 3082.025 (“direct contractor” defined),
9 3082.100 (“owner” defined).

10 **§ 3088.320. Additional notice**

11 3088.320. A direct contractor that gives an owner a stop work notice shall give
12 the following additional notice:

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

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

19 **Comment.** Section 3088.320 restates the second and third sentences of former Section
20 3260.2(a) without substantive change.

21 See also Sections 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
22 3082.160 (“site” defined), 3082.180 (“subcontractor” defined), 3082.190 (“work of
23 improvement” defined).

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

26 **§ 3088.330. Manner of notice**

27 3088.330. (a) Subject to subdivision (b), a direct contractor shall give a stop
28 work notice to the person to be notified, or a copy of a stop work notice to the
29 person to be given a copy, by any of the following methods:

30 (1) Delivering it personally.

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

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

37 (b) If the person to be notified does not reside in the state, notice shall be given
38 by any method provided in subdivision (a) or, if the person cannot be notified by
39 any method provided in subdivision (a), by mail addressed to the construction
40 lender, if any.

41 (c) Proof that notice was given to a person in the manner required by this section
42 shall be made by the proof of notice affidavit described in subdivision (d) and, if

1 given by mail, shall be accompanied by proof in the manner provided in Section
2 3082.240.

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

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

6 (2) The name and address of the person to which notice was given, and, if
7 appropriate, the title or capacity in which the person was given notice.

8 (e) Notice under this section by certified mail is effective on receipt. Notice by
9 registered mail is effective five days after mailing.

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

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

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

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

22 § 3088.340. Notification of construction lender

23 3088.340. Within five days after receipt of a stop work notice from a direct
24 contractor, the owner shall forward to the construction lender, if any, at the
25 address provided in the construction loan agreement, a copy of the notice by first-
26 class mail.

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

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

31 § 3088.350. Immunity from liability

32 3088.350. (a) The direct contractor or the direct contractor’s surety is not liable
33 for delay or damage that the owner or a subcontractor may suffer as a result of the
34 direct contractor giving a stop work notice and subsequently stopping work for
35 nonpayment, if the notice and posting requirements of this article are satisfied.

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

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

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

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

6 See also Sections 3082.025 (“direct contractor” defined), 3082.030 (“labor, service, equipment,
7 or material” defined), 3082.070 (“material supplier” defined), 3082.100 (“owner” defined),
8 3082.180 (“subcontractor” defined).

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

11 **§ 3088.360. Notice of resolution of dispute or cancellation of stop work notice**

12 3088.360. On resolution of the dispute or the direct contractor’s cancellation of
13 the stop work notice, the contractor shall post, in a conspicuous location at the site
14 and at the main office, if one exists, and give a notice to inform subcontractors
15 with which the contractor has a direct contractual relationship on the work of
16 improvement, of the resolution or cancellation.

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

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

21 **§ 3088.370. Stop work remedy not exclusive**

22 3088.370. A direct contractor’s right to stop work pursuant to this article is in
23 addition to other rights the direct contractor may have under the law.

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

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

26 **§ 3088.380. Judicial proceeding**

27 3088.380. If payment of the amount due is not made within 10 days after a stop
28 work notice is given, the direct contractor or the direct contractor’s surety may, in
29 an expedited proceeding seek a judicial determination of liability for the amount
30 due.

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

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

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

36 **§ 3088.390. Waiver against public policy**

37 3088.390. It is against public policy by contract to waive the provisions of this
38 article.

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

1 **§ 3088.410. Application of article**

2 3088.410. (a) This article applies to a contract entered into on or after January 1,
3 1999.

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

6 **Comment.** Section 3088.410 restates former Section 3260.2(f) without substantive change.
7 See also Section 3082.022 (“contract” defined).

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

10 CHAPTER 7. MISCELLANEOUS PROVISIONS

11 Article 1. Preliminary Notice of Private Work

12 **§ 3089.110. Preliminary notice prerequisite to remedies**

13 3089.110. (a) Except as otherwise provided in this section, a preliminary notice
14 (private work) is a necessary prerequisite to the validity of a lien, notice to
15 withhold funds, or claim against a payment bond with respect to a private work.

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

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

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

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

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

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

30 **§ 3089.120. Preliminary notice requirement**

31 3089.120. Before recording a claim of lien, filing a notice to withhold funds, or
32 asserting a claim against a payment bond, the claimant shall give a preliminary
33 notice (private work) to each of the following persons:

34 (a) The owner or reputed owner.

35 (b) The direct contractor or reputed contractor.

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

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

1 See also Sections 3082.010 (“claimant” defined), 3082.020 (“construction lender” defined),
2 3082.060 (“lien” defined), 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined),
3 3082.110 (“person” defined).

4 **§ 3089.130. Contents of preliminary notice**

5 3089.130. (a) A preliminary notice (private work) shall contain all of the
6 following information:

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

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

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

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

14 (5) The following statement in boldface type:

15 **NOTICE TO PROPERTY OWNER**

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

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

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

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

39 **Comment.** Section 3089.130 continues the substance of former Section 3097(c)(1)-(6) and the
40 unnumbered paragraph following paragraph (6) without substantive change. Cf. Section 3082.235
41 (written notice). The reference to an “express trust fund” has been replaced by the defined term,
42 “laborer’s compensation fund.” See Section 3082.050 (“laborer’s compensation fund” defined). It
43 also continues the requirement of former Section 3097(a) that the preliminary notice be written.

1 See also Sections 3082.030 (“labor, service, equipment, or material” defined), 3082.040
2 (“laborer” defined), 3082.060 (“lien” defined), 3082.110 (“person” defined), 3082.160 (“site”
3 defined), 3082.180 (“subcontractor” defined).

4 **§ 3089.140. Effect of preliminary notice**

5 3089.140. (a) A claimant may record a claim of lien, file a notice to withhold
6 funds, or assert a claim against a payment bond only for labor, service, equipment,
7 or material provided within 20 days before giving a preliminary notice (private
8 work) and at any time thereafter.

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

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

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

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

20 **§ 3089.150. Giving preliminary notice**

21 3089.150. (a) Subject to subdivision (b), a preliminary notice (private work)
22 shall be given to the person to be notified by any of the following methods:

23 (1) Delivering it personally.

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

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

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

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

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

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

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

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

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

9 For service and proof of service by mail, see Section 3082.240 (mailed notice). This expands
10 the permissible methods of mailing. See also Code Civ. Proc. § 2015.5 (declaration or certificate
11 under penalty of perjury).

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

14 **§ 3089.160. Coverage of preliminary notice**

15 3089.160. (a) Except as provided in subdivision (b), a claimant need give only
16 one preliminary notice (private work) to each person to which notice must be
17 given under this article with respect to all labor, service, equipment, and material
18 provided by the claimant for a work of improvement.

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

23 (c) A preliminary notice that contains a general description of labor, service,
24 equipment, or material provided by the claimant before the date of the notice also
25 covers labor, service, equipment, or material provided by the claimant after the
26 date of the notice whether or not they are within the scope of the general
27 description contained in the notice

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

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

32 **§ 3089.170. Direct contractor’s duty to provide information**

33 3089.170. A direct contractor shall make available to any person seeking to give
34 a preliminary notice (private work) the following information:

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

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

37 **Comment.** Section 3089.170 continues without substantive change the parts of former Section
38 3097(l)-(m) relating to the direct contractor’s duty to provide information. For provisions
39 concerning the content of contracts, see Section 3082.310 (contract forms).

40 See also Sections 14 (singular includes plural), 3082.020 (“construction lender” defined),
41 3082.025 (“direct contractor” defined), 3082.100 (“owner” defined), 3082.110 (“person”
42 defined).

1 **§ 3089.180. Owner’s duty to give notice of construction loan**

2 3089.180. If a construction loan is obtained after commencement of work, the
3 owner shall provide the name and address of the construction lender to each
4 person that has given the owner a preliminary notice (private work).

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

8 See also Sections 3082.020 (“construction lender” defined), 3082.100 (“owner” defined),
9 3082.110 (“person” defined).

10 **§ 3089.190. Waiver void**

11 3089.190. An agreement made or entered into by an owner, whereby the owner
12 agrees to waive the rights conferred on the owner by this article is void and
13 unenforceable.

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

16 **§ 3089.200. Disciplinary action**

17 3089.200. A licensed subcontractor is subject to disciplinary action under the
18 Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of
19 Division 3 of the Business and Professions Code, if all of the following conditions
20 are satisfied:

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

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

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

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

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

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

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

37 **§ 3089.210. Notices filed with county recorder**

38 3089.210. On or after January 1, 2007, the county recorder may cause to be
39 destroyed all documents filed under subdivision (o) of former Section 3097.

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

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

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

6 (3) The name of the direct contractor, if any, for the work of improvement or, if
7 the notice is given only of completion of a contract for a particular portion of the
8 work of improvement as provided in Section 3089.440, the name of the direct
9 contractor under that contract and a general statement of the kind of labor, service,
10 equipment, or material provided under the contract.

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

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

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

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

21 **Comment.** Section 3089.430 combines former Section 3093 (notice of completion) with
22 former Section 3092 (notice of cessation). For date of completion of a work of improvement, see
23 Section 3089.410. For the effect of a notice of completion, see Sections 3083.320-3083.330 (time
24 for claim of lien), 3083.710 (time for commencement of enforcement action). Cf. Section
25 3082.235 (written notice).

26 A notice of completion is ineffective to shorten the time for a claim of lien unless notice of
27 recordation is given to the person whose claim of lien is affected. See Section 3089.450 (notice of
28 recordation by owner). The requirement of an affidavit of mailing in subdivision (b)(7) is new.
29 See also Code Civ. Proc. § 2015.5 (declaration or certificate under penalty of perjury).

30 This section eliminates the 10-day period for recording a notice of completion under former
31 law. A claim of lien must be filed within 30 or 60 days after recording a notice of completion
32 (depending on the nature of the claimant), subject to a maximum of 90 days after actual
33 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the
34 effect of existing law. See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58
35 (1959).

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

40 As used in this section, the owner is the person who causes a building, improvement, or
41 structure, to be constructed, altered, or repaired (or the owner’s successor in interest at the date of
42 a notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee
43 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a
44 cotenant. A notice of completion may be signed and verified by the owner’s agent. See Sections
45 3082.100 (“owner” defined), 3082.260 (co-owners).

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

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

4 **§ 3089.440. Notice of completion of contract for portion of work of improvement**

5 3089.440. If a work of improvement is made under two or more contracts, each
6 covering a portion of the work of improvement:

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

13 (b) If the owner does not record a notice of completion under this section, the
14 period for recording a claim of lien is that provided in Sections 3083.320 and
15 3083.330.

16 **Comment.** Section 3089.440 continues the substance of former Section 3117, but eliminates
17 the 10-day period for recording a notice of completion. A claim of lien must be filed within 60
18 days after recording a notice of completion, subject to a maximum of 90 days after actual
19 completion. See Sections 3083.320 and 3083.330 (recordation of claim of lien). This codifies the
20 effect of existing law, See, e.g., *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58
21 (1959).

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

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

30 **§ 3089.450. Notice of recordation by owner**

31 3089.450. (a) An owner of a private work that records a notice of completion
32 shall at the time of recordation give a copy of the notice by mail to all of the
33 following persons:

34 (1) A direct contractor.

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

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

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

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

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

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

3 **Comment.** Section 3089.450 restates former Section 3259.5, replacing the notice of
4 recordation with a copy of the recorded notice. The section eliminates the former 10 day notice
5 period and requires immediate notice. See also Section 3089.430(b)(7) and Code Civ. Proc. §
6 1013a(c) (affidavit of mailing). As used in this section “owner” includes a person who has an
7 interest in property (or the person’s successor in interest on the date a notice of completion is
8 recorded) that causes a building, improvement, or structure, to be constructed, altered, or repaired
9 on the property), and includes a cotenant. See Section 3082.100 (“owner” defined). A notice is
10 recorded when it is filed for record. Section 3082.250 (filing and recording of papers). The
11 references to a “mechanic’s” lien in subdivision (a) have been deleted. Subdivision (a) is intended
12 to apply to a site improvement lien as well. For service and proof of service by mail, see Section
13 3082.240 (mailed notice).

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

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

19 Article 5. Waiver and Release

20 § 3089.610. Terms of contract

21 3089.610. (a) An owner or direct contractor may not, by contract or otherwise,
22 waive, affect, or impair a claimant’s rights under this title, whether with or without
23 notice, except with the claimant’s written consent, and any term of a contract that
24 purports to do so is void and unenforceable.

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

27 **Comment.** Section 3089.610 continues the first and second sentences of former Section
28 3262(a) without substantive change. See Section 3082.010 (“claimant” defined).

29 See also Sections 3082.010 (“claimant” defined), 3082.025 (“direct contractor” defined),
30 3082.100 (“owner” defined).

31 § 3089.620. Waiver and release

32 3089.620. A claimant’s waiver and release does not release the owner,
33 construction lender, or surety on a payment bond from a claim or lien unless both
34 of the following conditions are satisfied:

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

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

41 **Comment.** Section 3089.620 continues the third and fourth sentences of former Section
42 3262(a) without substantive change. The waiver and release may be signed by the claimant’s
43 agent. See Section 3082.270 (agency). The term “financial institution” has replaced “bank” in
44 subdivision (b) and in the forms provided in this article.

1 See also Sections 3082.010 (“claimant” defined), 3082.020 (“construction lender” defined),
2 3082.060 (“lien” defined), 3082.100 (“owner” defined).

3 **§ 3089.630. Statement of claimant**

4 3089.630. An oral or written statement purporting to waive, release, impair or
5 otherwise adversely affect a claim or lien is void and unenforceable and does not
6 create an estoppel or impairment of the claim or lien unless either of the following
7 conditions is satisfied:

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

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

10 **Comment.** Section 3089.630 continues former Section 3262(b) without substantive change.

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

12 **§ 3089.640. Accord and satisfaction or settlement agreement not affected**

13 3089.640. This article does not affect the enforceability of either an accord and
14 satisfaction concerning a good faith dispute or an agreement made in settlement of
15 an action pending in court if the accord and satisfaction or agreement and
16 settlement make specific reference to the claim or lien.

17 **Comment.** Section 3089.640 continues former Section 3262(c) without substantive change.

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

19 **§ 3089.650. Conditional waiver and release on progress payment**

20 3089.650. If a claimant is required to execute a waiver and release in exchange
21 for, or in order to induce the payment of, a progress payment and the claimant is
22 not, in fact, paid in exchange for the waiver and release or a single payee check or
23 joint payee check is given in exchange for the waiver and release, the waiver and
24 release shall be in substantially the following form:

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

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

29 **Identifying Information**

30 Name of Claimant: _____

31 Name of Customer:
32 _____

33 Job Location:
34 _____

35 Owner:
36 _____

37 Through Date:
38 _____

1 **Conditional Waiver and Release**

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

7 Maker of Check: _____

8 Amount of Check:

9 \$ _____

10 Check Payable to: _____

11 **Exceptions**

12 This document does not affect any of the following:

13 (1) Retentions.

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

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

17 Date of waiver and release: _____

18 Amount remaining unpaid: \$ _____

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

22 **Signature**

23 Claimant's Signature: _____

24 Claimant's Title: _____

25
26 **Comment.** Section 3089.650 continues former Section 3262(d)(1), with the addition of
27 language relating to progress payments covered by previous releases that have not been paid. The
28 references to a "mechanic's" lien have been deleted from this section; it applies to a site
29 improvement lien as well. The term "contract change" has replaced "written change order". The
30 statutory form is recast for clarity.

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

32 **§ 3089.660. Unconditional waiver and release on progress payment**

33 3089.660. If the claimant is required to execute a waiver and release in exchange
34 for, or in order to induce payment of, a progress payment and the claimant asserts
35 in the waiver it has, in fact, been paid the progress payment, the waiver and release
36 shall be in substantially the following form:

37 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

38 NOTICE TO CLAIMANT: This document waives and releases rights
39 unconditionally and states that you have been paid for giving up those rights. This

1 document is enforceable against you if you sign it, even if you have not been paid.
2 If you have not been paid, use a conditional waiver and release form.

3 **Identifying Information**

4 Name of Claimant: _____

5 Name of Customer:

6 _____

7 Job Location:

8 _____

9 Owner:

10 _____

11 Through Date:

12 _____

13 **Unconditional Waiver and Release**

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

18 Amount of payment: \$ _____

19 **Exceptions**

20 This document does not affect any of the following:

21 (1) Retentions.

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

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

26 **Signature**

27 Claimant's Signature: _____

28 Claimant's Title: _____

29

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

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

35 **§ 3089.670. Conditional waiver and release on final payment**

36 3089.670. If the claimant is required to execute a waiver and release in exchange
37 for, or in order to induce the payment of, a final payment and the claimant is not,
38 in fact, paid in exchange for the waiver and release or a single payee check or joint

1 payee check is given in exchange for the waiver and release, the waiver and
2 release shall be in substantially the following form:

3 **CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

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

7 **Identifying Information**

8 Name of Claimant: _____

9 Name of Customer:
10 _____

11 Job Location:
12 _____

13 Owner:
14 _____

15 Date: _____

16 **Conditional Waiver and Release**

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

21 Maker of Check: _____

22 Amount of Check:

23 \$ _____

24 Check Payable to: _____

25 **Exceptions**

26 This document does not affect any of the following:

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

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

30 Date of waiver and release: _____

31 Amount remaining unpaid: \$ _____

32 **Signature**

33 Claimant's Signature: _____

34 Claimant's Title: _____

35

36 **Comment.** Section 3089.670 continues former Section 3262(d)(3), with the addition of
37 language relating to progress payments covered by previous releases that have not been paid, and
38 the addition of a line for identification of the waivant's customer. The references to a

1 “mechanic’s” lien have been deleted from this section; it applies to a site improvement lien as
2 well. The statutory form is recast for clarity.

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

4 **§ 3089.680. Unconditional waiver and release on final payment**

5 3089.680. If the claimant is required to execute a waiver and release in exchange
6 for, or in order to induce payment of, a final payment and the claimant asserts in
7 the waiver it has, in fact, been paid the final payment, the waiver and release shall
8 be in substantially the following form:

9 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

14 **Identifying Information**

15 Name of Claimant: _____

16 Name of Customer: _____
17 _____

18 Job Location: _____
19 _____

20 Owner: _____
21 _____

22 Date: _____

23 **Unconditional Waiver and Release**

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

27 **Exceptions**

28 This document does not affect any of the following:

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

30 **Signature**

31 Claimant’s Signature: _____

32 Claimant’s Title: _____

33
34 **Comment.** Section 3089.680 continues former Section 3262(d)(4) without substantive change.
35 The references to a “mechanic’s” lien have been deleted from this section; it applies to a site
36 improvement lien as well. The statutory form is recast for clarity.

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

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WORKS OF IMPROVEMENT – PUBLIC WORK

[Public Contract Code]

CHAPTER 1. PRELIMINARY NOTICE OF PUBLIC WORK

[Reserved]

CHAPTER 2. NOTICE TO WITHHOLD FUNDS FOR PUBLIC WORK

[Reserved]

CHAPTER 3. PAYMENT BOND FOR PUBLIC WORK

[Reserved]
