

Memorandum 2006-20

**Mechanics Lien Law  
(Draft of Tentative Recommendation)**

This memorandum presents a revised draft of the mechanics lien law that incorporates all Commission decisions to date. That includes renumbering and relocating the private work portion of the statute to the end of the Civil Code and the public work portion of the statute to the Public Contract Code. We will supplement this memorandum with a draft of conforming revisions to other statutes to reflect the proposed renumbering.

This memorandum includes discussion of a number of issues previously raised in Memorandum 2006-3. The Commission commenced consideration of that memorandum at the February 2006 Commission meeting but did not complete consideration of those matters reproduced here. The memorandum refers on occasion to materials that were attached to Memorandum 2006-3; those materials are not reproduced here but are available from the Commission at [www.clrc.ca.gov](http://www.clrc.ca.gov).

Attached to this memorandum, and analyzed in the memorandum, is:

*Exhibit p.*

- Gordon Hunt, Pasadena (3/8/06) ..... 1

Our objective is to complete our review of issues and of the draft statute, and to approve a tentative recommendation on mechanics lien law to circulate for public comment.

GENERAL PROVISIONS

**Electronic Notice**

The Commission has decided to permit, but not require, notice to be given by electronic means under the mechanics lien law if the party to be notified has expressly indicated willingness to receive notice electronically. The Commission requested further information about the possible impact of the California Uniform Electronic Transactions Act (UETA) and the federal Electronic

Signatures in Global and National Commerce Act (E-Sign) on such a provision. Each of those statutes has as its purpose validating an electronic communication relating to a “transaction”, which almost certainly would include a statutory remedy relating to a transaction, such as the mechanics lien law.

Under UETA, the parties may agree to conduct a transaction by electronic means. The existence of an agreement is determined from the context and surrounding circumstances, including the parties’ conduct. “Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction by electronic means may not be contained in a standard form contract that is not an electronic record.” Civ. Code § 1633.5(b). A specific method of communication prescribed by statute (such as the mechanics lien law) may not be waived by the parties, unless allowed by the statute. Civ. Code § 1633.8.

E-Sign also enables electronic communication if the parties have agreed to it. Unlike UETA, the federal statute does not respect a state law requiring a specific form of communication. Instead, it allows parties to contract around the law, subject to consumer protections — a “consumer” must affirmatively consent to receiving electronic communications and must confirm the consent electronically or by a reasonable demonstration that the electronic communication being consented to is capable of being received. 15 USC § 7001(c).

A consumer transaction, for E-Sign purposes, is one involving an individual who obtains “products or services which are used primarily for personal, family, or household purposes.” 15 USC § 7006(1). This would appear to extend to a construction contract for building, remodeling, or otherwise making an improvement to a home.

It is unclear whether the looser standards of UETA may apply to consent to receive a notice electronically (assuming we amend the mechanics lien law to expressly allow electronic notice) or whether those standards are preempted by the stricter standards of E-Sign with respect to a consumer transaction. Preemption is waived for a state that has adopted UETA in its pure uniform form, and in some other circumstances. California’s adoption of UETA is not pure. The E-Sign preemption clause has not been interpreted, and the extent of potential preemption of California UETA is speculative.

If UETA is not preempted and is deemed to govern electronic communication under the mechanics lien law, then the mechanics lien law must specifically authorize electronic communication or the parties’ agreement to receive

electronic notice will be ineffective. On the other hand, if UETA is preempted, and if the preemption results in a complete substitution of E-Sign standards, then the parties' agreement to receive electronic notice would not need to be statutorily authorized, but with respect to a consumer transaction E-Sign's consumer protection provisions would determine the validity of the agreement.

One approach would be for the mechanics lien law specifically to authorize electronic notice by agreement of the parties and, in order to protect against invalidity of a notice due to federal preemption, require that the consumer protections of E-Sign be satisfied.

**§ 7110. Electronic communication**

7110. (a) As used in this section, "electronic record" has the meaning provided in Section 1633.2.

(b) A notice under this title may be given to a person in the form of an electronic record if (i) the person has agreed to receive the record by electronic means and, (ii) if the person is a consumer within the meaning of Section 7006 of Title 15 of the United States Code, the requirements of Section 7001 of Title 15 of the United States Code relating to consumer consent to an electronic record are satisfied.

**Comment.** Section 7110 is new. It combines the agreement requirement of the California Uniform Electronic Transactions Act (UETA) with the consumer protections of the federal Electronic Signatures in Global and National Commerce Act (E-Sign).

A consumer within the meaning of E-Sign is an individual who obtains products or services used primarily for personal, family, or household purposes." 15 USC § 7006(1). The consumer consent requirements of E-Sign include (i) affirmative consent, (ii) disclosure, (iii) electronic access, (iv) software and hardware upgrades. See 15 USC § 7001(c)(1).

See also Section 7032 ("person" defined).

The downside to this approach is that, if it turns out that that the UETA consent provisions are not preempted by E-Sign, we would be imposing different, and more onerous, requirements for mechanics lien law than for any other transaction under California law.

We are also somewhat concerned about possible application of the provision to a FAX. We suspect that a faxed notice is widely accepted and treated with the same effect in the industry as an original writing. A provision like that set out above could give a person a technical excuse to avoid the effect of a faxed notice.

On the other hand, it is not clear that a FAX should simply be considered as another form of writing. There are potential "receiving" problems specific to a

fax transmission, including machine malfunctioning, not turned on, out of paper, out of toner, insufficient legibility, and lack of a reliable way to confirm receipt. These issues might suggest that FAX notice should be contingent on agreement to accept it, just as with other forms of electronic notification.

**The input of practitioners on this issue would be helpful.**

### **Commencement**

Various legal incidents of the mechanics lien law hinge on the time a work of improvement commences. For example, priorities may depend on whether a construction loan was recorded before or after commencement. The cases have developed a definition of commencement. **Would it be helpful to codify the definition in the statute?** E.g.:

#### **§ 7003. Commencement**

7003. A work of improvement “commences” when either of the following occurs:

(a) Material or supplies that are used in the work of improvement are delivered to the site.

(b) There is actual visible work of a permanent nature on the site.

**Comment.** Section 7003 is new. It codifies case law. See, e.g., *Walker v. Lytton Sav. & Loan Assn.*, 2 Cal. 3d 152, 159, 84 Cal. Rptr. 521 (1970); *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* 6 Cal. App. 4th 1233, 1240-1241, 8 Cal. Rptr. 2d 298 (1992).

### **Completion**

Completion is a critical concept under the mechanics lien law. Completion of a work of improvement triggers time limits for recording a claim of lien, enforcing the liability on a payment bond, and paying the direct contractor a retention withheld by the owner, among other consequences.

Completion may be deemed to have occurred in a number of circumstances, besides actual completion, for purposes of triggering the time limits. For example, completion occurs on cessation of labor for a continuous period of 60 days, or on occupation or use by the owner accompanied by cessation of labor.

The owner may shorten time limits by recording a notice of completion. Under existing law, to be effective, a notice of completion must be recorded within 10 days after actual completion. Our proposed law allows a notice of completion to be recorded more than 10 days after actual completion, and simply starts the time limits running later.

The Commission concluded to allow a notice of completion more than 10 days after actual completion, based on comments we had received. The following discussion is from Memorandum 2004-31 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)):

The owner may record a notice of completion. The notice must be recorded within ten days after the date of completion. Civ. Code § 3093. Recordation triggers the statutory period for a claimant to record a claim of lien. See Civ. Code §§ 3115, 3116.

Mr. Stiepan suggests that, rather than requiring a notice of completion to be recorded within a narrow window of ten days, the provision should be revised to provide that the lien filing period is extended on a day-for-day basis for any notice of completion recorded after the ten day period. Mr. Hunt thinks it's unnecessary to revise the statute along these lines since case law gives the same result. *Doherty v. Carruthers*, 171 Cal.App.2d 214, 340 P.2d 58 (1959). The staff notes that case is based on an estoppel theory. It may be helpful to spell it out by statute rather than relegating the matter to case law.

Dick Nash has been concerned about the effect of a late recorded notice of completion. Under the proposed law, a direct contractor must record a claim of lien within 90 days after completion or, if a notice of completion is recorded, within 60 days after recordation. See proposed Section 7412 (time for claim of lien by direct contractor). A claimant other than a direct contractor also has 90 days after completion, but if a notice of completion is recorded, that is cut down to 30 days after recordation. See proposed Section 7414 (time for claim of lien by claimant other than direct contractor).

Suppose completion occurs, and the 90 day period starts running. After 80 days, the owner, for reasons we are unable to fathom, suddenly decides to record a notice of completion. Does this trigger a new 60 day period for the direct contractor, and a new 30 day period for other claimants? Or does the original 90 day period continue to run?

The proposed law takes the position that in this situation the 90-day-since-completion rule prevails over the 60- or 30-day-since-recordation rule. This position is based on the concept that recordation of a notice of completion is intended to give the owner a way of shortening the time for recording a claim of lien; it should not have the opposite effect of lengthening it.

Mr. Nash objects to this resolution. He argues, "Under the proposed language if an owner recorded a notice of completion on the 80th day, claimants would have only 10 days to record their liens. When a notice of completion is recorded

more than 10 days after completion, we believe that only the recording date of the notice of completion should operate to trigger the 30 or 60 day lien period.”

For support, Mr. Nash refers to the case of *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58 (1959), which is mentioned in the Comment to proposed Section 3089.430 (notice of completion). In that case the owner (or the direct contractor, acting as the owner’s agent) recorded a notice of completion on the 70th day after completion. (It is not clear why, since absent that recordation the lien claim period would have expired in 20 more days.) The notice of completion falsely stated that completion had occurred just three days earlier. Lien claimants, relying on the recorded notice, filed their claims within 30 days after recordation, but more than 90 days after actual completion. The court found that the claimants had detrimentally relied on the false statement in the notice of completion, and the owner was estopped from asserting the true date of completion and the running of the 90-day period.

The staff believes the Commission’s position on this issue is sound, but the Commission may want to give this matter further review in light of Mr. Nash’s comments. In any event, the staff has revised the reference to *Doherty* in the Comment to make clear that the statutory limits for recording a claim of lien are subject to estoppel principles.

### **Contract and Contractor**

Existing law defines “contract” to mean a contract between an owner and a direct contractor, as opposed to a subcontract. But the mechanics lien law uses the term “contract” in many instances in a sense other than its defined sense.

At the last meaning, the staff argued for a more normal use of the term in the statute. If a particular provision is intended to be limited to a contract between the owner and a direct contractor, that limitation would be stated directly instead of relying on use of the term “contract” in a technically defined sense.

That approach has proved to be trickier to implement than the staff had anticipated. We have instead preserved the existing scheme in the draft for now, with all its deficiencies. We intend to continue our review of the matter and, before we reach the point a final recommendation, try to develop a more adequate treatment of the matter.

On a related point, there is some confusion in the existing statutes between a contract for a work of improvement as a whole (through a general or prime contractor) and a contract with an individual contractor that only covers part of a

work of improvement. Some of the statutes are hazy about whether they intend to refer to the work of improvement as a whole as opposed to the individual contract. That may affect contract price, completion, and other key concepts in the law. Our current draft simply preserves existing ambiguities. We likewise plan to continue our review of this matter to ensure consistency before we arrive at a final recommendation.

## **Knowledge**

A number of the provisions of the mechanics lien law relate to the knowledge of a person. For example, a person must include some information in a notice to the extent “known” to the person. To a large degree, the system operates on good faith. A person should not attempt to avoid acquiring knowledge of something in order not to disclose it. **Would it be useful to codify a more objective standard of knowledge?** E.g.:

### **§ 7015. Know or knowledge**

7015. A person “knows” or “has knowledge” of information that is actually known to or is reasonably ascertainable by the person.

**Comment.** Section 7015 is new.

See also Section 7032 (“person” defined).

**Staff Note.** If this definition is adopted, a cross reference should be inserted in the Comment to a section where the term is used.

## **Owner**

The draft includes a flexible definition of “owner” (in the case of divided ownership, distinguishing between the owner of the improvement and the owner of the underlying property) and attempts to address issues relating to multiple ownership and successor owners in case of a transfer of ownership. This is a complex matter, and it is not clear whether these provisions satisfactorily address all the issues. The staff is continuing its review of this matter and we will propose any further refinements that appear appropriate at the time we consider public comment on the tentative recommendation.

## **Reputed Owner**

A number of the provisions of the mechanics lien law relate to reputed ownership. The intent is to enable a party to act on reasonable information and

belief without having to do a title search. **Would it help to flesh out the concept in the statute?** E.g.:

**§ 7037. Reputed owner, direct contractor, or construction lender**

7037. (a). “Reputed owner” means a person that a claimant reasonably and in good faith believes is an owner.

(b) “Reputed direct contractor” means a person that a claimant reasonably and in good faith believes is a direct contractor.

(c) “Reputed construction lender” means a person that a claimant reasonably and in good faith believes is a construction lender.

**Comment.** Section 7037 is new. It codifies case law. See *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 85, 229 Cal. Rptr. 418 (1986).

**Notice to Co-Owner**

Our current draft provides:

**§ 7058. Co-owners**

7058. (a) ....

(b) Notice to an owner of an interest in property is effective as to a co-owner of that interest.

(c) Notice to an owner of a leasehold or other interest in property that is less than a fee is not notice to an owner of the fee. Nothing in this subdivision limits the effect of knowledge of an owner, or of notice to a reputed owner where that notice is authorized by statute.

This provision is new, as notice given *to* a co-owner (as contrasted with notice given *by* a co-owner) was not explicitly addressed in the former statute.

An important notice given to an owner is a preliminary notice, and provision in the mechanics lien law for preliminary notice before an owner’s interest in property may be liened was a key factor underlying the Supreme Court’s upholding of the constitutionality of the statute. See *Connolly Development v. Superior Court*, 17 Cal. 3d 803, 553 P.2d 637, 132 Cal. Rptr. 477 (1976).

Our proposed section relating to the giving of preliminary notice provides:

**§ 7202. Preliminary notice requirement**

7202. Before recording a claim of lien, filing a stop payment notice, or asserting a claim against a payment bond, the claimant shall give preliminary notice to each of the following persons:

(a) The owner or reputed owner.

(b) The direct contractor or reputed contractor.

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

In the Comment to the proposed section, reference is made to the proposed definition of “owner”:

**§ 7028. Owner**

7028. “Owner” means:

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

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

(c) A successor in interest of a person described in subdivision (a) or (b).

The three statutory provisions in conjunction would allow the required preliminary notice to one owner of an interest in property to be accomplished by effectively “substitute serving” another co-owner of that interest.

The staff has done further research on this matter. In *Frank Pisano & Associates v. Taggart*, 29 Cal. App. 3d 1, 105 Cal. Rptr. 414 (1972), the court held that a preliminary notice given to one owner of property (husband) was not effective to allow enforcement of a claim of lien against another (wife), where there was no evidence of an agency relationship and the property was not held as community property. The holding represented only one aspect of a multi-faceted opinion, and the staff has found no subsequent cases either supporting or rejecting that precise ruling.

Nonetheless, we developed the notice to co-owner provision at a point in this project when we had not yet incorporated the “reputed owner” doctrine of existing law. Now that we have made explicit in the draft that notice to the reputed owner is effective notice to the owner, the notice to co-owner provision is no longer critical. Given its problematic status, **the staff suggests we abandon the notice to co-owner provision** in reliance on the reputed ownership doctrine.

**Operative Date and Transitional Issues**

Statutory revision of the mechanics lien law is complex, with many changes in language (including forms) and in procedure. In the ordinary course of events, the statute would become operative on January 1 following the year it is enacted. The staff thinks it may be worthwhile to build in a one year deferral of the operative date for transitional purposes. That would also allow time to correct

any defects that may be discovered in the statute — once it is enacted it will receive more intense scrutiny than it will have had up to that point.

There are also complex transitional issues. The staff thinks that, to simplify matters, any contract for a work of improvement entered into before the operative date of the new law should be governed by the old law. The major drawback to this approach is that a construction project may span many years, necessitating keeping old law books and following old rules for some time.

An alternative would be to provide a general rule that the new law applies except to the extent its application would substantially prejudice a right under the old law. We have enacted similar provisions in the past, but it is litigation breeding.

**Transitional provision**

- (a) This act is operative January 1, 2009.
- (b) This act applies to a contract for a work of improvement executed on or after the operative date.
- (c) A contract for a work of improvement executed before the operative date is governed by the applicable law in effect before the operative date.

MECHANICS LIEN

**Recordation of Lien**

A claim of lien under the mechanics lien law must be verified, and “shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment.” Civ. Code § 3084. At the February 2006 meeting the Commission questioned this provision, which is at odds with the general requirement that a recorded instrument must be acknowledged. See Gov’t Code § 27287.

The claim of lien is not the only instrument under the mechanics lien law entitled to recordation without acknowledgment. A similar rule applies to a notice of completion recorded by the owner. Civ. Code § 3093. These two provisions were enacted together in 1981.

“The effect of the 1981 amendment to Civil Code section 3084 was to remove the requirement of acknowledgment to the recording of a claim of lien under the mechanics lien law. This reflects a legislative judgment that verification of such a claim of lien provides sufficient proof of its authenticity and that an acknowledgment was therefore unnecessary.” 69 Ops. Cal. Atty. Gen. 97 (Op.

No. 86-202, May 14, 1986). The Attorney General’s opinion suggests that the purpose of the legislation was to provide “a faster and more efficient method for workmen to file their claims of lien.”

These two instruments are not unique in California law — the statutes identify numerous instruments that are deemed duly recorded without acknowledgment. These include various government documents such as a tax lien or court-certified document, as well as a fictitious lease, mortgage, or deed of trust. See, e.g., Gov’t Code §§ 27282-27287.

The staff draft of the revised mechanics lien law would generalize the verified/unacknowledged recordation principle and apply it to all recorded instruments under the law. See proposed Section 7056(b): “A paper in otherwise proper form, verified and containing the information required by this part, shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.” The concept is to try to simplify and standardize the law.

**Does the Commission agree with this approach?** If so, a conforming revision to Government Code Section 27287 will be in order:

**Gov’t Code § 27287 (amended). Recordation of instrument**

SEC. \_\_\_\_\_. Section 27287 of the Government Code is amended to read:

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is ~~a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code~~ an instrument provided for in Section 7056 of the Civil Code or a notice of completion as provided in Section 42230 of the Public Contract Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any quitclaim deed or grant deed other than a trustee’s deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.

**Comment.** Section 27287 is amended for conformity with the principles governing remedies for a private work of improvement or a public works contract. See Civ. Code § 7056(b) (private work); Pub. Cont. Code § 42230(a) (public work noticed of completion).

If not, a simple correction of the cross references will suffice.

### **Amount of Lien**

Civil Code Section 3123 prescribes the amount of a mechanics lien — “The liens provided for in this chapter shall be direct liens, and shall be for the reasonable value of the labor, services, equipment, or materials furnished or for the price agreed upon by the claimant and the person with whom he or she contracted, whichever is less.” The question came up at the February 2006 Commission meeting of the proper interpretation of this provision. Is a lien claimant entitled to the benefit of the bargain (contract price), or may the amount of the lien be reduced to “reasonable value” if that is less than the agreed upon price?

One would think the issue would be well settled by now. It has been a feature of California law since 1911. However, there is no direct authority on the point. One case indicates that “reasonable value” is the standard where there is no contract. *Bentz Plumbing & Heating v. Favaloro*, 128 Cal. App. 3d 145, 152 n. 9 (1982). If a contract exists, the lien amount may not exceed the contract price, regardless of the reasonable value of the work. See, e.g., *University Casework Systems, Inc. v. Superior Court*, 41 Cal. App. 3d 263 (1974).

Any effort to clarify the matter is likely to result in significant opposition from whatever party is disadvantaged by the interpretation adopted. The staff recommends that the matter be left as is, for judicial interpretation.

### **Invalid Lien**

The Commission has been concerned about problems caused by a false or otherwise unenforceable claim of lien that clouds title. We have been taking a two-pronged approach to this problem — (1) improving the procedure for expunging such a claim of lien from the record, and (2) developing a statute that would deter the filing of a false claim of lien at the outset (by imposing liability for a claim recorded with intent to slander title or defraud). See proposed Sections 7426 (damages for false claim of lien) and 7480 (petition for release order).

We discuss below two matters relating to the procedures for dealing with a false claim of lien. The first is the possibility using small claims procedures to rid the record of a claim of lien. The second is a suggestion of Gordon Hunt for a procedure by which an owner may obtain an early test of the validity of the claim of lien; he offers this as an alternative to the liability provisions. “I

respectfully suggest that it is a more fair procedure than that currently in place in the current draft.” Exhibit p. 1.

### *Small Claims Procedure*

Is the procedure for obtaining a release of lien adequate in the event of a small claim? We have received a note reciting one person’s adverse experience in trying to get an invalid lien removed from the record:

Situation is as follows. Back in summer of 2005 I rented a trash container from a company that later claimed that I owed them more than I paid. The company recorded a Mechanic’s Lien on my property and also opened a small claims court case. In small claims court the company lost the case and the judge ruled judgment in my favor. However up until today I’m having a very hard time removing this lien. I have contacted Los Angeles County Recorders office but they will not release the lien without a court order. But the court will not give me any papers. They tell me that they do not deal with Mechanic’s Liens.

Fred Magid, Los Angeles (12/12/05).

Mr. Magid’s situation presents an interesting test of the statutory scheme. The superior court has limited civil case jurisdiction in a proceeding to enforce, foreclose, or release, a mechanics lien of \$25,000 or less. Code Civ. Proc. § 86(a)(6). May a limited civil case of this type be handled in small claims court where the claim of lien is within the small claims jurisdictional limit?

Effective January 1, 2006, an action may be brought in small claims court for recovery of money if the amount of the demand does not exceed \$7,500 in the case of a natural person or \$5,000 in the case of other persons. Code Civ. Proc. §§ 116.220(a), 116.221. The court may, in lieu of or in addition to money damages, grant equitable relief in the form of rescission, restitution, reformation, or specific performance. Code Civ. Proc. § 116(b). This provision has not been construed, but the staff does not believe it would encompass enforcement or release of a mechanics lien.

The claimant’s action in Mr. Magid’s case was not brought to enforce the lien in small claims court — it was brought as an independent civil action for damages. Had the claimant recovered judgment in the small claims action, the claimant would not have been able to enforce the mechanics lien, but would have been required to bring a separate mechanics lien enforcement action. The small claims judgment would not have res judicata effect in a mechanics lien

enforcement action. However, the claimant could obtain a judgment lien on the basis of the small claims judgment and enforce that.

By parity of reasoning, Mr. Magid's small claims judgment denying the claim would be insufficient to release the mechanics lien, since lien release authority is not within the jurisdiction of the small claims court. But the judgment in Mr. Magid's favor would be given res judicata effect in a lien expungement proceeding. The differential res judicata treatment of a small claims judgment derives from the fact that it is the plaintiff that selected the forum and is therefore bound by a judgment of that forum.

These issues are not new to the Commission:

Another writer — homeowner Paula Gelber Dromi — has a similar tale to tell. Her contractor did shoddy work, they reached an impasse, and the contractor filed a claim of lien. The homeowner attempted mediation; the contractor refused. The homeowner got the Contractor's State License Board involved, and won \$4,000 in arbitration. When the contractor failed to pay, his license was revoked. There ensued a long saga of the homeowner trying to get the lien removed through small claims court, and failing after several orders. "I haven't taken the next step of getting it certified and going back to the County recorder's office which has said it will only accept a form stating the lien has been satisfied from the contractor. ... This has been a continuing nightmare."

Memorandum 2004-31 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)).

The draft statute tentatively proposes a number of revisions to address this sort of problem, such as allowing use of the expungement procedure for other reasons besides expiration of the time to enforce a lien, making clear the availability of damages in case of a fraudulent claim of lien, and removing the \$2,000 cap on the award of attorneys fees in an expungement proceeding. See proposed Section 7480 et seq. (release order).

The Commission has previously considered a possible expansion of small claims jurisdiction to include an expungement proceeding:

### **Court proceedings**

Proceedings under this article may be maintained in the small claims division of the superior court if the claimant's demand after deducting all just credits and offsets does not exceed \$5,000.

**Comment.** This section clarifies the rule that a mechanics lien release order may be made in small claims court. See Code Civ. Proc. §§ 86(a)(6) (petition to release mechanics lien of \$25,000 or less

is limited civil case), 87 (limited civil case may be brought in small claims court). See also Section 7052 (jurisdiction and venue).

The Commission rejected this proposal. Sam Abdulaziz' comments were instructive:

Generally, I have a problem with small claims courts deciding contested issues dealing with a subject as complicated as Mechanic's Liens. I would also suggest that the \$5,000.00 relate to the "claim," rather than "the claim after deducting credits and offsets." The determination of credits and offsets alone could be a significant problem.

First Supp. to Memo. 2005-4 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)).

Is the Commission inclined to revisit this issue? One option would be to make clear that **a court determination on the merits is entitled to res judicata effect** in the expungement proceeding:

#### **§ 7480. Petition for release order**

7480. (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 7460.

(2) The claim of lien is invalid under Section 7424.

(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.

(5) The claimant was not licensed to provide the labor, service, equipment, or material stated in the claim of lien for which a license was required by statute.

(6) There is a final judgment in another proceeding that the petitioner is not indebted to the claimant for the demand on which the claim of lien is based.

(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 7054, 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 7480 continues former Section 3154(a) without substantive change. Subdivisions (a)(2)-(5)(6) 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 7424 (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 7028 (“owner” defined).

See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined).

### *Early Test of Validity*

Gordon Hunt’s proposal for an expedited early test of the validity of a claim of lien is set out at Exhibit pages 2-4. The proposal would create a summary proceeding by which the owner may challenge a claim of lien.

Under the proposed procedure, an owner that challenges the validity of a claim of lien would serve an affidavit on the claimant stating the grounds of the challenge and demanding that the claimant release the claim of lien. A claimant that resists the challenge must serve a counteraffidavit on the owner within 20 days, otherwise the claim of lien becomes unenforceable.

In case of a contest, either party may move to have the matter resolved in a summary court proceeding. The hearing must be within 15 days after a party’s motion, and 10 days notice to the opposing party is required. The affidavit and counteraffidavit constitute the pleadings and evidence; the owner has the burden of proof at the hearing. Reasonable attorney’s fees are awarded to the prevailing party. The time within which a lien must be enforced is extended if it would otherwise run during the pendency of the proceeding. The court’s determination of the lien issue does not affect other liabilities and remedies of the parties.

The staff has a number of observations about the proposed procedure.

(1) The procedure parallels the procedure the Commission has developed for expungement of a claim of lien. See proposed Section 7480 et seq.

(2) The procedure proposes somewhat different timing than the Commission’s procedure. The Commission would require a 10-day demand by the owner before commencing a proceeding, versus the 20-day demand proposed by Mr. Hunt. The Commission would require a hearing within 30 days after commencing an expungement proceeding, whereas Mr. Hunt would require a hearing within 15 days. (It is unclear whether the courts would be willing to accept legislation imposing a 15 day calendaring requirement.)

(3) The procedure includes some useful details we might want to pick up for the expungement proceeding even if we do not adopt Mr. Hunt's procedure in its entirety. Examples are provisions governing pleadings and proof, continuances, and tolling of the lien enforcement period.

(4) The most intriguing aspect of the procedure, to the staff, is the front end — the affidavit/counteraffidavit concept. That procedure would appear to be self-executing:

If the lien claimant desires to contest the owner's affidavit and demand for release, he shall, within 20 days after service upon him of the affidavit, serve upon the owner a counteraffidavit alleging the details of his claim and shall also set forth, in detail, the specific basis upon which he contests or rebuts the allegations of the owner's original affidavit, together with proof of service of a copy of such counteraffidavit upon the owner. If no such counteraffidavit with proof of service is served upon the owner within the 20 days as set forth above, then the mechanic's lien shall be deemed unenforceable and shall have no further force and effect.

The staff's question, though, is how does this work? Does it mean anything to say that the lien is deemed unenforceable and has no further force and effect? As a practical matter, won't the owner still have to go to court, even though there is no counteraffidavit, to get the claim of lien expunged from the record by court order?

We could visualize a self-executing system whereby the owner records the affidavit, and if no counteraffidavit is recorded within 20 days, the claim of lien expires. That would be self-executing, and avoid the need for the owner to go to court. But the staff would be concerned about the owner recording an affidavit and never giving the lien claimant notice. We could try to require the county recorder to give the lien claimant notice on the recording of the affidavit, but as we know, the law is moving in the opposite direction with respect to imposing such duties on the county recorder.

(5) Would the early test procedure, as visualized by Mr. Hunt, in fact be a "more fair procedure" than the threat of liability for a false claim of lien? The liability provision as currently drafted would subject a lien claimant to liability only for a false claim of lien recorded "with intent to slander title or defraud"; the owner bears the burden of proof on the issue, and a lawsuit would only be allowed if the lien claimant fails to comply with the owner's demand that the claimant execute a release of the lien. See proposed Section 7426.

## PAYMENT BOND

An owner or a construction lender may require the direct contractor to give a payment bond as a condition of awarding the contract to the direct contractor. The payment bond covers the direct contractor's default in passing a contract payment through to a subcontractor or material supplier, thereby protecting the owner against the risk of double liability. Under the statute, if the owner records the direct contractor's payment bond in the amount of 50% of the contract price, the owner's liability exposure is limited to the contract price.

In order to enforce the liability on a bond under the statute, a claimant must (1) give a preliminary notice or (2) notify the principal and surety within 75 days after completion (or if a notice of completion is recorded, with 15 days after recordation). If the payment bond is recorded, the claimant must commence an enforcement action within six months after completion.

Gordon Hunt has suggested that the statute be revised to require the owner to provide a copy of a payment bond to any claimant that gives a preliminary notice. The consequence of failure to comply would be to toll the six month statute of limitations for enforcement of a recorded bond until a copy of the bond is provided. In the case of an unrecorded bond, the claimant would be unaware of its existence, and would simply pursue lien and stop notice remedies instead.

Mr. Hunt indicates a number of beneficial consequences of this proposal, that has the potential to save substantial time and expense for both the claimant and the owner. In the case of a recorded payment bond:

- (1) A claimant that is aware of the bond will seek payment from the surety without resorting to a lien or stop payment notice (unless the claimant is unsuccessful in collecting from the surety).
- (2) Where the claimant is represented by counsel, the claimant will be advised that its primary remedy is against the bond (due to the double liability protection of the statute), thereby short circuiting the filing of a lien and the serving of a stop payment notice.

In the case of an unrecorded payment bond:

- (1) The owner can attempt to convince the claimant that it ought to seek recovery from the surety rather than encumbering the owner's property with a lien or the construction funds with a stop payment notice.
- (2) The claimant may find it more attractive to proceed against a solvent surety than go to the expense of recording a lien and serving a bonded stop notice.

That all sounds logical to the staff. But if it's in the owner's interest to give each claimant a copy of the payment bond, wouldn't the owner just do it? Do we need a statute to require it?

We have heard that it's not so easy to collect from a surety on a bond, particularly a corporate surety that may be well represented by counsel. The easier collection route may be through a lien or a stop payment notice, regardless of the existence of a payment bond.

We wonder whether the bonding industry would think that giving a copy of the bond to each claimant is a good idea. As the staff has noted on numerous occasions, we will need to develop a consensus among stakeholders that the proposed changes are sound, or we won't get very far in the Legislature.

If the Commission is interested in pursuing this concept, we will highlight the change in the tentative recommendation and try to **get input from stakeholders** before, rather than after, legislation is introduced.

## PUBLIC WORKS CONTRACT

### **Preliminary Notice**

Michael Schoenfeld has written to suggest that the preliminary notice requirement for a public and private work of improvement be made uniform. He notes two differences in particular that are problematic.

#### *Preliminary Notice by Subcontractor*

A first tier subcontractor is required to give preliminary notice for a private work but not for a public work. Mr. Schoenfeld believes this is a problem — there will be claimants that the public entity and direct contractor do not know about:

These include union trust funds. While a sub on a private job needs to identify in the preliminary notice the trust funds it is signatory to, the same is not true on a public works job as no preliminary notice is required. Therefore, there is no way a prime or owner is provided notice of what union trust funds who are signatories to first tier subs may claim money via stop notice or bond claims.

First Supp. to Memo. 2005-43, Ex. p. 10 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)).

Mr. Schoenfeld gives a recent example of a general contractor on a public work that experienced double payment liability because it had not received

notice of potential trust fund rights. “Why should the result on a public project be different than on a private project? I cannot think of a valid reason. The fairness and equity of the checks and balances which are set up in the work of improvement section of the civil code is missing from this area and needs to be corrected.” *Ibid.*

Mr. Schoenfeld argues for consolidating the public and private work preliminary notice provisions into a single uniform scheme. He believes this would be workable:

My suggestion is not burdensome on subs. Most who perform public work also perform private work in my experience as well. Therefore, they are aware of the preliminary notice requirements. Further, to be licensed, the qualifiers are educated about the preliminary notice requirements and, simply stated, it is good practice to send such a notice when a job is started regardless of what tier a sub may be.

The need to plug this hole exists and upon reflection I cannot think of a valid reason why there are different rules for public and private projects. I recommend CLRC seriously consider merging the two statutes.

*Ibid.*

This position makes sense to the staff. We suggest that the draft tentative recommendation **require a first tier subcontractor on a public work to give preliminary notice**, just as on a private work. With any luck, that will generate comment indicating whether Mr. Schoenfeld is correct that this would not be burdensome on a subcontractor.

#### *Post-Completion Notice*

Generally, preliminary notice is a prerequisite to exercise of any of the statutory remedies for a public or private work of improvement. But the statutes include a unique remedy for a claimant that has failed to give the required preliminary notice. Such a claimant may still recover against a payment bond if the claimant gives notice to the principal and surety on the bond within 75 days after completion of the public work (or within 15 days after a notice of completion is recorded). See, e.g., Civ. Code § 3252 (public work).

This statutory scheme was enacted in 1994. It replaced a system that required a claimant to give a bond notice within 90 days after the claimant last provided labor, services, equipment, or materials for which the claim was made. Under the new scheme, the claimant must give the same 20-day preliminary notice

generally required or, failing that, may give the 75/15 day post completion notice.

According to the Senate Judiciary Committee analysis of the 1994 legislation, the purpose of the change in law was to require a payment bond claimant to give earlier notice of the claim than the former 90 day post-completion notice. The post completion notice provision was a compromise added to the bill:

**Default rights for unsophisticated subcontractors**

While existing law requires licensed contractors to file 20-day preliminary notices, that same requirement does not apply to material suppliers and other subs eligible to assert claims against a payment bond. Thus, while the proposed symmetrical structure for all the notices may work for licensed contractors, it could unfairly cut off the rights of some laborers and material suppliers who are unsophisticated or simply unaware of the mechanics' lien law procedures. In response to this concern, AB 3357 has been amended to allow a person to assert a claim against the payment bond for full payment of provided services or materials so long as a claim is made with 15 days after recordation of a notice of completion. Operationally, this reduces a claimant's time to file a payment bond claim for payment from 90 days under existing law to 15 days. This is fair compromise, asserts AGC, because it preserves the right of a material or labor supplier to recover full payment from the payment bond if he provides early notice of his claim.

Sen. Judic. Comm., *Analysis of AB 3357* (6/16/94).

Mr. Schoenfeld argues that the post-completion notice provision causes a problem by allowing a belated claim to be filed. It undermines the orderly payment of funds, since a bond principal must always be concerned about the possibility that an unknown claimant that did not give a preliminary notice may make a bond claim after the fact. Although the provision was included in the law as a safety valve for a claimant unaware of the preliminary notice requirement, "After more than a decade I know of no facts ever arising that illustrate that this provision is needed." First Supp. to Memo. 2005-43, Ex. p. 11 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)).

The staff would be reluctant to disturb a legislative compromise such as this. On the other hand, the compromise perhaps was intended primarily to protect an unsuspecting claimant who might have been unaware of the change in law from a 90 day post-completion notice to a 20 day preliminary notice. To that

extent, Mr. Schoenfeld may be correct that the passage of time has rendered the safety valve of Section 3252 unnecessary.

The staff notes, however, that the Senate Judiciary Committee's analysis of cleanup legislation enacted in 1995 does not speak of transitional concerns:

To address concerns that an all-inclusive strict requirement to file a "preliminary 20-day notice" would create a trap for "unsophisticated" laborers and material suppliers who may be unaware of the requirement and therefore fail to file, provisions were enacted to allow the filing of a claim on payment bond within 15 days if a notice of completion was recorded, and within 75 days after completion of the work of improvement if no notice is recorded.

Sen. Judic. Comm., *Analysis of AB 901* (6/12/95).

The staff notes that this statutory scheme is not unique to a public works contract. A parallel scheme also applies to a private work of improvement. Civ. Code § 3242.

The staff believes it is at least worth **making inquiry of subcontractors and material suppliers as to the continued need for the post completion safety valve**. It can be expected that, looking out for their own interests, they will maintain that it remains essential. On the other hand, the staff believes that we must create a balance in any proposed changes in the law if we are to develop an enactable legislative proposal. So far our tentatively approved changes frequently favor a subcontractor or material supplier. Maybe this is one they can agree to in favor of general contractors, in the interest of a balanced and enactable package.

### **Completion Issues**

Under existing law, cessation of labor for 30 days on a public work is deemed completion, and cessation of labor for 60 days on a private work is deemed completion. Civ. Code § 3086. Gordon Hunt has suggested that the public work cessation period be extended to 60 days, both for uniformity and because a 60 day period is more realistic. The Commission has asked the staff for background on the differential treatment.

The legislative intent behind this provisions is lost in the mists of time. The concept that cessation of labor for 30 days is deemed completion entered California law in 1887. That was extended to 60 days in the case of a private work

in 1951, but there is no legislative history to shed light on the reasons, if any, for the differential treatment.

As with the mechanics' lien statutes in general, no legislative history is available to explain the legislative intent underlying the amendments to the completion equivalents. Thus, it is uncertain if the subtle changes in punctuation and paragraph structure, which gradually altered the original meaning and context of the completion equivalents, represent substantive legislative intent or merely sloppy drafting.

Bronstein, *Trivial(?) Imperfections: The California Mechanics' Lien Recording Statutes*, 27 Loy. L.A. L. Rev. 735, 763 (1994) (fn. omitted).

Since we cannot ascertain the original reasons for the differential treatment, our focus should shift to whether the 30 day cessation of labor period for a public work is causing problems in practice. Mr. Hunt has indicated that it can. Perhaps the best way to proceed at this point is to **solicit comment on the issue** from the public entities and others reviewing the tentative recommendation.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

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March 8, 2006

Law Revision Commission  
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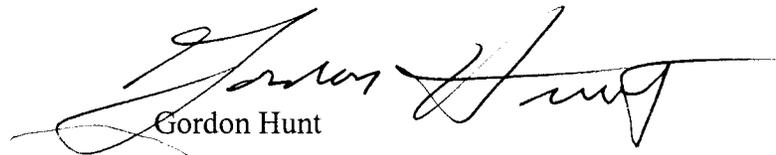
**Re: Mechanic's Lien Law**

Dear Mr. Sterling:

I have prepared and I am enclosing herein an alternative procedure for early testing of the validity of a Mechanic's Lien by the owner. I respectfully suggest that it is a more fair procedure than that currently in place in the current draft. I hope that the Commission will look upon this alternative as a favorable substitute for what is currently in the draft.

Very truly yours,

HUNT, ORTMANN, BLASCO,  
PALFFY & ROSSELL, INC.

  
Gordon Hunt

GH:slg

Enclosure

### **§ 3083.360. Disputed Mechanic's Lien – Summary Proceedings**

If the owner asserts (1) that the claim upon which the mechanic's lien is based is not included within the types or classifications of claims referred to in this title or (2) that the claimant is not one of the persons entitled to assert a mechanic's lien, or (3) that the amount of the claim of lien as specified in the mechanic's lien is excessive or (4) that there is no basis in law for the claim as referred to and set out in the mechanic's lien, the owner may have the question determined in a summary proceeding in accordance with the provisions of Sections 3083.370 to 3083.440, inclusive.

### **§ 3083.370. Affidavit by Owner – Service Upon Lien Claimant – Contents – Demand for Release**

The owner shall serve upon the claimant an affidavit alleging the legal grounds upon which he bases his claim and the facts in support thereof and demanding the release of the claim of lien recorded by the claimant. Such affidavit shall set forth the evidentiary facts which would be admissible in evidence at the time of hearing hereinafter set forth setting forth the specific evidentiary facts that support the owner's assertion that the lien is invalid for one of the four reasons set forth in Section 3083.360.

### **§ 3083.380. Counteraffidavit by Claimant – Contents – Proof of Service – Release of Lien Upon Failure to File – No Liability for Release**

If the lien claimant desires to contest the owner's affidavit and demand for release, he shall, within 20 days after service upon him of the affidavit, serve upon the owner a counteraffidavit alleging the details of his claim and shall also set forth, in detail, the specific basis upon which he contests or rebuts the allegations of the owner's original affidavit, together with proof of service of a copy of such counteraffidavit upon the owner. If no such counteraffidavit with proof of service is served upon the owner within the 20 days as set forth above, then the mechanic's lien shall be deemed unenforceable and shall have no further force and effect.

### **§ 3083.390. Proceedings to Determine Rights of the Parties – Motion for Hearing – Hearing Within 15 Days – Written Ten-Day Notice of Hearing**

If the claimant files a counteraffidavit, together with proof of service, then either the owner or the claimant may file an action in the appropriate Superior Court for a declaration of the respective rights of the parties. After the filing of such action, either the owner or the claimant shall be entitled to a hearing by the court for the purpose of determining his rights under the affidavit and demand for release and the counteraffidavit. Such hearing must be granted by the court within 15 days from the date of making such motion unless continued by the court for good cause. The party making the motion for hearing must give not less than 10 day's notice in writing of such hearing to the other party.

**§ 3083.400. Burden of Proof – Affidavit and Counteraffidavit Deemed the Pleadings**

At such hearing, the owner shall have the burden of proof. The affidavit and counteraffidavit shall be filed with the court by the owner and they shall constitute the pleadings subject to the power of the court to permit an amendment in the interest of justice or to determine any portion of the affidavits that will not be admissible in evidence. The affidavit of the owner shall be deemed controverted by the counteraffidavit and both shall be received in evidence subject to appropriate evidentiary objections.

**§ 3083.410. No Findings Required – Nature of Court Order – Service by Owner**

No findings shall be required in a summary proceeding under this article. In the hearing before the court if no evidence other than the affidavit and counteraffidavit is offered and if the court is satisfied that sufficient facts are shown thereby, it may make its determination thereon. Otherwise, it shall order the hearing continued for the production of other evidence, oral or documentary or the filing of other affidavits and counteraffidavits. At the conclusion of the hearing, the court shall make and enter its order determining whether the demand for release of the mechanic's lien shall be allowed or not, which order shall be determinative as to the right of the claimant to proceed with a foreclosure of its mechanic's lien. If the time to file a foreclosure action will expire before the hearing can be held, the claimant's time to file an action to foreclose its mechanic's lien shall be extended until 30 days after the order of the court becomes final. The order of the court is subject to review by the Appellate Court under Title 1, Chapters 1 through 4 of Part 3 "of Special Proceedings of a Civil Nature" in the *Code of Civil Procedure*. The owner shall serve a copy of the order of the court upon the claimant.

**§ 3083.420. Right to Jury Trial Preserved – Waiver Thereof**

Nothing contained in this article shall be construed to deprive any party of the right to a trial by jury in any case where such right is given by the California Constitution, but may be waived in like manner as in the trial of an action.

**§ 3083.430. Determination Not Res Judicata as to the Rights of Parties**

No determination in the summary proceedings under this article shall be res judicata with respect to any right of action by the claimant against either the principal or surety on a labor and material bond pursuant to this title or with respect to any right of action against any party personally liable to the claimant or with respect to the claimant's right to enforce a stop notice either against the owner or a construction lender.

**§ 3083.440. Attorney's Fees**

The prevailing party in any proceeding taken under this article shall be awarded its reasonable attorney's fees and costs incurred in any such proceeding.

#H-821

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

**STAFF DRAFT**

TENTATIVE RECOMMENDATION

Mechanics Lien Law

[Date To Be Determined]

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN \_\_\_\_\_.

The Commission will often substantially revise a proposal in response to comment it receives. Thus this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission

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## SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation proposes a complete revision of the California mechanics lien law and associated construction remedies. The recommendation responds to a request from the Assembly Judiciary Committee that the Law Revision Commission provide the Legislature a comprehensive review of this area of law.

This recommendation does not propose radical changes to the operation of the existing construction law remedies. The recommendation simplifies, clarifies, organizes, and modernizes the existing statutes. The recommendation includes modest substantive improvements, but does so in a way that maintains the relative balance of interests among current stakeholders.

The Commission intends that this recommendation make the existing law more understandable and usable. That will establish a foundation on which the Legislature may build improvements in the future, if that appears appropriate.

This recommendation is made pursuant to authority of Resolution Chapter 1 of the Statutes of 2006.

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## MECHANICS LIEN LAW

### INTRODUCTION

1  
2 This report recommends comprehensive revision of the California mechanics  
3 lien law.

4 The recommendation derives from a 1999 request to the Law Revision  
5 Commission from the Chair and Vice Chair of the Assembly Judiciary Committee  
6 urging a Commission study of the mechanics lien law.<sup>1</sup> The letter noted that the  
7 Judiciary Committee has heard and continues to hear numerous bills seeking to  
8 amend, and amending, that law. As a result, the mechanics lien law has been  
9 revised dozens of times since lien rights were added to the state Constitution.

10 We do not wish to impede the evolution of this important area of our law in any  
11 way, but we do believe it would be helpful if the Commission would provide the  
12 Legislature with a comprehensive review of this area of the law, making  
13 suggestions for possible areas of reform and aiding the review of such proposals  
14 in future legislative sessions. As you know, this subject area is complex and there  
15 are many stakeholders with competing interests.

16 The letter noted the existing general authority of the Commission in this area,<sup>2</sup> and  
17 suggested that the Commission prioritize the matter.

18 The Commission agreed to the request and commenced work on the study. This  
19 recommendation represents the completion of that work; it is preceded by two  
20 interim recommendations<sup>3</sup> and a prospectus for reform.<sup>4</sup> Consistent with the  
21 Judiciary Committee's vision, the Commission intends that this recommendation  
22 make the existing law more understandable and usable, establishing a foundation  
23 on which the Legislature may make improvements in the future.

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1 See Letter from Assembly Members Sheila James Kuehl (Chair) and Rod Pacheco (Vice Chair), to Nat Sterling (Executive Secretary, California Law Revision Commission), June 28, 1999 (attached to Commission Staff Memorandum 99-85 (Nov. 16, 1999) (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)).

2 Historically the Commission's calendar has included general authority to study the topics of real property law and creditors remedies law. The current authority is expressed in 2006 Cal. Stats. res. ch. 1.

3 See *The Double Payment Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm'n Reports 281 (2001) (not enacted), and *Stay of Mechanic's Lien Enforcement Pending Arbitration*, 31 Cal. L. Revision Comm'n Reports 333 (2001) (enacted as 2003 Cal. Stat. ch. 113).

4 See *Mechanic's Lien Law Reform*, 31 Cal. L. Revision Comm'n Reports 343 (2001).



1 The mechanics lien law applies to both private work and public works contracts.  
2 However, the lien itself is unavailable for a public works contract — the principal  
3 public works contract remedies are the stop notice and the payment bond.

4 Related construction contract remedies that are not part of the mechanics lien  
5 law include the design professionals lien<sup>11</sup> and licensing remedies found in the  
6 Contractors' State License Law.<sup>12</sup>

#### 7 **Operation of Mechanics Lien Law**

8 Every state has a mechanics lien law. The laws all operate similarly. The law  
9 gives the provider of labor or materials an enforceable lien on property to the  
10 extent of the value of the labor or materials contributed. As a practical matter, a  
11 lien is rarely enforced; the property owner is motivated to pay a legitimate lien  
12 claimant rather than have the lien foreclosed and the property sold to satisfy the  
13 lien.

14 Although the basic function and operation of the mechanics lien law is the same  
15 around the country, the details of the statutes vary enormously. Variations include  
16 the type of property subject to lien rights (public, private, quasi-public), persons  
17 entitled to lien rights (contractors, subcontractors, sub-subcontractors, materials  
18 suppliers, skilled versus unskilled laborers, design professionals), type of  
19 ownership subject to lien rights (fee simple, leasehold), type of work subject to  
20 lien rights (construction, alteration, landscaping), performance prerequisite to lien  
21 rights (full performance, contractor in default), the extent of the lien (whether or  
22 not limited by the amount of the prime contract), procedural prerequisites to  
23 enforcement (preliminary notices, statutory deadlines for filing and foreclosure),  
24 defenses (contractual waivers), priorities among liens (including priorities among  
25 mechanics lien claimants and between a mechanics lien and a construction loan  
26 lien).

27 The drafters of the Uniform Construction Lien Act (1987) note the extraordinary  
28 variety of mechanics lien laws from state to state. "In fact, variation among the  
29 states may be greater in this area than in any other statutory area." They observe,  
30 however, that despite the diversity, state laws deal with common issues and tend to  
31 fall into a limited number of patterns on the major issues involved.

## 32 HISTORY OF CALIFORNIA STATUTE

### 33 **Constitution**

34 In California, the mechanics lien has a constitutional basis. Article XIV, Section  
35 3, of the California Constitution provides:

---

11 Civ. Code §§ 3081.1-3081.10.

12 Bus. & Prof. Code §§ 7000-7191.

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

6 This provision has stood in the Constitution essentially unchanged since it was  
7 added in 1879. It was amended in 1974 to substitute “persons furnishing  
8 materials” for “materialmen”. It was moved to its current location in 1976.

9 **Legislative History**

10 The statutory history of the California mechanics lien law predates the  
11 constitutional provision. California’s first Legislature enacted a rudimentary  
12 mechanics lien statute in 1850.<sup>13</sup> Section 1 of that act granted a lien to “master  
13 builders, mechanics, lumber merchants, and all other persons performing labor or  
14 furnishing materials” in constructing any building or wharf. Section 2 provided a  
15 stop notice procedure whereby a “sub-contractor, journeyman, or laborer” could  
16 garnish payments from the owner. Section 3 provided for recording and  
17 commencement of an action to enforce the lien.

18 The California statute has been revised and recodified many times since. During  
19 that process the law made its way from the general statutes into the Code of Civil  
20 Procedure, and thence to the Civil Code. All told, since its codification in the 1872  
21 Code of Civil Procedure, the mechanics lien statute has been affected by more  
22 than 150 enacted bills.

23 Today’s mechanics lien statute still contains language dating back to the 1872  
24 codification and before. The 1951 and 1969 recodifications continued much of  
25 the pre-existing language, and were not intended to be substantive reforms.<sup>14</sup> It  
26 has been amended more than 70 times in the 35 years since the 1969 revision.  
27 Neither the 1951 revision nor the 1969 revision was intended as a substantive  
28 reform, — those efforts continued much of the preexisting language.

29 This process has taken its toll on a body of law that one California Supreme  
30 Court justice labeled “confused and confusing” nearly 90 years ago.<sup>15</sup>

31 **SUMMARY OF CALIFORNIA STATUTE**

32 The California mechanics lien law and its operation are summarized below.<sup>16</sup>  
33 The summary includes a discussion of policy considerations, the mechanics lien,

---

13 See Compiled Laws ch. 155.

14 See 1951 Cal. Stat. ch. 1159, § 5 (legislative intent as “only a formal revision of the law ... [not] an alteration in the public policy ... nor in the meaning or substance thereof”); 1969 Cal. Stat. ch. 1362, § 10 (legislative intent “to revise and restate ... shall not be construed to constitute a change in ... preexisting law”).

15 *Roystone Co. v. Darling*, 171 Cal. 526, 546, 154 P. 15 (1915) (Henshaw, J. concurring).

1 procedures for enforcement of the lien claim, devices available to the owner and  
2 construction lender to protect against the lien, and the stop notice right.

3 **Policy Considerations**

4 A supplier of labor or materials to the construction of an improvement as a  
5 practical matter has no opportunity to contract for a security interest to ensure  
6 payment. The law creates a remedy for a contractor, supplier, or worker to secure  
7 payment of the claim. The remedy is the mechanics lien, along with associated  
8 stop notice and payment bond remedies.

9 The mechanics lien is unique among creditors remedies in California because of  
10 its constitutional basis. For this reason the law is generally liberally construed to  
11 ensure maximum protection for a lien claimant.

12 ***Prevention of Unjust Enrichment***

13 The mechanics lien law attempts to strike a balance between the interest of the  
14 claimant in getting paid and the interest of the owner in paying only once for the  
15 same work. An unpaid contractor can assert a lien and, after a trial, force the  
16 improved property to be sold at public auction, and apply the proceeds to pay the  
17 debt. The lien law thus prevents the owner from being unjustly enriched by the  
18 contractor's services without making payment.

19 ***Owner May Have To Pay Twice***

20 The lien law is not always fair to an owner or developer. Because the lien right  
21 extends to a lower tier lien claimant such as a subcontractor or supplier, the owner  
22 may be in jeopardy of paying more than it bargained for to complete the project.  
23 For example, the owner may have made a progress payment to the general  
24 contractor for electrical work, but the general contractor may have used the money  
25 for another purpose. Even though the owner has already paid for the electrical  
26 work, the electrical subcontractor can assert a lien on the owner's property to  
27 recover the amount not paid by the general contractor.

28 ***Procedural Safeguards***

29 Much of the development of the mechanics lien law is an attempt to ensure  
30 protection for a lien claimant while at the same time protecting an owner from  
31 undue exposure. The mechanics lien law contains a series of time deadlines and  
32 procedural requirements. A claimant must comply with these requirements in  
33 order to enforce the claim.

---

16 This summary is drawn from Acret, *A Brief Summary of Mechanics' Liens and Stop Notices*, in *Handling A Mechanics' Lien* (Cal. Cont. Ed. Bar 1993).

1 ***Prompt Payment Statutes***

2 In recent years the Legislature has enacted prompt payment statutes. The statutes  
3 impose a statutory penalty on an owner or the owner’s contractor that is dilatory in  
4 paying an amount due. The incentive to prompt payment may mitigate but does  
5 not eliminate the need for the lien remedy.

6 **Mechanics Lien**

7 A mechanics lien gives a claimant a security interest in real property, similar to  
8 that provided by a deed of trust or mortgage. It secures for a claimant a right to be  
9 paid from funds generated by sale of the owner’s property. A lien claimant that  
10 complies with all steps necessary may foreclose the lien.

11 The mechanics lien is only as good as the owner’s equity in the property. If the  
12 owner’s equity is absorbed by other liens, or by deeds of trust that have priority  
13 over the mechanics lien claim, the mechanics lien may be worthless.

14 ***Property Subject to Lien***

15 The mechanics lien attaches to the work of improvement for which the claimant  
16 provided work or material. A claimant cannot assert a lien on other property of the  
17 owner not related to the work of improvement.

18 A mechanics lien applies only to a private work of improvement. There is no  
19 lien right on property owned by the government. A claimant on a public work of  
20 improvement is not without a remedy. On a state or local public work, an unpaid  
21 subcontractor or supplier has stop notice and payment bond rights. On a federal  
22 public work, an unpaid subcontractor or supplier has a right against the Miller Act  
23 payment bond.

24 ***Persons Entitled To Claim Lien***

25 The class of persons entitled to claim a lien includes a contractor, subcontractor,  
26 supplier, equipment lessor, architect, engineer, land surveyor, builder, trucker,  
27 laborer, and any other person that furnishes labor or material used in a work of  
28 improvement. To be entitled to claim a lien the claimant must contribute work or  
29 material to a “work of improvement” (a project intended permanently to improve  
30 specific property) at the request of the owner, the owner’s agent, or the owner’s  
31 statutory agent. The owner’s contractor on the project is considered to be the  
32 owner’s agent.

33 While the list of lien claimants is expansive, not every person that furnishes  
34 labor or material that ultimately is used in a work of improvement is entitled to  
35 claim a lien. A supplier to a general contractor or subcontractor has a lien right,  
36 but a supplier to another supplier does not. For example, a sawmill that furnishes  
37 lumber to a lumber yard is not entitled to a lien. In addition, the labor or material  
38 provided must contribute to a permanent improvement of the property. Thus, a  
39 landscape contractor that supplies and installs plants has a lien right, but one that  
40 simply maintains existing landscaping or buildings does not.

1 An unlicensed contractor is barred from enforcing a mechanics lien to recover  
2 the amount due for the work.

3 A right to assert a mechanics lien does not generally exist until visible work  
4 begins on a work of improvement. However, California has a separate lien statute  
5 that allows an architect, engineer, or surveyor to recover for services provided  
6 before a work of improvement has commenced.

7 ***Amount of Lien***

8 The lien is for the lesser of the reasonable value of the labor, services,  
9 equipment, or material furnished or for the price agreed upon, including change  
10 orders and extras. Attorneys fees, however, cannot be included in the amount of  
11 the lien.

12 ***Effect of Lien***

13 A mechanics lien attaches to the work of improvement, and to the land beneath  
14 the improvement “together with a convenient space about the same or so much as  
15 may be required for the convenient use and occupation thereof.”

16 In case of improvement of leased property, the lien attaches not only to the  
17 leasehold interest but also to the owner’s fee interest, unless the owner posts and  
18 records a notice of nonresponsibility. The notice of nonresponsibility is a written  
19 notice signed and verified by the owner or owner’s agent, notifying a potential lien  
20 claimant that the owner is not responsible for the work to be performed. In that  
21 event, the lien attaches only to the leasehold interest of the tenant that ordered the  
22 improvement. However, if the lease itself requires the tenant to install the  
23 improvement, the owner’s interest is subject to the lien.

24 ***Lien Priority***

25 A mechanics lien has priority over a mortgage, deed of trust, or other  
26 encumbrance that attaches after commencement of the work of improvement. The  
27 priority of the mechanics lien relates back to the time the work of improvement  
28 first commenced at the site of the improvement. All mechanics liens relate back to  
29 the start of the work of improvement as a whole, regardless of when the particular  
30 lien claimant began its work and regardless of when the lien is recorded. The  
31 commencement of work must be “visible to the eye.”

32 As between each other, mechanics liens have the same priority. If the total  
33 amount of valid liens enforced by the court’s judgment exceeds the proceeds of  
34 the sale, the lien claims are satisfied pro rata.

35 There is an exception to the rule that all mechanics liens share the same priority.  
36 If a blanket lien is recorded against several lots in a subdivision, those lien  
37 claimants that allocate the amounts of their liens between the lots take priority  
38 over those lien claimants that fail to do so.

1 **Procedures for Enforcing Lien Claim**

2 Three steps are required to perfect a claim of lien:

- 3 (1) Timely serving a preliminary 20-day notice (if required).
- 4 (2) Timely recording a claim of lien.
- 5 (3) Timely initiating a foreclosure suit.

6 ***Preliminary Notice***

7 The preliminary 20-day notice is required of all claimants except a person that  
8 directly contracts with the owner of the property or a person that performs actual  
9 labor for wages. The notice protects an owner or lender against a “secret lien.” An  
10 owner or lender is given the identity of a potential lien claimant so that it may take  
11 the necessary measures to insure that a potential lien claimant is paid.

12 The 20-day preliminary notice must contain:

- 13 • A description of the work or material furnished and an estimate of the  
14 total cost.
- 15 • The claimant’s name and address.
- 16 • The name of the person that ordered the work or materials (i.e., the  
17 claimant’s customer).
- 18 • A description of the job site.
- 19 • A warning in statutory language that the property might be subject to a  
20 mechanics lien.
- 21 • The identity of any fringe benefit trust to which the claimant is obligated  
22 to make a contribution.

23 The preliminary notice protects the lien right beginning 20 days before the  
24 notice is given. Failure to file the notice does not bar the lien claim entirely — it  
25 only bars the claim for work performed more than 20 days before the notice was  
26 given.

27 The 20-day notice must be served on the owner, the construction lender (if any),  
28 and the owner’s contractor. Service is made by registered mail, certified mail, or  
29 personal delivery. If service is by mail, proof of service must be made by an  
30 affidavit accompanied by a return receipt. A copy may be filed for record with the  
31 county recorder.

32 The name and address of the owner and construction lender are available from  
33 several sources. The owner’s contractor is required to make the name and address  
34 of the owner available to any person seeking to serve a preliminary notice. A  
35 written contract must include space for the owner to enter the name and address of  
36 the construction lender. The building department must keep a record of the name  
37 and address of the construction lender when a building permit is issued. A trust  
38 deed recorded with the county recorder’s office is required to bear the designation  
39 “Construction Trust Deed”.

1 The Contractors License Law makes it mandatory that a licensed contractor give  
2 the 20-day preliminary notice.

3 *Notice and Claim of Lien*

4 The lien is recorded in the county recorder's office in the county in which the  
5 property is located. The lien must contain the following information and be signed  
6 and verified:

- 7 • A description of the work or material supplied.
- 8 • A description of the property sufficient for identification.
- 9 • The name of the person that hired the claimant.
- 10 • The name of the owner or reputed owner of the property.
- 11 • A statement of the balance due (willful misstatement of the amount  
12 provided or due invalidates the lien).

13 The earliest the lien can be recorded is after the claimant has completed its  
14 work. Generally, the latest date to record the lien is 90 days after completion of the  
15 work of improvement. If the owner or owner's agent records a notice of  
16 completion, the owner's contractor has 60 days from the recording of the notice to  
17 record its lien. All other lien claimants have 30 days from the recording of a notice  
18 of completion.

19 *Completion*

20 A notice of completion that is prematurely recorded is ineffective. Completion  
21 generally means that all work called for in the contract is actually finished. Even  
22 small items such as a second coat of paint, pulling electrical wires, installation of a  
23 sewer lateral, and installation of soap dispensers have been held to prevent  
24 "completion." Warranty work, corrective work, and punchlist work do not prevent  
25 completion.

26 Occupancy and use by the owner plus cessation of labor is deemed to be  
27 completion. If no work has occurred for a continuous period of 60 days, the  
28 project is deemed to be completed as a matter of law. Acceptance of the project by  
29 the owner also constitutes completion.

30 Completion means completion of the entire work of improvement, not just one  
31 trade contractor's portion. However, if work is done under separate original  
32 contracts with the owner, the owner may record a notice of completion for each  
33 individual trade. The occasion for recording a separate notice of completion arises,  
34 for example, when a subdivider or developer "subs everything out" to  
35 subcontractors, that then are considered original contractors since each contracts  
36 directly with the owner of the project.

37 If the work of improvement consists of two or more separate residential units,  
38 each unit is a separate work of improvement, and the time for filing lien claims  
39 against each unit runs from the completion of the unit. "Separate residential unit"  
40 means one self contained residential structure. Each unit in a townhouse-type

1 condominium complex is a separate residential structure. On the other hand, an  
2 apartment building type condominium project is considered a residential structure  
3 in itself, and the separate units are not separate residential structures. The owner  
4 may record a notice of completion on the completion of an individual building  
5 comprised of several condominium or apartment units, even if remaining buildings  
6 in the project are not complete.

7 ***Foreclosure Action***

8 The final step in perfecting a mechanics lien is the timely filing of a lawsuit to  
9 foreclose the lien. The lawsuit must be filed within 90 days after the date the lien  
10 is recorded.

11 A claimant that fails to file a lawsuit within 90 days may record a second lien  
12 and start the 90-day foreclosure period running again, if the time to record the lien  
13 has not yet expired. However, this strategy may be forestalled by a sophisticated  
14 owner, who may file a motion to release a mechanics lien if the claimant failed to  
15 file foreclosure action within 90 days. Once the court has ordered a release, the  
16 lien cannot be revived by rerecording.

17 It is possible for an owner to agree to an extension of time to bring the action to  
18 foreclose the lien. The owner and the claimant must execute a “notice of credit”  
19 and record it in the county recorder’s office.

20 ***Diligent Prosecution***

21 The lawsuit must be filed in the county in which the property is situated. Once  
22 the foreclosure suit has been filed, the lien claimant must prosecute the suit with  
23 due diligence. Failure to bring a lien action to trial within two years gives the court  
24 discretion to dismiss the action.

25 ***Arbitration***

26 Many construction contracts contain an arbitration clause, requiring the parties  
27 to submit a dispute, including a payment dispute, to binding arbitration. Filing a  
28 demand for arbitration is not sufficient to protect a claimant’s lien right. Suit must  
29 be timely filed in the proper court. On the other hand, a claimant that files a lien  
30 foreclosure lawsuit could unintentionally waive its arbitration right. A claimant  
31 desiring to protect both its right to arbitration and its lien right must timely file the  
32 foreclosure suit in the proper court, along with an allegation of intent to preserve  
33 arbitration rights or an application for an order staying the litigation pending the  
34 outcome of the arbitration proceeding. A motion to stay litigation pending  
35 arbitration must be noticed within 30 days after service of summons in the  
36 foreclosure proceeding.

37 ***Lis Pendens***

38 After filing suit, in order to protect lien priority against a bona fide purchaser of  
39 the property, the lien claimant must record a lis pendens.

1 ***Motion to Release Lien***

2 If a lien claimant has failed to file foreclosure suit within 90 days after recording  
3 a lien, the owner may petition the court for an order to release the lien.

4 **Protection of Owner and Construction Lender**

5 ***Lien Release***

6 The law gives the owner and lender several ways to protect against a mechanics  
7 lien or stop notice. First, the owner and lender may insist on receiving a statutory  
8 release form before making payment. In order to be effective, the release must be  
9 in the form prescribed by the statute. The statute specifies four forms:

- 10 • Conditional Waiver and Release on Progress Payment  
11 • Unconditional Waiver and Release on Progress Payment  
12 • Conditional Waiver and Release on Final Payment  
13 • Unconditional Waiver and Release on Final Payment

14 The “condition” referred to is actual receipt of the amount of money specified in  
15 the release.

16 An owner usually withholds payment of a 10% retention until 35 days after  
17 recording the notice of completion. Because a lien of a subcontractor or supplier  
18 must be recorded within 30 days after notice of completion, this requirement  
19 allows the owner to check with the title company to make sure no lien claim has  
20 been recorded before issuing final retention to the owner’s contractor.

21 ***Notice of Completion***

22 Recordation of a valid notice of completion shortens the time to record a lien  
23 from 90 days after the completion of the project to 30 days after recording notice  
24 of completion (or, in the case of a contractor dealing directly with the owner, 60  
25 days after notice of completion).

26 ***Private Work Payment Bond***

27 An owner or developer can limit exposure to a lien claim by recording the  
28 original contract and a private work payment bond before the work commences.  
29 The payment bond obligates the surety to make payment for labor and material  
30 supplied in the construction of the work of improvement, and a lien claim may not  
31 be recorded for labor or material not included in the recorded contract. The  
32 payment bond inures to the benefit of all potential mechanics lien claimants.

33 A private work payment bond is rarely used, primarily because most contractors  
34 lack bonding capacity. A payment bond offers extra protection to a claimant by  
35 providing a source of recovery in addition to a lien claim or stop notice. It also  
36 protects the owner, who can insist that the surety pay off a lien claim and thus  
37 protect the owner’s title.

1 The surety is not obligated to pay a bond claimant unless the claimant either  
2 records a lien claim or gives the surety written notice of its claim on the bond  
3 within the time for recording a lien. Recording the bond may shorten the statute of  
4 limitations from four years to six months.

5 ***Lien Release Bond***

6 An owner or contractor may remove a lien claim from the title by recording a  
7 lien release bond. The bond must be executed by a corporate surety in 1-1/2 times  
8 the amount of the claim of lien. The bond obligates the surety to pay any sum the  
9 lien claimant may recover on the claim, together with costs of suit. On recording  
10 the release bond, the owner's property is released from the lien and from any  
11 action brought to foreclose the lien. The bond becomes substitute security — the  
12 lien claimant is protected by the financial solvency of the surety, and the owner is  
13 free to sell or finance its property pending the outcome of the lien foreclosure  
14 action. The lien claimant has six months from notice of the bond to file its action  
15 against the surety.

16 ***Attacking Lien by Motion***

17 An owner may attack an invalid lien by filing a motion to remove the lien.

18 **Stop Notice Right**

19 A claimant that has a mechanics lien right also has a stop notice right. A stop  
20 notice on a private work is a notice to the owner or construction lender to withhold  
21 construction funds to satisfy the claim. Rather than attaching to real property, the  
22 stop notice attaches to the construction loan fund, or to money in the hands of the  
23 owner to be paid to the owner's contractor. The stop notice has the effect of  
24 intercepting funds. The ultimate result of the enforcement of a stop notice is entry  
25 of a judgment against the fund holder.

26 ***Content and Procedural Requirements***

27 A stop notice is a written, verified statement that contains:

- 28 • A notice that the claimant has performed work.
- 29 • A description of the work performed.
- 30 • The name of the person that ordered the work (the claimant's customer).
- 31 • The value of the work already furnished, the value of the entire work  
32 agreed to be done, and the balance due.
- 33 • The name and address of the claimant.

34 If the stop notice is forwarded to a construction lender, it may also include (1) a  
35 request for notice in the event that the construction lender elects not to withhold  
36 funds on the ground that a payment bond has been previously recorded and (2) a  
37 self-addressed envelope for the lender to use in furnishing the claimant with a  
38 copy of the recorded payment bond.

1 As with a mechanics lien, serving a preliminary 20-day notice is a prerequisite  
2 to asserting a stop notice.

3 ***Time Limit***

4 A stop notice must be given before the expiration of the time within which to  
5 record a mechanics lien.

6 ***Stop Notice Bond***

7 The stop notice to the owner does not have to be bonded. However, in order to  
8 compel a construction lender to withhold funds, the stop notice must be  
9 accompanied by a stop notice bond.

10 ***Service and Enforcement***

11 A stop notice must be served personally or by registered or certified mail. A  
12 lawsuit to enforce the stop notice must be filed in the proper court within 90 days  
13 after the expiration of the period for recording a mechanics lien. Typically, the  
14 action to enforce the stop notice is part of the same complaint as the action to  
15 foreclose the lien.

16 ***Distribution of Funds***

17 If more than one stop notice attaches to a loan fund and the amount of the fund  
18 is insufficient to satisfy all notices, the funds are disbursed pro rata. Distribution is  
19 made without regard to the relative timing of the stop notices. There is no priority  
20 among valid stop notice claims.

21 ***Release of Stop Notice***

22 A stop notice, like a mechanics lien, can be released by using the statutory form  
23 of release or by posting a stop notice release bond.

24 ***Amount in Loan Account***

25 The stop notice applies to amounts in the construction loan account at the time  
26 the stop notice is served.

27 **REFORM OF CALIFORNIA LAW**

28 **CONTEXT OF MECHANICS LIEN LAW**

29 The mechanics lien law implements the policy to protect an artisan against  
30 unjust enrichment of a property owner that fails to pay. The law also fosters other  
31 public policies. It promotes development of property by protecting the  
32 construction industry. It recognizes the reality of an industry characterized by  
33 independent contractors that contribute to a work of improvement without a direct  
34 contractual relationship with the owner of the improvement.

1 The mechanics lien and stop notice rights are not the only remedies available to  
2 the construction industry. Other remedies include liability under a theory of  
3 contract, prompt payment statute, quasi-contract, common law tort, attachment,  
4 constructive trust, and imputed liability.<sup>17</sup>

5 But the mechanics lien and stop notice are undoubtedly the most effectual of the  
6 remedies. They are quick, and the claimant need take no further action because as  
7 a practical matter the owner will settle rather than have the property encumbered  
8 by a lien or have construction come to a halt due to interruption of the flow of  
9 funds.

10 The importance of the construction industry, the informality of credit extension  
11 in the industry, and the frequency of conflict and litigation, among other factors,  
12 all find expression in the mechanics lien law. For these reasons, despite  
13 availability of other remedies, the legislative focus on the mechanics lien and stop  
14 notice remedies continues unabated.

### 15 **General Approach**

16 The Law Revision Commission has undertaken this review and revision of the  
17 mechanics lien law and related provisions in order to modernize, simplify, and  
18 clarify the law, making it more user friendly, efficient, and effective for all  
19 stakeholders.<sup>18</sup>

20 Stakeholders predictably have different views on the soundness of the existing  
21 statute and the scope and desirability of statutory reform. Some have urged the  
22 Commission to “go back to square one” and conduct a thorough review and  
23 revision of the mechanics lien law and related provisions, on the ground that they  
24 are confusing, complicated, and at odds with modern conditions. Others have  
25 argued that, while some improvements could be made, the statute is basically  
26 sound and represents accumulated improvements from many years’ work.

27 The history of the mechanics lien law is one of continuous revision. Even  
28 though the statute is recompiled periodically and given a fresh start, it is invariably  
29 subject to ongoing manipulation. The basic decision is whether to attempt a  
30 moderate revision that preserves the existing structure of the law while improving  
31 it, or a radical revision that simplifies and streamlines the law.

### 32 **Moderate Revision of Existing Statute**

33 The moderate approach starts with the existing statute and seeks to improve the  
34 law by simplifying and streamlining within the existing statutory framework. This  
35 approach offers a number of advantages. It makes revisions within a known  
36 structure, enabling a stakeholder to understand and evaluate the effect of proposed  
37 changes in the law. It preserves to a maximum extent the knowledge, experience,

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17 See generally California Mechanics’ Liens and Related Statutory Remedies §§ 1.19-1.29 (Cal. Cont. Ed. Bar, 3d ed. 2003).

18 See also *Mechanic’s Lien Law Reform*, 31 Cal. L. Revision Comm’n Reports 343 (2001).

1 and body of interpretation accumulated over years of operation under the existing  
2 scheme. It reflects the Commission’s experience that often reform of the law in a  
3 highly contentious area must proceed on an evolutionary rather than revolutionary  
4 basis.

5 **Radical Revision of Existing Statute**

6 A more radical simplification of the mechanics lien law is conceivable.

7 The California statutes have evolved for more than 150 years and are lengthy,  
8 ambiguous, technical, and hard to understand. One Commission consultant has  
9 advocated radical simplification, noting that the need for reform is self-evident,  
10 and making the following indictment of the existing statute:<sup>19</sup>

- 11 • The right of a supplier of materials to enforce a mechanics lien claim  
12 depends on a meaningless distinction — whether the materials were ordered  
13 by a contractor or another supplier.
- 14 • A design professionals lien is provided for under a separate and confusing  
15 set of rules.
- 16 • The time periods for recording and enforcing claims are unduly complex  
17 and confusing and the time period dealing with enforcement of a stop notice  
18 is different from that governing the enforcement of a mechanics lien.
- 19 • A stop notice claim includes attorneys fees but a mechanics lien claim does  
20 not.
- 21 • It takes a court action to clear a mechanics lien claim from title if an  
22 enforcement action has not timely been filed.
- 23 • The preliminary notice requirement is lengthy, complex, and unduly  
24 technical.
- 25 • The definition of “completion” for a work subject to acceptance by a public  
26 agency is different from the definition of “completion” for all other works.
- 27 • A developer under certain circumstances has the right to record an early  
28 notice of completion and thus take potential claimants by surprise.
- 29 • An extraordinarily complex and ambiguous statute imposes on certain  
30 project owners the obligation to furnish a payment bond.
- 31 • Venue requirements are unduly technical.
- 32 • The provisions allowing arbitration of mechanics lien claims are complex  
33 and can lead to injustice.
- 34 • A superfluous and unused provision allows a preliminary 20-day notice to  
35 be recorded.
- 36 • A complex set of time limits and procedures governs recording of a notice  
37 of nonresponsibility.

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19 See comments of James Acret in Commission Staff Memorandum 2004-4 (Jan. 5, 2004) (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)). Mr. Acret states, “The present statute is an unruly beast that cannot easily be beaten into submission. This writer believes that the mechanics lien statute should be rewritten from scratch rather than redlined. That approach got us to where we are now!”

- 1 • The statutory release forms imposed by the legislature are complex and  
2 misleading.
- 3 • An unnecessary separate preliminary notice requirement applies to a  
4 payment bond claim.
- 5 • More than a dozen separate statutes establish prompt payment requirements  
6 for different classes of debtors and creditors and their inconsistent and  
7 conflicting provisions should be simplified and provided for in a single  
8 paragraph.

9 Various stakeholders have suggested that some of the existing complexity in the  
10 law is the result of legislative policy decisions to protect differing interests, and  
11 that simplification could cause the loss of those protections. On a more technical  
12 level, radical simplification would cause loss of existing interpretive language,  
13 resulting in litigation to resolve ambiguities that are well settled in existing law.

#### 14 **Uniform Construction Lien Act (1987)**

15 The Commission has also considered replacement of the California statute with  
16 a model act. The logical choice for that approach would be the Uniform  
17 Construction Lien Act (1987).

18 The Uniform Act tries to follow main line mechanics lien principles derived  
19 from existing state laws. It has been adopted in one state (Nebraska). The  
20 experience in Nebraska appears to be satisfactory. There have been very few  
21 amendments to it in the 20-plus years since its enactment.

22 The argument for uniformity in this area of the law is, “In an era of national  
23 lenders and suppliers and of many multistate builders, the variation among the  
24 states as to mechanics’ lien matters is a substantial impediment to an efficient  
25 mortgage and real estate market.”<sup>20</sup> Because adoption of the Uniform Act is not  
26 widespread, it must be viewed as a model rather than as a realistic opportunity to  
27 achieve uniformity.

#### 28 **Commission Recommendation**

29 The Commission sees no real benefit from adoption of a model act such as the  
30 Uniform Construction Lien Act (1987). While the Uniform Act is a clean draft and  
31 represents main line mechanics lien law, it introduces terminology and concepts  
32 foreign to California, and omits provisions that in California have been thought to  
33 be important. There is no real impetus to uniformity among the states by adoption  
34 of the act. A superior approach is to work with the existing California statute.

35 A practical consideration is the politics of this area of law. Given the many  
36 competing interests that aggressively seek to protect their rights in the legislative  
37 process, proposed legislation that does not continue existing stakeholder  
38 protections is unlikely to fare well. Radical simplification cannot be achieved  
39 unless stakeholders believe that on balance their interests are adequately protected.

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<sup>20</sup> *Prefatory Note*, Uniform Construction Lien Act (1987).

1 The Commission’s experience to date is that stakeholders in the construction  
2 industry are unwilling to engage in a balancing process if that may result in  
3 erosion of any existing protections.<sup>21</sup>

4 The Commission recommends the more moderate approach to simplification of  
5 the existing statute. That does not preclude substantive change where there is a  
6 consensus that the improvement is desirable, or where there is a balance that the  
7 stakeholders believe does not disturb the current equilibrium of rights and  
8 remedies. But the primary objective of the Commission’s recommendation is to  
9 make the existing mechanics lien law simpler, clearer, and more usable.

10 By modernizing the drafting, eliminating archaic and unnecessary language,  
11 reorganizing and simplifying the structure of the statute, and using shorter, clearer  
12 sections, the statutes can be greatly improved even if no major substantive  
13 changes are made. In addition, a simpler and better-organized statute facilitates  
14 implementation of policy revisions and technical adjustments in future years as  
15 the need arises.<sup>22</sup>

16 This recommendation does propose a number of significant substantive and  
17 procedural improvements, in addition to statutory simplification. The Commission  
18 believes that the proposed improvements represent a fair balance that does not  
19 disadvantage any stakeholder and that benefits all stakeholders.

## 20 DRAFTING CONSIDERATIONS

### 21 **Drafting Approach**

22 The proposed law includes a complete overhaul and technical cleanup of  
23 existing law, in addition to the substantive and procedural improvements described  
24 in this recommendation. The proposed law breaks long sections into shorter ones,  
25 inserts appropriate paragraphing, relocates out of place provisions, modernizes  
26 drafting style, substitutes gender-neutral language, seeks to achieve consistency in  
27 usage throughout the statute, and in general attempts to make the statute better and  
28 more usable from a technical perspective.

29 Because the technical revisions are so minor and so numerous, they are not  
30 generally noted in this part of the recommendation. However, each section of the  
31 proposed law includes a Comment that identifies its source in existing law, and  
32 details the more significant technical revisions. In addition, this recommendation  
33 includes a disposition table that points to the specific location in the proposed law  
34 of each provision of existing law.

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21 The Commission’s rather modest proposal to protect a homeowner from double liability in a small home improvement contract (under \$15,000) where the homeowner has paid the general contractor in good faith proved to be unenactable. See *The Double Payment Problem in Home Improvement Contracts*, 31 Cal. L. Revision Comm’n Reports 281 (2001) (not enacted).

22 *Mechanic’s Lien Law Reform*, 31 Cal. L. Revision Comm’n Reports 343, 352-54 (2001) (footnotes omitted).

1 **Location, Numbering, and Organization of Statute**

2 The mechanics lien law has been housed in various places in the California  
3 codes during its long career. Most recently it resided in the Code of Civil  
4 Procedure, before being moved to its current Civil Code location in 1969.<sup>23</sup>

5 The proposed law relocates the statute to the end of the Civil Code, at Section  
6 7000 *et seq.*<sup>24</sup> The relocation accomplishes several purposes. It will avoid the  
7 confusing situation of using old section numbers for new and different provisions  
8 under the reorganized statute. It will position the statute in an easy-to-find spot at  
9 the end of the code. And the new location will allow room for future expansion of  
10 the law without having to resort to hybrid decimal numbering. If the history of the  
11 mechanics lien law teaches us anything, it is that the statute will undergo  
12 continuing revision.

13 One concern is that relocating the statute will necessitate conforming revisions  
14 to nearly 100 other code sections that cross refer to the mechanics lien law.  
15 However, the vast majority of the cross references are to the public work portions  
16 of the mechanics lien law.<sup>25</sup> These will require revision in any event, to reflect  
17 relocation of the public work provisions of the mechanics lien law to the Public  
18 Contract Code.<sup>26</sup>

19 **Public Works Contract**

20 Public works contract remedies are physically located in the mechanics lien law.  
21 This placement is confusing because the lien remedy is not available for a public  
22 works contract dispute.<sup>27</sup>

23 The principal remedies for a public works contract dispute are the stop payment  
24 notice and the payment bond. The mechanics lien law deals with stop payment  
25 notices and payment bonds for both private work and public work. But there is no  
26 commonality among the private work and public work statutes; each statute is *sui*  
27 *generis*.<sup>28</sup>

28 At the time the public work remedies were originally incorporated into the  
29 mechanics lien law, the Public Contract Code did not exist. That code was created  
30 in 1981.<sup>29</sup> It seeks to consolidate statutory material relating to public contracts

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23 Civ. Code §§ 3082-3267, enacted by 1969 Cal. Stats. ch. 1362.

24 Civ. Code §§ 7000-7848.

25 See “Conforming Revisions” below.

26 See “Public Works Contract” below.

27 Civ. Code § 3109.

28 Compare Civ. Code § 3097 (preliminary 20-day notice (private work) with Civ. Code § 3098 (preliminary 20-day notice (public work)); Civ. Code §§ 3156-3176.5 (stop notice for private work) with Civ. Code §§ 3179-3214 (stop notice for public work); Civ. Code §§ 3235-3242 (payment bond for private work) with Civ. Code §§ 3247-3252 (payment bond for public work).

29 1981 Cal. Stats. ch. 306.

1 because “placing all public contract law in one code will make that law clearer and  
2 easier to find.”<sup>30</sup>

3 The Public Contract Code contains substantial amounts of statutory material  
4 governing public works contracts, including payment bond requirements and  
5 prompt payment requirements. But it does not contain the core stop notice  
6 remedies or the payment bond procedural provisions, which remain embedded in  
7 the mechanics lien law.

8 The proposed law relocates all of the public works contract material from the  
9 mechanics lien law to the Public Contract Code. This has the incidental effect of  
10 greatly simplifying the mechanics lien law itself.

11 Many persons in the construction industry are involved with both private works  
12 and public works, and it is perhaps a convenience for them to have all the  
13 construction remedies located in one place, rather than split between two codes.  
14 However, those persons must look to the Public Contract Code in any event.  
15 Essentially all of the prompt payment requirements for a public works contract are  
16 in the Public Contract Code, as is the main payment bond requirement applicable  
17 to all state agency construction contracts exceeding \$5,000.<sup>31</sup> Moreover, all of the  
18 provisions governing public works contract terms, bidding processes, awards,  
19 conduct of performance, and the like, are consolidated in the Public Contract  
20 Code.

21 Removal of the public work remedies to the Public Contract Code necessitates  
22 duplication of a number of general provisions found in the mechanics lien law. For  
23 example, some definitions and general provisions on notice and proof of service,  
24 construction of bonds, completion, and the like, are applicable to a public works  
25 contract. The proposed law continues these provisions, tailoring them to the  
26 circumstances of a public works contract.

### 27 **Design Professionals Lien**

28 An architect, engineer, or land surveyor that provides design services to the  
29 owner and is not paid is entitled to a lien under the mechanics lien law.<sup>32</sup> The  
30 mechanics lien right of a design professional is supplemented by a separate  
31 statutory lien — the design professionals lien.<sup>33</sup>

32 The design professionals lien was enacted in 1990. It is intended to cover the  
33 situation where services are provided by a design professional but construction on  
34 the work of improvement is not commenced.<sup>34</sup>

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30 Pub. Cont. Code § 100.

31 Pub. Cont. Code § 7103.

32 Civ. Code § 3110.

33 Civ. Code §§ 3081.1-3081.10.

34 A mechanics lien is unavailable to a design professional unless construction is commenced. *D’Orsay Intern. Partners v. Superior Court*, 123 Cal. App. 4th 836, 20 Cal. Rptr. 3d 399 (2004).

1 The design professionals lien parallels the mechanics lien, incorporates by  
2 reference the mechanics lien enforcement procedure, and is terminated by  
3 commencement of construction. (In that circumstance the design professional may  
4 use the mechanics lien remedy). The proposed law states clearly that the design  
5 professionals lien ends when construction begins, and at that point the design  
6 professional’s remedy is a mechanics lien.

7 The proposed law relocates the design professionals lien among the other private  
8 work remedies. This will have the effect of applying standard terminology,  
9 processes, and forms to it. In addition, useful provisions of the mechanics lien law  
10 will become applicable to it. For example, the lien release procedures, whether by  
11 release bond or release order, would apply to the design professionals lien, along  
12 with remedies for a fraudulent claim of lien, and similar general provisions.

### 13 **Terminology**

14 Many of the definitional provisions in the mechanics lien statute are confusing  
15 and disorganized. For example, Civil Code Section 3097 — purporting to define  
16 “preliminary 20-day notice (private work)” — is the longest section in the  
17 mechanics lien statute. It is twice as long as the entire mechanics lien statute in the  
18 1872 Code of Civil Procedure. The statute, amended over 15 times since 1969, is  
19 almost a mini-practice guide in itself, containing substantive and procedural  
20 material that should be relocated with related substantive provisions. Many other  
21 supposed definitions are really substantive rules that should be integrated with  
22 related provisions.<sup>35</sup>

23 Some terms are defined and never used, such as “materialman”<sup>36</sup> and  
24 “subdivision”.<sup>37</sup> Others are defined, but largely unused in later provisions, such as  
25 “site”,<sup>38</sup> which is ignored in favor of references to land, real property, or jobsite.  
26 Some are defined and used only once, such as “notice of nonresponsibility”.<sup>39</sup>  
27 Archaic language, such as the references to flumes and aqueducts in the definition  
28 of “work of improvement”<sup>40</sup> should be eliminated or subsumed in general  
29 language.

30 The proposed law cleans up and systematizes the statutory definitions for  
31 consistent usage throughout the mechanics lien law and related remedies. Two  
32 terminological issues are noteworthy.

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35 See, e.g., Civ. Code §§ 3083 (bonded stop notice), 3084 (claim of lien), 3092 (notice of cessation), 3093 (notice of completion).

36 Civ. Code § 3090.

37 Civ. Code § 3105.

38 Civ. Code § 3101.

39 Civ. Code § 3094.

40 Civ. Code § 3106.

1 ***“Mechanics Lien”***

2 The proposed law retains the term “mechanics lien”, even though it is a 19th  
3 century relic. Despite the archaism, there is a common understanding of its  
4 meaning in the construction industry, and it is useful shorthand.

5 The existing statute, however, rarely uses the term. The law provides a number  
6 of liens besides the “mechanics” lien, including the site improvement lien and the  
7 design professionals lien. The proposed law follows the current practice of  
8 referring to a particular lien, where appropriate, without attaching a label to it.

9 ***“Original Contractor”***

10 Existing law distinguishes between an “original contractor” — one who  
11 contracts directly with the owner — and other contractors such as a subcontractor,  
12 who does not contract directly with the owner. The distinction is important, since  
13 questions of privity, notice, and the like, depend on it.

14 The term “original contractor” is confined to the mechanics lien law; it does not  
15 appear to be in common use outside of the statute.<sup>41</sup> Terms more commonly in use  
16 in the construction industry include “prime contractor” and “general contractor”.  
17 None of these terms is completely satisfactory, particularly in the owner-builder  
18 context.

19 The proposed law substitutes the term “direct contractor” for “original  
20 contractor”. It is more descriptive than the other commonly used terms, and  
21 invokes the operative fact that a direct contractor is in privity with the owner by  
22 virtue of a direct contractual relationship.

23 **GENERAL PROVISIONS**

24 In the interest of simplification and clarity, the proposed law standardizes  
25 treatment of various issues common to the lien, stop notice, and payment bond  
26 remedies for a work of improvement. These include issues relating to notice,  
27 completion, waiver and release, and miscellaneous other matters.

28 **NOTIFICATION**

29 The mechanics lien law is replete with notices. There is preliminary notice, stop  
30 notice, notice of overdue laborer compensation, notice of nonresponsibility, notice  
31 to principal and surety, stop work notice, notice of completion, notice of cessation,  
32 and so forth. Each notice is subject to unique provisions governing its contents,  
33 manner of service, proof of service, and the like. The proposed law seeks to  
34 standardize these provisions in order to eliminate complexity and provide  
35 consistency throughout the range of remedies.

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41 The term is also used in the Oil and Gas Lien Act and in the Public Contract Code, where it apparently has the same meaning.

1 **Terminology**

2 The existing law employs a variety of terms for communicating information. A  
3 party may be required to “notify” or “give notice to” another party, “serve notice”  
4 or make a “demand” on a party, or “advise” a party. The proposed law  
5 standardizes usage, speaking in terms of giving notice and making proof of notice.

6 **Contents of Notice**

7 The various notices under the mechanics lien law typically require similar  
8 information, such as the name and address of the owner, original contractor, and  
9 construction lender, and a description of the site sufficient for identification. Each  
10 of these notices varies slightly; often there is no apparent reason for the variation.

11 For example, many notices require a description of the site and the street  
12 address, but excuse an erroneous address if there is an accurate legal description.  
13 Some simply require a description without elaboration. Others require a legal  
14 description.

15 Although the purpose of each notice is unique, the basic identifying information  
16 is not. The proposed law prescribes standard contents applicable to all notices,  
17 including:

- 18 • The name and address of the owner or reputed owner.
- 19 • The name and address of the direct contractor.
- 20 • The name and address of the construction lender, if any.
- 21 • A description of the site sufficient for identification, including the street  
22 address of the site, if any. If a sufficient legal description of the site is  
23 given, the effectiveness of the notice is not affected by the fact that the  
24 street address is erroneous or is omitted.
- 25 • The name, address, and relationship to the parties of the person giving the  
26 notice.
- 27 • If the person giving the notice is a claimant:
  - 28 (1) A general statement of the kind of labor, services, equipment, or  
29 material provided.
  - 30 (2) The name of the person to or for which the labor, services,  
31 equipment, or material is provided.
  - 32 (3) A statement of the claimant’s demand, after deducting all just  
33 credits and offsets.

34 **Manner of Notice**

35 Many notices under the mechanics lien law must be given by personal delivery,  
36 by leaving the notice at a specified place or with a specified person, or by deposit  
37 in the mail. Some notices are posted on the jobsite. Recordation may also be  
38 required.

39 Mailed notice ordinarily must be given by registered or certified mail. A few  
40 notices may be given by first class mail evidenced by a certificate of mailing.

1 Some notice requirements do not specify a manner — the information is simply  
2 communicated by notifying a person, making a demand, advising a person,  
3 providing a copy, making information available, and so on. The statute does not  
4 indicate how this is to be done.

5 The proposed law establishes a general notice procedure, to be applied  
6 throughout the mechanics lien law. The general procedure would replace the  
7 individual variants applicable to one type of notice or another. Any notice could be  
8 given by personal delivery, mail, or by leaving the notice for the person and  
9 mailing a copy in the manner provided for service of summons in a civil action.<sup>42</sup>

10 *Mailed Notice*

11 Where notice is given by mail, it must be by first class registered or certified  
12 mail. The proposed law also authorizes Express Mail, or another method of  
13 delivery providing for overnight delivery. Overnight delivery by a private express  
14 service carrier is an innovation. **The Law Revision Commission particularly**  
15 **solicits public comment on this provision.**

16 *Posted Notice*

17 A few notices under the mechanics lien law must be posted.<sup>43</sup> The posting  
18 requirement is generally augmented by a supplemental means of notice, such as  
19 recording or giving a copy to subcontractors.

20 The proposed law standardizes the posting provisions, requiring display in a  
21 conspicuous location at the site and at the main office of the site, if one exists.

22 *Recorded Notice*

23 Recording is used to give constructive notice under the mechanics lien law. The  
24 proposed law generalizes and standardizes recording provisions.

25 *Electronic Notice*

26 All significant notices and acts under the mechanics lien law are required to be  
27 in writing, including the preliminary notice, notice of nonresponsibility, notice of  
28 completion, notice of cessation, claim of lien, and various waivers and releases.  
29 Electronic delivery is not contemplated.

30 The Law Revision Commission believes the law should move towards electronic  
31 notification. Electronic notification would engender a number of benefits,  
32 including (1) reduced flow of paperwork, (2) reduced the time for notice, (3)  
33 reduced the cost of delivery, and (4) enhanced opportunity for monitoring notices,  
34 deadlines, and the like, through electronic databases.

35 Much of the construction industry remains paper based, however, and the law  
36 should move slowly in this area. The proposed law makes clear that electronic

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42 Code Civ. Proc. § 415.20.

43 These are the notice of nonresponsibility, and its cancellation, as well as the stop work notice.

1 notification is permissible only where the party to be notified has agreed to it by  
2 an “express indication” of willingness.

3 **Proof of Notice**

4 Like the manner of notice, proof of notice is treated inconsistently under the  
5 mechanics lien statutes. The proposed law standardizes proof of mailing and proof  
6 of delivery provisions.

7 ***Proof of Mailing***

8 A number of provisions of the mechanics lien law contemplate notice by  
9 registered or certified mail. Typically these statutes provide for proof of notice by  
10 a return receipt or a photocopy of the record of delivery and receipt maintained by  
11 the post office, showing the date of delivery and to whom delivered. In the event  
12 of nondelivery, the returned envelope itself is proof of mailing.

13 Because the post office might not return either the proof of mailing or the  
14 envelope, the proposed law expands proof of proper mailing to include a  
15 certificate of mailing issued by the post office, as well as more modern techniques  
16 of proof such as electronic signature capture. Under the proposed law, proof of  
17 mailing may be made by:

- 18 (1) A return receipt, delivery confirmation, signature confirmation, or other  
19 proof of delivery or attempted delivery provided by the United States  
20 Postal Service.
- 21 (2) A proof of mailing certified by the United States Postal Service.
- 22 (3) A tracking record certified by an express service carrier showing  
23 delivery or attempted delivery.

24 It should be noted that the United States Postal Service’s certificate of mailing  
25 shows only that something was mailed, not that it was delivered. However, the  
26 United States mail is reasonably reliable, and proof of mailing may be sufficient.  
27 **The Law Revision Commission seeks comment of people in the industry**  
28 **about their experience with the reliability of mail delivery by the United**  
29 **States Postal Service.**

30 ***Proof of Personal Delivery***

31 The proposed law includes general provisions on proof of notice by personal  
32 delivery. The provisions are generalized from the proof of delivery models in the  
33 statutes governing preliminary notice and the stop work notice.<sup>44</sup>

34 Under the proposed law, proof of notice by personal delivery is made by a proof  
35 of notice affidavit, showing (1) the time, place, and manner of notice, (2) the name  
36 and address of the person to which notice was given (and the title or capacity in  
37 which the person was given notice).

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44 See Civ. Code §§ 3097, 3199, 3260.2.

1 **Address at Which Notice is Given**

2 Under existing law, the address at which notice is to be given varies with the  
3 type of notice. The proposed law standardizes the address at which notice is to be  
4 given.

5 Under the proposed law, all notice is given at the address of the recipient's  
6 residence or place of business, or at any of the following addresses:

- 7 • If the person to be notified is an owner, at the address shown on the  
8 contract, the building permit, or a construction trust deed.
- 9 • If the person to be notified is a construction lender, at the address shown  
10 on the construction loan agreement or construction trust deed.
- 11 • If the person to be notified is a direct contractor, at the address shown on  
12 the contract or building permit, or on the records of the Contractors' State  
13 License Board.
- 14 • If the person to be notified is a claimant, at the address shown on the  
15 contract, preliminary notice, claim of lien, stop payment notice, or claim  
16 against a payment bond, or on the records of the Contractors' State  
17 License Board.
- 18 • If the person to be notified is the principal or surety on a bond, at the  
19 address provided in the bond for service of notices, papers, and other  
20 documents.

21 **When Notice is Complete**

22 Under existing law a variety of rules determine when notice is complete. The  
23 proposed law standardizes these provisions by eliminating the variants and  
24 providing that notice is complete at the following times:

- 25 • If given by personal delivery, when delivered.
- 26 • If given by mail, when deposited in the mail or with an express service  
27 carrier in the manner provided in Section 1013 of the Code of Civil  
28 Procedure.
- 29 • If given by leaving the notice and mailing a copy in the manner provided  
30 in Section 415.20 of the Code of Civil Procedure for service of summons  
31 in a civil action, five days after leaving the notice.
- 32 • If given by posting, when posted.
- 33 • If given by recording, when filed for record in the office of the county  
34 recorder.

35 **COMPLETION**

36 Completion of a work of improvement is fundamental to the operation of the  
37 mechanics lien system. Completion of a work of improvement triggers time limits  
38 for recording a claim of lien, enforcing the liability on a payment bond, and paying

1 the direct contractor a retention withheld by the owner, among other  
2 consequences.<sup>45</sup>

3 Completion may be deemed to have occurred in a number of circumstances, in  
4 addition to actual completion, for purposes of triggering time limits. For example,  
5 completion occurs on cessation of labor for a continuous period of 60 days, on  
6 acceptance by the owner, on acceptance by a public entity, or on occupation or use  
7 by the owner accompanied by cessation of labor.<sup>46</sup>

#### 8 **Acceptance by Owner**

9 Under existing law, completion occurs on acceptance of a work of improvement  
10 by the owner. The proposed law eliminates this provision. It is not used in  
11 practice. The owner's recordation of a notice of completion is a preferable  
12 demarcation of completion, since it is a fixed date and is communicated to  
13 interested persons.

#### 14 **Acceptance by Public Entity**

15 Under existing law, if a work of improvement "is subject to acceptance by any  
16 public entity," completion is deemed to be the date of acceptance by the public  
17 entity.<sup>47</sup> The provision has been construed to apply to private work that includes  
18 elements of public dedication.<sup>48</sup>

19 Practitioners have suggested that this provision should be eliminated. The  
20 apparent purpose of the provision is to hold the lien claim period open so that, in a  
21 dedication situation, the owner can require the contractor to make changes  
22 demanded by the public entity as a condition to acceptance. **The Law Revision  
23 Commission requests public comment on whether this provision in fact serves  
24 a useful purpose.**

#### 25 **Notice of Completion**

26 The owner may shorten applicable time limits by recording a notice of  
27 completion. The owner may also record a notice of cessation of labor, which is  
28 deemed completion.<sup>49</sup> Recordation of the notice triggers the statutory period for a  
29 claimant to record a claim of lien.<sup>50</sup>

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45 See, e.g., Civ. Code §§ 3115, 3116 (time for recording claim of lien).

46 See Civ. Code § 3086.

47 Civ. Code § 3086.

48 See, e.g., A.J. Raisch Paving Co. v. Mountain View Sav. & Loan Ass'n, 28 Cal. App. 3d 832, 105 Cal. Rptr. 96 (1972) (private developer's contract for installation of streets, sewers, landscaping, etc., in subdivision subject to acceptance by city); Howard A. Deason & Co. v. Costa Tierra Ltd., 2 Cal. App. 3d 742, 83 Cal. Rptr. 105 (1969) (street work contracted for by owner-builder of apartment complex subject to acceptance by city).

49 Civil Code §§ 3086, 3092.

50 See Civ. Code §§ 3115, 3116.

1 ***Consolidation of Notice of Completion and Notice of Cessation***

2 The notice of completion and notice of cessation are treated in tandem in  
3 existing law. The overlap between the two notices is substantial. In the interest of  
4 simplification, the proposed law merges the two notices into one notice of  
5 completion.

6 ***Time for Recording Notice of Completion***

7 A notice must be recorded within 10 days after the date of actual completion or  
8 it is ineffective.<sup>51</sup> The proposed law allows the notice to be recorded more than 10  
9 days after actual completion; in that case, the time limits for making a claim begin  
10 to run on recordation.

11 ***Notice of Recordation***

12 If the owner records a notice of completion, the owner must notify a potential  
13 lien claimant of the recordation. Failure to notify a claimant of the recording of a  
14 notice of completion extends the time for recording a claim of lien.

15 A lien claimant may find it difficult to identify the claim to which the notice  
16 relates, due to fragmentary information in the notification. The proposed law  
17 addresses this problem by replacing the notification requirement with a  
18 requirement that the owner provide a potential lien claimant a copy of the notice of  
19 completion.

20 ***Notice by County Recorder***

21 Existing law requires the county recorder to give notice to a potential lien  
22 claimant when a notice of completion is filed. There is no consequence for the  
23 recorder's failure to do this, and most recorders do not give the notice.

24 Due to the marginal benefit of the county recorder notice scheme, and in the  
25 interest of greater simplicity of the mechanics lien law, the proposed law  
26 eliminates the requirement. The owner's notification of potential lien claimants is  
27 a preferable remedy.

28 ***Separate Contracts on Single Job***

29 Under existing law, where there are contracts for different parts of the same job,  
30 a notice of completion may be recorded separately as to each contract.<sup>52</sup> That  
31 technique may be advantageous for an owner-builder, for example, to narrow  
32 liability exposure. It can also benefit a subcontractor whose right to receive a  
33 retention may be triggered by the notice of completion.

34 On the other hand, a partial notice of completion may cause problems by  
35 triggering a lien claim or foreclosure as to a portion of the project. If that portion is

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51 Civ. Code § 3093.

52 See Civ. Code § 3117.

1 stand-alone, the foreclosure may be feasible; if it is part of an integrated whole,  
2 foreclosure may be difficult.

3 **The Commission solicits public comment on the policy of this provision, and**  
4 **whether it should be preserved in the law.**

#### 5 WAIVER AND RELEASE

6 Existing law prescribes forms that must be used in order for a lien claimant to  
7 execute a valid waiver and release — conditional release for a progress payment,  
8 unconditional release for a progress payment, conditional release for a final  
9 payment, and unconditional release for a final payment.<sup>53</sup> The statutory forms are  
10 inadequate in a number of respects, including:

- 11 • The language of the conditional waiver and release for a progress  
12 payment appears to convert the instrument to a mere receipt.
- 13 • Language in the statutory notice appears to preserve contract rights, while  
14 waiving lien, stop notice, and payment bond rights for the same amount.

15 The industry operates on the assumption that if the claimant is paid through a  
16 given date, all of the claimant's lien, stop notice, and bond rights through that date  
17 are waived with the exceptions noted in the release form. The industry believes  
18 that the waiver and release forms provide full protection, when in fact they do not.  
19 (Some of these concerns may be tempered by case law construing the statutory  
20 language to provide for release of a lien with respect to all labor, service,  
21 equipment and material to the date of the release, but not to waive other legal  
22 remedies to the extent labor, service, equipment or material has not been paid  
23 for.<sup>54</sup>)

24 The proposed law revises the statutory waiver and release forms for clarity and  
25 to address these concerns. The forms as revised also identify progress payments  
26 covered by earlier conditional releases that have not been paid and identify the  
27 customer to which labor, service, equipment or material was provided.

#### 28 MISCELLANEOUS MATTERS

##### 29 **Ownership Issues**

30 There are two types of owners under the mechanics lien law — the owner of the  
31 work of improvement contracted for, and the owner of the property on which the  
32 work of improvement is constructed. These are often the same person, but not  
33 necessarily.

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53 Civ. Code § 3262.

54 Tesco Controls, Inc. v. Monterey Mechanical Co., 124 Cal. App. 4th 780, 21 Cal. Rptr. 3d 751 (2004).

1 There is some ambiguity in existing law as to whether a specific provision  
2 applies to one type of owner, the other type, or both. In case of ambiguity, the  
3 proposed law specifies whether it is the owner of the improvement or the owner of  
4 the property that is affected.

5 A few provisions of the mechanics lien law deal with the question of co-  
6 ownership.<sup>55</sup> The provisions raise more questions than they resolve. If a statute  
7 requires notice by an owner and is silent as to co-ownership, is notice by one  
8 effective for all? Is notice to one effective as to all? Does a lien against the interest  
9 of one co-owner affect the interests of all co-owners?

10 The proposed law deals systematically with the question of co-ownership. It  
11 makes clear that an owner may act on behalf of a co-owner if the owner gives  
12 identifying information for the co-owner for which the owner acts. Notice to an  
13 owner of an interest is effective as to a co-owner of the interest.

14 Under the proposed law, however, notice to the owner of a leasehold interest  
15 would not bind the owner of the fee. The proposed law preserves the existing  
16 doctrine of reputed ownership in that circumstance — if the owner of the  
17 leasehold is the reputed owner of the fee, notice to the reputed owner may bind the  
18 owner of the fee.

#### 19 **Authority of Agent**

20 Existing law refers on occasion to the authority of an owner’s agent,<sup>56</sup> or to  
21 action by a claimant’s or another person’s agent in other circumstances.<sup>57</sup> These  
22 provisions should not be read to imply that an agent cannot perform other acts  
23 under the mechanics lien law.<sup>58</sup>

24 In some instances, verification of a document may be necessary, suggesting that  
25 the principal and not an agent should be required to act. But existing law  
26 authorizes an agent to make a verification in a number of instances. Moreover, the  
27 principal may be an artificial person and action must necessarily be taken through  
28 an agent.<sup>59</sup>

29 The proposed law provides systematically that notice by or to, or action by, an  
30 agent binds the owner. It also makes clear that the ability of an agent to act on  
31 behalf of the principal is limited to the authority conferred by the agency. Thus to

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55 A notice of completion may be signed by one of several co-owners on behalf of all; a notice of cessation may be signed by one of several joint tenants or tenants in common on behalf of all (but apparently not by a spouse in the case of community property). In either case the notice must “recite the names and addresses” of the other co-owners.

56 For example a work of improvement is deemed complete when occupied or accepted by the owner or agent. A notice of cessation may be executed by an owner or agent.

57 For example, a lien claimant may act through an agent when executing a waiver and release or when making a claim of lien. See Civ. Code §§ 3084, 3262.

58 Cf. Civ. Code § 2305 (agent may perform acts required of principal).

59 Often a waiver or claim of lien is signed by a credit manager or other person in the credit department of a claimant.

1 the extent a direct contractor is deemed to be the agent of the principal for the  
2 purpose of engaging a subcontractor, the scope of the agency does not include  
3 other acts, such as compromise of litigation.

4 **Contract Change**

5 Existing law deals haphazardly with the effect of a contract change<sup>60</sup> on  
6 provisions of the statute relating to the terms of the contract, particularly the  
7 contract price. The proposed law deals with the issue globally by defining the  
8 terms “contract” and “contract price” to include a contract change, and using those  
9 terms consistently throughout the statute.

10 Existing law requires that an owner notify the original contractor and  
11 construction lender of a change in the original contract if the change increases the  
12 contract amount by 5% or more.<sup>61</sup> The statute does not specify when the  
13 notification must be made, the manner of notification, or the consequences of  
14 failure to notify.<sup>62</sup> Practitioners indicate that this provision is not observed in the  
15 industry and serves no useful purpose. The proposed law would eliminate it. **The  
16 Commission particularly solicits comment on this proposal.**

17 PRELIMINARY NOTICE

18 **Function of Preliminary Notice**

19 To a significant degree the complexity of the existing mechanics lien law is  
20 attributable to the preliminary notice requirement and its ramifications. However,  
21 preliminary notice serves a number of functions in the operation of the system in  
22 its current form.

- 23 (1) Preliminary notice alerts the owner to existence of a potential claim of a  
24 subcontractor or material provider, and the corresponding possibility of  
25 double payment liability. It enables the owner to monitor the claim and  
26 structure payment to the direct contractor in such a way as to ensure that  
27 claimant is paid (for example by use of a joint check, release, and the  
28 like) or take whatever other protective measures appear appropriate.

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60 The term “contract change” has replaced “written modification of the contract” as used in former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

61 Civ. Code § 3123(c).

62 The intent may be that if the owner fails to give the required notification, a lien does not cover the amount of the change order. Civ. Code § 3123(a). But if that were the case, it would not be in the owner’s interest to give the notification (except where the change order actually reduces the contract price).

1           (2) The preliminary notice provides the owner advance notice of a claim,  
2           and thereby helps satisfy due process of law requirements that enable  
3           the lien claimant to impose a direct lien on the property.<sup>63</sup>

4           **Simplification of Statute**

5           The preliminary notice statute runs to several pages and is located among the  
6           mechanics lien definitions. The statute is substantive, and in the proposed law it is  
7           relocated among general provisions. The proposed law also breaks the statute into  
8           smaller, more comprehensible pieces, and streamlines and simplifies its wording.

9           **Notice to Construction Lender**

10          Some lien claimants must give preliminary notice to the construction lender as  
11          well as to the owner.<sup>64</sup> There are several avenues by which the lien claimant can  
12          discover the existence and identity of a construction lender, including building  
13          permit records. Under existing law, a building permit is supposed to include  
14          information about the construction lender. but failure of the permit to include that  
15          information (which is ordinarily the case) does not excuse the duty to give  
16          preliminary notice.<sup>65</sup>

17          Existing law appears to both require a direct contractor to give a preliminary  
18          notice to the construction lender and exempt a direct contractor from the  
19          requirement.<sup>66</sup> The internal contradiction has not gone unnoticed.<sup>67</sup> The apparent

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63 In upholding the constitutionality of the remedy, a divided Supreme Court noted that there is a rough approximation of due process in the form of the preliminary notice and an opportunity for the owner to seek judicial relief. *Connolly Development v. Superior Court*, 17 Cal. 3d 803, 553 P.2d 637, 132 Cal. Rptr. 477 (1976). Query whether the lien right of a direct contractor, laborer, or laborer's compensation fund would satisfy this standard, since each of these claimants is excused from the preliminary notice requirement.

64 Civ. Code § 3097(a)-(b).

65 Case law interpreting this requirement indicates that a lien claimant need only check for the existence of a construction lender at the commencement of the lien claimant's work and may give preliminary notice on that basis. The lien claimant is not charged with the obligation continually to monitor public records to see whether evidence of a construction lender appears at a later date. *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 229 Cal. Rptr. 418 (1986).

66 Civ. Code § 3097(b).

67 *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 82 fn. 3, 229 Cal. Rptr. 418 (1986):

The exception of the "contractor" is puzzling here. Presumably it refers to someone other than "all persons who have a direct contract with the owner." But section 3088 defines a "contract" as an "agreement between an owner and any original contractor providing for the work of improvement or any part thereof." And section 3095 in turn defines "original contractor" as "any contractor who has a direct contractual relationship with the owner." As has been noted, "[t]he Mechanic's Lien Law often is inartfully drawn and leaves much room for doubt, as in this instance." (Killeen, *The 20-Day Preliminary Notice in Private Construction Work* (1977) 53 L.A. Bar J. 113, 120, fn. 42.) Despite this apparent contradiction because the single word "contractor" is not defined, it has sensibly been construed to mean the general or prime contractor for the entire project. (See *Korherr v. Bumb* (9th Cir. 1958) 262 F.2d 157, 161- 162, construing the phrase "except the contractor" in former Code Civ. Proc., 1190.1, subd. (h) [Stats. 1951, ch. 1382, 1, p. 3305], the predecessor of 3097, as referring

1 policy supporting preliminary notice to the construction lender is that, while a  
2 direct contractor is properly exempted from the general preliminary notice  
3 requirement because known to the owner, a direct contractor should not be exempt  
4 from preliminary notice to the lender because, although a direct contractor may be  
5 known to the lender, that is not necessarily the case. The proposed law clarifies the  
6 requirement that a direct contractor notify the construction lender.

7 **Disciplinary Action Against Subcontractor**

8 Existing law provides that if a subcontractor fails to give a preliminary notice  
9 where the contract price exceeds \$400, the subcontractor is subject to disciplinary  
10 action under the Contractors State License Law.<sup>68</sup>

11 The proposed law would eliminate this provision. A subcontractor should not be  
12 forced to the trouble and expense of serving a preliminary notice in every case.  
13 The contract amount may be small enough that the subcontractor is willing to skip  
14 enforcement remedies if not paid. Or the subcontractor may simply be willing to  
15 take a risk with a responsible contractor.<sup>69</sup>

16 **County Recorder**

17 A copy of the preliminary notice may be recorded in the recorder's office.  
18 Recordation of the notice obligates the county recorder to provide notification  
19 when a notice of completion or notice of cessation of labor is recorded.<sup>70</sup>

20 The preliminary notice recording procedure is seldom used for several reasons:  
21 (1) Recording fees may be high. (2) A potential mechanics lien claimant usually  
22 has little difficulty in keeping track of job progress sufficiently to be sure of  
23 recording the claim of mechanics lien within 30 days after completion of the  
24 project. (3) Failure of the county recorder to give notice does not excuse prompt  
25 recording of a mechanics lien.

26 The process whereby a claimant may file a preliminary notice with the county  
27 recorder and the county recorder should notify claimants when a notice of

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to the general or prime contractor; see also 1 Miller & Starr, *Current Law of Cal. Real Estate* (rev. pt. 2, 1975) Pre-lien Notice, 10:20, pp. 550-552, noting that if the term "contractor" referred to the original contractor, 3097, subd. (b) "would read that 'all persons having a direct contract with the owner, except any contractor who has a direct contractual relationship with the owner' must give the notice to the lender." (*Ibid.*)

See also Burden, *Counter-Revolutionary Changes in Construction Work Remedies*, 2 U.S.F. L. Rev. 216, 217 n.4 (1968) ("It is apparent from the scheme of the legislation that the person commonly referred to as the general contractor is the one referred to in [Section 3097(b)] as the 'contractor.'")

68 Civ. Code § 3097(h), ¶ 1.

69 There is an argument that the requirement is necessary to protect the interest of an express trust fund. See Civ. Code § 3097(h), ¶ 2. However, an express trust fund may exercise lien rights without the need for a preliminary notice. Civ. Code § 3097(a). Moreover, a subcontractor's giving of a preliminary notice does not guarantee that the subcontractor will ever take any further steps to record a claim of lien or to enforce the lien.

70 Civ. Code § 3097(o).

1 completion or cessation is recorded is of marginal value and serves to complicate  
2 the statute. The proposed law eliminates the provision in the interest of  
3 simplifying mechanics lien law.

## 4 MECHANICS LIEN

### 5 CLARIFICATION AND SIMPLIFICATION OF LIEN LAW

#### 6 **Laborers Compensation Fund**

7 The law gives lien rights to a laborer's employment benefits fund that is not paid  
8 the amount due. These provisions have been heavily litigated and the subject of  
9 significant legislative attention. A key issue has been federal preemption under  
10 ERISA.<sup>71</sup>

11 However, the statute itself is confusing. For example, the statute defines  
12 "laborer" to include such a benefit fund, but generally ignores the definition in  
13 favor of specific provisions that prescribe rights and duties relating to the fund.  
14 Moreover, the statute grants extensive remedies to a laborer's compensation fund<sup>72</sup>  
15 but appears to limit the lien right of an express trust fund.<sup>73</sup> The preliminary notice  
16 statutes refer sometimes to an express trust fund, sometimes to an express trust  
17 fund as described in Section 3111, and sometimes to a "laborer" in its broadly  
18 defined sense including a laborer's compensation fund.<sup>74</sup> It is not clear whether  
19 these differences in treatment are intentional, or are simply the result of  
20 inconsistent drafting over several legislative sessions.

21 The proposed law simplifies drafting by creating a new term — "laborers  
22 compensation fund" — and using the term consistently whenever rights and duties  
23 relating to such a fund are in issue. This also has the effect of harmonizing the  
24 provisions where different treatment probably was not intended.

#### 25 **Use of Material in Structure**

26 A material supplier has a lien for material that is provided "to be used or  
27 consumed in" a work of improvement.<sup>75</sup> The implication of this language is that  
28 the material supplier is entitled to the lien whether or not the material is actually  
29 used in the work of improvement.

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71 The current version of the statute appears to be free of ERISA preemption. See *Betancourt v. Storke Housing Investors*, 31 Cal. 4th 1157, 82 P. 3d 286, 8 Cal. Rptr. 3d 259 (2003).

72 Civ. Code § 3089(b).

73 Civ. Code § 3111.

74 Civ. Code § 3097.

75 Civ. Code §§ 3090, 3110.

1 However, case law is that the material must actually be used in the work of  
2 improvement in order for the material supplier to have a lien.<sup>76</sup> This interpretation  
3 of the statutes stems from the unjust enrichment theory underlying the mechanics  
4 lien right — a person whose material permanently improves real property should  
5 be paid because value has been added to the property. If the material does not  
6 actually improve the property, the material supplier has no stake in the property.

7 A material supplier must prove that the material was actually used in the  
8 particular construction project, and also that it was provided with that intent.  
9 Delivery provides “some evidence of use and consumption if coupled with other  
10 evidence tending to show use.”<sup>77</sup> But mere delivery does not create a presumption  
11 of use.

12 Once a material supplier has delivered material to a jobsite it may be impractical  
13 to monitor construction to determine whether the material was actually used on the  
14 job. Proof problems may be difficult where materials are fungible.

15 Under the proposed law, delivery of materials to the jobsite would create a  
16 rebuttable presumption that the materials were used in the construction.

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

18 There is no requirement under existing law that the lien claimant notify the  
19 owner when a claim of lien is recorded. The existence of a lien may only come to  
20 the owner’s attention when the owner tries to refinance or sell the property. At that  
21 time, it may be difficult to locate the lien claimant to obtain a release, and it will  
22 be time consuming and costly to obtain judicial relief.

23 Until 2004, the county recorder was required to notify a property owner when an  
24 involuntary lien of any kind (not just a mechanics lien) was recorded against the  
25 property.<sup>78</sup> The notification requirement is no longer mandatory; the law  
26 encourages, but does not mandate, county recorder notice. Under current practice,  
27 a county recorder will not send notice unless requested to do so and is paid a fee  
28 for the service by the lien claimant.<sup>79</sup>

29 The law facilitates a claim of lien. The claimant may record a claim of lien that  
30 encumbers property on a simple allegation that money is owed, without bonding  
31 against damage caused by a false claim.<sup>80</sup> This procedure has been upheld against  
32 a due process challenge — the property owner has preliminary notice of a

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76 [Citation to be provided.]

77 Marsh and Marsh, *California Mechanics’ Lien Law and Construction Industry Practice* § 2.30 (6th Ed. 2003).

78 Gov’t Code § 27297.5.

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

80 This is mitigated by the requirement that a claim of lien be verified, which may help deter a false claim.

1 potential claim and, on recordation of a claim of lien, can bring an immediate  
2 court action to discharge a false claim, assuming the owner is aware of the  
3 recordation.<sup>81</sup>

4 The constitutionality of the mechanics lien law, as well as its fairness, would be  
5 enhanced if the lien claimant were required to notify the owner on recording a  
6 claim of lien against the property. The requirement would be enforced by a  
7 prohibition against recordation of a claim of lien unless accompanied by proof of  
8 service of notice on the owner. The proposed law would implement this policy.

#### 9 **Lien Release Bond**

10 The owner may obtain release of the property from a claim of lien by giving a  
11 release bond equal to 1-1/2 times the amount of the claim.<sup>82</sup> By comparison a stop  
12 notice release bond must be in an amount 1-1/4 times the claimant's claim. The  
13 greater amount required for a lien release bond is anomalous, since the lien release  
14 bond does not cover attorney's fees in a proceeding to enforce the claim, whereas  
15 the stop notice release bond may be required to cover attorney's fees awarded in a  
16 proceeding to enforce the claim. The proposed law standardizes both release bonds  
17 at the 1-1/4 level.

#### 18 **Time for Commencement of Enforcement Action**

19 Under existing law, a lien enforcement action must be commenced within 90  
20 days after recordation of the claim of lien, unless an extension of credit is obtained  
21 within that time, in which case an enforcement action must be commenced within  
22 90 days of the extension, but in no event more one year after completion of the  
23 work of improvement. As a matter of practice, a title company will not insure title  
24 until a full year has elapsed, whether or not an extension of credit is recorded.

25 The proposed law seeks to expedite release of property from the encumbrance of  
26 a lien in that circumstance by giving statutory protection to a bona fide purchaser  
27 that acquires property beyond the 90-day enforceability period of the lien if no lis  
28 pendens is recorded before the time of acquisition.<sup>83</sup> The intent is to enable a title  
29 company to insure around the recorded claim of lien.

#### 30 **Attorneys Fees**

31 Existing law allows attorney's fees in some types of stop notice and payment  
32 bond enforcement actions, but not for enforcement of a mechanics lien.<sup>84</sup> **The Law  
33 Revision Commission seeks public comment concerning the disparity of  
34 treatment.**

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81 [Citation to be provided.]

82 Civ. Code § 3143.

83 The proposed law allows an extra 10 days for recordation of a lis pendens due to the likelihood that an enforcement action will be commenced at the end of the 90 day enforcement period.

84 *Abbett Elec. Corp. v. California Fed. Sav. & Loan Ass'n*, 230 Cal. App. 3d 355 (1991).



1 **Judicial Procedure for Release of Lien**

2 Existing law provides an expedited court proceeding for release of a claim of  
3 lien that is unenforceable because neither a lis pendens nor an extension of credit  
4 has been recorded within the 90-day enforceability period.

5 *Extension of Credit*

6 The only ground for expedited release under existing law is that the lien  
7 claimant has failed to commence an enforcement action on the lien within the  
8 statutorily required 90 days. A lien claimant may extend the 90-day enforceability  
9 period for up to a year by obtaining an extension of credit.

10 There is some confusion in the case law concerning who may agree to an  
11 extension of credit on behalf of the owner.<sup>88</sup> In *Dorer v. McKinsey*<sup>89</sup> the lien  
12 claimant was a subcontractor that had not been paid by the direct contractor. The  
13 lien claimant recorded an extension of credit without the property owner's  
14 consent. The court held the property owner's consent was not necessary, since the  
15 debtor in this case was the direct contractor rather than the owner.

16 The direct contractor is in theory the owner's agent in engaging a subcontractor  
17 to provide labor or materials. Whether the scope of the agency should be  
18 considered to extend to waiver of the owner's statutory rights is doubtful. It would  
19 defeat the purpose of the law to allow the direct contractor to waive a protection  
20 intended for the owner.<sup>90</sup> The proposed law makes clear that the owner must agree  
21 to an extension of credit.

22 *90 Day Delay*

23 Under existing law, the judicial release remedy is limited. Relief is not available  
24 until 90 days after recordation of the claim, and the only basis for relief is failure  
25 of the lien claimant to proceed promptly. The waiting period is problematic, as is  
26 the ground for relief. If the lien was fraudulently recorded, the owner should be  
27 able to challenge it in court immediately. It was the assumption of the availability  
28 of prompt judicial relief that satisfied the California Supreme Court of the  
29 constitutionality of the mechanics lien law.<sup>91</sup>

30 The proposed would allow an immediate expungement action by the owner on  
31 the basis of the invalidity of the lien, without the 90-day delay.

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88 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).

89 188 Cal. App. 2d 199, 200, 10 Cal. Rptr. 287, 288 (1961)

90 Cf. 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").

91 *Connolly Development, Inc. v. Superior Court*, 17 Cal. 3d 803, 827, 132 Cal. Rptr. 477 (1976).

1 **Other Improvements**

2 The proposed law would make a number of related improvements to the  
3 expedited release procedure:

- 4 (1) The grounds for the expedited release procedure would be expanded to  
5 include (i) the claim was made with intent to defraud or slander title, (ii)  
6 the claim has been paid in full, (iii) no work has been done, or (iv) the  
7 lien claimant was unlicensed for all or part of the time of performance of  
8 the work for which the lien is claimed.
- 9 (2) As a prerequisite to use of the expedited procedure, the owner must, at  
10 least 10 days before commencement of the proceeding, demand that the  
11 lien claimant execute and record a release of the claim of lien. Relief is  
12 conditioned on failure of the lien claimant to release the lien on demand  
13 of the owner.
- 14 (3) The petition in the proceeding would include more detail concerning the  
15 facts on which the petition is based.
- 16 (4) The court must make its determination within 75 days after  
17 commencement of the proceeding.
- 18 (5) The \$2,000 cap on the award of attorneys fees to the prevailing party is  
19 eliminated.
- 20 (6) The statute makes clear that the release order issued by the court is a  
21 recordable instrument.

22 **Bona Fide Purchaser or Encumbrancer**

23 A claim of lien is voided by operation of law, without the need for a court order,  
24 if no enforcement action has been commenced within the statutory time limits.<sup>92</sup>  
25 This is not an efficacious remedy because (1) the commencement of an  
26 enforcement action is an off-record event that a title insurer cannot readily  
27 determine from inspection of the record, and (2) there is the possibility of an  
28 extension of credit that extends enforceability of the lien.

29 The proposed law addresses these problems by providing that a lien expires and  
30 is unenforceable if no lis pendens or extension of credit is recorded within the  
31 statutory period for enforcement. The objective of this provision is to enable a title  
32 company to insure title immediately on expiration of the statutory enforcement  
33 period without having to wait for a full year after a lien is recorded. The proposed  
34 law makes clear that, on expiration of the statutory period, the claim of lien “does  
35 not constitute actual or constructive notice of any of the matters contained,  
36 claimed, alleged, or contended in the claim of lien, or create a duty of inquiry in  
37 any person thereafter dealing with the affected property.”<sup>93</sup>

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92 Civ. Code § 3144(b).

93 Cf. Code Civ. Proc. § 405.60.

1 **Common Law Damages for Fraudulent Claim of Lien**

2 A claim of lien is invalid if made with intent to defraud. The existing statute  
3 does not address potential liability of a fraudulent claimant. The matter is left to  
4 common law. One problem with reliance on common law remedies is that under  
5 California law a claim of lien in conjunction with an enforcement action is  
6 privileged.<sup>94</sup>

7 A claim of lien should not be privileged if made with fraudulent intent or intent  
8 to slander title.<sup>95</sup> The proposed law makes clear that common law remedies are  
9 available against a lien claimant that records a fraudulent claim of lien. Relief  
10 would be conditioned on the lien claimant’s failure to release the lien in response  
11 to the owner’s request. The burden of proof would be on the owner that the claim  
12 of lien was made with intent to defraud or slander title.

13 **STOP PAYMENT NOTICE**

14 **Terminology**

15 *Stop Payment Notice*

16 The “stop notice” is a directive to the owner, construction lender, or other  
17 person holding construction funds not to pay out the funds until resolution of the  
18 dispute over payment. The term “stop notice” is somewhat cryptic, and can be  
19 confused with the “stop work order”. The proposed law replaces the term with the  
20 more descriptive “stop payment notice”.

21 *Bonded Stop Payment Notice*

22 A stop payment notice may be bonded, which provides the claimant giving the  
23 notice greater rights. For many purposes the law treats a bonded stop payment  
24 notice the same as an unbonded stop payment notice. In order to simplify drafting,  
25 the proposed law uses the generic term “stop payment notice” to include both a  
26 bonded and an unbonded notice, except where a bonded notice receives special  
27 treatment.

28 *Giving Stop Payment Notice*

29 Existing law refers inconsistently to giving the notice, filing the notice, or  
30 serving the notice. A stop payment notice is not filed in the traditional sense of  
31 registering it with the county recorder or lodging it with the clerk of court. Nor is  
32 it served with the formalities of court process. It is delivered by the claimant to the

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94 See, e.g., *Pisano & Associates v. Hyman*, 29 Cal. App. 3d 1, 105 Cal. Rptr. 414 (1972).

95 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).

1 owner or construction lender either personally or by mail. The proposed law  
2 standardizes the giving of the notice.

3 **Contents of Notice**

4 *Amount of Claimant's Claim*

5 Existing law requires a claimant to include in a stop payment notice the amount  
6 in value, as near as may be, of the work already provided and of the whole agreed  
7 to be provided. The meaning of the phrase "as near as may be" is obscure.  
8 Presumably it refers to the market value, rather than the contract price, of the  
9 claimant's work. Perhaps it is intended to mean the claimant's good faith and  
10 reasonable estimate of the value of the work.

11 The proposed law replaces the existing standard with the requirement that the  
12 notice state the claimant's demand after deducting all just credits and offsets. That  
13 is the same standard used for a claim of lien, and will help achieve consistency in  
14 the statute.

15 *Claim for Contract Changes and Damages for Breach*

16 The statute governing the stop payment notice does not deal with contract  
17 changes. By contrast, the mechanics lien allows a claimant to include in the claim  
18 of lien an amount due for written modification of the contract or as a result of  
19 rescission, abandonment, or breach of the contract.<sup>96</sup> The proposed law adopts the  
20 same standard for both.

21 No court has yet addressed whether a stop payment notice can include amounts  
22 due based on breach of contract and other items included in the claim of  
23 mechanics lien. Many practitioners believe the stop payment notice is co-extensive  
24 with the mechanics lien and whatever amounts are includable in a mechanics lien  
25 are likewise includable in a stop payment notice. The proposed law clears up the  
26 ambiguity by stating expressly that these items may be included in a claim covered  
27 by a stop payment notice. There is no reason for inconsistency between the  
28 remedies with respect to the claims covered by them.

29 **Demand for Notice**

30 An owner may demand that a claimant give the owner a stop notice. If the  
31 claimant fails to do so, the claimant forfeits the mechanics lien right.<sup>97</sup> The  
32 proposed law makes clear that only an unbonded stop payment notice may be  
33 required under this provision.

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<sup>96</sup> See Civ. Code § 3123.

<sup>97</sup> "Any person who shall fail to serve such a Stop Notice after a written demand therefor from the owner shall forfeit his right to a Mechanic's Lien." Civ. Code § 3158.

1 **Release Bond for Funds Withheld Pursuant to Notice**

2 ***Who May Give Bond***

3 Existing law provides that “an owner, construction lender, direct contractor, or  
4 subcontractor” that disputes the correctness or validity of a stop payment notice  
5 may obtain release of funds withheld pursuant to the notice by giving the person  
6 withholding the funds a release bond.<sup>98</sup> There is no apparent reason why a material  
7 supplier or other interested person ought not to be able to obtain release of funds  
8 by giving an appropriate bond. The proposed law simplifies the statute by  
9 eliminating the restriction on persons authorized to give a release bond.

10 ***Conditions for Giving Bond***

11 Under existing law the release bond remedy is limited to circumstances where a  
12 person disputes the correctness or validity of a stop payment notice. The proposed  
13 law simplifies the statute by allowing a release bond in any circumstances.

14 ***Sureties on Bond***

15 The release bond for funds held pursuant to a stop payment notice is analogous  
16 to a lien release bond. Under existing law a lien release bond requires an admitted  
17 surety insurer, whereas the stop payment notice release bond does not. Given the  
18 similarity of function of the two bonds, and the fact that the release bond stands in  
19 place of funds or property that have been sequestered for a claim, the proposed  
20 law requires an admitted surety insurer for a stop payment notice release bond.

21 **Release of Notice or Reduction of Amount of Claim**

22 Legislation operative January 1, 2006, makes clear that the general statutory  
23 waiver and release forms<sup>99</sup> are inapplicable to a claimant’s release of a stop  
24 payment notice or reduction of the amount claimed in the notice. The new  
25 provision is difficult to interpret, since parts of it appear to relate only to a stop  
26 payment notice given to the owner and other parts appear to relate to any stop  
27 payment notice, whether given to the owner or to a construction lender. The  
28 anomaly is perhaps explained by the fact that the drafters may have had in mind  
29 the public work stop notice and not the private work stop notice.<sup>100</sup> However, by  
30 its terms, the provision would apply to a private work as well as a public work.

31 **The Law Revision Commission solicits public comment concerning the**  
32 **application of the new provision.**

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98 Civ. Code § 3171.

99 The forms are prescribed in Civil Code Section 3262.

100 See, e.g., Assembly Judiciary Committee, *Analysis of SB 130 (Margett)* (6/6/05).

1 **Duty to Withhold Funds**

2 Existing law states that if the owner is given a stop payment notice, it is the duty  
3 of the owner to:<sup>101</sup>

4 withhold from the original contractor or from any person acting under his or her  
5 authority and to whom labor or materials, or both, have been furnished, or agreed  
6 to be furnished, sufficient money due or to become due to such contractor to  
7 answer such claim and any claim of lien that may be recorded therefore.

8 This statute is garbled. It is unclear whether the person from which funds are to be  
9 withheld must be acting under authority of the owner or of the original contractor,  
10 and whether labor or materials must have been furnished to the owner, the original  
11 contractor, or the person acting under authority of one of them.

12 The comparable provision of the public work stop payment notice, from which  
13 this statute evolved, states simply that the public entity must withhold from the  
14 direct contractor, or from any person acting under the direct contractor's authority,  
15 an amount sufficient to pay the claim stated in the notice.<sup>102</sup> That interpretation is  
16 sensible, and the proposed law adopts it.

17 The proposed law also omits the requirement that funds be withheld to cover the  
18 amount claimed both in the stop payment notice and "in any claim of lien that is  
19 recorded." The claim of lien reference is problematic since any amount withheld  
20 pursuant to a stop payment notice reduces the claim of lien. **The Law Revision**  
21 **Commission solicits comment on this issue.**

22 **Enforcement of Notice**

23 Existing law requires a stop payment notice claimant, within five days after  
24 commencement of an enforcement action, to notify persons that have been given  
25 the stop payment notice. The five day notice appears to supplement and not  
26 replace normal service of process requirements.

27 The consequences of failure to give the five day notice are unclear. The *Sunlight*  
28 *Electric*<sup>103</sup> case indicates that the five day notice requirement is directory rather  
29 than mandatory.

30 That case arose in the context of a public work. Its rationale is that in a public  
31 work, the stop payment notice substitutes for a mechanics lien, and therefore  
32 should be construed liberally in favor of a claimant, just as a mechanics lien is  
33 construed liberally in the private work context.

34 The same consideration does not apply in the context of a stop payment notice  
35 for private work. In a private work, the stop payment notice augments, and is not  
36 exclusive of, the mechanics lien remedy.

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101 Civ. Code § 3161.

102 Civ. Code § 3186.

103 *Sunlight Elec. Supply Co. v. McKee*, 226 Cal. App. 2d 47, 37 Cal. Rptr. 782 (1964).



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

2 Existing law provides that if a construction lender requires a payment bond as a  
3 condition of making the loan and accepts the bond that is offered, the lender may  
4 question the bond and go back on the loan commitment “only if the bond  
5 underwriter was licensed by the Department of Insurance.”<sup>108</sup> The provision seems  
6 counterintuitive — a bond given by a licensed surety is perhaps the one type a  
7 lender should not be allowed to question.

8 The provision was enacted as part of an effort to preclude a construction lender  
9 from renegeing on a loan commitment.<sup>109</sup> It seems probable that the problematic  
10 language was the result of a last minute political compromise on the bill that was  
11 inartfully executed. It is likely that the intent was to enable the lender to question  
12 the bond unless executed by a licensed surety.<sup>110</sup> The proposed law codifies that  
13 rule.

14 **Statute of Limitations for Enforcement of Bond**

15 Existing law provides a six month statute of limitations for an action against a  
16 surety on a payment bond recorded before completion of a work of  
17 improvement.<sup>111</sup> In the interest of simplicity and standardization, the proposed law  
18 extends this provision to an action against the principal, and eliminates the  
19 provision for shortening the statute of limitations.<sup>112</sup>

20 **OTHER REMEDIES**

21 **Stop Work Notice**

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

26 This remedy was enacted in 1998 in response to case law invalidating a “pay if  
27 paid” clause in a contract between the contractor and a subcontractor or material  
28 supplier.<sup>113</sup> The new remedy enables the contractor to stop work and limit potential  
29 losses on the project.

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108 Civ. Code § 3237.

109 See SB 1851 (Ayala) (Reg. Sess. 1984).

110 Miller & Starr, California Real Estate § 36:4 n. 10 (3d ed. 2001) interprets the provision in this way.

111 Civ. Code § 3240.

112 Civ. Code § 3239.

113 Under *Wm. R. Clarke Corp. v. Safeco Ins. Co.*, 5 Cal. 4th 882, 938 P. 2d 372, 64 Cal. Rptr. 2d 578 (1997), a contractor that has not been paid by the owner must nonetheless pay subcontractors and material suppliers.

1 The proposed law preserves the substance of the statute. It denominates the  
2 remedy a stop work “notice” rather than an order, since it is not a court order and  
3 it should be given and proved in the same manner as other notices under the  
4 mechanics lien law.

5 The proposed law also eliminates existing provisions that appear to address  
6 subcontractor liability. These provisions are apparently an artifact of the  
7 legislative process. Under the law as enacted, only the direct contractor may give a  
8 stop work notice.

### 9 **Security for Large Project**

10 In addition to the classical remedies of the lien, stop notice, and payment bond,  
11 the mechanics lien law now requires that the owner of a large construction project  
12 provide security for payment of the contractor.<sup>114</sup> The security may take the form  
13 of a payment bond, irrevocable letter of credit, or escrow account. The remedy  
14 relates only to a private work of improvement, not to a public work.

15 The provision for security responds to same concern as the stop work notice —  
16 case law invalidating a “pay if paid” clause in a contract between the prime  
17 contractor and a subcontractor or material supplier.<sup>115</sup>

18 The remedy is contained in one extremely long section of the code.<sup>116</sup> The  
19 proposed law substantially rewrites the statute to make it more comprehensible by  
20 simplifying language, standardizing terminology, breaking it into smaller pieces,  
21 and reorganizing it. The revision is nonsubstantive.

## 22 PUBLIC WORKS CONTRACT

23 The lien remedy is not available in a public works contract. The principal  
24 remedy for a subcontractor or material supplier that has not been paid by the direct  
25 contractor is the stop payment notice or the payment bond.

26 The proposed law relocates the public works contract remedies to the Public  
27 Contract Code from their current location among the mechanics lien provisions of  
28 the Civil Code.<sup>117</sup>

## 29 GENERAL PROVISIONS

### 30 **Notification**

31 As with private work remedies, the public work remedies contain notice  
32 requirements that vary unnecessarily with respect to contents of the notice, persons

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114 The new requirement was enacted in 2002.

115 See discussion of “Stop Work Notice” above.

116 See Civ. Code Section 3110.5.

117 See discussion of “Drafting Considerations” above.

1 served, addresses, manner of giving notice, proof of service, and the like. The  
2 proposed law standardizes notice provisions to replace the many variants, to the  
3 extent practicable.

4 Existing law specifies that preliminary notice to the state is delivered to the  
5 Department of General Services or Department of Transportation.<sup>118</sup> This  
6 provision is unduly narrow for notice under a public works contract.

7 The proposed law would require that notice to a public entity be addressed to the  
8 disbursing officer of the public entity (or another address specified in the public  
9 works contract). The disbursing officer issues the payments to the direct contractor  
10 and is in the best position to keep the file of preliminary notices and verify that  
11 they are in hand when it receives a stop payment notice.

## 12 **Jurisdiction and Venue**

13 The jurisdiction and venue provisions of existing law refer variously to the  
14 “proper court,”<sup>119</sup> “the appropriate superior court,”<sup>120</sup> “the court first acquiring  
15 jurisdiction,”<sup>121</sup> and “the superior court in the county in which the private work of  
16 improvement is located.”<sup>122</sup>

17 Reference to the court first acquiring jurisdiction is evidently a relic of the pre-  
18 unification era when jurisdiction under the mechanics lien law could be in the  
19 municipal court or the superior court, depending on the amount in controversy.  
20 The proposed law does not eliminate that provision since it could have continued  
21 relevance in the context of a work of improvement that straddles a county line.  
22 That may be a significant factor in a public work such as a road or waterway. If  
23 the public work extends across a county line, the superior court in either county  
24 could have jurisdiction.<sup>123</sup>

## 25 **Assignment**

26 A direct (or “original”) contractor is a person that contracts directly with a  
27 public entity on a public works contract. The existing statute refers to a direct  
28 contractor’s assignee in two instances.<sup>124</sup> Yet it is apparent that the statute should  
29 apply systematically to a direct contractor’s assignee as well as to the direct  
30 contractor. The proposed law expands the definition of “direct contractor” to  
31 include an assignee.

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118 Civ. Code § 3098.

119 Civ. Code §§ 3144, 3146, 3154, 3210.

120 Civ. Code § 3201.

121 Civ. Code §§ 3175, 3214.

122 Civ. Code § 3260.2.

123 See Civ. Code § 3214 (joinder, consolidation, and interpleader).

124 Existing law gives a stop payment notice priority over a direct contractor’s assignment of receivables, but a public entity may make payment to the direct contractor or assignee if payment is made before the public entity is served with a stop payment notice. Civ. Code §§ 3187, 3193.

1 **Completion**

2 Completion triggers time limits within which a claimant must act in order to  
3 exercise the stop payment notice and payment bond remedies under a public works  
4 contract.

5 The term is defined in Civil Code Section 3086:

6 3086. "Completion" means, in the case of any work of improvement other than  
7 a public work, actual completion of the work of improvement. Any of the  
8 following shall be deemed equivalent to a completion:

9 (a) The occupation or use of a work of improvement by the owner, or his agent,  
10 accompanied by cessation of labor thereon.

11 (b) The acceptance by the owner, or his agent, of the work of improvement.

12 (c) After the commencement of a work of improvement, a cessation of labor  
13 thereon for a continuous period of 60 days, or a cessation of labor thereon for a  
14 continuous period of 30 days or more if the owner files for record a notice of  
15 cessation.

16 If the work of improvement is subject to acceptance by any public entity, the  
17 completion of such work of improvement shall be deemed to be the date of such  
18 acceptance; provided, however, that, except as to contracts awarded under the  
19 State Contract Act, Chapter 3 (commencing with Section 14250), Part 5, Division  
20 3, Title 2 of the Government Code, a cessation of labor on any public work for a  
21 continuous period of 30 days shall be a completion thereof.

22 The statute causes a number of difficulties of interpretation in its application to a  
23 public works contract.

24 ***Actual Completion or its Equivalent***

25 The first sentence of Civil Code Section 3086 defines completion as "actual  
26 completion" except in the case of a public work. The public work exception  
27 apparently also extends to the other grounds for completion (occupation or use,  
28 acceptance, and cessation of labor) set out in subdivisions (a)-(c) of the section,  
29 but this is far from clear. The proposed law makes this clear.

30 ***Acceptance by a Public Entity***

31 The unnumbered paragraph at the end of Section 3086 does apply to a public  
32 work. The first clause — a work of improvement that is subject to acceptance by a  
33 public entity — applies to both a public work and a private work. A private work  
34 of improvement may be subject to acceptance by a public entity, particularly  
35 where the private work is infrastructure that is to be conveyed to the public entity  
36 as an exaction for approval of a land development project.

37 With respect to a public work, the work is always subject to acceptance by the  
38 public entity. Thus completion of a public works contract will ordinarily occur on  
39 acceptance by the public entity.

1 *Cessation of Labor*

2 There may be circumstances where completion of a public work is deemed to  
3 occur even though there has been no acceptance by the public entity. The second  
4 clause of the unnumbered paragraph at the end of Section 3086 deals with one  
5 such circumstance — cessation of labor. Cessation of labor on a public work for a  
6 continuous period of 30 days is considered completion for purposes of exercise of  
7 the stop payment notice and payment bond remedies. This should be compared  
8 with the rule for private work, where cessation of labor is generally not considered  
9 completion until 60 days have elapsed.<sup>125</sup>

10 Is there a sound reason to provide a different period of time for completion by  
11 cessation of labor on a public work of improvement and on private work of  
12 improvement? The concept that cessation of labor for 30 days is deemed  
13 completion entered California law in 1887. That was extended to 60 days in the  
14 case of a private work in 1951, but there is no legislative history to shed light on  
15 the reasons, if any, for the difference in treatment.<sup>126</sup>

16 **The Law Revision Commission solicits public comment on whether the law**  
17 **governing a public work and a private work should be harmonized on this**  
18 **point.**

19 *Contract Awarded Under State Contract Act*

20 The second clause of the unnumbered paragraph at the end of Section 3086  
21 excludes from the 30 day cessation rule a contract awarded under the State  
22 Contract Act.<sup>127</sup>

23 The scope of the State Contract Act is complex. The act covers major state  
24 construction projects, including those of the Departments of Water Resources,  
25 General Services, Boating and Waterways, Corrections, and Transportation. Many  
26 state projects are not covered by the act.

27 The net result is that the 30 day cessation rule applies to all local public works  
28 contracts and many, but not all, state public works contracts.

29 *Notice of Cessation*

30 In the case of a private work, an owner may record a notice of cessation after  
31 labor has ceased for 30 days or more, and completion is deemed to have occurred  
32 at that time.<sup>128</sup> May a public entity — the “owner” of a public work — also record  
33 a notice of cessation under the statutory scheme?

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125 Civ. Code § 3086(c).

126 Bronstein, *Trivial(?) Imperfections: The California Mechanics' Lien Recording Statutes*, 27 Loy. L.A. L. Rev. 735, 763 (1994)).

127 The existing statutory reference to the Government Code is obsolete. The State Contract Act has been relocated, along with other statutes affecting public works contracts, to the Public Contract Code. See Pub. Cont. Code § 10100 *et seq.*

128 Civ. Code § 3086(c). See also Civ. Code § 3092 (“notice of cessation” defined).

1 The Law Revision Commission does not believe these provisions were intended  
2 to apply to a public work. They would not seem to have a major effect on a public  
3 work in any event, since completion is deemed to have occurred on a work  
4 stoppage of 30 days on most public works.<sup>129</sup>

5 Nonetheless, a public work stop payment notice must be served within 30 days  
6 after the recording of a notice of cessation.<sup>130</sup> It is not clear why a public entity  
7 would record a notice of cessation, since such a notice can only be recorded on or  
8 after 30 days of work stoppage, and by operation of law completion is deemed to  
9 have occurred on the 30th day.

10 If the public entity records a notice of cessation on the 45th day of work  
11 stoppage, do the statutes of limitation begin to run at that time, or do they continue  
12 to run from the 30th day? The cases have not answered this question.

13 The Commission has no information about the frequency of recordation of a  
14 notice of cessation by a public entity. It is likely that the ability to record a notice  
15 of cessation causes more problems than it solves. It is perhaps a useful tool for a  
16 contract awarded under the State Contract Act, to which the 30 day work stoppage  
17 rule does not apply.

18 The proposed law makes no change on this point. **But the Law Revision**  
19 **Commission solicits comment, particularly from state agencies, concerning**  
20 **the utility of this provision.**

21 *Notice of Completion*

22 The statutes allow a public entity to record a notice of completion.<sup>131</sup> This has  
23 the effect of reducing the time within which a claimant may give stop payment  
24 notice from 90 days after completion to 30 days after recordation.

25 Recordation of a notice of completion also triggers the 10 day period during  
26 which the public entity must notify a stop payment notice claimant of the time for  
27 enforcing the claim.<sup>132</sup>

28 Finally, recordation of a notice of completion reduces the time for a claimant on  
29 a payment bond to notify the principal and surety on the bond from 75 days after  
30 completion to 15 days after recordation.<sup>133</sup>

31 The notice of completion thus serves a useful purpose in the public work context  
32 and the proposed law retains it.

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129 Civ. Code § 3086 (unnumbered paragraph, 2d clause).

130 Civ. Code § 3184(a).

131 Civ. Code § 3184.

132 Civ. Code § 3185. It is not clear how the timing on this duty works, however, since it is possible that the public entity will not receive a claimant's stop payment notice until 30 days after recordation of the notice of completion.

133 Civ. Code § 3252(b).

1 **Notice of Acceptance**

2 Civil Code Section 3184 remarks parenthetically that a notice of completion is  
3 “sometimes referred to in public works as a notice of acceptance”. That is the only  
4 place the term “notice of acceptance” is used in the mechanics lien law. Nor is it  
5 used in the Public Contract Code.

6 The statute gives the notice of acceptance no legal effect, although a claimant  
7 notified by a public entity of its acceptance of the work of improvement would  
8 undoubtedly be entitled to rely on the notice under common law principles.

9 The Law Revision Commission questions whether a notice of completion and a  
10 notice of acceptance are indeed synonymous. A public works contract may be  
11 substantially complete and the public entity may start a limitation period running  
12 by recording a notice of completion. But that does not require the public entity to  
13 have accepted the work of improvement. Further work may be necessary before  
14 the public entity accepts the work of improvement.

15 The proposed law eliminates the “notice of acceptance” from the statute.<sup>134</sup>

16 **PRELIMINARY NOTICE**

17 A claimant on a public works contract must give a preliminary notice to the  
18 public entity and the direct contractor as a prerequisite to exercise of stop payment  
19 notice and payment bond remedies.<sup>135</sup>

20 **Contents of Preliminary Notice**

21 The public work preliminary notice is similar to the private work preliminary  
22 notice. Each requires the claimant to inform the person being notified of (1) the  
23 work provided by the claimant and (2) the person that contracted with the claimant  
24 for the work.

25 The private work preliminary notice also requires the claimant’s address and a  
26 description of the construction site sufficient for identification. This information  
27 would be useful information for a public work as well.

28 The proposed law conforms the content of the public work preliminary notice  
29 for consistency with the private work preliminary notice. This conforms to  
30 existing practice to use the same form for both types of projects.

31 **Disciplinary Action for Failure to Give Preliminary Notice**

32 Under existing law, if the amount to be paid a licensed subcontractor exceeds  
33 \$400 and the subcontractor fails to give preliminary notice, the subcontractor is  
34 subject to disciplinary licensing action.<sup>136</sup>

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134 The proposed law also eliminates the term “acceptance of completion” which likewise is used only in one provision. See Civ. Code § 3184. That term is evidently a longhand for “acceptance”.

135 See, e.g., Civ. Code § 3098 (“preliminary 20-day notice (public work)” defined).

136 Civ. Code § 3098.

1 This provision is antiquated. The \$400 figure was set in 1968. Adjusted for  
2 inflation, it would be about \$2,000 today.

3 In many small jobs, giving a preliminary notice is not practical. The  
4 subcontractor may elect not incur the administrative effort and expanse of giving  
5 preliminary notice.

6 The proposed law does not continue the disciplinary sanction. Instead, it enables  
7 disciplinary action if the subcontractor's failure to protect its construction  
8 remedies results in a loss to laborers. **The Law Revision Commission requests**  
9 **comment on this change.**

#### 10 **Transitional Provision**

11 Existing law contains a transitional provision from an era when, for a year,  
12 preliminary notice was required to be given to a subcontractor.<sup>137</sup> The transitional  
13 rule is no longer necessary. In the interest of simplification, the proposed law  
14 eliminates it.

### 15 STOP PAYMENT NOTICE

#### 16 **Terminology**

17 The proposed law redesignates the public work stop notice as a “stop payment  
18 notice” consistent with proposed usage in the private work portion of the  
19 mechanics lien law. This terminological change is for the purpose of adding clarity  
20 to the statute.

#### 21 **Notification of Stop Payment Claimant**

22 Existing law provides that within 10 days after completion of a public works  
23 contract, the public entity must notify each person that has given a stop payment  
24 notice of the expiration of “such period.”<sup>138</sup> This cryptic provision probably is  
25 intended to refer to the period for enforcement of a stop payment notice.<sup>139</sup> The  
26 proposed law clarifies the matter by codifying this interpretation.

27 The notification statute also provides that “No such notice need be given unless  
28 the claimant shall have paid to the public entity the sum of two dollars (\$2) at the  
29 time of filing his stop notice.” The \$2 fee was enacted in 1969. It would amount to  
30 about \$10 in today's buying power. The proposed law increases the fee to \$10.

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137 Civ. Code § 3098(e).

138 Civ. Code § 3185.

139 *J.H. Thompson Corp. v. DC Contractors*, 4 Cal. App. 4th 1355, 7 Cal. Rptr. 2d 1355 (1992), assumes “such period” refers to the period for enforcement of a stop payment notice, as do various treatises on mechanics lien law.

1 **Summary Release Procedure**

2 The direct contractor may obtain release of funds withheld pursuant to an  
3 improper stop payment notice by a summary proceeding under existing law. The  
4 matter is determined by the court sitting without a jury, based on affidavits of the  
5 parties.

6 The summary procedure statute notes that “Nothing in this article shall be  
7 construed to deprive any party of the right to a trial by jury in any case where such  
8 right is given by the California Constitution, but a jury trial may be waived in like  
9 manner as in the trial of an action.”<sup>140</sup>

10 The California Constitution states that “Trial by jury is an inviolate right and  
11 shall be secured to all.”<sup>141</sup> It is generally accepted that this provision codifies the  
12 right to jury trial as it existed at common law in 1850, when the Constitution was  
13 adopted.

14 Because the mechanics lien law remedies generally, and the summary release  
15 procedure for a stop payment claim specifically, were unknown to the common  
16 law and are equitable in nature, there would ordinarily be no constitutional right to  
17 a jury trial.<sup>142</sup> The summary release procedure for funds withheld pursuant to a  
18 stop payment notice does not implicate the loss of any rights for which a jury trial  
19 would be required. The jury trial provision serves no useful purpose; the proposed  
20 law eliminates it.

21 **Amount Due for Extras**

22 “No assignment by the original contractor of any money due or to become due to  
23 the original contractor under the contract, or for ‘extras’ in connection therewith  
24 whether made before or after the service of a stop notice, takes priority over a stop  
25 notice.”<sup>143</sup> Although the grammatical construction of this provision is confusing,  
26 the provision apparently intends that a stop payment notice has priority over an  
27 assignment of an amount due for extras.

28 The meaning of “extras” in this context is unclear. The statutory waiver and  
29 release forms refer in two places to extras furnished before or after the release date  
30 and in one place to a disputed claim for extra work. Otherwise, the mechanics lien  
31 law does not use the term.

32 The proposed law standardizes terminology by referring to “contract change”. A  
33 stop payment notice would take priority over an assignment by the direct  
34 contractor of any amount due or to become due under the contract, “including  
35 contract changes”.

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140 Civ. Code § 3204.

141 Cal. Const. art. I, § 16.

142 However, if the defendant in a mechanics lien enforcement proceeding raises a contract defense, that may entail legal issues for which there is a right to jury trial. See, e.g., *Selby Constructors v. McCarthy*, 91 Cal. App. 3d 517, 154 Cal. Rptr. 164 (1979).

143 Civ. Code § 3193.

1 PAYMENT BOND

2 The payment bond requirements for a public works contract are confusing, both  
3 in their application and in their coverage. The Law Revision Commission has  
4 investigated what is being done in practice with respect to public work payment  
5 bonds, and has come to the following conclusions.

6 **Existing Practice**

7 Public Contract Code Section 7103(d) requires a payment bond in every  
8 construction contract over \$5,000 awarded by a “state entity”:

9 For purposes of this section, “state entity” means every state office department,  
10 [sic] division, bureau, board, or commission, but does not include the Legislature,  
11 the courts, any agency in the judicial branch of government, or the University of  
12 California. All other public entities shall be governed by the provisions of Section  
13 3247 of the Civil Code.

14 Civil Code Section 3247 requires a payment bond in every contract over \$25,000  
15 awarded by a public entity, “except as provided in subdivision (d) of Section 7103  
16 of the Public Contract Code”.

17 The circularity of this provision leaves doubt as to the rule applicable to the  
18 Legislature, the judiciary, and the University of California. Are those entities  
19 exempt from any payment bond requirement, or are they subject to a \$25,000  
20 threshold? The law is unclear.

21 The judicial branch, for example, understands the intent of the existing statutory  
22 scheme to be that it is exempt from any payment bond requirement. The judicial  
23 branch indicates that, in any event, separation of powers doctrine would immunize  
24 it from a statutory payment bond requirement. The judicial branch voluntarily  
25 requires a payment bond in a contract over \$25,000. This has not been a  
26 significant issue in the past because most court facilities were county owned. The  
27 judicial branch will be more heavily involved with construction contract matters in  
28 the future, now that the state has taken control of the trial courts.

29 The University of California also believes it is constitutionally exempt from any  
30 statutory payment bond requirement.<sup>144</sup> Nonetheless, the university voluntarily  
31 adheres to the rule of Section 7103 and requires a payment bond in a contract over  
32 \$5,000.

33 **State Contract Act**

34 To complicate matters, there are additional payment bond requirements  
35 applicable to a public works contract under the State Contract Act.<sup>145</sup> Subject to a  
36 number of exceptions, that act applies to a state project for which the total cost

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144 See Cal. Const. art. IX, § 9.

145 Pub. Cont. Code §§ 10100-10285.1.

1 exceeds \$100,000, as adjusted to reflect changes in the annual California  
2 Construction Index.<sup>146</sup>

3 The State Contract Act requires that every contract covered by it include a  
4 payment bond executed by an admitted surety insurer.<sup>147</sup> Subject to exceptions, the  
5 bond must be at least one-half the contract price.<sup>148</sup>

6 A key exception to the one-half contract price requirement is “as otherwise  
7 provided in Section 3248 of the Civil Code.”<sup>149</sup> At the time the exception was  
8 written, Civil Code Section 3248 provided a sliding scale for the amount of the  
9 payment bond required for a public work, based on the contract price. That  
10 scheme was changed beginning in 1998 and 2000, so that now Section 3248  
11 requires that, “The bond shall be in a sum not less than one hundred percent of the  
12 total amount payable by the terms of the contract.”<sup>150</sup>

13 Another problem is that the exact scope of the State Contract Act is not defined.  
14 A bond under that act is subject to approval of the “department”,<sup>151</sup> which is  
15 defined to mean the Department of Water Resources, General Services, Boating  
16 and Waterways, or Corrections, with respect to a project within its jurisdiction, or  
17 the Department of Transportation with respect to all other projects.<sup>152</sup> This may  
18 suggest a limited scope. There is no case law on the matter.

### 19 **Conclusion**

20 Reading all these statutes together and interpreting legislative intent as rationally  
21 as possible the Law Revision Commission concludes:

- 22 • A public entity other than the state must require a 100% payment bond in  
23 a construction project over \$25,000.
- 24 • The state, other than the Legislature, the judiciary, or the University of  
25 California, must require a 100% payment bond in a construction project  
26 over \$5,000.
- 27 • It is unclear what, if any, requirements apply to the Legislature, the  
28 judiciary, and the University of California. There are constitutional  
29 considerations affecting these entities, and their practices with respect to  
30 requiring a payment bond in their construction contracts vary.
- 31 • Special rules may apply to specific types of state projects that are the  
32 subject of an express statute. For example, the Department of

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146 Pub. Cont. Code § 10105.

147 Pub. Cont. Code § 10221.

148 Pub. Cont. Code § 10222.

149 Pub. Cont. Code § 10222.

150 Civ. Code § 3248(a).

151 Pub. Cont. Code § 10221.

152 Pub. Cont. Code § 10106.

1           Transportation may specify a smaller than 100% payment bond in a  
2           project over \$250,000,000, subject to limitations.

3           The proposed law does not attempt to provide uniform rules applicable to all  
4           public works contracts, state and local. The public cost implications are  
5           significant. The proposed law preserves the status quo.



## PROPOSED LEGISLATION

### CONSTRUCTION REMEDIES

1  
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 §§ 3081.1-3081.10 (repealed). Design professionals lien**

9 SEC. \_\_\_\_\_. Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of  
10 Division 3 of the Civil Code is repealed.

11 **Comment.** Former Chapter 8 (former Sections 3081.1-3081.10) is replaced by Chapter 3  
12 (Sections 7300-7316) of Part 6 of Division 4. For the disposition of the provisions of former  
13 Chapter 8, see [Table, to be provided.] The source of each section in the new law is indicated in  
14 its Comment.

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

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

18 **Comment.** Former Title 15 (former Sections 3082-3267) is replaced by new Part 6 (Sections  
19 7000-7848) of Division 4 of the Civil Code (private work of improvement) and by new Part 6  
20 (Sections 41010-45090) of Division 2 of the Public Contract Code (public works contract  
21 remedies). For the disposition of the provisions of former Title 15, see [Table, to be provided.]  
22 The source of each section in the new law is indicated in its Comment.

23 **Civ. Code §§ 7100-7106 (repealed). Automatic checkout system**

24 SEC. \_\_\_\_\_. Part 8 (commencing with Section 7100) of Division 4 of the Civil  
25 Code is repealed.

26 **Comment.** Former Part 8 (former Sections 7100-7106) is relocated to new Title 1.4C (Sections  
27 1749.70-1749.76) of Part 4 of Division 3. The purpose of the relocation is to make space for new  
28 Part 6 (Sections 7000-7848), relating to private works of improvement.

29 For the disposition of the provisions of former Part 8, see [Table, to be provided.] The source  
30 of each section in the new law is indicated in its Comment.

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### PRIVATE WORK OF IMPROVEMENT

31  
32 **Civ. Code §§ 7000-7848 (added). Private work of improvement**

33 SEC. \_\_\_\_\_. Part 6 (commencing with Section 7000) is added to Division 4 of the  
34 Civil Code, to read:

1                   PART 6. PRIVATE WORK OF IMPROVEMENT

2                   CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

3                                   Article 1. Definitions

4   **§ 7000. Application of definitions**

5       7000. Unless the provision or context otherwise requires, the definitions in this  
6 article govern the construction of this part.

7       **Comment.** Section 7000 continues former Section 3082 without substantive change.

8   **§ 7002. Claimant**

9       7002. “Claimant” means a person that has or exercises a right under this part to  
10 record a claim of lien, file a stop payment notice, or assert a claim against a  
11 payment bond.

12       **Comment.** Section 7002 restates former Section 3085, omitting reference to the combination  
13 of remedies as unnecessary.

14       See also Sections 7024 (“lien” defined), 7030 (“payment bond” defined), 7032 (“person”  
15 defined), 7042 (“stop payment notice” defined).

16   **§ 7004. Construction lender**

17       7004. “Construction lender” means either of the following:

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

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

24       **Comment.** Section 7004 continues former Section 3087 without substantive change.

25       See also Sections 14 (present includes future), 7028 (“owner” defined), 7032 (“person”  
26 defined), 7046 (“work of improvement” defined).

27   **§ 7006. Contract**

28       7006. “Contract” means an agreement between an owner and a direct contractor  
29 that provides for all or part of a work of improvement. The term includes a  
30 contract change.

31       **Comment.** Section 7006 continues former Section 3088 and adds a reference to a contract  
32 change. The term “contract change” replaces “written modification of the contract” as used in  
33 former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70  
34 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

35       There are instances in this part where the term is not used in its defined sense. See, e.g.,  
36 Sections 7028 (contract of purchase), 7130 (subcontract). See also Section 7000 (application of  
37 definitions).

38       See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7046 (“work of  
39 improvement” defined).

1 **☞ Staff Note.** The Commission tentatively agreed to remove the words “between an owner and  
2 a direct contractor” from this definition, subject to staff review of the statutes in which the term is  
3 used to make sure the statute is appropriately applied to a direct contract or subcontract. The  
4 staff’s review of the statutes suggests that the change would require extensive reworking of a  
5 number of provisions in order to preserve the effect of existing law. The staff has therefore not  
6 implemented the change.

7 **§ 7008. Contract price**

8 7008. “Contract price” means the price agreed to for a work of improvement,  
9 including a contract change. If the parties have not agreed to a price for the work  
10 of improvement, the contract price is the reasonable value of the labor, service,  
11 equipment, or material provided for the work of improvement.

12 **Comment.** Section 7008 generalizes provisions found in former Section 3123 (amount of lien)  
13 and throughout the mechanics lien law.

14 See also Sections 7006 (“contract” defined), 7016 (“labor, service, equipment, or material”  
15 defined).

16 **§ 7010. Design professional**

17 7010. “Design professional” means a certificated architect, registered  
18 professional engineer, or licensed land surveyor that provides services pursuant to  
19 a written contract with an owner for the design, engineering, or planning of a work  
20 of improvement.

21 **Comment.** Section 7010 restates the first paragraph of former Section 3081.1. The  
22 introductory clause and the second paragraph of former Section 3081.1 are not continued because  
23 they are surplus. See Section 7000 (application of definitions).

24 See also Sections 7006 (“contract” defined), 7046 (“work of improvement” defined).

25 **☞ Staff Note.** The term “certificated architect” may be intentionally narrower than the term  
26 “architect” used elsewhere in the mechanics lien law, although that is not clear. Presumably it  
27 excludes design services provided under a “design-build” contract from a design professionals  
28 lien.

29 **§ 7012. Direct contractor**

30 7012. “Direct contractor” means a person that has a direct contractual  
31 relationship with an owner.

32 **Comment.** Section 7012 supersedes former Section 3095 “original contractor”. A direct  
33 contractor is not limited to a builder, and may include a surveyor, engineer, material supplier,  
34 artisan, or other person that contracts directly with the owner. A direct contractor within the  
35 meaning of this section is one that contracts directly with the owner and in not one such as a  
36 subcontractor or material provider that contracts with a general contractor acting as the owner’s  
37 “agent” for purposes of authorizing work.

38 See also Sections 7028 (“owner” defined), 7032 (“person” defined).

39 **§ 7014. Express trust fund**

40 7014. “Express trust fund” means a laborers compensation fund to which a  
41 portion of a laborer’s total compensation is to be paid pursuant to an employment  
42 agreement or a collective bargaining agreement for the provision of benefits,

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

3 **Comment.** Section 7014 continues a portion of former Section 3111 without substantive  
4 change.

5 See also Sections 7018 (“laborer” defined), 7020 (“laborers compensation fund” defined).

6 **§ 7016. Labor, service, equipment, or material**

7 7016. “Labor, service, equipment, or material” includes but is not limited to  
8 labor, skills, services, material, supplies, equipment, appliances, transportation,  
9 power, surveying, construction plans, and construction management provided for a  
10 work of improvement.

11 **Comment.** Section 7016 is a new definition. It is included for drafting convenience. The  
12 phrase is intended to encompass all things of value provided for a work of improvement, and  
13 replaces various phrases used throughout the former law, including “labor or material,” “labor,  
14 services, equipment, or materials,” “appliances, teams, or power,” and the like. The definition  
15 applies to variant grammatical forms of the phrase used in this part, such as “labor, service,  
16 equipment, *and* material.”

17 See also Section 7046 (“work of improvement” defined).

18 **§ 7018. Laborer**

19 7018. “Laborer” means a person who, acting as an employee, provides labor,  
20 skill, or other necessary services for a work of improvement.

21 **Comment.** Section 7018 continues former Section 3089(a) without substantive change.  
22 “Laborer” is no longer defined to include a compensation fund, which is treated separately in this  
23 part. Cf. Section 7020 (“laborers compensation fund” defined).

24 See also Section 7046 (“work of improvement” defined).

25 **§ 7020. Laborers compensation fund**

26 7020. “Laborers compensation fund” means a person, including an express trust  
27 fund, to which a portion of the compensation of a laborer is paid by agreement  
28 with the laborer or the collective bargaining agent of the laborer.

29 **Comment.** Section 7020 continues the first sentence of former Section 3089(b) without  
30 substantive change. See also Section 7070 (standing to enforce laborer’s rights).

31 See also Sections 7014 (“express trust fund” defined), 7018 (“laborer” defined), 7032  
32 (“person” defined).

33 **§ 7022. Lending institution**

34 7022. “Lending institution” includes commercial bank, savings and loan  
35 institution, credit union, or other organization or person engaged in the business of  
36 financing loans.

37 **Comment.** Section 7022 continues the second paragraph of former Section 3237.

38 See also Section 7032 (“person” defined).

1    **§ 7024. Lien**

2       7024. “Lien” means a lien under this part and includes a lien of a design  
3 professional under Section 7300, a lien for a work of improvement under Section  
4 7400, and a lien for a site improvement under Section 7404.

5       **Comment.** Section 7024 is a new definition. It is included for drafting convenience. There are  
6 instances in this part where the term is not used in its defined sense. See, e.g., Sections 7446 (d)  
7 (multiple works of improvement), 7450 (a) (priority of lien). See also Section 7000 (application  
8 of definitions).

9       See also Sections 7010 (“design professional” defined), 7040 (“site improvement” defined),  
10 7046 (“work of improvement” defined).

11    **☞ Staff Note.** Need to review lien statutes to make sure they apply appropriately to design  
12 professionals lien, or else exclude them in design professional statute.

13    **§ 7026. Material supplier**

14       7026. (a) “Material supplier” means a person that provides material or supplies  
15 to be used or consumed in a work of improvement.

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

19       **Comment.** Subdivision (a) of Section 7026 replaces the term “materialman” with the term  
20 “material supplier” to conform to contemporary usage under this part. It continues former Section  
21 7026 without substantive change.

22       Subdivision (b) is new. It reverses existing law. See, e.g., Consolidated Elec. Distributors, Inc.  
23 v. Kirkham, Chaon & Kirkham, Inc., 18 Cal. App. 3d 54, 58, 95 Cal. Rptr. 673 (1971).

24       See also Sections 7032 (“person” defined), 7046 (“work of improvement” defined).

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

28    **§ 7028. Owner**

29       7028. “Owner” means:

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

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

35       (c) A successor in interest of a person described in subdivision (a) or (b).

36       **Comment.** Section 7028 is a new definition. It is included for drafting convenience.

37       For the authority of an owner to act on behalf of co-owners, and for the effect of notice to a co-  
38 owner or the owner of a lesser interest, see Section 7058 (co-owners). For general provisions on  
39 the authority of an agent, see Section 7060 (agency).

40       See also Sections 7032 (“person” defined), 7046 (“work of improvement” defined).

41    **§ 7030. Payment bond**

42       7030. “Payment bond” means a bond given under Chapter 6 (commencing with  
43 7600).

1       **Comment.** Section 7030 supersedes former Section. 3096. See also Section 7600 (payment  
2 bond). There are instances in this part where the term is not used in its defined sense. See, e.g.,  
3 Sections 7720-7722 (payment bond as security for large project). See also Section 7000  
4 (application of definitions).

5       **§ 7032. Person**

6       7032. “Person” means an individual, corporation, public entity, business trust,  
7 estate, trust, partnership, limited liability company, association, or other entity.

8       **Comment.** Section 7032 is a new definition. It is included for drafting convenience. It  
9 supplements Section 14 (“person” includes corporation as well as natural person).

10       See also Section 7036 (“public entity” defined).

11       **§ 7034. Preliminary notice**

12       7034. “Preliminary notice” means the notice provided for in Chapter 2  
13 (commencing with 7200).

14       **Comment.** Section 7034 supersedes former Section 3097. The substantive requirements for  
15 preliminary notice are relocated to Section 7200 *et seq.*

16       **§ 7036. Public entity**

17       7036. “Public entity” means the state, Regents of the University of California, a  
18 county, city, district, public authority, public agency, and any other political  
19 subdivision or public corporation in the state.

20       **Comment.** Section 7036 continues former Section 3099 without substantive change. This part  
21 does not apply to a public work, including a work of improvement governed by federal law. See  
22 Section 7050 (application of part). For public works contract remedies, see Pub. Cont. Code §§  
23 41010-42390.

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

25       **§ 7038. Site**

26       7038. “Site” means the property on which a work of improvement is situated or  
27 planned.

28       **Comment.** Section 7038 continues former Section 3101, with the addition of a reference to a  
29 planned work of improvement. See Section 7300 (design professionals lien).

30       See also Section 7046 (“work of improvement” defined).

31       **§ 7040. Site improvement**

32       7040. “Site improvement” means any of the following work on property:

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

34       (b) Drilling test holes.

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

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

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

39       (f) Any other work or improvements in preparation of the site for a work of  
40 improvement.

1       **Comment.** Section 7040 continues former Section 3102 without substantive change.  
2       Subdivision (f) makes clear that the reference in former law to “making any improvements”  
3       means preparatory work, including infrastructure, and does not include construction of a  
4       structure.

5       See also Sections 7038 (“site” defined), 7046 (“work of improvement” defined).

6       **§ 7042. Stop payment notice**

7       7042. (a) “Stop payment notice” means the notice given under Chapter 5  
8       (commencing with Section 7500). A reference in another statute to a “stop notice”  
9       in connection with the remedies provided in this part means a stop payment notice.

10       (b) A stop payment notice may be bonded or unbonded. A “bonded stop  
11       payment notice” is a notice given with a bond under Section 7532. An “unbonded  
12       stop payment notice” is a notice not given with a bond under Section 7532.

13       (c) Except to the extent this part distinguishes between a bonded and an  
14       unbonded stop payment notice, a reference in this part to a stop payment notice  
15       includes both a bonded and an unbonded notice.

16       **Comment.** Subdivision (a) of Section 7042 is new. The term “stop payment notice” replaces  
17       the term “stop notice” used in former law.

18       Subdivision (b) supersedes former Section 3083.

19       ☞ **Staff Note.** Our proposed conforming revisions pick up most, but not all, statutory references  
20       to stop notices. Cf. Gov’t Code §§ 905, 60201.

21       **§ 7044. Subcontractor**

22       7044. “Subcontractor” means a contractor that does not have a direct contractual  
23       relationship with an owner. The term includes a contractor that has a contractual  
24       relationship with a direct contractor or with another subcontractor.

25       **Comment.** The first sentence of Section 7044 continues former Section 3104 without  
26       substantive change. The second sentence is new; it makes clear that the term “subcontractor”  
27       includes a subcontractor below the first tier.

28       See also Section 7028 (“owner” defined).

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

31       **§ 7046. Work of improvement**

32       7046. (a) “Work of improvement” includes but is not limited to:

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

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

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

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

41       **Comment.** Section 7046 restates former Section 3106. The section is revised to reorganize and  
42       tabulate the different types of works falling within the definition, to expand the coverage of the

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

3 A site improvement is treated under this part in the same manner as a work of improvement  
4 generally, except as specifically provided in this part. See Sections 7448 (claim against separate  
5 residential units), 7450 (priority of lien), 7458 (priority of site improvement lien). See also  
6 Section 7040 (“site improvement” defined).

## 7 Article 2. Miscellaneous Provisions

### 8 § 7050. Application of part

9 7050. This part applies only to a private work of improvement.

10 **Comment.** Section 7050 is new. It subsumes various provisions of former law, including  
11 former Sections 3097 (preliminary notice of private work), 3109 (application of mechanics lien  
12 provisions), 3156 (stop notice provisions), 3260 (retention payment provisions), 3260.1 (progress  
13 payment provisions), 3260.2 (stop work notice provisions).

14 The provisions of the mechanics lien law governing a public work are relocated to the Public  
15 Contract Code. See Pub. Cont. Code §§ 41010-42390 (public works contract remedies).

16 See also Section 7046 (“work of improvement” defined).

### 17 § 7052. Jurisdiction and venue

18 7052. The proper court for proceedings under this part is the superior court in  
19 the county in which a work of improvement, or part of it, is situated.

20 **Comment.** Section 7052 is a new provision included for drafting convenience. It generalizes a  
21 number of provisions of former law.

22 See also Section 7046 (“work of improvement” defined).

### 23 § 7054. Rules of practice

24 7054. Except as otherwise provided in this part, Part 2 (commencing with  
25 Section 307) of the Code of Civil Procedure provides the rules of practice in  
26 proceedings under this part.

27 **Comment.** Section 7054 continues the first sentence of former Section 3259 without  
28 substantive change. The second sentence of former Section 3259 is not continued; this part does  
29 not include special provisions relating to new trials or appeals.

30 Section 7054 makes former Section 3149, relating to consolidation of actions, unnecessary.  
31 Part 2 of the Code of Civil Procedure enables persons claiming liens on the same property to join  
32 in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive joinder). If  
33 separate actions are commenced the court may consolidate them. See Code Civ. Proc. § 1048  
34 (consolidation of actions).

### 35 § 7056. Filing and recording of papers

36 7056. (a) If this part provides for filing a contract, plan, or other paper with the  
37 county recorder the provision is satisfied by filing the paper in the office of the  
38 county recorder of the county in which the work of improvement or part of it is  
39 situated.

40 (b) If this part provides for recording a notice, claim of lien, payment bond, or  
41 other paper, the provision is satisfied by filing the paper for record in the office of  
42 the county recorder of the county in which the work of improvement or part of it is

1 situated. A paper in otherwise proper form, verified and containing the  
2 information required by this part, shall be accepted by the recorder for recording  
3 and is deemed duly recorded without acknowledgment.

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

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

12 **Comment.** Subdivisions (a) and (b) of Section 7056 are new. They generalize a number of  
13 provisions of former law. The provision of subdivision (b) for recordation without  
14 acknowledgment is drawn from former Sections 3084 and 3093; it is an exception to the general  
15 rule of Government Code Sections 27280 and 27287.

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

17 See also Sections 7024 (“lien” defined), 7046 (“work of improvement” defined).

#### 18 § 7057. Effect of act by owner

19 7057. No act of an owner in good faith and in compliance with a provision of  
20 this part shall be construed to prevent a direct contractor’s performance of the  
21 contract, or exonerate a surety on a performance or payment bond.

22 **Comment.** Section 7057 continues former Section 3263 without substantive change.

23 See also Section 7142 (release of surety from liability).

24 See also Sections 7006 (“contract” defined), 7012 (“direct contractor”) defined, 7028 (“owner”  
25 defined).

#### 26 § 7058. Co-owners

27 7058. (a) An owner may give a notice or execute or file a document under this  
28 part on behalf of a co-owner if the owner acts on the co-owner’s behalf and  
29 includes in the notice or document the name and address of the co-owner on  
30 whose behalf the owner acts.

31 (b) Notice to an owner of an interest in property is effective as to a co-owner of  
32 that interest.

33 (c) Notice to an owner of a leasehold or other interest in property that is less  
34 than a fee is not notice to an owner of the fee. Nothing in this subdivision limits  
35 the effect of knowledge of an owner, or of notice to a reputed owner where that  
36 notice is authorized by statute.

37 **Comment.** Section 7058 is new. It generalizes provisions found in former Sections 3092  
38 (notice of cessation) and 3093 (notice of completion), and clarifies the effect of giving or  
39 receiving notice by co-owners.

40 Under subdivision (c), notice to the owner of a leasehold may be effective as to the owner of  
41 the fee where the owner of the leasehold is the reputed owner of the fee and notice is given  
42 pursuant to statutory authority to notify the reputed owner. See, e.g., Section 7202 (preliminary  
43 notice requirement). This subdivision deals only with the effect of notice to the owner of a less

1 than fee interest. It does not deal with knowledge of the owner of the fee. See, e.g., Section 7442  
2 (lien attaches to interest of person for work provided with knowledge of that person).

3 See also Sections 7028 (“owner” defined), 7046 (“work of improvement” defined).

4 **§ 7060. Agency**

5 7060. An act that may be done by or to a person under this part may be done by  
6 or to the person’s agent to the extent the act is within the scope of the agent’s  
7 authority.

8 **Comment.** Section 7060 is a specific application of Section 2305 (agent may perform acts  
9 required of principal by code). This section makes clear that an agent’s authority is limited to the  
10 scope of the agency. Thus to the extent a direct contractor is deemed to be the agent of the  
11 principal for the purpose of engaging a subcontractor, the scope of the agency does not include  
12 other acts, such as compromise of litigation.

13 For provisions relating to the agent of an owner and to the agency authority of co-owners, see  
14 Sections 7028 (“owner” defined) and 7058 (co-owners).

15 See also Section 7032 (“person” defined).

16 **§ 7062. Relation to other statutes**

17 7062. (a) This part does not apply to a transaction governed by the Oil and Gas  
18 Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of  
19 the Code of Civil Procedure.

20 (b) This part does not limit, and is not affected by, improvement security  
21 provided under the Subdivision Map Act, Division 2 (commencing with Section  
22 66410) of Title 7 of the Government Code.

23 **Comment.** Subdivision (a) of Section 7062 restates former Section 3266(a) without  
24 substantive change. The substance of former Section 3266(b), which referred to former Streets  
25 and Highways Code Sections 5290-5297, is continued in Public Contract Code § 42010  
26 (application of part). This part does not apply to a public work. See Section 7050 (application of  
27 part).

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

31 **Article 3. Laborers Compensation Fund**

32 **§ 7070. Standing to enforce laborer’s rights**

33 7070. (a) A laborers compensation fund that has standing under applicable law  
34 to maintain a direct legal action in its own name or as an assignee to collect any  
35 portion of compensation owed for a laborer, has standing to enforce rights under  
36 this part to the same extent as the laborer.

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

40 **Comment.** Section 7070 continues the last two sentences of former Section 3089(b) without  
41 substantive change.

42 See also Sections 7018 (“laborer” defined), 7020 (“laborers compensation fund” defined), 7046  
43 (“work of improvement” defined).



1 effectiveness of the notice is not affected by the fact that the street address is  
2 erroneous or is omitted.

3 (5) The name, address, and relationship to the parties of the person giving the  
4 notice.

5 (6) If the person giving the notice is a claimant:

6 (i) A general statement of the labor, service, equipment, or material provided.

7 (ii) The name of the person to or for which the labor, service, equipment, or  
8 material is provided.

9 (iii) A statement or estimate of the claimant's demand, after deducting all just  
10 credits and offsets.

11 (b) Notice is not invalid by reason of any variance from the requirements of this  
12 section if the notice is sufficient to substantially inform the person given notice of  
13 the information required by this section and other information required in the  
14 notice.

15 **Comment.** Section 7102 is new. It generalizes and standardizes provisions found throughout  
16 former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion),  
17 3097 (preliminary notice), 3103 (stop notice), 3252 (notice to principal and surety).

18 **Staff Note.** Is this section overbroad? It applies at least to the major formal notices, but how  
19 about the lesser notices? Perhaps just limit it to notices that incorporate this section by reference.

20 Do we need a parallel provision for a public works contract?

21 **§ 7104. Manner of giving notice**

22 7104. Except as otherwise provided by statute, notice under this part may be  
23 given by any of the following means:

24 (a) Personal delivery.

25 (b) Mail in the manner provided in Section 7108.

26 (c) Leaving the notice and mailing a copy in the manner provided in Section  
27 415.20 of the Code of Civil Procedure for service of summons and complaint in a  
28 civil action.

29 **Comment.** Section 7104 is new. It generalizes and standardizes provisions found throughout  
30 former law. See, e.g., former Sections 3097 (preliminary notice), 3103 (stop notice), 3144.5  
31 (notice of release bond), 3227 (notice to principal and surety), 3259.5 (notice of recordation of  
32 notice of completion), 3260.2 (stop work notice).

33 When notice is given in the manner provided in Code of Civil Procedure Section 415.20 for  
34 service of summons and complaint, the notice is complete five days after leaving the notice. See  
35 Section 7114 (when notice complete). The 10 day delay provided in the Code of Civil Procedure  
36 for completion of service under that code is inapplicable.

37 This part may prescribe a different or more limited manner of giving a particular notice. See,  
38 e.g., [to be provided].

39 **Staff Note.** Do we need a parallel provision for public works contracts?

40 **§ 7106. Address at which notice is given**

41 7106. (a) Notice under this part shall be given to the person to be notified at an  
42 address prescribed in this section. If the person giving notice knows of more than

1 one address for the person to be notified, notice shall be given at the last known  
2 address of the person to be notified.

3 (b) Notice under this part shall be given to the person to be notified at the  
4 address of the person's residence or place of business, or at any of the following  
5 addresses:

6 (1) If the person to be notified is an owner, at the address shown on the contract,  
7 the building permit, or a construction trust deed.

8 (2) If the person to be notified is a construction lender, at the address shown on  
9 the construction loan agreement or construction trust deed.

10 (3) If the person to be notified is a direct contractor, at the address shown on the  
11 contract or building permit, or on the records of the Contractors' State License  
12 Board.

13 (4) If the person to be notified is a claimant, at the address shown on the  
14 contract, preliminary notice, claim of lien, stop payment notice, or claim against a  
15 payment bond, or on the records of the Contractors' State License Board.

16 (5) If the person to be notified is the principal or surety on a bond, at the address  
17 provided in the bond for service of notices, papers, and other documents.

18 **Comment.** Section 7106 is new. It generalizes and standardizes provisions found throughout  
19 former law.

20 Subdivision (b)(5) does not continue the unique provisions found in former Section 3227 for  
21 notice to alternate persons in the case of a personal surety or admitted surety insurer. The bond  
22 and undertaking law requires very bond to include the address at which the principal and sureties  
23 may be served with notices, papers, and other documents. Code Civ. Proc. § 995.320.

24 **§ 7108. Mailed notice**

25 7108. (a) Notice given by mail under this part shall be by (1) first class  
26 registered or certified mail or by (2) Express Mail or another method of delivery  
27 providing for overnight delivery.

28 (b) Proof that the notice was given in the manner provided in this section may be  
29 made by any of the following means:

30 (1) A return receipt, delivery confirmation, signature confirmation, or other  
31 proof of delivery or attempted delivery provided by the United States Postal  
32 Service, or a photocopy of the record of delivery and receipt maintained by the  
33 United States Postal Service, showing the date of delivery and to whom delivered,  
34 or in the event of nondelivery, by the returned envelope itself.

35 (2) Proof of mailing certified by the United States Postal Service.

36 (3) A tracking record or other documentation certified by an express service  
37 carrier showing delivery or attempted delivery of the notice.

38 **Comment.** Section 7108 is a new provision included for drafting convenience. It generalizes a  
39 number of provisions of former law, expands the methods of proof to include a certification of the  
40 mailing by the United States Postal Service, and expands the methods of giving notice to include  
41 delivery by express service carrier.

42 **Note.** The Commission proposes to expand the allowable methods of notice to include  
43 express delivery service, and to expand proof of notice by mail to include the United States Postal

1 Service’s certification of mailing. The Commission solicits comment on the proposed changes.  
2 Query, should overnight delivery in this draft be replaced by express service carrier?

3 **§ 7110. Electronic communication**

4 7110. (a) As used in this section, “electronic communication” includes  
5 electronic transmission of written or graphical material by electronic mail,  
6 facsimile, or other means, but does not include voice communication.

7 (b) A notice under this title may be given to a person by means of electronic  
8 communication if the person has expressly indicated a willingness to receive the  
9 notice by means of electronic communication.

10 **Comment.** Section 7110 is new. It is drawn from Government Code Section 11340.85  
11 (administrative procedure act).

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

13 See also Section 7032 (“person” defined).

14  **Staff Note.** How should the agreement be expressed and proved? What do UETA and E-  
15 SIGN have to say?

16 **§ 7112. Posting**

17 7112. A notice required by this part to be posted shall be displayed in a  
18 conspicuous location at the site and at the main office of the site, if one exists.

19 **Comment.** Section 7102 is new. It generalizes and standardizes provisions found in former  
20 law. See, e.g., former Sections 3094 (notice of nonresponsibility), 3260.2 (stop work notice).

21  **Staff Note.** It may be helpful to specifically cross reference this section in provisions where  
22 posting is required. Perhaps the same is true of other notice provisions as well.

23 **§ 7114. When notice complete**

24 7114. Notice under this part is complete and deemed to have been given at the  
25 following times :

26 (a) If given by personal delivery, when delivered.

27 (b) If given by mail, when deposited in the mail or with an express service  
28 carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

29 (c) If given by leaving the notice and mailing a copy in the manner provided in  
30 Section 415.20 of the Code of Civil Procedure for service of summons in a civil  
31 action, five days after leaving the notice.

32 (d) If given by posting, when displayed.

33 (e) If given by recording, when filed for record in the office of the county  
34 recorder.

35 **Comment.** Section 7114 is new. It generalizes and standardizes provisions found in former  
36 law. See, e.g., former Sections [to be provided].

37 Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure  
38 Section 1013, the notice is complete when deposited in the mail or with an express service carrier.  
39 The 10 and 20 day delays provided in the Code of Civil Procedure for completion of service  
40 under that code are inapplicable. For an exception to this rule, see Section 7486 (notice of hearing  
41 on lien release petition).

42 Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure  
43 Section 415.20 for service of summons and complaint, the notice is complete five days after

1 leaving the notice. The 10 day delay provided in the Code of Civil Procedure for completion of  
2 service under that code is inapplicable.

3 **§ 7116. Proof of notice**

4 7116. (a) Proof that notice was given to a person in the manner required by this  
5 part shall be made by the proof of notice affidavit provided in subdivision (b) and,  
6 if given by mail, shall be accompanied by proof in the manner provided in Section  
7 7108.

8 (b) A proof of notice affidavit shall show all of the following:

9 (1) The time, place, and manner of notice and facts showing that notice was  
10 given in the manner required by statute.

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

13 **Comment.** Section 7116 is new. It generalizes and standardizes provisions found throughout  
14 former law. See, e.g., former Sections 3097 (preliminary notice), 3260.2 (stop work notice).

15  **Staff Note.** Do we need a parallel provision for a public works contract?

16 **Article 5. Construction Documents**

17 **§ 7130. Contract forms**

18 7130. (a) A written contract entered into between an owner and a direct  
19 contractor shall provide a space for the owner to enter the following information:

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

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

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

28 **Comment.** Section 7130 continues the parts of former Section 3097(l)-(m) relating to the  
29 content of contracts, deleting the limitation to the owner's residence address. The reference to  
30 "written" contract is added to subdivision (b) for consistency with subdivision (a). The reference  
31 to "lender or lenders" in subdivision (a) is shortened to "lender" for consistency with subdivision  
32 (b). See Section 14 (singular includes plural, and plural includes singular). These and other minor  
33 wording changes are technical, nonsubstantive revisions. For the direct contractor's duty to  
34 provide information to persons seeking to serve a preliminary notice, see Section 7210.

35 See also Sections 7004 ("construction lender" defined), 7012 ("direct contractor" defined),  
36 7028 ("owner" defined), 7044 ("subcontractor" defined).

37 **§ 7132. Designation of construction lender on building permit**

38 7132. (a) A public entity that issues building permits shall, in its application  
39 form for a building permit, provide space and a designation for the applicant to  
40 enter the name, branch designation, if any, and address of the construction lender

1 and shall keep the information on file open for public inspection during the regular  
2 business hours of the public entity.

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

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

8 **Comment.** Section 7132 continues former Section 3097(i) without substantive change.

9 See also Sections 7004 (“construction lender” defined), 7032 (“person” defined), 7034  
10 (“preliminary notice” defined), 7036 (“public entity” defined).

11 **Note.** We have corrected a typographical error in the existing statute, which includes a stray  
12 comma between the words “branch” and “designation” in subdivision (a). Branch information  
13 may be important because a stop payment notice must be given at the office or branch of the  
14 lender administering or holding construction funds.

15 A random sampling of building permit application forms, however, indicates that half the cities  
16 don’t provide any space for construction lender information, and those that do provide space  
17 don’t inquire about branches. Does this provision serve a useful purpose? But see Health & Saf.  
18 Code § 19825 (building permit).

19 **§ 7134. Construction trust deed**

20 7134. (a) A mortgage, deed of trust, or other instrument securing a loan, any of  
21 the proceeds of which may be used for a work of improvement, shall bear the  
22 designation “Construction Trust Deed” prominently on its face and shall state all  
23 of the following:

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

25 (2) The name and address of the owner of the property described in the  
26 instrument.

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

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

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

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

36 **Comment.** Section 7134 continues former Section 3097(j) without substantive change.

37 See also Sections 7004 (“construction lender” defined), 7028 (“owner” defined), 7032  
38 (“person” defined), 7034 (“preliminary notice” defined), 7046 (“work of improvement” defined).

1 Article 6. Bonds

2 **§ 7140. Application of Bond and Undertaking Law**

3 7140. The Bond and Undertaking Law, Chapter 2 (commencing with Section  
4 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond  
5 given under this part.

6 **Comment.** Section 7140 is new. It is a specific application of Code of Civil Procedure Section  
7 995.020 (application of Bond and Undertaking Law)

8 Former Section 3227, relating to notice to principal and surety, is not continued. Its substance  
9 is superseded by Sections 7100-7116 (notice).

10 **§ 7142. Release of surety from liability**

11 7142. None of the following releases a surety from liability on a bond given  
12 under this part:

13 (a) A change to a contract, plan, specification, or agreement for a work of  
14 improvement or for labor, service, equipment, or material provided for a work of  
15 improvement.

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

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

19 (d) A condition precedent or subsequent in the bond purporting to limit the right  
20 of recovery of a claimant otherwise entitled to recover pursuant to a contract,  
21 agreement, or bond.

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

24 **Comment.** Section 7142 restates former Section 3225 without substantive change. See also  
25 Section 7057 (effect of act by owner).

26 See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7016 (“labor, service,  
27 equipment, or material” defined), 7032 (“person” defined), 7046 (“work of improvement”  
28 defined).

29 **§ 7144. Construction of bond**

30 7144. (a) A bond given under this part shall be construed most strongly against  
31 the surety and in favor of the beneficiary.

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

35 (c) The sole conditions of recovery on the bond are that the beneficiary is a  
36 person described in Article 1 (commencing with Section 7400) of Chapter 4 and  
37 has not been paid the full amount of the claim.

38 **Comment.** Section 7144 restates former Section 3226 without substantive change. See also  
39 Sections 7400-7406 (who is entitled to lien).

40 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”  
41 defined), 7032 (“person” defined).

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

1 ☞ **Staff Note.** Query whether subdivision (c) applies to non-lien remedies?

2 Article 7. Completion

3 § 7150. Completion

4 7150. (a) For the purpose of this part, completion of a work of improvement  
5 occurs at the earliest of the following times:

- 6 (1) Actual completion.  
7 (2) Occupation or use by the owner accompanied by cessation of labor.  
8 (3) Cessation of labor for a continuous period of 60 days.  
9 (4) Recordation of a notice of completion after cessation of labor for a  
10 continuous period of 30 days.

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

13 **Comment.** Section 7150 restates former Section 3086 to the extent it applied to a private work,  
14 but omits the provision of the former law that defined completion to include “acceptance” by the  
15 owner. References to occupation or use by an owner include those actions by the owner’s agent.  
16 See Section 7028 (“owner” defined).

17 The provision in subdivision (b) for acceptance by a public entity refers to acceptance pursuant  
18 to a legislative enactment of the public entity and not to inspection and approval or issuance of a  
19 certificate of occupancy under building regulations.

20 See also Sections 7036 (“public entity” defined), 7046 (“work of improvement” defined).

21 ☞ **Note.** The Commission particularly solicits comment on:

- 22 • Whether the provision of existing law for completion on “acceptance” by the owner is  
23 useful. That provision is not continued in the current draft because it appears to be rarely  
24 used, and there is no mechanism for communication of acceptance to the claimant.  
25 • Whether subdivision (b), relating to acceptance by a public entity, is useful.

26 § 7152. Notice of completion

27 7152. (a) On or after completion of a work of improvement an owner may  
28 record a notice of completion.

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

31 (1) If the notice is given only of completion of a contract for a particular portion  
32 of the work of improvement as provided in Section 7154, the name of the direct  
33 contractor under that contract and a general statement of the kind of labor, service,  
34 equipment, or material provided pursuant to the contract.

35 (2) If signed by the owner’s successor in interest, the name and address of the  
36 successor’s transferor.

37 (3) The nature of the interest or estate of the owner.

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

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

4 (6) An affidavit of mailing in the manner provided in Section 1013a of the Code  
5 of Civil Procedure, showing all persons given notice under Section 7156.

6 **Comment.** Section 7152 combines former Section 3093 (notice of completion) with former  
7 Section 3092 (notice of cessation). For the date of completion of a work of improvement, see  
8 Section 7150. For the effect of a notice of completion, see Sections 7412-7414 (time for claim of  
9 lien), 7460 (time for commencement of enforcement action). See also Sections 7100-7116  
10 (notice). The information required in this notice is in addition to the information required by  
11 Section 7102 (contents of notice).

12 This section eliminates the 10-day period for recording a notice of completion under former  
13 law. A claim of lien must be filed within 30 or 60 days after recording a notice of completion  
14 (depending on the nature of the claimant), subject to a maximum of 90 days after actual  
15 completion. See Sections 7412 and 7414 (recordation of claim of lien). However, an owner that  
16 records a notice of completion that states an incorrect date of completion may be estopped from  
17 asserting the running of the filing period. See *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340  
18 P.2d 58 (1959).

19 A notice of completion is ineffective to shorten the time for a claim of lien unless notice of  
20 recordation is given to the person whose claim of lien is affected. See Section 7156 (notice of  
21 recordation by owner). The requirement of an affidavit of mailing in subdivision (b)(6) is new.  
22 See also Code Civ. Proc. § 2015.5 (declaration or certificate under penalty of perjury).

23 A notice of completion is recorded in the office of the county recorder of the county in which  
24 the work of improvement or part of it is situated. Section 7056(a) (filing and recording of papers).  
25 A notice of completion is recorded when it is filed for record. Section 7056(b).

26 As used in this section, the owner is the person that causes a building, improvement, or  
27 structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of  
28 a notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee  
29 under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a  
30 cotenant. A notice of completion may be signed and verified by the owner's agent. See Sections  
31 7028 ("owner" defined), 7058 (co-owners).

32 The reference to a successor's "transferors" is omitted from subdivision (b)(2). See Section 14  
33 (singular includes plural).

34 See also Sections 7016 ("labor, service, equipment, or material" defined), 7012 ("direct  
35 contractor" defined), 7038 ("site" defined), 7046 ("work of improvement" defined), Section 7056  
36 (filing and recording of papers).

37 **§ 7154. Notice of completion of contract for portion of work of improvement**

38 7154. If a work of improvement is made pursuant to two or more contracts, each  
39 covering a portion of the work of improvement:

40 (a) The owner may record a notice of completion of a contract for a portion of  
41 the work of improvement. On recordation of the notice of completion, for the  
42 purpose of Sections 7412 and 7414 a direct contractor is deemed to have  
43 completed the contract for which the notice of completion is recorded and a  
44 claimant other than a direct contractor is deemed to have ceased providing labor,  
45 service, equipment, or material.

46 (b) If the owner does not record a notice of completion under this section, the  
47 period for recording a claim of lien is that provided in Sections 7412 and 7414.

1 **Comment.** Section 7154 continues the substance of former Section 3117, but eliminates the  
2 10-day period for recording a notice of completion. A claim of lien must be filed within 60 days  
3 after recording a notice of completion (depending on the nature of the claimant), subject to a  
4 maximum of 90 days after actual completion. See Sections 7412 and 7414 (recordation of claim  
5 of lien). However, an owner that records a notice of completion that states an incorrect date of  
6 completion may be estopped from asserting the running of the filing period. See *Doherty v.*  
7 *Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58 (1959).

8 This section omits the rules found in former law governing the time for recording a claim of  
9 lien after a notice of completion for a portion of a work of improvement. The general rules  
10 governing the time for recording do not distinguish among types of notice of completion, and  
11 appear to be satisfactory for purposes of this section, with the clarification set out in subdivision  
12 (a). See Sections 7412 and 7414 (recordation of claim of lien).

13 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
14 defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7046 (“work of  
15 improvement” defined).

16 **Note.** The Commission solicits comment on the policy of this section. Where there are two  
17 or more separate contracts on a single job, it may be advantageous for an owner-builder, for  
18 example, to narrow liability exposure. A notice of completion as to a portion of a project can also  
19 benefit a subcontractor whose right to received a retention may be triggered by the notice of  
20 completion. On the other hand, a notice of completion as to a portion of a project can also cause  
21 problems by triggering a lien claim or foreclosure as to that portion of the project. If that portion  
22 of the project is stand-alone, the foreclosure may be feasible; if it is part of an integrated whole,  
23 foreclosure may be difficult.

#### 24 § 7156. Notice of recordation by owner

25 7156. (a) An owner that records a notice of completion shall on recordation give  
26 a copy of the notice to all of the following persons:

27 (1) A direct contractor.

28 (2) A claimant that has given the owner preliminary notice.

29 (b) If the owner fails to give notice to a person under subdivision (a), the notice  
30 of completion is ineffective to shorten the time within which the person may  
31 record a claim of lien under Sections 7412 and 7414. The ineffectiveness of the  
32 notice of completion is the sole liability of the owner for failure to give notice to a  
33 person under subdivision (a).

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

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

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

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

40 **Comment.** Section 7156 restates former Section 3259.5, replacing the notice of recordation  
41 with a copy of the recorded notice and expanding the manner of notice. See Section 7104  
42 (manner of giving notice). This provision is limited to a private work. See Section 7050  
43 (application of part). The section eliminates the former 10 day notice period and requires  
44 immediate notice. See also Section 7152(b)(7) and Code Civ. Proc. § 1013a(c) (affidavit of  
45 mailing). As used in this section “owner” includes a person who has an interest in property (or the  
46 person’s successor in interest on the date a notice of completion is recorded) that causes a  
47 building, improvement, or structure, to be constructed, altered, or repaired on the property), and  
48 includes a cotenant. See Section 7028 (“owner” defined). A notice is recorded when it is filed for

1 record. Section 7056 (filing and recording of papers). The references to a “mechanic’s” lien in  
2 subdivision (a) are deleted. Subdivision (a) is intended to apply to a site improvement lien as  
3 well.

4 The notice may no longer be given by regular mail. For service and proof of service by mail,  
5 see Section 7108 (mailed notice).

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

8 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7012 (“direct contractor”  
9 defined), 7032 (“person” defined), 7034 (“preliminary notice” defined).

## 10 Article 8. Waiver and Release

### 11 § 7160. Terms of contract

12 7160. An owner or direct contractor may not, by contract or otherwise, waive,  
13 affect, or impair a claimant’s rights under this part, whether with or without notice,  
14 and any term of a contract that purports to do so is void and unenforceable unless  
15 and until the claimant executes and delivers a waiver and release under this article.

16 **Comment.** Section 7160 continues the first and second sentences of former Section 3262(a)  
17 without substantive change. See Section 7002 (“claimant” defined).

18 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7028  
19 (“owner” defined).

### 20 § 7162. Waiver and release

21 7162. A claimant’s waiver and release does not release the owner, construction  
22 lender, or surety on a payment bond from a claim or lien unless both of the  
23 following conditions are satisfied:

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

26 (b) If the release is a conditional release, there is evidence of payment to the  
27 claimant. Evidence of payment may be (1) the claimant’s endorsement on a single  
28 or joint payee check that has been paid by the financial institution on which it was  
29 drawn or (2) written acknowledgment of payment by the claimant.

30 **Comment.** Section 7162 continues the third and fourth sentences of former Section 3262(a)  
31 without substantive change. The waiver and release may be signed by the claimant’s agent. See  
32 Section 7060 (agency). The term “financial institution” replaces “bank” in subdivision (b) and in  
33 the forms provided in this article.

34 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7024  
35 (“lien” defined), 7028 (“owner” defined).

### 36 § 7164. Statement of claimant

37 7164. An oral or written statement purporting to waive, release, impair or  
38 otherwise adversely affect a claim or lien is void and unenforceable and does not  
39 create an estoppel or impairment of the claim or lien unless either of the following  
40 conditions is satisfied:

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

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

1       **Comment.** Section 7164 continues former Section 3262(b) without substantive change.  
2       See also Section 7002 (“claimant” defined).

3       **§ 7166. Reduction or release of stop payment notice**

4       7166. (a) A claimant may reduce the amount of, or release in its entirety, a stop  
5       payment notice. The reduction or release shall be in writing and may be given in a  
6       form other than a form of waiver and release prescribed in this article.

7       (b) A claimant’s reduction or release of a stop payment notice has the following  
8       effect:

9       (1) The reduction or release releases the claimant's right to enforce the notice to  
10       the extent of the reduction or release.

11       (2) The reduction or release releases the person given the notice from the  
12       obligation to withhold funds pursuant to the notice to the extent of the reduction or  
13       release.

14       (3) The reduction or release does not preclude the claimant from giving a  
15       subsequent stop payment notice that is timely and proper.

16       (4) The reduction or release does not release any right of the claimant other than  
17       the right to enforce the stop payment notice to the extent of the reduction or  
18       release.

19       **Comment.** Section 7166 restates the second, third, and fourth sentences of subdivision (b) of  
20       former Section 3262. The provisions apply to a stop payment notice given to a construction  
21       lender as well as to a stop payment notice given to the owner.

22       See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment  
23       notice” defined).

24       **§ 7168. Accord and satisfaction or settlement agreement not affected**

25       7168. This article does not affect the enforceability of either an accord and  
26       satisfaction concerning a good faith dispute or an agreement made in settlement of  
27       an action pending in court if the accord and satisfaction or agreement and  
28       settlement make specific reference to the claim or lien.

29       **Comment.** Section 7168 continues former Section 3262(c) without substantive change.

30       See also Section 7024 (“lien” defined).

31       **§ 7170. Conditional waiver and release on progress payment**

32       7170. If a claimant is required to execute a waiver and release in exchange for,  
33       or in order to induce the payment of, a progress payment and the claimant is not,  
34       in fact, paid in exchange for the waiver and release or a single payee check or joint  
35       payee check is given in exchange for the waiver and release, the waiver and  
36       release shall be in substantially the following form:

1                   CONDITIONAL WAIVER AND RELEASE ON PROGRESS  
2   PAYMENT

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

6 **Identifying Information**

7 Name of Claimant: \_\_\_\_\_  
8 Name of Customer: \_\_\_\_\_  
9 Job Location: \_\_\_\_\_  
10 Owner: \_\_\_\_\_  
11 Through Date: \_\_\_\_\_

12 **Conditional Waiver and Release**

13 This document waives and releases lien, stop payment notice, and payment bond  
14 rights the claimant has for labor, service, equipment, and material provided to the  
15 customer on this job through the Through Date of this document. This document is  
16 effective only on the claimant’s receipt of payment from the financial institution  
17 on which the following check is drawn:

18           Maker of Check: \_\_\_\_\_  
19           Amount of Check: \$ \_\_\_\_\_  
20           Check Payable to: \_\_\_\_\_

21 **Exceptions**

22 This document does not affect any of the following:

- 23 (1) Retentions.  
24 (2) Extras for which the claimant has not received payment.  
25 (3) The following progress payments for which the claimant has previously given  
26 a conditional waiver and release but has not received payment:

27           Date of waiver and release: \_\_\_\_\_  
28           Amount remaining unpaid: \$ \_\_\_\_\_

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

32 **Signature**

33 Claimant’s Signature: \_\_\_\_\_  
34 Claimant’s Title: \_\_\_\_\_

35  
36 **Comment.** Section 7170 restates former Section 3262(d)(1), with the addition of language  
37 relating to progress payments covered by previous releases that have not been paid. The statutory  
38 form is recast for clarity.

39 See also Section 7002 (“claimant” defined).

1 **§ 7172. Unconditional waiver and release on progress payment**

2 7172. If the claimant is required to execute a waiver and release in exchange for,  
3 or in order to induce payment of, a progress payment and the claimant asserts in  
4 the waiver it has, in fact, been paid the progress payment, the waiver and release  
5 shall be in substantially the following form, with the text of the “Notice to  
6 Claimant” in at least as large a type as the largest type otherwise in the form:

7 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS  
8 PAYMENT

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

13 **Identifying Information**

14 Name of Claimant: \_\_\_\_\_  
15 Name of Customer: \_\_\_\_\_  
16 Job Location: \_\_\_\_\_  
17 Owner: \_\_\_\_\_  
18 Through Date: \_\_\_\_\_

19 **Unconditional Waiver and Release**

20 This document waives and releases lien, stop payment notice, and payment bond  
21 rights the claimant has for labor, service, equipment, and material provided to the  
22 customer on this job through the Through Date of this document. The claimant has  
23 received the following payment:

24 Amount of payment: \$ \_\_\_\_\_

25 **Exceptions**

26 This document does not affect any of the following:

- 27 (1) Retentions.  
28 (2) Extras for which the claimant has not received payment.  
29 (3) Contract rights, including (i) a right based on rescission, abandonment, or  
30 breach of contract, and (ii) the right to recover compensation for labor, service,  
31 equipment, or material not compensated by the payment.

32 **Signature**

33 Claimant’s Signature: \_\_\_\_\_  
34 Claimant’s Title: \_\_\_\_\_

35

1 **Comment.** Section 7172 restates former Section 3262(d)(2) without substantive change. The  
2 references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals  
3 lien or a site improvement lien as well. The statutory form is recast for clarity.

4 See also Section 7002 (“claimant” defined).

5 **§ 7174. Conditional waiver and release on final payment**

6 7174. If the claimant is required to execute a waiver and release in exchange for,  
7 or in order to induce the payment of, a final payment and the claimant is not, in  
8 fact, paid in exchange for the waiver and release or a single payee check or joint  
9 payee check is given in exchange for the waiver and release, the waiver and  
10 release shall be in substantially the following form:

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

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

15 **Identifying Information**

16 Name of Claimant: \_\_\_\_\_

17 Name of Customer: \_\_\_\_\_

18 Job Location: \_\_\_\_\_

19 Owner: \_\_\_\_\_

20 Date: \_\_\_\_\_

21 **Conditional Waiver and Release**

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

26 Maker of Check: \_\_\_\_\_

27 Amount of Check: \$ \_\_\_\_\_

28 Check Payable to: \_\_\_\_\_

29 **Exceptions**

30 This document does not affect any of the following:

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

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

34 Date of waiver and release: \_\_\_\_\_

35 Amount remaining unpaid: \$ \_\_\_\_\_

36 **Signature**

37 Claimant’s Signature: \_\_\_\_\_

38 Claimant’s Title: \_\_\_\_\_

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**Comment.** Section 7174 continues former Section 3262(d)(3), with the addition of language relating to progress payments covered by previous releases that have not been paid, and the addition of a line for identification of the waivant’s customer. The references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals lien or a site improvement lien as well. The statutory form is recast for clarity.

See also Section 7002 (“claimant” defined).

**§ 7176. Unconditional waiver and release on final payment**

7176. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall be in substantially the following form, with the text of the “Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

**Identifying Information**

Name of Claimant: \_\_\_\_\_  
Name of Customer: \_\_\_\_\_  
Job Location: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Date: \_\_\_\_\_

**Unconditional Waiver and Release**

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

**Exceptions**

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

**Signature**

Claimant’s Signature: \_\_\_\_\_  
Claimant’s Title: \_\_\_\_\_

**Comment.** Section 7176 continues former Section 3262(d)(4) without substantive change. The references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals lien or a site improvement lien as well. The statutory form is recast for clarity.

See also Section 7002 (“claimant” defined).

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## CHAPTER 2. PRELIMINARY NOTICE

### § 7200. Preliminary notice prerequisite to remedies

7200. (a) Except as otherwise provided in this section, preliminary notice is a necessary prerequisite to the validity of a lien, stop payment notice, or claim against a payment bond.

(b) A laborer or laborers compensation fund is not required to give preliminary notice.

(c) A direct contractor is required to give preliminary notice only to a construction lender.

**Comment.** Subdivision (a) of Section 7200 restates part of the introductory clause of former Section 3097 without substantive change. This article is limited to private work. See Section 7050 (application of part).

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

Subdivision (c) restates parts of former Section 3097(a) and (b), omitting the exception of “the contractor”. Although a direct contractor is generally excused from the preliminary notice requirement, the direct contractor must give preliminary notice to a construction lender under Section 7202(c).

The transitional provisions of former Section 3097(p) are not continued due to lapse of time.

See also Sections 7002 (“claimant” defined), 7018 (“laborer” defined), 7020 (“laborers compensation fund” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined).

### § 7202. Preliminary notice requirement

7202. Before recording a claim of lien, giving a stop payment notice, or asserting a claim against a payment bond, the claimant shall give preliminary notice to each of the following persons:

(a) The owner or reputed owner.

(b) The direct contractor or reputed contractor.

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

**Comment.** Section 7202 restates parts of the introductory clause and subdivision (a) of former Section 3097, without substantive change. Some repetitive detail is omitted in reliance on defined terms and other substantive provisions. The preliminary notice must be in writing. Section 7204 (contents of preliminary notice).

For an exception to the requirement that preliminary notice must be given before asserting a claim against a payment bond, see Section 7612.

Former Sections 3097(f) and 3097.1 are not continued. General provisions of this part expand the methods of notice. See Sections 7100-7116 (notice). See also Code Civ. Proc. § 2015.5 (declaration or certificate under penalty of perjury).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined).

### § 7204. Contents of preliminary notice

7204. (a) A preliminary notice shall include the following statement in boldface type:

**NOTICE TO PROPERTY OWNER**

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

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

17           (b) If preliminary notice is given by a subcontractor that has not paid all  
18 compensation due to a laborer or laborers compensation fund, the notice shall  
19 include the name and address of the laborer and any laborers compensation fund to  
20 which payments are due.

21           (c) If an invoice for material or certified payroll contains the information  
22 required by this section and Section 7102, a copy of the invoice or payroll, given  
23 in the manner provided by this article for giving of notice, is sufficient.

24           **Comment.** Section 7204 continues the substance of former Section 3097(c)(1)-(6), the  
25 unnumbered paragraph following paragraph (6), and the requirement of former Section 3097(a)  
26 that the preliminary notice be written. See also Sections 7100-7116 (notice). The reference to an  
27 “express trust fund” is replaced by the defined term, “laborers compensation fund,” See Section  
28 7020 (“laborers compensation fund” defined).

29           The information required in this notice is in addition to the information required by Section  
30 7102 (contents of notice).

31           See also Sections 7008 (“contract price” defined), 7016 (“labor, service, equipment, or  
32 material” defined), 7018 (“laborer” defined), 7024 (“lien” defined), 7032 (“person” defined),  
33 7038 (“site” defined), 7044 (“subcontractor” defined).

34           **§ 7206. Effect of preliminary notice**

35           7206. (a) A claimant may record a claim of lien, file a stop payment notice, or  
36 assert a claim against a payment bond only for labor, service, equipment, or  
37 material provided within 20 days before giving preliminary notice and at any time  
38 thereafter.

39           (b) Notwithstanding subdivision (a), a design professional may record a claim of  
40 lien, file a stop payment notice, or assert a claim against a payment bond for  
41 design professional services provided for the design of the work of improvement if  
42 the design professional gives preliminary notice not later than 20 days after the  
43 work of improvement has commenced.

1 **Comment.** Subdivision (a) of Section 7206 supersedes former Section 3097(d). The provision  
2 is simplified so that it refers only to the effect of giving preliminary notice.

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

4 See also Sections 7002 (“claimant” defined), 7010 (“design professional” defined), 7016  
5 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7046 (“work of  
6 improvement” defined).

7 **§ 7208. Coverage of preliminary notice**

8 7208. (a) Except as provided in subdivision (b), a claimant need give only one  
9 preliminary notice to each person to which notice must be given under this article  
10 with respect to all labor, service, equipment, and material provided by the claimant  
11 for a work of improvement.

12 (b) If a claimant provides labor, service, equipment, or material pursuant to  
13 contracts with more than one subcontractor, the claimant shall give a separate  
14 preliminary notice with respect to labor, service, equipment, or material provided  
15 to each contractor.

16 (c) A preliminary notice that contains a general description of labor, service,  
17 equipment, or material provided by the claimant through the date of the notice also  
18 covers labor, service, equipment, or material provided by the claimant after the  
19 date of the notice whether or not they are within the scope of the general  
20 description contained in the notice

21 **Comment.** Section 7208 restates former Section 3097(g) without substantive change.

22 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
23 defined), 7032 (“person” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement”  
24 defined).

25 **§ 7210. Direct contractor’s duty to provide information**

26 7210. A direct contractor shall make available to any person seeking to give  
27 preliminary notice the following information:

28 (a) The name and address of the owner.

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

30 **Comment.** Section 7210 continues the parts of former Section 3097(l)-(m) relating to the  
31 direct contractor’s duty to provide information, deleting the limitation to the owner’s residence  
32 address. For provisions concerning the content of contracts, see Section 7130 (contract forms).

33 See also Sections 14 (singular includes plural), 7004 (“construction lender” defined), 7012  
34 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined).

35 **§ 7212. Owner’s duty to give notice of construction loan**

36 7212. If a construction loan is obtained after commencement of work, the owner  
37 shall provide the name and address of the construction lender to each person that  
38 has given the owner preliminary notice.

39 **Comment.** Section 7212 continues former Section 3097(n) without substantive change. The  
40 reference to commencement of construction is changed to commencement of work for  
41 consistency with the remainder of this part.

42 See also Sections 7004 (“construction lender” defined), 7028 (“owner” defined), 7032  
43 (“person” defined).

1 § 7214. Waiver void

2 7214. An agreement made or entered into by an owner whereby the owner  
3 agrees to waive the rights conferred on the owner by this article is void and  
4 unenforceable.

5 **Comment.** Section 7214 continues former Section 3097(e) without substantive change.  
6 See also Section 7028 (“owner” defined).

7 § 7216. Disciplinary action

8 7216. A licensed subcontractor is subject to disciplinary action under the  
9 Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of  
10 Division 3 of the Business and Professions Code, if all of the following conditions  
11 are satisfied:

12 (a) The subcontractor does not pay all compensation due to a laborers  
13 compensation fund.

14 (b) The subcontractor fails to give preliminary notice or include in the notice the  
15 information required by subdivision (b) of Section 7204.

16 (c) The subcontractor’s failure results in the laborers compensation fund  
17 recording a claim of lien, filing a stop payment notice, or asserting a claim against  
18 a payment bond.

19 (d) The amount due the laborers compensation fund is not paid.

20 **Comment.** Section 7216 continues the substance of the second paragraph of former Section  
21 3097(h), The first paragraph, relating to disciplinary action if a subcontractor fails to give  
22 preliminary notice on a work of improvement exceeding \$400, is not continued.

23 The reference to an “express trust fund” is replaced by the defined term, “laborers  
24 compensation fund” which arguably expands the scope of the provision. See Section 7020  
25 (“laborers compensation fund” defined).

26 See also Sections 7024 (“lien” defined), 7034 (“preliminary notice” defined), 7044  
27 (“subcontractor” defined), 7046 (“work of improvement” defined).

28 § 7218. Notices filed with county recorder

29 7218. The county recorder may cause to be destroyed all documents filed under  
30 subdivision (o) of former Section 3097.

31 **Comment.** Section 7218 supersedes former Section 3097(o) relating to filing preliminary  
32 notice with the county recorder. This part no longer provides for filing a preliminary notice with  
33 the county recorder or for the county recorder to give notice to persons who filed preliminary  
34 notice of the recording of a notice of completion or notice of cessation.

35 The former reference to the date after which the county recorder is authorized to act (January 1,  
36 2007) is deleted as a transitional provision that is now obsolete.

37 CHAPTER 3. DESIGN PROFESSIONALS LIEN

38 § 7300. Lien

39 7300. (a) A design professional has, from the date of recordation of a claim of  
40 lien under this chapter, a lien on the site notwithstanding the absence of  
41 commencement of the planned work of improvement, if the owner that contracted

1 for the design professional’s services is also the owner of the site at the time of  
2 recordation of the claim of lien.

3 (b) The lien of the design professional is for the amount of the design  
4 professional’s fee for services provided under the contract or the reasonable value  
5 of those services, whichever is less. The amount of the lien is reduced by the  
6 amount of any deposit or prior payment under the contract.

7 (c) A design professional may not record a claim of lien, and a lien may not be  
8 created, under this chapter unless a building permit or other governmental  
9 approval in furtherance of the work of improvement has been obtained in  
10 connection with or utilizing the services provided by the design professional.

11 **Comment.** Section 7300 restates former Section 3081.2. See also Section 7060 (agency). The  
12 amount of the lien is limited to the fee for services provided under the contract, rather than the  
13 amount provided before commencement of work, since the lien provided by this section is  
14 available even though construction is not commenced. See also Section 7304 (lien terminates on  
15 commencement of work).

16 See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner”  
17 defined), 7038 (“site” defined), 7046 (“work of improvement” defined).

18 **§ 7302. Prerequisites for lien**

19 7302. A design professional is not entitled to a lien under this chapter unless all  
20 of the following conditions are satisfied:

21 (a) The work of improvement for which the design professional provided  
22 services has not commenced.

23 (b) The owner defaults in a payment required under the contract or refuses to  
24 pay the demand of the design professional made under the contract.

25 (c) Not less than 10 days before recording a claim of lien, the design  
26 professional gives the owner notice making a demand for payment and stating that  
27 a default has occurred under the contract and the amount of the default.

28 (d) The design professional records a claim of lien. The claim of lien shall  
29 include all of the following information:

30 (1) The name of the design professional.

31 (2) The amount of the claim.

32 (3) The current owner of record of the site.

33 (4) A legal description of the site.

34 (5) Identification of the building permit or other governmental approval for the  
35 work of improvement.

36 **Comment.** Section 7302 restates former Section 3081.3, with the clarification that a lien under  
37 this chapter is unavailable if construction has commenced. See subdivision (a). See also Sections  
38 7100-7116 (notice), 7056 (filing and recording of papers).

39 A building permit or other governmental approval for the work of improvement obtained in  
40 connection with or utilizing the services provided by the design professional is required as a  
41 condition of recording the claim of lien under Section 7300 (lien).

42 See also Sections 7006 (“contract” defined), 7010 (“design professional” defined), 7024 (“lien”  
43 defined), 7028 (“owner” defined), 7038 (“site” defined), 7046 (“work of improvement” defined).

1    **§ 7304. Creation, expiration, and release of lien**

2       7304. (a) On recordation of the claim of lien, a lien is created in favor of the  
3 named design professional.

4       (b) The lien automatically expires and is null and void and of no further force or  
5 effect on the occurrence of either of the following events:

6           (1) The commencement of the work of improvement for which the design  
7 professional provided services.

8           (2) The expiration of 90 days after recording the claim of lien, unless the design  
9 professional commences an action to enforce the lien within that time.

10       (c) If the owner partially or fully satisfies the lien, the design professional shall  
11 execute and record a waiver and release under Article 8 (commencing with  
12 Section 7160) of Chapter 2.

13       **Comment.** Section 7304 restates former Section 3081.4. On expiration of the lien as a result of  
14 commencement of the work of improvement, the design professional may obtain a lien under  
15 Section 7400 (mechanics lien). See Section 7308 (mechanics lien right not affected).

16       See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner”  
17 defined), 7046 (“work of improvement” defined).

18    **§ 7306. Enforcement of lien**

19       7306. A lien created under this chapter is enforceable under Article 7  
20 (commencing with Section 7460) of Chapter 4.

21       **Comment.** Section 7306 restates former Section 3081.5.

22       See also Section 7024 (“lien” defined).

23    **§ 7308. Mechanics lien right not affected**

24       7308. This chapter does not affect the ability of a design professional to obtain a  
25 lien for a work of improvement under Section 7400.

26       **Comment.** Section 7308 restates former Section 3081.6.

27       See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7046 (“work of  
28 improvement” defined).

29    **§ 7310. Time for claim of lien**

30       7310. A design professional shall record a claim of lien under this chapter no  
31 later than 90 days after the design professional knows or has reason to know that  
32 the work of improvement will not be commenced.

33       **Comment.** Section 7310 restates former Section 3081.7.

34       See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner”  
35 defined), 7046 (“work of improvement” defined).

36    **§ 7312. Right to pursue other remedies**

37       7312. The creation of a lien under this chapter does not affect the ability of the  
38 design professional to pursue other remedies.

39       **Comment.** Section 7312 restates former Section 3081.8.

40       See also Sections 7010 (“design professional” defined), 7024 (“lien” defined).



1 The reference in the introductory portion of Section 7400 to labor, service, equipment or  
2 material “authorized” replaces the references in former Section 3110 to the “instance or request of  
3 the owner (or any other person acting by his authority or under him, as contractor or otherwise).”  
4 See Section 7406 (who may authorize work).

5 The type of contribution to the work of improvement that qualifies for a lien right is described  
6 in the introductory portion of Section 7400 as provision of “labor, service, equipment, or  
7 material.” Elimination of the former references to “bestowing skill or other necessary services” or  
8 “furnishing appliances, teams, or power” or “work done or materials furnished” is not a  
9 substantive change. See Section 7016 (“labor, service, equipment, or material” defined).

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

16 See also Sections 7010 (“design professional” defined), 7012 (“direct contractor” defined),  
17 7016 (“labor, service, equipment, or material” defined), 7018 (“laborer” defined), 7024 (“lien”  
18 defined), 7026 (“material supplier” defined), 7032 (“person” defined), 7044 (“subcontractor”  
19 defined), 7046 (“work of improvement” defined).

#### 20 § 7402. Lien right of express trust fund

21 7402. 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 7402 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 7014 (“express trust fund” defined), 7018 (“laborer” defined), 7024 (“lien”  
28 defined).

#### 29 § 7404. Site improvement lien

30 7404. A person that provides labor, service, equipment, or material authorized  
31 for a site improvement has a lien right under this chapter.

32 **Comment.** Section 7404 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 7016 (“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 authorized. See Section 7406 (who  
37 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 7448 (claim against separate residential units), 7450  
40 (priority of lien), 7458 (priority of site improvement lien). See also Section 7046 (“work of  
41 improvement” defined).

42 See also Sections 7024 (“lien” defined), 7032 (“person” defined), 7040 (“site improvement”  
43 defined).

#### 44 § 7406. Who may authorize work

45 7406. Labor, service, equipment, or material is authorized for a work of  
46 improvement or for a site improvement in any of the following circumstances:

- 47 (a) It is provided at the request of or agreed to by the owner.

1 (b) It is provided or authorized by a direct contractor, subcontractor, architect,  
2 project manager, or other person having charge of all or part of the work of  
3 improvement or site improvement.

4 **Comment.** Section 7406 restates parts of former Sections 3110 and 3112.

5 The reference to work provided at the request of an owner in subdivision (a) includes work  
6 provided at the instance of the owner, or of a person acting by or under the owner’s authority. See  
7 Section 7028 (“owner” defined).

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

9 The references in former law to sub-subcontractors and builders are omitted as surplus. A  
10 contractor either has a contract with the owner (direct contractor) or does not (subcontractor).  
11 This part does not distinguish among levels of subcontractor. The term “builder” was not defined  
12 in former law and was used only in former Section 3110. A work of improvement includes a site  
13 improvement. See Section 7046 (“work of improvement” defined).

14 See also Sections 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or  
15 material” defined), 7032 (“person” defined), 7044 (“subcontractor” defined).

## 16 Article 2. Conditions to Enforcing a Lien

### 17 § 7410. Preliminary notice required

18 7410. A claimant may enforce a lien only if the claimant has given preliminary  
19 notice to the extent required by Chapter 2 (commencing with Section 7200) and  
20 made proof of notice.

21 **Comment.** Section 7410 continues former Section 3114 without substantive change. A  
22 claimant must give preliminary notice to the extent provided in the preliminary notice provisions  
23 of this part. See Section 7200 *et seq.* Preliminary notice is not required of a direct contractor or a  
24 laborer or laborers compensation fund. Section 7200(b) (preliminary notice prerequisite to  
25 remedies).

26 See also Section 7116 (proof of notice).

27 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7034 (“preliminary notice”  
28 defined).

### 29 § 7412. Time for claim of lien by direct contractor

30 7412. A direct contractor may not enforce a lien unless the contractor records a  
31 claim of lien within the following times:

32 (a) After the contractor completes the contract.

33 (b) Before the earlier of the following times:

34 (1) Ninety days after completion of the work of improvement.

35 (2) Sixty days after the owner records a notice of completion.

36 **Comment.** Section 7412 restates former Section 3115. A contract is complete within the  
37 meaning of this section when the contractor’s obligations under it are substantially performed,  
38 excused, or otherwise discharged. See *Howard S. Wright Construction Co. v. BBIC Investors, LLC*,  
39 136 Cal. App. 4th 228, 38 Cal. Rptr. 3d 769 (2006).

40 For “completion” of a work of improvement, see Section 7150. For recordation of a notice of  
41 completion, see Section 7152 (notice of completion). The notice of completion includes notice of  
42 cessation.

43 See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner”  
44 defined), 7046 (“work of improvement” defined).

1    **§ 7414. Time for claim of lien by claimant other than direct contractor**

2       7414. A claimant other than a direct contractor may not enforce a lien unless the  
3 claimant records a claim of lien within the following times:

4       (a) After the claimant ceases to provide labor, service, equipment, or material.

5       (b) Before the earlier of the following times:

6           (1) Ninety days after completion of the work of improvement.

7           (2) Thirty days after the owner records a notice of completion.

8       **Comment.** Section 7414 restates former Section 3116. For “completion” of a work of  
9 improvement, see Section 7150. For recordation of a notice of completion, see Section 7152  
10 (notice of completion). The notice of completion includes notice of cessation.

11       An express trust fund may have a longer period in the case of a claim against a separate  
12 residential unit. See Section 7416.

13       See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7016 (“labor,  
14 service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7046  
15 (“work of improvement” defined).

16    **§ 7416. Time for claim of lien on separate residential unit in condominium**

17       7416. Notwithstanding any other provision of this chapter, completion of a  
18 residential structure containing multiple condominium units, together with any  
19 common area, garage, or other appurtenant improvements, does not operate in any  
20 manner to impair the lien right of an express trust fund under Section 7402 if the  
21 claim of lien is recorded within 120 days after completion of the residential  
22 structure.

23       **Comment.** Section 7416 continues the last paragraph of former Section 3131 without  
24 substantive change.

25       See also Sections 7002 (“claimant” defined), 7014 (“express trust fund” defined), 7024 (“lien”  
26 defined).

27    **§ 7418. Claim of lien**

28       7418. A claim of lien shall be in writing, signed and verified by the claimant,  
29 and shall include all of the following information:

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

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

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

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

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

38       (f) The claimant’s address.

39       **Comment.** Subdivisions (a)-(e) of Section 7418 continue former Section 3084 without  
40 substantive change. The claim of lien may be executed by the claimant’s authorized agent. See  
41 Section 7060 (agency).

42       Subdivision (d) requires the name of the person that “contracted for” the labor, service,  
43 equipment, or material, rather than who “employed” the claimant. See Section 7406 (who may  
44 authorize work). See also Section 7056 (filing and recording of papers).

1 Subdivision (f) is new. It implements other provisions that invoke a claimant’s address. Cf.  
2 Sections 7428 (release bond), 7486 (notice of hearing).

3 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
4 defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032 (“person” defined), 7038 (“site”  
5 defined).

6 **§ 7420. Notice of intended filing claim of lien for record**

7 7420. (a) Before filing a claim of lien for record, the claimant shall give notice  
8 of the intended filing to the owner or reputed owner of property subject to the  
9 claim of lien.

10 (b) Notice of the intended filing a claim of lien for record shall include a copy of  
11 the claim of lien and a statement of the date and place where the claim of lien is to  
12 be filed.

13 **Comment.** Section 7420 is new. A claim of lien may not be recorded unless accompanied by  
14 proof of notice to the owner. Section 7422 (notice prerequisite to recording claim of lien).

15 See also Sections 7100-7116 (notice).

16 **§ 7422. Notice prerequisite to recording claim of lien**

17 7422. The county recorder shall not record a claim of lien that is filed for record  
18 unless accompanied by the claimant’s proof of notice showing compliance with  
19 the Section 7420.

20 **Comment.** Section 7422 is new. Cf. Gov’t Code § 27297.5 (notification by county recorder of  
21 person against which involuntary lien is recorded). See also Section 7116 (proof of notice).

22 **§ 7424. Forfeiture of lien for false claim**

23 7424. (a) Except as provided in subdivision (b), erroneous information contained  
24 in a claim of lien relating to the claimant’s demand, credits and offsets deducted,  
25 the labor, service, equipment, or material provided, or the description of the site,  
26 does not invalidate the lien.

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

30 (1) The claim of lien was made with intent to slander title or defraud.

31 (2) An innocent third party, without notice, actual or constructive, became the  
32 bona fide owner of the property after recordation of the claim of lien, and the  
33 claim of lien was so deficient that it did not put the party on further inquiry in any  
34 manner.

35 **Comment.** Section 7424 combines former Sections 3118 and 3261. The terminology of the  
36 combined provision is conformed to Section 7418 (claim of lien).

37 Subdivision (b)(1) expands the bases for invalidity to include intent to slander title. If the court  
38 finds intent to slander (i.e., falsely disparage) title or defraud, common law damages are  
39 available. See Section 7426 (damages for false claim of lien).

40 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
41 defined), 7024 (“lien” defined), 7028 (“owner” defined), 7038 (“site” defined).

1    **§ 7426. Damages for false claim of lien**

2       7426. (a) If a claimant records a claim of lien containing erroneous information  
3 with intent to slander title or defraud, the claimant is liable for damages caused by  
4 the recordation, including costs and a reasonable attorney’s fee incurred in a  
5 proceeding to invalidate the lien and recover damages.

6       (b) An owner may not commence an action for damages under this section  
7 unless at least 10 days before commencement the owner gave the claimant notice  
8 demanding that the claimant execute and record a release of the claim of lien and  
9 the claimant failed to do so. A demand given under Section 7482 satisfies the  
10 requirement of this subdivision.

11       (c) The owner has the burden of proof of all elements of an action for damages  
12 under this section.

13       **Comment.** Section 7426 is new. It reverses case law to the effect that recordation of a claim of  
14 mechanics lien is privileged. See, e.g., *Pisano & Associates v. Hyman*, 29 Cal. App. 3d 1, 105  
15 Cal. Rptr. 414 (1972). See also Section 7482 (demand prerequisite to petition).

16       See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7028 (“owner” defined).

17    **§ 7428. Release bond**

18       7428. (a) An owner of property subject to a recorded claim of lien or a direct  
19 contractor or subcontractor affected by the claim of lien that disputes the  
20 correctness or validity of the claim may obtain release of the property from the  
21 claim of lien by recording a lien release bond. The principal on the bond may be  
22 the owner of the property or the contractor or subcontractor.

23       (b) The bond shall be conditioned on payment of any judgment and costs the  
24 claimant recovers on the lien. The bond shall be in an amount equal to 125 percent  
25 of the amount of the claim of lien or 125 percent of the amount allocated in the  
26 claim of lien to the property to be released. The bond shall be executed by an  
27 admitted surety insurer.

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

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

36       **Comment.** Subdivisions (a)-(c) of Section 7428 continue former Section 3143. The amount of  
37 the release bond is reduced to 125 percent of the amount of the claim of lien, consistent with the  
38 stop payment notice release bond. See Section 7510 (release bond). The language of the section is  
39 harmonized with the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010)  
40 of Title 14 of Part 2 of the Code of Civil Procedure.

41       Subdivision (d) restates former Section 3144.5. See also Sections 7100-7116 (notice).

42       The owner of an interest in property may obtain a release bond. See Section 7028 (“owner”  
43 defined). The reference to recordation of the bond in the county in which the claim of lien is  
44 recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office

1 of the county recorder of the county in which the work of improvement or part of it is situated.  
2 Section 7056 (filing and recording of papers).

3 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7024 (“lien”  
4 defined), 7032 (“person” defined), 7044 (“subcontractor” defined).

### 5 Article 3. Amount of Lien

#### 6 § 7430. Amount of lien

7 7430. (a) The lien is a direct lien for the lesser of the following amounts:

8 (1) The reasonable value of the labor, service, equipment, and material provided  
9 by the claimant.

10 (2) The price agreed to by the claimant and the person that contracted for the  
11 labor, service, equipment, or material. The lien is not limited in amount by the  
12 contract price for the work of improvement except as provided in Section 7602.

13 (b) This section does not preclude the claimant from including in a claim of lien  
14 an amount due as a result of rescission, abandonment, or breach of the contract. If  
15 there is a rescission, abandonment, or breach of the contract, the amount of the  
16 lien may not exceed the reasonable value of the labor, service, equipment, and  
17 material provided by the claimant.

18 **Comment.** Section 7430 restates subdivisions (a) and (b) of former Section 3123 and a portion  
19 of former Section 3110. See also Sections 7008 (“contract price” defined) and 7602 (payment  
20 bond). As used in this section, the reasonable value of labor, service, equipment, and material  
21 includes the reasonable use value of appliances, equipment, teams, and power.

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

24 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
25 defined), 7024 (“lien” defined), 7032 (“person” defined), Section 7418 (claim of lien).

26 **Note.** This draft omits from the law the provision of former Section 3123(c) that required an  
27 owner to give notice of a change of 5 percent or more. This provision did not appear to have an  
28 effective enforcement mechanism. **The Commission particularly solicits comment on this**  
29 **proposed change.**

#### 30 § 7432. Lien limited to work included in contract or modification

31 7432. (a) A lien does not extend to labor, service, equipment, or material not  
32 included in a contract between the owner and direct contractor if the labor, service,  
33 equipment, or material was contracted for by the direct contractor or subcontractor  
34 and the claimant had actual knowledge or constructive notice of the contract  
35 before providing the labor, service, equipment, or material.

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

39 **Comment.** Section 7432 restates former Section 3124 without substantive change. “Direct  
40 contractor” is substituted for the undefined “contractor” in subdivision (a). The concept of  
41 “contracted for” is substituted for “employed” in subdivision (a). See Section 7406 (who may  
42 authorize work). The reference to a modification of the contract is omitted in reliance of the  
43 definition of “contract”, which includes a contract change. See Section 7006 (“contract” defined).

1 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7016 (“labor,  
2 service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032  
3 (“person” defined), 7044 (“subcontractor” defined).

4 **§ 7434. Amount of recovery**

5 7434. A direct contractor or a subcontractor may enforce a lien only for the  
6 amount due pursuant to the contract after deducting all claims of other claimants  
7 for labor, service, equipment, and material provided and embraced within the  
8 contract.

9 **Comment.** Section 7434 continues former Section 3140 without substantive change.

10 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
11 defined), 7024 (“lien” defined), 7012 (“direct contractor” defined), 7044 (“subcontractor”  
12 defined).

13 **Staff Note.** The wording of this section needs to be correlated with the wording of Section  
14 7432 (amount of lien).

15 **Article 4. Property Subject to Lien**

16 **§ 7440. Property subject to lien**

17 7440. Subject to Section 7442, a lien attaches to the work of improvement and to  
18 the property on which the work of improvement is situated, including as much  
19 space about the work of improvement as is required for the convenient use and  
20 occupation of the work of improvement.

21 **Comment.** Section 7440 restates the parts of former Sections 3128 and 3112 (site  
22 improvement lien on lot or tract of land) that described property subject to the lien, without  
23 substantive change. References to “property” are substituted for references to “land.”

24 See also Sections 7024 (“lien” defined), 7046 (“work of improvement” defined), 7046 (“work  
25 of improvement” defined).

26 **§ 7442. Interest subject to lien**

27 7442. The following interests in property to which a lien attaches are subject to  
28 the lien:

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

30 (b) The interest of a person that did not contract for the work of improvement, if  
31 labor, service, equipment, or material for which the lien is claimed was provided  
32 with the knowledge of the person. This subdivision does not apply to the interest  
33 of a person that gives notice of nonresponsibility under Section 7444.

34 **Comment.** Section 7442 restates former Section 3129 and the last portion of former Section  
35 3128. A reference to “labor, service, equipment, or material” is substituted for the former  
36 reference to “commencement of the work or of the furnishing of the materials”. Cf. Section 7016  
37 (“labor, service, equipment, or material” defined).

38 It should be noted that under this section, the interest of a person that contracts for a work of  
39 improvement indirectly, for example through a provision in a lease that requires a tenant to make  
40 the work of improvement, may be subject to the lien. Likewise, the interest of a person that did  
41 not contract for a work of improvement might in some circumstances be subject to the lien if the

1 person is a “participating owner.” See, e.g., *Los Banos Gravel Co. v. Freeman*, 58 Cal. App. 3d  
2 785, 130 Cal. Rptr. 180 (1976).

3 See also Sections 7024 (“lien” defined), 7032 (“person” defined), 7046 (“work of  
4 improvement” defined).

5 **§ 7444. Notice of nonresponsibility**

6 7444. (a) An owner of property on which a work of improvement is situated that  
7 did not contract for the work of improvement may give notice of  
8 nonresponsibility.

9 (b) A notice of nonresponsibility shall be signed and verified by the owner, and  
10 shall include all of the following information:

11 (1) The nature of the owner’s title or interest.

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

13 (3) A statement that the person giving the notice is not responsible for claims  
14 arising from the work of improvement.

15 (c) A notice of nonresponsibility is not effective unless, within 10 days after the  
16 person giving notice has knowledge of the work of improvement, the person both  
17 posts and records the notice.

18 **Comment.** Section 7444 restates former Section 3094 without substantive change. See also  
19 Sections 7100-7116 (notice). The information required in this notice is in addition to the  
20 information required by Section 7102 (contents of notice). The notice of nonresponsibility may be  
21 signed and verified by the owner or person owning or claiming an interest in the property, or by  
22 the owner or other person’s agent. See Section 7028 (“owner” defined). A notice of  
23 nonresponsibility is recorded in the office of the county recorder of the county in which the work  
24 of improvement or part of it is situated. Section 7056 (filing and recording of papers).

25 See also Sections 7032 (“person” defined), 7038 (“site” defined), 7046 (“work of  
26 improvement” defined).

27 **§ 7446. Multiple works of improvement**

28 7446. A claimant may record one claim of lien on two or more works of  
29 improvement, subject to the following conditions:

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

33 (b) The claimant in the claim of lien designates the amount due for each work of  
34 improvement. If the claimant contracted for a lump sum payment for labor,  
35 service, equipment, and material provided for the works of improvement and the  
36 contract does not segregate the amount due for each work of improvement  
37 separately, the claimant may estimate an equitable distribution of the amount due  
38 for each work of improvement based on the proportionate amount of labor,  
39 service, equipment, or material provided for each. If the claimant does not  
40 designate the amount due for each work of improvement, the lien is subordinate to  
41 other liens.

42 (c) If there is a single structure on property of different owners, the claimant  
43 need not segregate the proportion of labor, service, equipment, or material

1 provided for the portion of the structure situated on property of each owner. In the  
2 lien enforcement action the court may, if it determines it equitable to do so,  
3 designate an equitable distribution of the lien among the property of the owners.

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

7 **Comment.** Section 7446 restates former Section 3130 without substantive change. The concept  
8 of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section 7406  
9 (who may authorize work).

10 Subdivision (c) is intended to apply to a single work of improvement situated on two or more  
11 parcels of land that have distinct owners.

12 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
13 defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032 (“person” defined), 7046 (“work  
14 of improvement” defined).

15 **§ 7448. Claim against separate residential units**

16 7448. (a) As used in this section, “separate residential unit” means one  
17 residential structure, including a residential structure containing multiple  
18 condominium units, together with any common area, garage, or other appurtenant  
19 improvements.

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

22 (1) Each unit is deemed a separate work of improvement, and completion of  
23 each unit is determined separately for purposes of the time for recording a claim of  
24 lien on that unit. This paragraph does not affect any lien right under Section 7404  
25 or 7446.

26 (2) Material provided for the work of improvement is deemed to be provided for  
27 use or consumption in each separate residential unit in which the material is  
28 actually used or consumed; but if the claimant is unable to segregate the amounts  
29 used or consumed in separate residential units, the claimant has the right to all the  
30 benefits of Section 7446.

31 **Comment.** Section 7448 restates the first paragraph of former Section 3131 without  
32 substantive change. The reference to “filing” a claim of lien is changed to recording. See Sections  
33 7412, 7414 (recording of claim of lien). For the purpose of this section, a claim of lien is not  
34 considered recorded unless done in the manner provided by Section 7056 (filing and recording of  
35 papers). See also Sections 7404 (site improvement lien) and 7446 (multiple works of  
36 improvement).

37 The second paragraph of former Section 3131 is continued in Section 7416 (special rule for  
38 express trust fund claim on separate residential unit in condominium).

39 For “completion” of a work of improvement, see Section 7150.

40 See also Sections 7418 (claim of lien), 7002 (“claimant” defined), 7024 (“lien” defined), 7046  
41 (“work of improvement” defined).

1 Article 5. Priorities

2 **§ 7450. Priority of lien**

3 7450. (a) A lien under this chapter, other than a lien provided for in Section  
4 7404, has priority over a lien, mortgage, deed of trust, or other encumbrance on  
5 the work of improvement or the property on which the work of improvement is  
6 situated, that (1) attaches after commencement of the work of improvement, or (2)  
7 was unrecorded at the commencement of the work of improvement and of which  
8 the claimant had no notice.

9 (b) Subdivision (a) is subject to the exception provided for in Section 7452.

10 **Comment.** Section 7450 continues former Section 3134 without substantive change. For a site  
11 improvement lien, see Section 7458 (priority of site improvement lien). See also Sections 7404  
12 (site improvement lien), 7452 (payment bond).

13 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7040 (“site improvement”  
14 defined), 7046 (“work of improvement” defined).

15 **§ 7452. Payment bond covering mechanics lien**

16 7452. A mortgage or deed of trust, otherwise subordinate to a lien under Section  
17 7450, has priority over a lien for labor, service, equipment, or material provided  
18 after recordation of a payment bond that satisfies all of the following  
19 requirements:

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

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

23 **Comment.** Section 7452 continues former Section 3138 without substantive change. See also  
24 Section 7056 (recordation of payment bond in county in which work of improvement is situated).

25 See also Sections 7016 (“labor, service, equipment, or material” defined), 7024 (“lien”  
26 defined), 7030 (“payment bond” defined).

27 **§ 7454. Separate contract for site improvement**

28 7454. If a site improvement is provided for in a contract separate from the  
29 contract for the remainder of the work of improvement, the site improvement is  
30 deemed a separate work of improvement and commencement of the site  
31 improvement is not commencement of the remainder of the work of improvement.

32 **Comment.** Section 7454 restates former Section 3135 without substantive change.

33 See also Sections 7040 (“site improvement” defined), 7046 (“work of improvement” defined).

34 **§ 7456. Priority of advances by lender**

35 7456. (a) This section applies to a construction loan secured by a mortgage or  
36 deed of trust that has priority over a lien under this chapter.

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



1 within 90 days after recordation of the claim of lien or (2) more than 90 days after  
2 recordation of the claim of lien but before a purchaser or encumbrancer for value  
3 and in good faith acquires rights in the property. In that event the claimant shall  
4 commence an action to enforce the lien and record a notice of the pendency of the  
5 action within 90 days after the expiration of the credit, but in no case later than  
6 one year after completion of the work of improvement. If the claimant does not  
7 commence an action and record notice of the pendency of the action within the  
8 time provided in this subdivision, the claim of lien expires and is unenforceable.

9 **Comment.** Section 7460 restates former Sections 3144 and 3145, and adds the requirement  
10 that a claim of lien is unenforceable if a lis pendens is not recorded within the statutory periods.

11 Subdivision (b) makes clear that the owner must be a party to the extension of credit, and  
12 allows for late recording of the extension of credit. This codifies the rule in *Richards v. Hillside*  
13 *Development Co.*, 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960) and overrules *Dorer v.*  
14 *McKinsey*, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961)

15 For completion of a work of improvement, see Section 7150.

16 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7046 (“work of  
17 improvement” defined).

#### 18 § 7462. Effect of expiration

19 7462. If a claim of lien expires and is unenforceable under Section 7460, the  
20 claim of lien does not constitute actual or constructive notice of any of the matters  
21 contained, claimed, alleged, or contended in the claim of lien, or create a duty of  
22 inquiry in any person thereafter dealing with the affected property.

23 **Comment.** Section 7462 is drawn from Code of Civil Procedure Section 405.60 (lis pendens).

24 See also Section 7024 (“lien” defined).

#### 25 § 7464. Lis pendens

26 7464. After commencement of an action to enforce a lien, the claimant may  
27 record a notice of the pendency of action under Title 4.5 (commencing with  
28 Section 405) of Part 2 of the Code of Civil Procedure.

29 **Comment.** Section 7464 restates former Section 3146 without substantive change. The  
30 reference to the lis pendens statute is corrected, to reflect the repeal of Code of Civil Procedure  
31 409. See 1992 Cal. Stat. ch. 883, § 1. See also Section 7054 (rules of practice).

32 The second sentence of former Section 3146 is not continued. It is superseded by general  
33 provisions governing the effect of a lis pendens. See Code Civ. Proc. § 405.24 (constructive  
34 notice).

35 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

#### 36 § 7466. Dismissal for lack of prosecution

37 7466. Notwithstanding Section 583.420 of the Code of Civil Procedure, the  
38 court may dismiss an action to enforce a lien that is not brought to trial within two  
39 years after commencement.

40 **Comment.** Section 7466 continues former Section 3147 without substantive change. The  
41 cross-reference to the Code of Civil Procedure is added to make clear that this section modifies  
42 the general three-year period for discretionary dismissal. See also Section 7054 (rules of  
43 practice).

44 See also Section 7024 (“lien” defined).

1    **§ 7468. Dismissal of action or judgment of no lien**

2       7468. Dismissal of an action to enforce a lien, unless the dismissal is expressly  
3       stated to be without prejudice, or a judgment that no lien exists, is equivalent to  
4       cancellation of the lien and its removal from the record.

5       **Comment.** Subdivision (a) of Section 7468 continues former Section 3148 without substantive  
6       change.

7       See also Section 7024 (“lien” defined).

8    **§ 7470. Costs**

9       7470. In addition to any other costs allowed by law, the court in an action to  
10       enforce a lien shall allow as costs to each claimant whose lien is established the  
11       amount paid to verify and record the claim of lien, whether the claimant is a  
12       plaintiff or defendant.

13       **Comment.** Section 7470 continues former Section 3150 without substantive change.

14       See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

15   **§ 7472. Deficiency**

16       7472. If there is a deficiency of proceeds from the sale of property on a  
17       judgment for enforcement of a lien, a deficiency judgment may be entered against  
18       a party personally liable for the deficiency in same the manner and with the same  
19       effect as in an action to foreclose a mortgage.

20       **Comment.** Section 7472 restates former Section 3151 without substantive change.

21       See also Section 7024 (“lien” defined).

22   **§ 7474. Personal liability**

23       7474. (a) This chapter does not affect any of the following rights of a claimant:

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

26       (2) The right to a writ of attachment. In an application for a writ of attachment,  
27       the claimant shall refer to this section. The claimant’s recording of a claim of lien  
28       does not affect the right to a writ of attachment.

29       (3) The right to enforce a judgment.

30       (b) A judgment obtained by the claimant in a personal action described in  
31       subdivision (a) does not impair or merge the claim of lien, but any amount  
32       collected on the judgment shall be credited on the amount of the lien.

33       **Comment.** Section 7474 restates former Section 3152 without substantive change. The  
34       reference in the introductory portion of the section to “this title” is changed to “this chapter”  
35       consistent with the scope of the chapter.

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

38       See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7032 (“person” defined).

39   **§ 7476. Liability of contractor for lien enforcement**

40       7476. In an action to enforce a lien for labor, service, equipment, or material  
41       provided to a contractor:

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

4 (b) If the judgment in the action is against the owner or the owner’s property, the  
5 owner may deduct the amount of the judgment and costs from any amount owed to  
6 the direct contractor. If the amount of the judgment and costs exceeds the amount  
7 owed to the direct contractor, or if the owner has settled with the direct contractor  
8 in full, the owner may recover from the contractor, or the sureties on a bond given  
9 by the contractor for faithful performance of the contract, the amount of the  
10 judgment and costs that exceed the contract price and for which the contractor was  
11 originally liable.

12 **Comment.** Section 7476 restates former Section 3153 without substantive change.

13 See also Sections 7008 (“contract price” defined), 7016 (“labor, service, equipment, or  
14 material” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined), 7028 (“owner”  
15 defined).

## 16 Article 7. Release Order

### 17 § 7480. Petition for release order

18 7480. (a) The owner of property subject to a claim of lien may petition the court  
19 for an order to release the property from the claim of lien for any of the following  
20 causes:

21 (1) The claimant has not commenced an action to enforce the lien within the  
22 time provided in Section 7460.

23 (2) The claim of lien is invalid under Section 7424.

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

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

27 (5) The claimant was not licensed to provide the labor, service, equipment, or  
28 material stated in the claim of lien for which a license was required by statute.

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

34 (c) Notwithstanding Section 7054, Chapter 2.5 (commencing with Section  
35 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a  
36 proceeding under this article.

37 **Comment.** Subdivision (a)(1) of Section 7480 continues former Section 3154(a) without  
38 substantive change. Subdivisions (a)(2)-(5) are new. The owner need not wait until expiration of  
39 the time to commence an enforcement action before bringing a petition to release an invalid claim  
40 of lien under this section. Cf. Section 7424 (forfeiture of lien for false claim).

1 Subdivision (b) continues former Section 3154(h) without substantive change. Subdivision (c)  
2 continues former Section 3154(i) without substantive change. As used in this section, the owner  
3 of property includes the owner of an interest in the property. See Section 7028 (“owner” defined).

4 See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material”  
5 defined), 7024 (“lien” defined).

6 **§ 7482. Demand prerequisite to petition**

7 7482. An owner of property may not petition the court for a release order under  
8 this article unless at least 10 days before filing the petition the owner gives the  
9 claimant notice demanding that the claimant execute and record a release of the  
10 claim of lien.

11 **Comment.** Section 7482 is new. If the lien claimant complies with the demand, a release  
12 proceeding is unnecessary.

13 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7028 (“owner” defined).

14 **§ 7484. Contents of petition**

15 7484. A petition for a release order shall be verified and shall allege all of the  
16 following:

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

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

20 (c) The book and page or series number of the place in the official records where  
21 the claim of lien is recorded.

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

23 (e) The facts on which the petition is based. If the petition is based on expiration  
24 of the time to enforce the lien, the petition shall allege that no extension of credit  
25 has been recorded within the time required by Section 7460, that the time for  
26 commencement of an action to enforce the lien has expired.

27 (f) That the owner has given the claimant notice demanding that the claimant  
28 execute and record a release of the lien and that the claimant is unable or unwilling  
29 to do so or cannot with reasonable diligence be found.

30 (g) Whether an action to enforce the lien is pending.

31 (h) Whether the owner has filed for relief in bankruptcy or there is another  
32 restraint that prevents the claimant from commencing an action to enforce the lien.

33 **Comment.** Section 7484 supersedes subdivision (b) of former Section 3154. As used in this  
34 section, the owner of property includes the owner of an interest in the property. See Section 7028  
35 (“owner” defined). See also Section 7100 (written notice).

36 The information included in the petition is intended to facilitate the court’s order under Section  
37 7488 (hearing and order). The reference to series number is added to cover a county in which the  
38 recorder uses a sequence number for record location.

39 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

40 **§ 7486. Time of hearing**

41 7486. (a) On the filing of a petition for a release order, the clerk shall set a  
42 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.

8 (c) Notwithstanding Section 7114, when service is made by mail, service is  
9 complete on the fifth day following deposit of the petition and notice in the mail.

10 **Comment.** Section 7486 continues subdivisions (c), (d), and the first sentence of (e) of former  
11 Section 3154, with the addition of the requirement that the court act no later than 75 days after the  
12 petition is filed. The reference to “if there is no clerk, the judge” is deleted. All courts now have a  
13 clerk. See also Section 7052 (proper court).

14 See also Sections 7100-7116 (notice).

15 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7034 (“preliminary notice”  
16 defined).

#### 17 § 7488. Hearing and order

18 7488. (a) At the hearing both the petition and the issue of compliance with the  
19 service requirements of this article are deemed controverted by the claimant. The  
20 petitioner has the burden of proof that service and the date for hearing comply  
21 with this article.

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

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

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

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

28 (4) The legal description of the property.

29 (c) The prevailing party is entitled to a reasonable attorney’s fee.

30 **Comment.** Subdivision (a) of Section 7488 continues the last sentence of former Section  
31 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change.  
32 Subdivision (b) continues former Section 3154(f). The reference to sequence number is added to  
33 cover a county in which the recorder uses a series number for record location. The reference to  
34 the city where the claim of lien is recorded is omitted as superfluous. Subdivision (c) continues  
35 former Section 3154(g) with the exception of the \$2,000 limitation.

36 See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

37 **Note.** AB 1902 (Villines) would omit the \$2,000 cap and add the name of the owner to this  
38 provision.

#### 39 § 7490. Release of property from claim of lien

40 7490. (a) A release order is a recordable instrument.

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



1 to be provided to or for the person named in the notice forfeits all right to  
2 participate in the distribution of the funds withheld and all right to a lien under  
3 Chapter 4 (commencing with Section 7400).

4 **Comment.** Section 7504 restates former Section 3168 without substantive change.

5 See also Sections 7002 (“claimant” defined), Section 7016 (“labor, service, equipment, or  
6 material” defined), 7024 (“lien” defined), 7032 (“person” defined), 7042 (“stop payment notice”  
7 defined).

8 **§ 7506. Manner of giving stop payment notice**

9 7506. (a) A stop payment notice to an owner shall be given to the owner or to  
10 the owner’s architect, if any.

11 (b) A stop payment notice to a construction lender holding construction funds  
12 shall be given to the manager or other responsible officer or person at the office or  
13 branch of the lender administering or holding the construction funds.

14 **Comment.** Subdivisions (a) and (b) of Section 7506 restate a portion of the second paragraph  
15 of former Section 3103 and the last two sentences of former Section 3083, expanding the manner  
16 of notice. See Section 7104 (manner of giving notice).

17 A notice given to a construction lender under subdivision (b) is not effective as against the  
18 lender unless given as provided in that subdivision.

19 The effect of the last paragraph of former Section 3103 is continued in Section 7104 (manner  
20 of giving notice).

21 See also Sections 7004 (“construction lender” defined), 7028 (“owner” defined), 7032  
22 (“person” defined), 7042 (“stop payment notice” defined).

23 **§ 7508. Requirements for valid stop payment notice**

24 7508. A stop payment notice is not valid unless both of the following conditions  
25 are satisfied:

26 (a) The claimant gave preliminary notice to the extent required by Chapter 2  
27 (commencing with Section 7200).

28 (b) The claimant gave the stop payment notice before expiration of the time  
29 within which a claim of lien must be recorded under Chapter 4 (commencing with  
30 Section 7400).

31 **Comment.** Section 7508 restates former Section 3160 and a portion of the first sentence of  
32 former Section 3159 without substantive change. For the time within which a claim of lien must  
33 be recorded, see Sections 7412-7416 (time for claim of lien); see also Section 7154 (notice of  
34 completion of contract for portion of work of improvement).

35 See also Sections 7002 (“claimant” defined), 7028 (“owner” defined), 7034 (“preliminary  
36 notice” defined), 7042 (“stop payment notice” defined), 7046 (“work of improvement” defined).

37 **§ 7510. Release bond**

38 7510. (a) A person may obtain release of funds withheld pursuant to a stop  
39 payment notice by giving the person withholding the funds a release bond.

40 (b) A release bond shall be given by an admitted surety insurer and shall be  
41 conditioned for payment of any amount the claimant recovers on the claim,  
42 together with costs of suit awarded in the action. The bond shall be in an amount  
43 equal to 125 percent of the amount claimed in the stop payment notice.

1 (c) On receipt of a release bond, the person withholding funds pursuant to the  
2 stop payment notice shall release them.

3 **Comment.** Section 7510 restates former Section 3171 but eliminates the restrictions on the  
4 persons and the conditions under which a release bond may be given. The bond must be given by  
5 an admitted surety insurer. See Section 7140 (application of Bond and Undertaking Law); Code  
6 Civ. Proc. § 995.120 (“admitted surety insurer” defined).

7 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012  
8 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined), 7042 (“stop  
9 payment notice” defined), 7044 (“subcontractor” defined).

## 10 Article 2. Stop Payment Notice to Owner

### 11 § 7520. Stop payment notice to owner

12 7520. (a) A person that has a lien right under Chapter 4 (commencing with  
13 Section 7400), other than a direct contractor, may give the owner a stop payment  
14 notice.

15 (b) The owner may give notice demanding that a person that has a lien right  
16 under Chapter 4 (commencing with Section 7400) give the owner a stop payment  
17 notice. If the person fails to give the owner a bonded or unbonded stop payment  
18 notice, the person forfeits the right to a lien under Chapter 4 (commencing with  
19 Section 7400).

20 **Comment.** Section 7520 restates former Section 3158. It makes clear that the owner’s demand  
21 under this section requires only an unbonded stop payment notice. See also Section 7100 (written  
22 notice).

23 See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner”  
24 defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

### 25 § 7522. Duty of owner

26 7522. (a) Except as provided in subdivision (b), on receipt of a stop payment  
27 notice an owner shall withhold from the direct contractor or from any person  
28 acting under authority of a direct contractor a sufficient amount due or to become  
29 due to the direct contractor to pay the claim stated in the notice.

30 (b) The owner may, but is not required to, withhold funds if the owner has  
31 recorded a payment bond under Section 7602. If the owner does not withhold  
32 funds, the owner shall, within 30 days after receipt of the stop payment notice,  
33 give notice to the claimant that a payment bond has been recorded and provide the  
34 claimant a copy of the bond.

35 **Comment.** Section 7522 restates former Section 3161 and makes it parallel to the stop  
36 payment notice for a public work. See Pub. Cont. Code § 44150 (duty to withhold funds). See  
37 also Sections 7100-7116 (notice).

38 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), Section 7016  
39 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined),  
40 7030 (“payment bond” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

41 **Note.** This draft deletes the provision of existing law that requires the owner to withhold an  
42 amount due to pay the amount of the claim stated in the notice “and any claim of lien that is  
43 recorded.” Under the draft, the amount claimed in a stop payment notice is the same as the

1 amount in a claim of lien. Any amount paid pursuant to the stop payment notice reduces the claim  
2 of lien.

### 3 Article 3. Stop Payment Notice to Construction Lender

#### 4 § 7530. Stop payment notice to construction lender

5 7530. (a) A person that has a lien right under Chapter 4 (commencing with  
6 Section 7400) may give a construction lender a stop payment notice.

7 (b) If the person that gives a construction lender a stop payment notice is a  
8 claimant other than a direct contractor, the notice may only be given for labor,  
9 service, equipment, or material provided by the claimant.

10 **Comment.** Subdivision (a) of Section 7530 restates a portion of the first sentence of former  
11 Section 3159 without substantive change. See also Sections 7042 (“stop payment notice”  
12 defined), 7508 (requirements for valid stop payment notice).

13 For provisions governing the amount withheld where the person giving a stop payment notice  
14 is a direct contractor or subcontractor and there is a claim of another subcontractor or material  
15 supplier, see Section 7542 (amount withheld).

16 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012  
17 (“direct contractor” defined), Section 7016 (“labor, service, equipment, or material” defined),  
18 7024 (“lien” defined), 7032 (“person” defined).

#### 19 § 7532. Bonded stop payment notice

20 7532. A claimant may give a construction lender a stop payment notice  
21 accompanied by a bond in an amount equal to 125 percent of the amount of the  
22 claim. The bond shall be conditioned that if the defendant recovers judgment in an  
23 action to enforce the stop payment notice or to enforce a claim of lien recorded by  
24 the claimant, the claimant will pay all costs that are awarded the owner, direct  
25 contractor, or construction lender, and all damages to the owner, direct contractor,  
26 or construction lender that result from the stop payment notice or recordation of  
27 the claim of lien, not exceeding the amount of the bond.

28 **Comment.** Section 7532 restates the first sentence of former Section 3083 without substantive  
29 change. The former reference to “good and sufficient sureties” on the bond is omitted as  
30 unnecessary. See Code Civ. Proc. § 995.310 (sufficient sureties on bond required). The second  
31 two sentences of former Section 3083 are continued in Section 7506(a)(2) (manner of giving  
32 notice).

33 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012  
34 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7042 (“stop  
35 payment notice” defined).

36 **Note.** Existing law states that the claimant’s bond covers costs that may be awarded “against”  
37 the defendant. This is evidently a garbled way of saying that the claimant must cover the  
38 prevailing defendant’s court costs. We have revised the provision accordingly.

#### 39 § 7534. Objection to bond

40 7534. (a) A construction lender that objects to the sufficiency of sureties on the  
41 bond given with a bonded stop payment notice shall give notice to the claimant of  
42 the objection within 20 days after the bonded stop payment notice is given.

1 (b) The claimant may within 10 days after notice of the objection is given  
2 substitute for the initial bond a bond executed by an admitted surety insurer. If the  
3 claimant does not substitute a bond executed by an admitted surety insurer, the  
4 construction lender may disregard the bonded stop payment notice and release all  
5 funds withheld in response to that notice.

6 **Comment.** Section 7534 restates former Section 3163 without substantive change. Cf. Section  
7 7100 (written notice); Code Civ. Proc. § 995.120 (“admitted surety insurer” defined).

8 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7042 (“stop  
9 payment notice” defined).

10 **§ 7536. Duty of construction lender**

11 7536. (a) Except as provided in subdivision (b), on receipt of a stop payment  
12 notice a construction lender shall withhold from the borrower or other person to  
13 which the lender or the owner is obligated to make payments or advancement out  
14 of the construction fund sufficient funds to pay the claim.

15 (b) The construction lender may, at its option, elect not to withhold funds in any  
16 of the following circumstances:

17 (1) The stop payment notice is unbonded.

18 (2) A payment bond is recorded before the lender is given the first stop payment  
19 notice. This paragraph does not apply to a bonded stop payment notice given by a  
20 direct contractor.

21 **Comment.** Section 7536 restates paragraphs (1) and (2) of subdivision (a) of former Section  
22 3159, and subdivision (a)(1)-(2) of former Section 3162. The requirement that the lender  
23 withhold sufficient funds to pay “any claim of lien that is recorded” is omitted; any amount paid  
24 pursuant to a stop payment notice reduces the claim of lien. The reference to recordation of a  
25 payment bond “in the office of the county recorder where the site is located” is omitted from  
26 subdivision (b)(2) as unnecessary. See Section 7056 (filing and recording of papers).

27 If a bonded stop payment notice is given by a direct contractor, the construction lender must  
28 withhold funds regardless of whether a payment bond has previously been recorded under Section  
29 7602.

30 For provisions governing the amount withheld where the person giving a stop payment notice  
31 is a direct contractor or subcontractor and there is a claim of another subcontractor or material  
32 supplier, see Section 7542 (amount withheld).

33 See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined),  
34 7024 (“lien” defined), 7028 (“owner” defined), 7030 (“payment bond” defined), 7032 (“person”  
35 defined), 7042 (“stop payment notice” defined).

36 **Note.** We have radically recast this provision in an effort to simplify it. Knowledgeable  
37 persons should examine the provision to ensure that we have not inadvertently changed its  
38 meaning.

39 This draft deletes the provision of existing law that requires the owner to withhold an amount  
40 due to pay the amount of the claim stated in the notice “and any claim of lien that is recorded.”  
41 Under the draft, the amount claimed in a stop payment notice is the same as the amount in a claim  
42 of lien. Any amount paid pursuant to the stop payment notice reduces the claim of lien.

43 **§ 7538. Notice of election**

44 7538. (a) The claimant may make a written request for notice of an election by  
45 the construction lender under Section 7536 not to withhold funds. The request

1 shall be made at the time the claimant gives the construction lender the stop  
2 payment notice and shall be accompanied by a preaddressed, stamped envelope.

3 (b) If the construction lender elects not to withhold funds under Section 7536,  
4 the lender shall, within 30 days after making the election give notice to a clamant  
5 that has requested notice of the election under subdivision (a). If the basis of the  
6 election is the recordation of a payment bond under Section 7602, the construction  
7 lender shall include a copy of the bond with the notice.

8 (c) A construction lender is not liable for failure to include a copy of the bond  
9 with the notice under this section if all of the following conditions are satisfied:

10 (1) The failure was not intentional and resulted from a bona fide error.

11 (2) The lender maintains reasonable procedures to avoid an error of that type.

12 (3) The lender corrected the error not later than 20 days after the date the lender  
13 discovered the violation.

14 **Comment.** Section 7538 restates paragraph (3) of subdivision (a) of former Sections 3159 and  
15 3162 without substantive change. The last sentence of former Section 3159(a)(3) is continued in  
16 Section 7530(b) (notice to construction lender to withhold funds).

17 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7030  
18 (“payment bond” defined), 7042 (“stop payment notice” defined).

#### 19 Article 4. Priorities

##### 20 § 7540. Distribution of funds withheld pursuant to stop payment notice

21 7540. (a) Funds withheld pursuant to a stop payment notice shall be distributed  
22 in the following order of priority:

23 (1) First, to pay claims of persons that have given a bonded stop payment notice.  
24 If funds are insufficient to pay the claims of those persons in full, the funds shall  
25 be distributed pro rata among the claimants in the ratio that the claim of each bears  
26 to the aggregate of all claims for which a bonded stop payment notice is given.

27 (2) Second, to pay claims of persons that have given an unbonded stop payment  
28 notice. If funds are insufficient to pay the claims of those persons in full, the funds  
29 shall be distributed among the claimants in the ratio that the claim of each bears to  
30 the aggregate of all claims for which an unbonded stop payment notice is given.

31 (b) Pro rata distribution under this section shall be made among the persons  
32 entitled to share in the distribution without regard to the order in which the person  
33 has given a stop payment notice or commenced an enforcement action.

34 **Comment.** Section 7540 restates former Section 3167 without substantive change. Only valid  
35 claims, as determined in an enforcement action, are entitled to participate in the distribution. Cf.  
36 Idaho Lumber Co. v. Northwestern S. & L. Ass’n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422  
37 (1968). The amount of the claim for which payment is required is determined under Article 5  
38 (commencing with Section 7550) (enforcement of stop payment notice).

39 See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment  
40 notice” defined).

41 **Note.** We believe this recasting of existing Section 3167 captures its meaning. Experts should  
42 examine the rewrite closely.

1    **§ 7542. Amount withheld**

2       7542. Notwithstanding Section 7540:

3       (a) A direct contractor or a subcontractor may recover pursuant to a stop  
4 payment notice given to a construction lender only the net amount due the direct  
5 contractor or subcontractor after deducting the claims of all subcontractors and  
6 material suppliers that have given a bonded stop payment notice for work done on  
7 behalf of the direct contractor or subcontractor.

8       (b) In no event is the construction lender required to withhold, pursuant to a  
9 bonded stop payment notice, more than the net amount provided in subdivision  
10 (a). Notwithstanding any other provision of this chapter, a construction lender is  
11 not liable for failure to withhold more than that net amount on receipt of a bonded  
12 stop payment notice.

13       **Comment.** Section 7542 restates subdivisions (b) and (c) of former Sections 3159 and 3162.

14       See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined),  
15 7026 (“material supplier defined), 7042 (“stop payment notice” defined), 7044 (“subcontractor”  
16 defined).

17       **Note.** Subdivision (a) relates to either a bonded or an unbonded notice, and subdivision (b)  
18 relates only to a bonded notice. Yet they both seem to state the same rule. The Commission  
19 would appreciate some input on whether we can simply delete subdivision (b), or whether it  
20 serves a useful purpose.

21       In any event, the statute seems to be an exception to the general rules on priorities, so we have  
22 relocated it among the priorities statutes for ease of reference.

23    **§ 7544. Effect of stop payment notice on assignment of funds**

24       7544. The rights of a claimant that gives a construction lender a stop payment  
25 notice are not affected by an assignment of construction loan funds made by the  
26 owner or direct contractor, and the stop payment notice has priority over the  
27 assignment, whether the assignment is made before or after the stop payment  
28 notice is given.

29       **Comment.** Section 7544 restates former Section 3166 without substantive change.

30       See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012  
31 (“direct contractor” defined), 7028 (“owner” defined), 7042 (“stop payment notice” defined).

32                                   Article 5. Enforcement of Stop Payment Notice

33    **§ 7550. Time for enforcement of stop payment notice**

34       7550. (a) A claimant shall commence an action to enforce a stop payment notice  
35 not earlier than 10 days after the date the claimant gives the notice and not later  
36 than 90 days after expiration of the time within which a stop payment notice must  
37 be given. The action may not be brought to trial or judgment entered before  
38 expiration of the time prescribed in this subdivision.

39       (b) If a claimant does not commence an action to enforce a stop payment notice  
40 within the time prescribed in subdivision (a), the notice ceases to be effective and  
41 the person withholding funds pursuant to the notice shall release them.

1 (c) Within five days after commencement of an action to enforce a stop payment  
2 notice, the claimant shall give notice of commencement of the action to the  
3 persons to which the stop payment notice was given.

4 **Comment.** Section 7550 restates former Section 3172 without substantive change. A stop  
5 payment notice must be given before expiration of the time within which a claim of lien must be  
6 recorded under Chapter 4 (commencing with Section 7400). See Section 7508 (requirements for  
7 valid stop payment notice).

8 For the manner that notice of commencement of an enforcement action is to be given, see  
9 Section 7506 (manner of giving notice).

10 Funds released for failure to timely commence an enforcement action must be paid or delivered  
11 to the person to which they are due.

12 See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment  
13 notice” defined).

14 **Note.** The Commission solicits comment on whether subdivision (c), purporting to require a  
15 five day notice, should be made mandatory. Under existing law, the provision is directory.  
16 *Sunlight Elec. Supply Co. v. McKee*, 226 C.A. 2d 47, 37 Cal. Rptr. 782 (1964).

#### 17 § 7552. Joinder, consolidation, and interpleader

18 7552. If more than one claimant has given a stop payment notice:

19 (a) Any number of claimants may join in the same enforcement action.

20 (b) If claimants commence separate actions, the court first acquiring jurisdiction  
21 may order the actions consolidated.

22 (c) On motion of the owner or construction lender the court shall require all  
23 claimants to be impleaded in one action, to the end that the rights of all parties  
24 may be adjudicated in the action.

25 **Comment.** Section 7552 restates former Section 3175 without substantive change. Subdivision  
26 (a) is a specific application of the general rule stated in Section 7054 (rules of practice).

27 See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7028  
28 (“owner” defined), 7042 (“stop payment notice” defined).

29 **Note.** The reference in this section to the court “first acquiring jurisdiction” is evidently a  
30 relic of pre-unification days when jurisdiction under the mechanics lien law could be in the  
31 municipal or the superior court, depending on the amount in controversy. We have not eliminated  
32 this provision because it arguably could still have relevance in the context of a work of  
33 improvement that straddles a county line, in which case the superior court in either county would  
34 have jurisdiction. See proposed Section 7052 (jurisdiction and venue). Is this a common enough  
35 occurrence that it is worth addressing in the statute?

#### 36 § 7554. Dismissal of enforcement action for lack of prosecution

37 7554. Notwithstanding Section 583.420 of the Code of Civil Procedure, the  
38 court may dismiss an action to enforce a stop payment notice that is not brought to  
39 trial within two years after commencement.

40 **Comment.** Section 7554 restates former Section 3173 without substantive change. The cross-  
41 reference to the Code of Civil Procedure is added to make clear that this section modifies the  
42 general three-year period for discretionary dismissal. Cf. Section 7054 (rules of practice).

43 See also Section 7042 (“stop payment notice” defined).

1    **§ 7556. Dismissal of action or judgment against claimant**

2       7556. A stop payment notice ceases to be effective, and a person withholding  
3 funds pursuant to the notice shall release them, if an action to enforce the stop  
4 payment notice is dismissed (unless expressly stated to be without prejudice) or if  
5 judgment in the action is against the claimant.

6       **Comment.** Section 7556 restates former Section 3174 without substantive change. Funds  
7 released as a result of dismissal of the action or judgment against the claimant must be paid or  
8 delivered to the person to which they are due.

9       See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment  
10 notice” defined).

11    **§ 7558. Attorney’s fee in action to enforce bonded stop payment notice**

12       7558. (a) In an action to enforce a bonded stop payment notice, the prevailing  
13 party is entitled to a reasonable attorney’s fee in addition to costs and damages.

14       (b) The court, on notice and motion by a party, shall determine which is the  
15 prevailing party or that there is no prevailing party for the purpose of this section,  
16 regardless of whether the action proceeds to final judgment. The prevailing party  
17 is the party that recovers greater relief in the action, subject to the following  
18 limitations:

19       (1) If the action is voluntarily dismissed or dismissed pursuant to a settlement,  
20 there is no prevailing party.

21       (2) If the defendant tenders to the claimant the full amount to which the  
22 defendant is entitled, and deposits in court for the claimant the amount so  
23 tendered, and alleges those facts in the answer and the allegation is determined to  
24 be true, the defendant is deemed to be the prevailing party.

25       **Comment.** Section 7558 restates former Section 3176 without substantive change.

26       See also Sections 7002 (“claimant” defined), 7042 (“stop payment notice” defined).

27       **Note.** The existing statute refers to an action against an owner or construction lender to  
28 enforce a bonded stop payment notice. But a bonded notice is only given to a construction lender  
29 under existing Section 3083, not to an owner. We have omitted the reference to particular  
30 defendants from this draft.

31    **§ 7560. Interest in action to enforce bonded stop payment notice**

32       7560. If the claimant is the prevailing party in an action to enforce a bonded stop  
33 payment notice, any amount awarded on the claim shall include interest at the  
34 legal rate calculated from the date the stop payment notice is given.

35       **Comment.** Section 7560 restates former Section 3176.5 without substantive change.

36       See also Sections 7002 (“claimant” defined), 7042 (“stop payment notice” defined).

37       **Note.** The existing statute refers to an action against an owner or construction lender to  
38 enforce a bonded stop payment notice. But a bonded notice is only given to a construction lender  
39 under existing Section 3083, not to an owner. We have omitted the reference to particular  
40 defendants from this draft.

41       The existing statute refers to the date the bonded notice is given to the owner or construction  
42 lender “pursuant to Section 3172.” This cross reference is confusing because Section 3172 does  
43 not deal with the giving of a stop payment notice; it prescribes the limitation period for  
44 commencing an action to enforce a notice. Perhaps a reference to Section 3162 was intended; that

1 section deals with the duties of a construction lender on receipt of a stop payment notice. We  
2 have simply eliminated the cross reference in this draft.

3 CHAPTER 6. PAYMENT BOND

4 **§ 7600. Public policy of payment bond**

5 7600. An owner may require a payment bond or other security as protection  
6 against a direct contractor's failure to perform the contract or to make full  
7 payment for all labor, service, equipment and material provided pursuant to the  
8 contract.

9 **Comment.** Section 7600 restates the second sentence of former Section 3236 without  
10 substantive change.

11 See also Sections 7006 ("contract" defined), 7012 ("direct contractor" defined), 7016 ("labor,  
12 service, equipment, or material" defined), 7028 ("owner" defined), 7030 ("payment bond"  
13 defined), 7046 ("work of improvement" defined).

14 **§ 7602. Limitation of owner's liability**

15 7602. (a) The court shall limit an owner's liability to the contract price under  
16 subdivision (b) if, before the commencement of work, the owner in good faith files  
17 the contract with the county recorder and records a payment bond of the direct  
18 contractor given by sufficient sureties in an amount not less than 50 percent of the  
19 contract price.

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

25 **Comment.** Subdivision (a) of Section 7602 restates the first part of former Section 3235 and  
26 the first sentence of former Section 3236 without substantive change. It makes clear that the  
27 bond, as well as the contract, must be recorded before the commencement of work. See also  
28 Section 7056 (filing and recording of papers).

29 Subdivision (b) restates the last part of former Section 3235. It replaces the restriction of lien  
30 enforcement in cases where it would be equitable, with a restriction of lien enforcement in cases  
31 where the sureties are sufficient. See also Code Civ. Proc. § 995.310 (sufficient sureties on bond  
32 required). This codifies case law interpretation of former Section 3235 and is consistent with the  
33 "in all cases" language of former Section 3236. See, e.g., *Simpson v. Bergmann*, 125 Cal. App. 1,  
34 13 P.2d 531 (1932), *Sudden Lumber Co. v. Singer*, 103 Cal. App. 386, 284 P. 477 (1930), *S.R.*  
35 *Frazee Co. v. Arnold*, 46 Cal. App. 74, 76, 188 P. 822 (1920). See also Section 14 (singular  
36 includes plural).

37 See also Sections 7002 ("claimant" defined), 7006 ("contract" defined), 7008 ("contract price"  
38 defined), 7012 ("direct contractor" defined), 7024 ("lien" defined), 7028 ("owner" defined), 7030  
39 ("payment bond" defined).

40 **§ 7604. Bond required by lending institution**

41 7604. If a lending institution requires that a payment bond be given as a  
42 condition of lending money to finance a work of improvement, and accepts in

1 writing as sufficient a bond given in fulfillment of the requirement, the lending  
2 institution may not thereafter object to the borrower as to the validity of the bond  
3 or refuse to make the loan based on an objection to the bond if the bond is given  
4 by an admitted surety insurer.

5 **Comment.** Section 7604 supersedes former Section 3237. It makes clear that the lender may  
6 not object to the bond if given by an admitted surety insurer. Cf. Code Civ. Proc. § 995.120  
7 (“admitted surety insurer” means corporate insurer to which Insurance Commissioner has issued  
8 certificate of authority to transact surety insurance in state).

9 See also Sections 7022 (“lending institution” defined), 7030 (“payment bond” defined), 7032  
10 (“person” defined), 7046 (“work of improvement” defined).

11 See also Code Civ. Proc. §§ 995.130 (“beneficiary” defined), 995.140 (“bond” defined),  
12 995.185 (“surety” defined).

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

### 15 § 7606. Payment bond

16 7606. (a) A payment bond shall be conditioned for the payment in full of the  
17 claims of all claimants and shall by its terms inure to the benefit of all claimants so  
18 as to give a claimant a right of action to enforce the liability on the bond.

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

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

23 **Comment.** Section 7606 restates former Section 3096 without substantive change. See also  
24 Section 7140 (application of Bond and Undertaking Law). The statute is relocated to the general  
25 provisions on payment bonds because it states substantive rules.

26 See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7024 (“lien”  
27 defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

### 28 § 7608. Limitation on part

29 7608. (a) This part does not give a claimant a right to recover on a direct  
30 contractor’s payment bond given under this chapter unless the claimant provided  
31 labor, service, equipment or material to the direct contractor or one of the direct  
32 contractor’s subcontractors pursuant to a contract between the direct contractor  
33 and the owner.

34 (b) Nothing in this section affects the stop payment notice right of, and relative  
35 priorities among, design professionals and holders of secured interests in the  
36 property.

37 **Comment.** Section 7608 restates former Section 3267 without substantive change.

38 See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7010 (“design  
39 professional” defined), 7012 (“direct contractor” defined), 3083.030 (“labor, service, equipment,  
40 or material” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

1    **§ 7610. Statute of limitations against surety on recorded bond**

2    7610. If a payment bond is recorded before completion of a work of  
3    improvement, an action to enforce the liability on the bond may not be  
4    commenced later than six months after completion of the work of improvement.

5    **Comment.** Section 7610 restates former Section 3240, and broadens it to cover enforcement of  
6    any liability on the bond, not limited to the liability of the surety. Cf. Code Civ. Proc. § 996.440  
7    (judgment on bond against principal and sureties). It supersedes former Section 3239 (provision  
8    shortening statute of limitations). See also Section 7056 (filing and recording of papers),  
9    completion.

10    See also Sections 7030 (“payment bond” defined), 7046 (“work of improvement” defined).

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

12    **§ 7612. Notice prerequisite to enforcement**

13    7612. A claimant may not enforce the liability on a payment bond unless any of  
14    the following conditions is satisfied:

15    (a) The claimant has given preliminary notice to the extent required by Chapter  
16    2 (commencing with Section 7200).

17    (b) The claimant has given notice to the principal and surety within the earlier of  
18    75 days after completion of the work of improvement or 15 days after recordation  
19    of a notice of completion.

20    **Comment.** Section 7612 restates former Section 3242 without substantive change. See also  
21    Sections 7100-7116 (notice). The former limitation to a contract entered into on or after January  
22    1, 1995, is omitted due to lapse of time.

23    See also Sections 14 (singular includes plural), 7108 (mailed notice and proof of notice), 7150  
24    (completion), 7152 (notice of completion).

25    See also Sections 7002 (“claimant” defined), 7030 (“payment bond” defined), 7034  
26    (“preliminary notice” defined), 7046 (“work of improvement” defined).

27                                    CHAPTER 7. SECURITY FOR LARGE PROJECT

28    Article 1. Application of Chapter

29    **§ 7700. Application of chapter**

30    7700. (a) This chapter applies if any of the following conditions is satisfied:

31    (1) The owner of the fee interest in property contracts for a work of  
32    improvement on the property with a contract price greater than five million dollars  
33    (\$5,000,000).

34    (2) The owner of a less than fee interest in property contracts for a work of  
35    improvement on the property with a contract price greater than one million dollars  
36    (\$1,000,000).

37    (b) For the purpose of this section:

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

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

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

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

9 **Comment.** Subdivision (a) of Section 7700 restates former Section 3110.5(a)(2) without  
10 substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive  
11 change.

12 This section standardizes terminology consistent with the remainder of the mechanics lien law.  
13 A less than fee interest includes a leasehold interest in the property. See Section 7028 (“owner”  
14 defined). See also Section 7046 (“work of improvement” defined).

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

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

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

25 **§ 7702. Single-family residence and low income housing, excluded**

26 7702. This chapter does not apply to any of the following works of  
27 improvement:

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

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

35 **Comment.** Section 7702 restates former Section 3110.5(e) without substantive change,  
36 omitting reference to a public work. This part does not apply to a public work. See Section 7050  
37 (application of part).

38 **§ 7704. Qualified publicly traded company and qualified private company excluded**

39 7704. This chapter does not apply to any of the following owners:

40 (a) A qualified publicly traded company or a wholly owned subsidiary of a  
41 qualified publicly traded company, if the obligations of the subsidiary pursuant to  
42 the contract for the work of improvement are guaranteed by the parent. As used in  
43 this subdivision, “qualified publicly traded company” means a company having a  
44 class of equity securities listed for trading on the New York Stock Exchange, the

1 American Stock Exchange, or the NASDAQ stock market, and the  
2 nonsubordinated debt securities of which are rated as “investment grade” by either  
3 Fitch ICBA, Inc., Moody’s Investor Services, Inc., Standard & Poor’s Ratings  
4 Services, or a similar statistical rating organization that is nationally recognized  
5 for rating the creditworthiness of a publicly traded company. If at any time before  
6 final payment of all amounts due pursuant to the contract the nonsubordinated debt  
7 securities of the qualified publicly traded company are downgraded to below  
8 “investment grade” by any of those rating organizations, the owner is no longer  
9 exempt from this chapter.

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

20 **Comment.** Section 7704 restates former Section 3110.5(f) without substantive change.

21 See also Sections 7006 (“contract” defined), 7028 (“owner” defined), 7046 (“work of  
22 improvement” defined).

## 23 Article 2. Security Requirement

### 24 § 7710. Security for owner’s payment obligation

25 7710. An owner shall provide the direct contractor all of the following:

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

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

33 **Comment.** Section 7710 restates the first parts of subdivisions (a) and (b) of former Section  
34 3110.5 without substantive change. As used in this section, “owner” includes the owner of the fee  
35 simple absolute interest or any lesser interest in the property. See Section 7028 (“owner”  
36 defined). The reference to a “work of improvement” includes construction, alteration, addition to,  
37 or repair upon, the property. See Section 7046 (“work of improvement” defined).

38 See also Sections 7100-7116 (notice), 7134 (construction trust deed).

39 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7022 (“lending  
40 institution” defined).

41 **Note.** We have applied the term “lending institution”, as used in the mechanics lien law in  
42 subdivision (b). The term includes commercial bank, savings and loan institution, credit union, or

1 other organization or person engaged in the business of financing loans. The term apparently  
2 differs from “financial institution”, used elsewhere in this chapter.

3 **§ 7712. Demand for security**

4 7712. If an owner fails to provide or maintain the security required by this  
5 chapter, the direct contractor may give the owner notice demanding security. If the  
6 owner does not provide or maintain the security within 10 days after notice  
7 demanding security is given, the direct contractor may suspend work until the  
8 owner provides or maintains the security.

9 **Comment.** Section 7712 restates the second sentence of former Section 3110.5(c) without  
10 substantive change.

11 See also Sections 7100-7116 (notice).

12 See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined).

13 **§ 7714. Security not waivable**

14 7714. It is against public policy by contract to waive the provisions of this  
15 chapter.

16 **Comment.** Section 7714 restates former Section 3110.5(g) without substantive change. This  
17 part does not apply to a public work. See Section 7050 (application of part).

18 See also Section 7006 (“contract” defined).

19 **§ 7716. Rights of subcontractor not affected**

20 7716. This chapter does not affect any statute providing a subcontractor the right  
21 to record a claim of lien, file a stop payment notice, assert a claim against a  
22 payment bond, or receive prompt payment, including the direct contractor’s  
23 payment responsibilities under Section 7108.5 of the Business and Professions  
24 Code.

25 **Comment.** Section 7716 restates former Section 3110.5(d), omitting the reference to Public  
26 Contract Code Section 10262. This chapter does not apply to a public works contract. Cf. Section  
27 7050 (application of part).

28 See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7030 (“payment  
29 bond” defined), 7044 (“subcontractor” defined).

30 **Article 3. Form of Security**

31 **§ 7720. Form of security**

32 7720. An owner shall provide security by any of the following means:

33 (a) A bond that satisfies Section 7722.

34 (b) An irrevocable letter of credit that satisfies Section 7724.

35 (c) An escrow account that satisfies Section 7726.

36 **Comment.** Section 7720 restates a part of former Section 3110.5(b) without substantive  
37 change.

38 See also Section 7028 (“owner” defined).

1 § 7722. Bond

2 7722. A bond under this chapter shall satisfy all of the following requirements:

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

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

12 (c) The bond shall be conditioned for payment on default by the owner of any  
13 undisputed amount pursuant to the contract that is due and payable for more than  
14 30 days.

15 **Comment.** Section 7722 restates former Section 3110.5(b)(1).

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

17 See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7028 (“owner”  
18 defined), 7046 (“work of improvement” defined).

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

21 § 7724. Irrevocable letter of credit

22 7724. 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 7724 restates former Section 3110.5(b)(2) without substantive change.

35 See also Sections 7008 (“contract price” defined), 7012 (“direct contractor” defined), 7028  
36 (“owner” defined), 7046 (“work of improvement” defined).

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

39 § 7726. Escrow account

40 7726. An escrow account under this chapter shall satisfy all of the following  
41 requirements:

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

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

6 (c) The owner shall deposit funds in the account in the amount provided in  
7 Section 7728. This chapter does not require a construction lender to agree to  
8 deposit proceeds of a construction loan in the account.

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

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

19 **Comment.** Section 7726 restates portions of former Section 3110.5(b)(3) without substantive  
20 change.

21 See also Sections 7004 ("construction lender" defined), 7012 ("direct contractor" defined),  
22 7028 ("owner" defined).

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

27 **§ 7728. Deposits to and disbursements from escrow account**

28 7728. The following provisions govern a deposit to or disbursement from a  
29 construction security escrow account under this chapter:

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

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

39 (c) The amount required to be maintained on deposit shall not exceed the total  
40 amount remaining to be paid to the direct contractor pursuant to the contract or as  
41 adjusted by agreement between the owner and the direct contractor. If the amount  
42 on deposit equals or exceeds the total amount remaining to be paid to the direct  
43 contractor, the owner and the direct contractor shall authorize disbursement to the

1 direct contractor for progress payments then due the direct contractor, but a party  
2 is not obligated to authorize disbursement that would cause the amount remaining  
3 on deposit following the disbursement to be less than the total amount remaining  
4 to be paid to the direct contractor.

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

13 **Comment.** Section 7728 restates portions of former Section 3110.5(b)(3) without substantive  
14 change.

15 See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7012 (“direct  
16 contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

17 **§ 7730. Contract price**

18 7730. If the contract price for a work of improvement is not a fixed price, the  
19 amount of security provided under this chapter shall be the guaranteed maximum  
20 price or, if there is no guaranteed maximum price, the owner’s and direct  
21 contractor’s good faith estimate of the reasonable value of the labor, service,  
22 equipment, or material to be provided pursuant to the contract.

23 **Comment.** Section 7730 restates the first sentence of former Section 3110.5(c) without  
24 substantive change.

25 See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7012 (“direct  
26 contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

27 **CHAPTER 8. PROMPT PAYMENT**

28 **Article 1. Progress Payment**

29 **§ 7800. Progress payment between owner and direct contractor**

30 7800. (a) Except as otherwise agreed in writing by the owner and direct  
31 contractor, the owner shall pay the direct contractor, within 30 days after notice  
32 demanding payment pursuant to the contract, any progress payment due as to  
33 which there is no good faith dispute between them.

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

37 (c) An owner that violates this section is liable to the direct contractor for a  
38 penalty of two percent per month on the amount wrongfully withheld, in place of

1 any interest otherwise due. In an action for collection of the amount wrongfully  
2 withheld, the prevailing party is entitled to costs and a reasonable attorney’s fee.

3 (d) This section does not supersede any requirement of Article 2 (commencing  
4 with Section 7810) relating to the withholding of a retention.

5 **Comment.** Section 7800 restates former Section 3260.1, with the addition of a reasonableness  
6 limitation on an attorney’s fee. This section is limited to a private work. See Section 7050  
7 (application of part). The operative date provision of subdivision (a) of former Section 3260.1 is  
8 omitted due to lapse of time.

9 The owner’s duty runs from the time notice is complete, rather than the time of “receipt”. See  
10 Section 7114 (when notice is complete).

11 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”  
12 defined).

13 **Note.** We have limited the introductory proviso of subdivision (a), relating to a written  
14 agreement between the owner and contractor, to subdivision (a), and have not extended the  
15 proviso to subdivisions (b) and (c). This appears to capture the intent of existing law.

16 **§ 7802. Progress payment between direct contractor and subcontractor on public utility**  
17 **work**

18 7802. (a) This section applies to a contract between a public utility and a direct  
19 contractor for all or part of a work of improvement.

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

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

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

36 **Comment.** Section 7802 restates former Section 3262.5, with the addition of a reasonableness  
37 limitation on an attorney’s fee. The reference to 15 “working days” is converted to 21 “days”,  
38 consistent with the remainder of the mechanics lien law. Cf. Section 9 (business day).

39 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7044  
40 (“subcontractor” defined), 7046 (“work of improvement” defined).

41 **Note.** Existing law makes this section applicable to a contract “to do business” with a public  
42 utility. We have limited it to a work of improvement contracted for by a public utility, consistent  
43 with placement of this section in the mechanics lien law.

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Article 2. Retention Payment

**§ 7810. Application of article**

7810. This article governs a retention withheld by an owner from a direct contractor or by a direct contractor from a subcontractor.

**Comment.** Section 7810 restates subdivision (b) of former Section 3260 without substantive change. This article is limited to a private work. See Section 7050 (application of part). The transitional provision found in subdivision (a) of former Section 3260, relating to contracts entered into before 1991, 1993, and 1994, are omitted due to lapse of time.

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

**§ 7812. Payment of retention by owner**

7812. (a) If an owner withholds a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor.

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

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

**Comment.** Section 7812 restates subdivision (c) of former Section 3260, except that detailed provisions defining the date of completion are eliminated in reliance on the general provisions of this part governing completion. See Section 7150 (completion). The right of the owner to withhold disputed amounts is made subject to a condition of good faith, consistent with other provisions of this part.

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7036 (“public entity” defined), 7046 (“work of improvement” defined).

**Note.** We have eliminated the definition of “date of completion” found in the existing statute, in reliance on general provisions relating to completion. See Section 7150 (completion). We have done this in the interest of simplification of the statute.

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

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

**§ 7814. Payment of retention by direct contractor**

7814. (a) If a direct contractor has withheld a retention from a subcontractor, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay the subcontractor its share of the payment.

(b) If a retention payment received by the direct contractor is specifically designated for a particular subcontractor, the direct contractor shall pay the

1 retention payment to the designated subcontractor, if consistent with the terms of  
2 the subcontract.

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

7 **Comment.** Section 7814 restates subdivisions (d) and (e) of former Section 3260 without  
8 substantive change.

9 See also Sections 7012 (“direct contractor” defined), 7044 (“subcontractor” defined).

10 **§ 7816. Payment for disputed work**

11 7816. (a) If the direct contractor gives the owner, or a subcontractor gives the  
12 direct contractor, notice that work in dispute has been completed in accordance  
13 with the contract, the owner or direct contractor shall within 10 days give notice  
14 advising the notifying party of the acceptance or rejection of the disputed work.

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

17 **Comment.** Section 7816 restates subdivision (f) of former Section 3260 without substantive  
18 change. See also Sections 7100-7116 (notice).

19 See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”  
20 defined), 7044 (“subcontractor” defined).

21 **§ 7818. Wrongful withholding**

22 7818. If an owner or direct contractor does not make a retention payment within  
23 the time required by this article:

24 (a) The owner or direct contractor is liable to the person to which payment is  
25 owed for a penalty of two percent per month on the amount wrongfully withheld,  
26 in place of any interest otherwise due.

27 (b) In an action for collection of the amount wrongfully withheld, the prevailing  
28 party is entitled to costs and a reasonable attorney’s fee.

29 **Comment.** Section 7818 restates subdivision (g) of former Section 3260, with the addition of a  
30 reasonableness limitation on an attorney’s fee.

31 See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person”  
32 defined).

33 **§ 7820. Waiver against public policy**

34 7820. It is against public policy by contract to waive the provisions of this  
35 article.

36 **Comment.** Section 7820 restates subdivision (h) of former Section 3260 without substantive  
37 change.

38 **§ 7822. Construction loan exempt**

39 7822. This article does not apply to a retention withheld by a lender pursuant to  
40 a construction loan agreement.

41 **Comment.** Section 7822 restates subdivision (i) of former Section 3260.

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### Article 3. Stop Work Notice

#### § 7830. “Stop work notice” defined

7830. “Stop work notice” means notice given under this article by a direct contractor to an owner that the contractor will stop work if the amount owed the contractor is not paid within 10 days after notice is given.

**Comment.** Section 7830 restates a part of the first sentence of former Section 3260.2(a) without substantive change. This article is limited to a private work. See Section 7050 (application of part).

Former Section 3260.2(g), relating to the mechanics of the notice, is superseded by Sections 7100-7116 (notice).

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined).

#### § 7832. Stop work notice

7832. If a direct contractor is not paid the amount due pursuant to a written contract within 35 days after the date payment is due under the contract, and there is no dispute as to the satisfactory performance of the contractor, the contractor may give the owner a stop work notice.

**Comment.** Section 7832 restates a portion of the first sentence of former Section 3260.2(a) without substantive change.

See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).

#### § 7834. Additional notice

7834. A direct contractor that gives an owner a stop work notice shall give the following additional notice:

(a) At least five days before giving the stop work notice, the contractor shall post notice of intent to give a stop work notice.

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

**Comment.** Section 7834 restates the second and third sentences of former Section 3260.2(a), and requires that the contractor give a copy of the stop work notice. See also Section 7112 (posting).

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7038 (“site” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

#### § 7836. Notice to construction lender

7836. Within five days after receipt of a stop work notice from a direct contractor, the owner shall give a copy of the notice to the construction lender, if any.

**Comment.** Section 7836 restates the fourth sentence of former Section 3260.2(a). See also Sections 7100-7116 (notice).

See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).

1    **§ 7838. Immunity from liability**

2       7838. (a) The direct contractor or the direct contractor’s surety is not liable for  
3 delay or damage that the owner or a subcontractor may suffer as a result of the  
4 direct contractor giving a stop work notice and subsequently stopping work for  
5 nonpayment, if the notice and posting requirements of this article are satisfied.

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

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

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

16       **Comment.** Section 7838 restates former Section 3260.2(c), except that provisions that appear  
17 to suggest that a subcontractor may give a stop work notice are deleted.

18       See also Sections 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or  
19 material” defined), 7026 (“material supplier” defined), 7028 (“owner” defined), 7044  
20 (“subcontractor” defined).

21    **§ 7840. Notice of resolution of dispute or cancellation of stop work notice**

22       7840. On resolution of the dispute or the direct contractor’s cancellation of the  
23 stop work notice, the contractor shall post, and give subcontractors with which the  
24 contractor has a direct contractual relationship on the work of improvement, notice  
25 of the resolution or cancellation.

26       **Comment.** Section 7840 restates the second paragraph of former Section 3260.2(a) without  
27 substantive change. See also Section 7112 (posting).

28       See also Sections 7012 (“direct contractor” defined), 7038 (“site” defined), 7044  
29 (“subcontractor” defined), 7046 (“work of improvement” defined).

30    **§ 7842. Stop work remedy not exclusive**

31       7842. A direct contractor’s right to stop work under this article is in addition to  
32 other rights the direct contractor may have under the law.

33       **Comment.** Section 7842 restates former Section 3260.2(b) without substantive change.

34       See also Section 7012 (“direct contractor” defined).

35    **§ 7844. Judicial proceeding**

36       7844. If payment of the amount due is not made within 10 days after a stop work  
37 notice is given, the direct contractor or the direct contractor’s surety may in an  
38 expedited proceeding seek a judicial determination of liability for the amount due.

39       **Comment.** Section 7844 restates former Section 3260.2(d) without substantive change. See  
40 also section 7052 (jurisdiction and venue).

41       See also Section 7012 (“direct contractor” defined).

1 **Note.** It's not clear what sort of expedited proceeding is referred to here. Is this a trial setting  
2 preference, or something else? The statute lacks detail. It may be best to simply delete the  
3 reference to expedition.

4 **§ 7846. Waiver against public policy**

5 7846. It is against public policy by contract to waive the provisions of this  
6 article.

7 **Comment.** Section 7846 restates former Section 3260.2(e) without substantive change.

8 **§ 7848. Application of article**

9 7848. (a) This article applies to a contract entered into on or after January 1,  
10 1999.

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

13 **Comment.** Section 7848 restates former Section 3260.2(f) without substantive change.

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14 **PUBLIC WORK OF IMPROVEMENT**

15 **Pub. Cont. Code §§ 41010-45090 (added). Public works contract remedies**

16 SEC. \_\_\_\_\_. Part 6 (commencing with Section 41010) is added to Division 2 of  
17 the Public Contract Code, to read:

18 **PART 6. PUBLIC WORKS CONTRACT**  
19 **REMEDIES**

20 **CHAPTER 1. DEFINITIONS**

21 **§ 41010. Application of definitions**

22 41010. Unless the provision or context otherwise requires, the definitions in this  
23 chapter govern the construction of this part.

24 **Comment.** Section 41010 supersedes former Civil Code Section 3082.

25 **§ 41020. Claimant**

26 41020. "Claimant" means a person that gives a stop payment notice or asserts a  
27 claim against a payment bond.

28 **Comment.** Section 41020 restates former Civil Code Section 3085, omitting as unnecessary  
29 the reference to the claimant's "entitlement" and to the combination of remedies. For persons  
30 having the right to give a stop payment notice or assert a claim against a payment bond, see  
31 Section 42030 (who may use remedies).

32 See also Sections 41090 ("payment bond" defined), 41100 ("person" defined), 41150 ("stop  
33 payment notice" defined).

1    **§ 41030. Design professional**

2    41030. “Design professional” means a certificated architect, registered  
3 professional engineer, or licensed land surveyor that provides architectural,  
4 engineering, or land surveying services pursuant to a public works contract.

5    **Comment.** Section 41030 is drawn from Civil Code Section 7010.

6    See also Sections 41100 (“person” defined), 41130 (“public works contract” defined).

7    **§ 41040. Direct contractor**

8    41040. “Direct contractor” means a person that has a direct contractual  
9 relationship with a public entity. With respect to the amount due or to become due  
10 to a direct contractor, the term includes the direct contractor’s assignee.

11    **Comment.** Section 41040 supersedes former Civil Code Section 3095 (“original contractor”).  
12 A direct contractor is not limited to a builder, and may include a surveyor, engineer, material  
13 supplier, artisan, or other person that contracts directly with the public entity.

14    The definition generalizes provisions of former Civil Code Section 3187 relating to payment of  
15 the assignee of a direct contractor. See also Section 44340 (effect of assignment or garnishment).

16    See also Sections 41100 (“person” defined), 41120 (“public entity” defined).

17    **§ 41050. Express trust fund**

18    41050. “Express trust fund” means a laborers compensation fund to which a  
19 portion of a laborer’s total compensation is to be paid pursuant to an employment  
20 agreement or a collective bargaining agreement for the provision of benefits,  
21 including, but not limited to, employer payments described in Section 1773.1 of  
22 the Labor Code and implementing regulations.

23    **Comment.** Section 41050 continues a portion of former Civil Code Section 3111 without  
24 substantive change.

25    See also Section 41080 (“laborers compensation fund” defined).

26    **§ 41060. Funds**

27    41060. “Funds” means warrant, check, money, or bonds (if bonds are to be  
28 issued in payment of the public works contract).

29    **Comment.** Section 41060 is a new definition. It is included for drafting convenience. It  
30 generalizes provisions of former Civil Code Sections 3186, 3187, and 3196.

31    See also Section 41130 (“public works contract” defined).

32    **§ 41070. Labor, service, equipment, or material**

33    41070. “Labor, service, equipment, or material” includes but is not limited to  
34 labor, skills, services, material, supplies, equipment, appliances, transportation,  
35 power, surveying, construction plans, and construction management provided for a  
36 public works contract.

37    **Comment.** Section 41070 is a new definition. It is included for drafting convenience. The  
38 phrase is intended to encompass all things of value provided for a public works contract, and  
39 replaces various phrases used throughout the former law, including “labor or material,” “labor,  
40 services, equipment, or materials,” “appliances, teams, or power,” “provisions, provender, or  
41 other supplies,” and the like.

42    See also Section 41130 (“public works contract” defined).

1    **§ 41080. Laborers compensation fund**

2       41080. “Laborers compensation fund” means a person, including an express  
3 trust fund, to which a portion of the compensation of a laborer is paid by  
4 agreement with the laborer or the collective bargaining agent of the laborer.

5       **Comment.** Section 41080 continues the first sentence of former Civil Code Section 3089(b)  
6 without substantive change. See also Section 7070 (standing to enforce laborer’s rights).

7       See also Sections 41050 (“express trust fund” defined), 41100 (“person” defined).

8    **§ 41090. Payment bond**

9       41090. “Payment bond” means a bond given under any of the following  
10 provisions:

11       (a) Section 7103.

12       (b) Chapter 5 (commencing with Section 45010).

13       (c) Another provision of this code that provides for a payment bond.

14       **Comment.** Section 41090 supersedes former Civil Code Section 3096.

15    **§ 41100. Person**

16       41100. “Person” means an individual, corporation, public entity, business trust,  
17 estate, trust, partnership, limited liability company, association, or other entity.

18       **Comment.** Section 41100 is a new definition. It is included for drafting convenience.

19       See also Section 41120 (“public entity” defined).

20    **§ 41110. Preliminary notice**

21       41110. “Preliminary notice” means the notice required by Chapter 3  
22 (commencing with Section 43010) as a prerequisite to use of the remedies  
23 provided in this part.

24       **Comment.** Section 41110 supersedes former Civil Code Section 3098. The substantive  
25 requirements for preliminary notice are relocated to Chapter 3 (commencing with Section 43010).

26    **§ 41120. Public entity**

27       41120. (a) “Public entity” has the meaning provided in Section 1100 and  
28 includes all of the following:

29       (1) The Regents of the University of California.

30       (2) An officer authorized to act for a public entity.

31       (b) A reference in this part to a public entity means the public entity that  
32 awarded the public works contract.

33       **Comment.** Subdivision (a) of Section 41120 restates former Civil Code Section 3099. Under  
34 Section 1100, “public entity” means the state, county, city, city and county, district, public  
35 authority, public agency, municipal corporation, or any other political subdivision or public  
36 corporation in the state. This part does not apply to a public works contract governed by federal  
37 law. See Section 42010 (application of part). The reference to an officer of the public entity is  
38 included for drafting convenience. Cf. former Civ. Code §§ 3247, 3250, 3251 (public entity or  
39 officer).

40       Subdivision (b) is new; it is intended for drafting convenience. Cf. former Civ. Code §§ 3247,  
41 3250, 3251.

1 See also Section 41130 (“public works contract” defined).

2 **§ 41130. Public works contract**

3 41130. “Public works contract” has the meaning provided in Section 1101.

4 **Comment.** Section 41130 supersedes former Civil Code Section 3100 (“public work” defined).  
5 Under Section 1101, “public works contract” means an agreement for the erection, construction,  
6 alteration, repair, or improvement of any public structure, building, road, or other public  
7 improvement of any kind. This part does not apply to a public works contract governed by federal  
8 law. See Section 42010 (application of part).

9 **§ 41140. Site**

10 41140. “Site” means the property on which a public works contract is  
11 performed.

12 **Comment.** Section 41140 restates former Civil Code Section 3101 to the extent it applied to a  
13 public works contract.

14 See also Section 41130 (“public works contract” defined).

15 **§ 41150. Stop payment notice**

16 41150. “Stop payment notice” means a notice given under Chapter 4  
17 (commencing with Section 44110).

18 **Comment.** Section 41150 supersedes former Civil Code Section 3103.

19 **§ 41160. Subcontractor**

20 41160. “Subcontractor” means a contractor that does not have a direct  
21 contractual relationship with a public entity. The term includes a contractor that  
22 has a contractual relationship with a direct contractor or with another  
23 subcontractor.

24 **Comment.** The first sentence of Section 41160 continues former Section 3104 to the extent it  
25 applied to a public works contract. The second sentence is new; it makes clear that the term  
26 “subcontractor” includes a subcontractor below the first tier.

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

29 **CHAPTER 2. GENERAL PROVISIONS**

30 **Article 1. Miscellaneous Provisions**

31 **§ 42010. Application of part**

32 42010. (a) This part applies to a public works contract awarded by a public  
33 entity.

34 (b) This part does not apply to any of the following:

35 (1) A public works contract governed by federal law.

36 (2) A transaction governed by Sections 20457 to 20464, inclusive.

1 **Comment.** Subdivision (a) of Section 42010 restates former Civil Code Sections 3100 and  
2 3179.

3 Paragraph (1) of subdivision (b) is new.

4 Paragraph (2) of subdivision (b) restates former Civil Code Section 3266(b). This provision  
5 updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which  
6 were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, §  
7 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See  
8 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under  
9 Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code.  
10 See Pub. Cont. Code § 20457.

11 See also Sections 41120 (“public entity” defined), 41130 (“public works contract” defined).

12 **§ 42020. Relation to other statutes**

13 42020. (a) This part does not limit, and is not affected by, improvement security  
14 provided under the Subdivision Map Act, Division 2 (commencing with Section  
15 66410) of Title 7 of the Government Code.

16 (b) The Bond and Undertaking Law, Chapter 2 (commencing with Section  
17 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond  
18 given under this part.

19 **Comment.** Subdivision (a) of Section 42020 is new. It clarifies the interrelation between this  
20 part and the Subdivision Map Act. For relevant provisions of that act, see Gov’t Code §§ 66499-  
21 66499.10 (improvement security).

22 Subdivision (b) is new. It is a specific application of Code of Civil Procedure Section 995.020  
23 (application of Bond and Undertaking Law).

24 **§ 42030. Who may use remedies**

25 42030. (a) Except as provided in subdivision (b), any of the following persons  
26 that has not been paid in full may give a stop payment notice to the public entity or  
27 assert a claim against a payment bond:

28 (1) A person that provides labor, service, equipment, or material for a public  
29 works contract pursuant to an agreement with a direct contractor.

30 (2) An express trust fund, to the extent of the compensation agreed to be paid to  
31 the express trust fund for labor on that public works contract only.

32 (3) A person described in Section 4107.7.

33 (b) A direct contractor may not give a stop payment notice or assert a claim  
34 against a payment bond under this part.

35 **Comment.** Section 42030 restates former Civil Code Section 3181. The former references to  
36 site improvement work and to provisions, provender, or other supplies are included within the  
37 meaning of subdivision (a). See Section 41070 (“labor, service, equipment, or material” defined).

38 See also Sections 41040 (“direct contractor” defined), 41050 (“express trust fund” defined),  
39 41070 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41100  
40 (“person” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined),  
41 41150 (“stop payment notice” defined).

42 **§ 42040. Jurisdiction and venue**

43 42040. The proper court for proceedings under this part is the superior court in  
44 the county in which a public works contract, or part of it, is to be performed.

1       **Comment.** Section 42040 is a new provision included for drafting convenience. It generalizes  
2 a number of provisions of former law.

3       See also Section 41130 (“public works contract” defined).

4       **§ 42050. Rules of practice**

5       42050. Except as otherwise provided in this part, Part 2 (commencing with  
6 Section 307) of the Code of Civil Procedure provides the rules of practice in  
7 proceedings under this part.

8       **Comment.** Section 42050 continues the first sentence of former Civil Code Section 3259  
9 without substantive change. The second sentence of former Civil Code Section 3259 is not  
10 continued; this part does not include special provisions relating to new trials or appeals.

11       **§ 42060. Written notice**

12       42060. Notice under this part shall be in writing.

13       **Comment.** Section 42060 generalizes various provisions of former law. See, e.g., former Civ.  
14 Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3098 (preliminary notice), 3103  
15 (stop notice).

16       **§ 42070. Notice to public entity**

17       42070. Notice to a public entity shall be addressed to the public entity at the  
18 office of the disbursing officer of the public entity or at another address specified  
19 in the contract.

20       **Comment.** Section 42070 supersedes the third sentence of former Civil Code Section 3098(a)  
21 (preliminary notice of public work). Notice under this part may be given by mail or personal  
22 delivery as provided in Section [7104 (manner of giving notice)].

23       **§ 42080. Mailed notice**

24       42080. The following provisions apply to notice given by mail under this part:

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

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

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

36       **Comment.** Section 42080 is a new provision included for drafting convenience. It generalizes  
37 a number of provisions of former law, expands the methods of proof to include a certification of  
38 the mailing by the United States Postal Service, and expands the methods of giving notice to  
39 include delivery by express service carrier.

1 § 42090. Agency

2 42090. An act that may be done by or to a person under this part may be done by  
3 or to the person's agent to the extent the act is within the scope of the agent's  
4 authority.

5 **Comment.** Section 42090 generalizes a provision of former Civil Code Section 3103. It makes  
6 clear that an agent's authority is limited to the scope of the agency. Thus to the extent a direct  
7 contractor is deemed to be the agent of the principal for the purpose of engaging a subcontractor,  
8 the scope of the agency does not include other acts, such as compromise of litigation.

9 See also Section 41100 ("person" defined).

10 § 42100. Liability of surety

11 42100. None of the following releases a surety from liability on a bond given  
12 under this part:

13 (a) A change to a contract, plan, specification, or agreement for a public works  
14 contract or for labor, service, equipment or material provided for a public works  
15 contract.

16 (b) A change to the terms of payment or an extension of the time for payment  
17 for a public works contract.

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

19 (d) A condition precedent or subsequent in the bond purporting to limit the right  
20 of recovery of a claimant otherwise entitled to recover pursuant to a contract,  
21 agreement, or bond.

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

24 **Comment.** Section 42100 restates former Civil Code Section 3225.

25 See also Sections 41020 ("claimant" defined), 41070 ("labor, service, equipment, or material"  
26 defined), 41100 ("person" defined), 41130 ("public works contract" defined).

27 Article 2. Completion

28 § 42210. Completion (including acceptance and cessation)

29 42210. For the purpose of this part, completion of a public works contract  
30 occurs at the earliest of the following times:

31 (a) Acceptance of performance by the public entity.

32 (b) Cessation of labor for a continuous period of 30 days. This subdivision does  
33 not apply to a contract awarded under the State Contract Act, Part 2 (commencing  
34 with Section 10100).

35 **Comment.** Section 42210 restates former Civil Code Section 3086, to the extent it applied to a  
36 public works contract. See also Section 42220 (notice of completion).

37 See also Section 41120 ("public entity" defined).

38 **Note.** The Commission seeks comment on whether the 30 day cessation of labor period is  
39 too short. Should it be changed to 60 days for consistency with the rule applicable to a private  
40 work of improvement?



1       **Comment.** Section 42310 continues the first and second sentences of former Civil Code  
2 Section 3262(a) without substantive change, to the extent they related to a public works contract.  
3 See Section 41020 (“claimant” defined).

4       See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41040  
5 (“public entity” defined).

6       **§ 42320. Waiver and release**

7       42320. A claimant’s waiver and release does not release the public entity or  
8 surety on a payment bond from a claim unless both of the following conditions are  
9 satisfied:

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

12       (b) If the release is a conditional release, there is evidence of payment to the  
13 claimant. Evidence of payment may be (1) the claimant’s endorsement on a single  
14 or joint payee check that has been paid by the financial institution on which it was  
15 drawn or (2) written acknowledgment of payment by the claimant.

16       **Comment.** Section 42320 continues the third and fourth sentences of former Civil Code  
17 Section 3262(a) without substantive change, to the extent they related to a public works contract.  
18 The waiver and release may be signed by the claimant’s agent. See Section 42090 (agency).

19       See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined), 41040  
20 (“public entity” defined).

21       **§ 42330. Statement of claimant**

22       42330. An oral or written statement purporting to waive, release, impair or  
23 otherwise adversely affect a claim is void and unenforceable and does not create  
24 an estoppel or impairment of the claim unless either of the following conditions is  
25 satisfied:

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

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

28       **Comment.** Section 42330 continues former Civil Code Section 3262(b) without substantive  
29 change, to the extent it related to a public works contract.

30       See also Section 41020 (“claimant” defined).

31       **§ 42340. Reduction or release of stop payment notice**

32       42340. (a) A claimant may reduce the amount of, or release in its entirety, a stop  
33 payment notice. The reduction or release shall be in writing and may be given in a  
34 form other than a form of waiver and release prescribed in this article.

35       (b) A claimant’s reduction or release of a stop payment notice has the following  
36 effect:

37       (1) The reduction or release releases the claimant's right to enforce the notice to  
38 the extent of the reduction or release.

39       (2) The reduction or release releases the public entity from the obligation to  
40 withhold funds pursuant to the notice to the extent of the reduction or release.

41       (3) The reduction or release does not preclude the claimant from giving a  
42 subsequent stop payment notice that is timely and proper.

(4) The reduction or release does not release any right of the claimant other than the right to enforce the stop payment notice to the extent of the reduction or release.

**Comment.** Section 42340 restates the second, third, and fourth sentences of subdivision (b) of former Civil Code Section 3262, to the extent they related to a public works contract.

See also Sections 41020 (“claimant” defined), 41100 (“person” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

**§ 42350. Accord and satisfaction or settlement agreement not affected**

42350. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the claim.

**Comment.** Section 42350 continues former Civil Code Section 3262(c) without substantive change, to the extent it related to a public works contract.

**§ 42360. Conditional waiver and release on progress payment**

42360. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS  
PAYMENT

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

**Identifying Information**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Public Entity: \_\_\_\_\_

Through Date: \_\_\_\_\_

**Conditional Waiver and Release**

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

Maker of Check: \_\_\_\_\_

1 Amount of Check: \$ \_\_\_\_\_  
2 Check Payable to: \_\_\_\_\_

3 **Exceptions**

4 This document does not affect any of the following:

- 5 (1) Retentions.
- 6 (2) Extras for which the claimant has not received payment.
- 7 (3) The following progress payments for which the claimant has previously given
- 8 a conditional waiver and release but has not received payment:

9 Date of waiver and release: \_\_\_\_\_

10 Amount remaining unpaid: \$ \_\_\_\_\_

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

14 **Signature**

15 Claimant’s Signature: \_\_\_\_\_

16 Claimant’s Title: \_\_\_\_\_

17  
18 **Comment.** Section 42360 restates former Civil Code Section 3262(d)(1), to the extent it  
19 related to a public works contract, with the addition of language relating to progress payments  
20 covered by previous releases that have not been paid. The statutory form is recast for clarity.

21 See also Section 41020 (“claimant” defined).

22 **§ 42370. Unconditional waiver and release on progress payment**

23 42370. If the claimant is required to execute a waiver and release in exchange  
24 for, or in order to induce payment of, a progress payment and the claimant asserts  
25 in the waiver it has, in fact, been paid the progress payment, the waiver and release  
26 shall be in substantially the following form:

27 UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS  
28 PAYMENT

29 NOTICE TO CLAIMANT: This document waives and releases rights  
30 unconditionally and states that you have been paid for giving up those rights. This  
31 document is enforceable against you if you sign it, even if you have not been paid.

32 If you have not been paid, use a conditional waiver and release form.

33 **Identifying Information**

34 Name of Claimant: \_\_\_\_\_

35 Name of Customer: \_\_\_\_\_

36 Job Location: \_\_\_\_\_

37 Public Entity: \_\_\_\_\_

1 Through Date: \_\_\_\_\_

2 **Unconditional Waiver and Release**

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

7 Amount of payment: \$ \_\_\_\_\_

8 **Exceptions**

9 This document does not affect any of the following:

10 (1) Retentions.

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

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

15 **Signature**

16 Claimant's Signature: \_\_\_\_\_

17 Claimant's Title: \_\_\_\_\_

18

19 **Comment.** Section 42370 continues former Civil Code Section 3262(d)(2) without substantive  
20 change, to the extent it related to a public works contract. The statutory form is recast for clarity.

21 See also Section 41020 ("claimant" defined).

22 **§ 42380. Conditional waiver and release on final payment**

23 42380. If the claimant is required to execute a waiver and release in exchange  
24 for, or in order to induce the payment of, a final payment and the claimant is not,  
25 in fact, paid in exchange for the waiver and release or a single payee check or joint  
26 payee check is given in exchange for the waiver and release, the waiver and  
27 release shall be in substantially the following form:

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

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

32 **Identifying Information**

33 Name of Claimant: \_\_\_\_\_

34 Name of Customer: \_\_\_\_\_

35 Job Location: \_\_\_\_\_

36 Public Entity: \_\_\_\_\_

37 Date: \_\_\_\_\_

1 **Conditional Waiver and Release**

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

6 Maker of Check: \_\_\_\_\_  
7 Amount of Check: \$ \_\_\_\_\_  
8 Check Payable to: \_\_\_\_\_

9 **Exceptions**

10 This document does not affect any of the following:

- 11 (1) Disputed claims for extras in the amount of \$ \_\_\_\_\_
- 12 (2) The following progress payments for which the claimant has previously given  
13 a conditional waiver and release but has not received payment:

14 Date of waiver and release: \_\_\_\_\_  
15 Amount remaining unpaid: \$ \_\_\_\_\_

16 **Signature**

17 Claimant’s Signature: \_\_\_\_\_  
18 Claimant’s Title: \_\_\_\_\_

19  
20 **Comment.** Section 42380 continues former Civil Code Section 3262(d)(3), to the extent it  
21 related to a public works contract, with the addition of language relating to progress payments  
22 covered by previous releases that have not been paid, and the addition of a line for identification  
23 of the waivant’s customer. The statutory form is recast for clarity.

24 See also Section 41020 (“claimant” defined).

25 **§ 42390. Unconditional waiver and release on final payment**

26 42390. If the claimant is required to execute a waiver and release in exchange  
27 for, or in order to induce payment of, a final payment and the claimant asserts in  
28 the waiver it has, in fact, been paid the final payment, the waiver and release shall  
29 be in substantially the following form:

30 UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

35 **Identifying Information**

36 Name of Claimant: \_\_\_\_\_  
37 Name of Customer: \_\_\_\_\_  
38 Job Location: \_\_\_\_\_  
39 Public Entity: \_\_\_\_\_

1 Date: \_\_\_\_\_

2 **Unconditional Waiver and Release**

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

6 **Exceptions**

7 This document does not affect any of the following:

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

9 **Signature**

10 Claimant's Signature: \_\_\_\_\_

11 Claimant's Title: \_\_\_\_\_

12

13 **Comment.** Section 42390 continues former Civil Code Section 3262(d)(4) without substantive  
14 change, to the extent it related to a public works contract. The statutory form is recast for clarity.  
15 See also Section 41020 ("claimant" defined).

16

CHAPTER 3. PRELIMINARY NOTICE

17 **§ 43010. Preliminary notice prerequisite to remedies**

18 43010. (a) Except as otherwise provided by statute, preliminary notice is a  
19 necessary prerequisite to the validity of a stop payment notice or a claim against a  
20 payment bond under this part.

21 (b) Preliminary notice is not required of a laborer or a laborers compensation  
22 fund.

23 (c) Preliminary notice is not required of a claimant that has a direct contractual  
24 relationship with the direct contractor.

25 **Comment.** Subdivision (a) of Section 43010 restates part of the introductory clause of former  
26 Civil Code Section 3098. For a statutory exception to the preliminary notice requirement, see  
27 Section 45070 (notice to principal and surety).

28 Subdivision (b) restates former Civil Code Section 3098(c).

29 Subdivision (c) restates a portion of former Civil Code Section 3098(a).

30 The transitional provision of former Civil Code Section 3098(e) is not continued due to lapse  
31 of time.

32 See also Sections 41020 ("claimant" defined), 41040 ("direct contractor" defined), 41080  
33 ("laborers compensation fund" defined), 41090 ("payment bond" defined), 41110 ("preliminary  
34 notice" defined), 41150 ("stop payment notice" defined).

35 **§ 43020. Persons to be given preliminary notice**

36 43020. Before giving a stop payment notice or asserting a claim against a  
37 payment bond, a claimant shall give preliminary notice to the public entity and the  
38 direct contractor.

1 **Comment.** Section 43020 restates part of the introductory clause and subdivision (a) of former  
2 Civil Code Section 3098. Repetitive detail is omitted, in reliance on defined terms and other  
3 substantive provisions.

4 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41070  
5 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41110  
6 (“preliminary notice” defined), 41120 (“public entity” defined), 41150 (“stop payment notice”  
7 defined).

8 **§ 43030. Contents of preliminary notice**

9 43030. A preliminary notice shall state with substantial accuracy all of the  
10 following:

11 (1) A general description of the labor, service, equipment, or material provided  
12 or to be provided.

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

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

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

18 **Comment.** Section 43030 restates part of the first sentence of former Civil Code Section  
19 3098(a), and revises it for conformity with the preliminary notice for private work.

20 See also Section 41070 (“labor, service, equipment, or material” defined), 41100 (“person”  
21 defined), 41110 (“preliminary notice” defined), 41140 (“site” defined).

22 **§ 43040. Giving preliminary notice**

23 43040. (a) Preliminary notice shall be given by mail or personal delivery.

24 (b) Notice to a direct contractor shall be addressed to the contractor at any place  
25 the contractor maintains an office or conducts business or at the contractor’s  
26 residence.

27 (c) Notice to a public entity shall be addressed to the public entity as provided in  
28 Section 42070.

29 **Comment.** Subdivision (a) of Section 43040 restates the second and fourth sentences of former  
30 Civil Code Section 3098(a). See also Section 42080 (mailed notice).

31 Subdivision (b) restates the third sentence of former Civil Code Section 3098(a).

32 Subdivision (c) supersedes the fourth sentence of former Civil Code Section 3098(a). See  
33 Section 42070 (notice to public entity).

34 See also Sections 41040 (“direct contractor” defined), 41110 (“preliminary notice” defined).

35 **§ 43050. Effect of preliminary notice**

36 43050. A claimant may give a stop payment notice or assert a claim against a  
37 payment bond only for labor, service, equipment, or material provided within 20  
38 days before giving preliminary notice and at any time thereafter.

39 **Comment.** Section 43050 restates parts of subdivisions (a) and (d) of former Civil Code  
40 Section 3098.

41 See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”  
42 defined), 41090 (“payment bond” defined), 41110 (“preliminary notice” defined), 41150 (“stop  
43 payment notice” defined).

1 **Note.** Although the language of this provision is radically simplified, it is believed to capture  
2 the essence of existing law.

3 **§ 43060. Disciplinary action for failure to give notice**

4 43060. A licensed subcontractor is subject to disciplinary action under the  
5 Contractors' State License Law, Chapter 9 (commencing with Section 7000) of  
6 Division 3 of the Business and Professions Code, if all of the following conditions  
7 are satisfied:

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

10 (b) The subcontractor fails to give a required preliminary notice.

11 (c) The subcontractor's failure results in the laborers compensation fund filing a  
12 stop payment notice or asserting a claim against a payment bond.

13 (d) The amount due the laborers compensation fund is not paid.

14 **Comment.** Section 43060 supersedes former Civil Code Section 3098(b); the provision  
15 relating to disciplinary action if a subcontractor fails to give preliminary notice on a work of  
16 improvement exceeding \$400, is not continued. Section 43060 is drawn from former Civil Code  
17 Section 3097(h), relating to a private work of improvement.

18 See also Sections 41080 ("laborers compensation fund" defined), 41090 ("payment bond"  
19 defined), 41110 ("preliminary notice" defined), 41150 ("stop payment notice" defined).

20 **CHAPTER 4. STOP PAYMENT NOTICE**

21 **Article 1. General Provisions**

22 **§ 44110. Stop payment notice exclusive remedy to reach construction funds**

23 44110. (a) A person may not assert a legal or equitable right in funds for  
24 payment of construction costs, other than a right created by direct written contract  
25 between the person and the holder of the funds, except as provided in this chapter.

26 (b) This chapter provides the exclusive remedy of a person that provides labor,  
27 service, equipment, or material against funds for payment of construction costs.

28 **Comment.** Section 44110 restates former Civil Code Section 3264 to the extent it applied to a  
29 public works contract. See Section 42010 (application of part). For a comparable provision  
30 applicable to a private work, see Civ. Code § [to be provided].

31 See also Sections 41060 ("funds" defined), 41070 ("labor, service, equipment, or material"  
32 defined), 41100 ("person" defined).

33 **§ 44120. Contents of stop payment notice**

34 44120. (a) A stop payment notice shall be signed and verified by the claimant  
35 and shall state in general terms all of the following:

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

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

1 (3) The amount in value, as near as may be, of that already provided and of the  
2 whole agreed to be provided.

3 (4) The name and address of the claimant.

4 (b) A stop payment notice is not invalid by reason of any defect in form if it is  
5 sufficient to substantially inform the public entity of the information required.

6 **Comment.** Subdivision (a) of Section 44120 restates subdivisions (a)-(d) of former Civil Code  
7 Section 3103. See also Section 42090 (agency).

8 Subdivision (b) continues the third sentence of the first unnumbered paragraph of former Civil  
9 Code Section 3103.

10 See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”  
11 defined) 41100 (“person” defined), 41120 (“public entity” defined), 41150 (“stop payment  
12 notice” defined).

13 **§ 44130. Giving of stop payment notice**

14 44130. A stop payment notice shall be given to the public entity by mailing or  
15 personally delivering the notice to the following person:

16 (a) In the case of a public works contract of the state, the director of the  
17 department that awarded the contract.

18 (b) In the case of a public works contract of a public entity other than the state,  
19 the office of the controller, auditor, or other public disbursing officer whose duty it  
20 is to make payment pursuant to the contract, or the commissioners, managers,  
21 trustees, officers, board of supervisors, board of trustees, common council, or  
22 other body by which the contract was awarded.

23 **Comment.** Subdivision (a) of Section 44130 restates the second sentence of the first  
24 unnumbered paragraph of former Civil Code Section 3103.

25 Subdivision (b) restates the second unnumbered paragraph of former Civil Code Section 3103.  
26 See also Section 42080 (mailed notice).

27 A claimant wishing to receive return notice of the time within which a stop payment notice  
28 must be enforced must pay the public entity ten dollars (\$10) at the time of giving the stop  
29 payment notice. See Section 44170.

30 See also Sections 41100 (“person” defined), 41120 (“public entity” defined), 41130 (“public  
31 works contract” defined), 41150 (“stop payment notice” defined).

32 **§ 44140. Time for giving notice**

33 44140. A stop payment notice is not effective unless given within 30 days after  
34 recordation of a notice of completion or, if a notice of completion is not recorded,  
35 within 90 days after completion.

36 **Comment.** Section 44140 restates former Civil Code Section 3184. The former statutory  
37 references to “notice of cessation” and “notice of acceptance” are not continued; they are  
38 subsumed within the notice of completion. See Sections 42210 (completion (including acceptance  
39 and cessation)) and 42220 (notice of completion).

40 See also Section 41150 (“stop payment notice” defined).

41 **§ 44150. Duty to withhold funds**

42 44150. (a) The public entity shall, on receipt of a stop payment notice, withhold  
43 from the direct contractor sufficient funds due or to become due to the direct

1 contractor to pay the claim stated in the stop payment notice and to provide for the  
2 public entity's reasonable cost of any litigation pursuant to the stop payment  
3 notice.

4 (b) The public entity may satisfy its duty under this section by refusing to  
5 release funds held in escrow under Section 10263 or 22300.

6 **Comment.** Section 44150 restates former Civil Code Section 3186. See also Section 42090  
7 (agency).

8 See also Sections 41040 ("direct contractor" defined), 41060 ("funds" defined), 41120 ("public  
9 entity" defined), 41150 ("stop payment notice" defined).

10 **§ 44160. Payment notwithstanding stop payment notice**

11 44160. (a) This chapter does not prohibit payment of funds to a direct contractor  
12 if a stop payment notice is not received before the disbursing officer actually  
13 surrenders possession of the funds.

14 (b) This chapter does not prohibit payment of any amount due to a direct  
15 contractor in excess of the amount necessary to pay the total amount of all claims  
16 stated in stop payment notices received by the public entity at the time of payment  
17 plus any interest and court costs that might reasonably be anticipated in connection  
18 with the claims.

19 **Comment.** Section 44160 restates former Civil Code Section 3187. Authority in this section  
20 for payment of a direct contractor includes payment of the direct contractor's assignee. See  
21 Section 41040 ("direct contractor" defined).

22 See also Sections 41040 ("direct contractor" defined), 41060 ("funds" defined), 41150 ("stop  
23 payment notice" defined).

24 **§ 44170. Notice to claimant**

25 44170. (a) Not later than 10 days after completion of a public works contract,  
26 the public entity shall give notice to each claimant that has given a stop payment  
27 notice of the time within which a stop payment notice must be enforced.

28 (b) Notice under this section shall be by personal delivery or by mail addressed  
29 to the claimant at the address shown on the stop payment notice.

30 (c) A public entity need not give notice under this section unless the claimant  
31 has paid the public entity ten dollars (\$10) at the time of giving the stop payment  
32 notice.

33 **Comment.** Section 44170 restates former Civil Code Section 3185. See also 42080 (mailed  
34 notice). See also Section 44420 (time for enforcement of stop payment notice). The \$2 fee is  
35 increased to \$10 in recognition of the change in the value of the dollar since the fee's enactment.

36 See also Sections 41020 ("claimant" defined), 41120 ("public entity" defined), 41130 ("public  
37 works contract" defined), 41150 ("stop payment notice" defined).

38 **§ 44180. Release bond**

39 44180. (a) If the direct contractor or a subcontractor disputes the correctness,  
40 validity, or enforceability of a stop payment notice, the public entity may, in its  
41 discretion, permit the direct contractor to give the public entity a release bond. The  
42 bond shall be executed by an admitted surety insurer, in an amount equal to 125

1 percent of the claim stated in the stop payment notice, conditioned for the payment  
2 of any amount the claimant recovers in an action on the claim, together with court  
3 costs if the claimant prevails.

4 (b) On receipt of a release bond, the public entity shall not withhold funds from  
5 the direct contractor pursuant to the stop payment notice.

6 (c) The surety on a release bond is jointly and severally liable to the claimant  
7 with the sureties on any payment bond given under Chapter 5 (commencing with  
8 Section 45010).

9 **Comment.** Section 44180 restates former Civil Code Section 3196.

10 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060  
11 (“funds” defined), 41090 (“payment bond” defined), 41120 (“public entity” defined), 41150  
12 (“stop payment notice” defined).

## 13 Article 2. Summary Proceeding for Release of Funds

### 14 § 44210. Grounds for summary proceeding

15 44210. A direct contractor may obtain release of funds withheld pursuant to a  
16 stop payment notice under the summary proceeding provided in this article on any  
17 of the following grounds:

18 (a) The claim on which the notice is based is not a type for which a stop  
19 payment notice is authorized under this chapter.

20 (b) The claimant is not a person authorized under Section 42030 to give a stop  
21 payment notice.

22 (c) The amount of the claim stated in the stop payment notice is excessive.

23 (d) There is no basis for the claim stated in the stop payment notice.

24 **Comment.** Section 44210 restates former Civil Code Section 3197.

25 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060  
26 (“funds” defined), 41100 (“person” defined), 41150 (“stop payment notice” defined).

### 27 § 44220. Contractor’s affidavit and demand for release

28 44220. The direct contractor shall serve on the public entity an affidavit,  
29 together with a copy of the affidavit, that includes all of the following information:

30 (a) An allegation of the grounds for release of the funds and a statement of the  
31 facts supporting the allegation.

32 (b) A demand for the release of all or the portion of the funds that are alleged to  
33 be withheld improperly or in an excessive amount.

34 (c) A statement of the address of the contractor within the state for the purpose  
35 of permitting service by mail on the contractor of any notice or document.

36 **Comment.** Section 44220 restates former Civil Code Section 3198. The grounds for release are  
37 provided in Section 44210.

38 See also Sections 41040 (“direct contractor” defined), 41060 (“funds” defined), 41120 (“public  
39 entity” defined).

1    **§ 44230. Notice to claimant**

2       44230. (a) The public entity shall serve on the claimant a copy of the direct  
3 contractor’s affidavit, together with a notice stating that the public entity will  
4 release the funds withheld, or the portion of the funds demanded, unless the  
5 claimant serves on the public entity a counteraffidavit on or before the time stated  
6 in the notice. The time stated in the notice shall be not less than 10 nor more than  
7 20 days after service on the claimant of the copy of the affidavit.

8       (b) Service under this section shall be made either personally or by registered or  
9 certified mail, addressed to the last known address of the claimant. Proof of  
10 service shall be made by affidavit.

11       **Comment.** Section 44230 restates former Civil Code Section 3199. See also Section 42060  
12 (written notice).

13       See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060  
14 (“funds” defined), 41120 (“public entity” defined).

15    **§ 44240. Claimant’s counteraffidavit**

16       44240. (a) A claimant that contests the direct contractor’s affidavit shall serve  
17 on the public entity a counteraffidavit alleging the details of the claim and  
18 describing the specific basis on which the claimant contests or rebuts the  
19 allegations of the contractor’s affidavit. The counteraffidavit shall be served  
20 within the time stated in the public entity’s notice, together with proof of service  
21 of a copy of the counteraffidavit on the direct contractor.

22       (b) If no counteraffidavit with proof of service is served on the public entity  
23 within the time stated in the public entity’s notice, the public entity shall  
24 immediately release the funds, or the portion of the funds demanded by the  
25 affidavit, without further notice to the claimant, and the public entity is not liable  
26 in any manner for their release.

27       (c) The public entity is not responsible for the validity of an affidavit or  
28 counteraffidavit under this article.

29       **Comment.** Section 44240 restates former Civil Code Section 3200.

30       See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060  
31 (“funds” defined), 41120 (“public entity” defined).

32    **§ 44250. Commencement of action**

33       44250. (a) If a counteraffidavit, together with proof of service, is served under  
34 Section 44240, either the direct contractor or the claimant may commence an  
35 action for a declaration of the rights of the parties.

36       (b) After commencement of the action, either the direct contractor or the  
37 claimant may move the court for a determination of rights under the affidavit and  
38 counteraffidavit. The party making the motion shall give not less than five days’  
39 notice of the hearing to the public entity and to the other party.

40       (c) The court shall hear the motion within 15 days after the date of the motion,  
41 unless the court continues the hearing for good cause.

1       **Comment.** Section 44250 restates former Civil Code Section 3201. See also Sections 42040  
2 (jurisdiction and venue) and 42060 (written notice).

3       See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41120  
4 (“public entity” defined).

5       **§ 44260. Pleadings and burden of proof**

6       44260. (a) The affidavit and counteraffidavit shall be filed with the court by the  
7 public entity and shall constitute the pleadings, subject to the power of the court to  
8 permit an amendment in the interest of justice. The affidavit of the direct  
9 contractor shall be deemed controverted by the counteraffidavit of the claimant,  
10 and both shall be received in evidence.

11       (b) At the hearing, the direct contractor has the burden of proof.

12       **Comment.** Section 44260 restates former Civil Code Section 3202.

13       See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41120  
14 (“public entity” defined).

15       **§ 44270. Court determination**

16       44270. (a) No findings are required in a summary proceeding under this article.

17       (b) If the hearing is before the court sitting without a jury and no evidence other  
18 than the affidavit and counteraffidavit is offered, the court may, if satisfied that  
19 sufficient facts are shown, make a determination on the basis of the affidavit and  
20 counteraffidavit. If the court is not satisfied that sufficient facts are shown, the  
21 court shall order the hearing continued for production of other evidence, oral or  
22 documentary, or the filing of other affidavits and counteraffidavits.

23       (c) At the conclusion of the hearing, the court shall make an order determining  
24 whether the demand for release is allowed. The court’s order is determinative of  
25 the right of the claimant to have funds further withheld by the public entity.

26       (d) The direct contractor shall serve a copy of the court’s order on the public  
27 entity.

28       **Comment.** Section 44270 restates former Civil Code Section 3203. Former Civil Code Section  
29 3204 relating to jury trial is not continued; proceedings under this article are tried to the judge,  
30 not to a jury.

31       See also Sections 41020 (“claimant” defined, 41040 (“direct contractor” defined), 41060  
32 (“funds” defined), 41120 (“public entity” defined).

33       **§ 44280. Summary determination not res judicata**

34       44280. A determination in a summary proceeding under this article is not res  
35 judicata with respect to a right of action by the claimant against either the principal  
36 or surety on a payment bond or with respect to a right of action against a party  
37 personally liable to the claimant.

38       **Comment.** Section 44280 restates former Civil Code Section 3205. The former reference to a  
39 “labor or material bond” is replaced by a reference to a payment bond.

40       See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined).

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Article 3. Distribution of Funds Withheld

**§ 44310. Distribution of funds withheld pursuant to stop payment notice**

44310. If funds withheld pursuant to a stop payment notice are insufficient to pay in full the claims of all persons that have given a stop payment notice, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a stop payment notice is given, without regard to the order in which the notices were given or enforcement actions were commenced.

**Comment.** Section 44310 restates former Civil Code Section 3190. Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. Cf. *Idaho Lumber Co. v. Northwestern S. & L. Ass'n*, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968). The amount of the claim for which payment is required is determined under Article 4 (commencing with Section 40410) (enforcement of stop payment notice).

See also Sections 41020 (“claimant” defined), 41060 (“funds” defined), 41100 (“person” defined), 41150 (“stop payment notice” defined).

**§ 44320. Stop payment notice remedy not exclusive**

44320. Nothing in this chapter impairs the right of a claimant to recover from the direct contractor or the contractor’s sureties in an action on a payment bond under Chapter 5 (commencing with Section 45010) any deficit that remains unpaid after the distribution under Section 44310.

**Comment.** Section 44320 restates former Civil Code Section 3191.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41090 (“payment bond” defined).

**§ 44330. Forfeiture for false notice**

44330. A person that willfully gives a false stop payment notice to the public entity or that willfully includes in the notice labor, service, equipment, or material not provided for the public works contract for which the stop payment notice is given, forfeits all right to participate in the distribution under Section 44310.

**Comment.** Section 44330 restates former Civil Code Section 3192.

See also Sections 41070 (“labor, service, equipment, or material” defined), 41100 (“person” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined), 41150 (“stop payment notice” defined).

**§ 44340. Effect of assignment or garnishment**

44340. (a) A stop payment notice takes priority over an assignment by a direct contractor of any amount due or to become due pursuant to a public works contract, including contract changes, whether made before or after the giving of a stop payment notice, and the assignment has no effect on the rights of the claimant.

(b) Any garnishment of an amount due or to become due pursuant to a public works contract by a creditor of a direct contractor under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code

1 of Civil Procedure and any statutory lien on that amount is subordinate to the  
2 rights of a claimant.

3 **Comment.** Section 44340 restates former Civil Code Section 3193.

4 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41150  
5 (“stop payment notice” defined).

6 **Staff Note.** Do we need to generalize the concept of a contract change?

#### 7 Article 4. Enforcement of Stop Payment Notice

##### 8 § 44410. Prerequisites for enforcement of notice

9 44410. (a) A claimant may not enforce a stop payment notice unless the  
10 claimant has complied with all of the following conditions:

11 (1) The claimant has given preliminary notice to the extent required by Chapter  
12 3 (commencing with Section 43010).

13 (2) The claimant has given the stop payment notice within the time provided in  
14 Section 44140.

15 (b) The claim filing procedures of Part 3 (commencing with Section 900) of  
16 Division 3.6 of Title 1 of the Government Code do not apply to an action under  
17 this article.

18 **Comment.** Subdivision (a) of Section 44410 restates former Civil Code Section 3183.

19 Subdivision (b) restates former Civil Code Section 3265.

20 See also Sections 41020 (“claimant” defined), 41110 (“preliminary notice” defined), 41150  
21 (“stop payment notice” defined).

##### 22 § 44420. Time for enforcement of stop payment notice

23 44420. (a) The claimant shall commence an action against the public entity and  
24 the direct contractor to enforce a stop payment notice not earlier than 10 days after  
25 the date the claimant gives the stop payment notice and not later than 90 days after  
26 expiration of the time within which a stop payment notice must be given.

27 (b) An action under this section may not be brought to trial or judgment entered  
28 before expiration of the time provided in subdivision (a).

29 (c) If a claimant does not commence an action to enforce a stop payment notice  
30 within the time provided in subdivision (a), the notice ceases to be effective and  
31 the public entity shall release funds withheld pursuant to the notice.

32 **Comment.** Section 44420 restates former Civil Code Section 3210. See also Section 44140  
33 (time within which stop payment notice must be given).

34 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060  
35 (“funds” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

##### 36 § 44430. Notice of action

37 44430. Within five days after commencement of an action to enforce a stop  
38 payment notice, the claimant shall give notice of commencement of the action to  
39 the public entity in the same manner that a stop payment notice is given.

1 **Comment.** Section 44430 restates former Civil Code Section 3211. See Section 44130 (giving  
2 of stop payment notice).

3 See also Sections 41020 (“claimant” defined), 41120 (“public entity” defined), 41150 (“stop  
4 payment notice” defined).

5 **§ 44440. Joinder, consolidation, and interpleader**

6 44440. If more than one claimant has given a stop payment notice:

7 (a) Any number of claimants may join in the same enforcement action.

8 (b) If claimants commence separate actions, the court that first acquires  
9 jurisdiction may order the actions consolidated.

10 (c) On request of the public entity the court shall require that all claimants be  
11 impleaded in one action and shall adjudicate the rights of all parties in the action.

12 **Comment.** Section 44440 restates former Civil Code Section 3214 without substantive change.  
13 See also Section 42040 (jurisdiction and venue).

14 See also Sections 41020 (“claimant” defined), 41120 (“public entity” defined), 41150 (“stop  
15 payment notice” defined).

16 **§ 44450. Dismissal of enforcement action for lack of prosecution**

17 44450. The court may in its discretion dismiss an action to enforce a stop  
18 payment notice that is not brought to trial within two years after commencement.

19 **Comment.** Section 44450 restates former Civil Code Section 3212.

20 See also Section 41150 (“stop payment notice” defined).

21 **§ 44460. Dismissal of action or judgment against claimant**

22 44460. A stop payment notice ceases to be effective, and the public entity shall  
23 release funds withheld, in either of the following circumstances:

24 (a) The action to enforce the stop payment notice is dismissed, unless expressly  
25 stated to be without prejudice.

26 (b) Judgment in the action is against the claimant.

27 **Comment.** Section 44460 restates former Civil Code Section 3213.

28 See also Sections 41020 (“claimant” defined), 41060 (“funds” defined), 41120 (“public entity”  
29 defined), 41150 (“stop payment notice” defined).

30 **CHAPTER 5. PAYMENT BOND**

31 **§ 45010. Payment bond requirement**

32 45010. (a) Except as provided in subdivision (d) of Section 7103:

33 (1) A direct contractor that is awarded a public works contract involving an  
34 expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before  
35 commencement of work, give a payment bond to and approved by the public  
36 entity.

37 (2) A public entity shall state in its call for bids that a payment bond is required  
38 for a public works contract involving an expenditure in excess of twenty-five  
39 thousand dollars (\$25,000).

1 (b) A payment bond given and approved under this section is sufficient to permit  
2 performance of work pursuant to a public works contract that supplements the  
3 contract for which the bond is given, if the requirement of a new bond is waived  
4 by the public entity.

5 (c) For the purpose of this section, a design professional is not deemed a direct  
6 contractor and is not required to give a payment bond.

7 **Comment.** Section 45010 restates former Civil Code Section 3247. The transitional provisions  
8 of the former section are omitted due to lapse of time. Section 7103(d) defines “state entity” for  
9 purposes of the payment bond requirement under that section.

10 See also Sections 41030 (“design professional” defined), 41040 (“direct contractor” defined),  
11 41090 (“payment bond” defined), 41120 (“public entity” defined), 41130 (“public works  
12 contract” defined).

13 **§ 45020. Consequences of failure to give bond**

14 45020. If a payment bond is not given and approved as required by statute:

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

17 (b) A claimant shall receive payment of a claim pursuant to a stop payment  
18 notice under Chapter 4 (commencing with Section 44110).

19 **Comment.** Section 45020 restates former Civil Code Section 3251. The former operative date  
20 provision is deleted due to lapse of time.

21 See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41090  
22 (“payment bond” defined), 41120 (“public entity” defined), 41150 (“stop payment notice”  
23 defined).

24 **Note.** This section refers to a payment bond given and approved “as required by statute.” That  
25 could include a payment bond under other provisions of the Public Contract Code, including the  
26 State Contract Act. Is this provision overbroad?

27 **§ 45030. Bond requirements**

28 45030. (a) A payment bond shall be in an amount not less than one hundred  
29 percent of the total amount payable pursuant to the public works contract. The  
30 bond shall be in the form of a bond and not a deposit in lieu of bond.

31 (b) The payment bond shall provide that if the direct contractor or a  
32 subcontractor fails to pay any of the following, the surety will pay the obligation  
33 and, if an action is brought to enforce the liability on the bond, a reasonable  
34 attorney’s fee, to be fixed by the court:

35 (1) A person authorized under Section 42030 to assert a claim against a payment  
36 bond.

37 (2) Amounts due under the Unemployment Insurance Code with respect to work  
38 or labor performed pursuant to the public works contract.

39 (3) Amounts required to be deducted, withheld, and paid over to the  
40 Employment Development Department from the wages of employees of the  
41 contractor and subcontractors under Section 13020 of the Unemployment  
42 Insurance Code with respect to the work and labor.

1 (c) The payment bond shall by its terms inure to the benefit of any person  
2 authorized under Section 42030 to assert a claim against a payment bond so as to  
3 give a right of action to that person or that person's assigns in an action to enforce  
4 the liability on the bond.

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

8 **Comment.** Section 45030 restates former Civil Code Section 3248 and supersedes former  
9 Civil Code Section 3096.

10 See also Sections 41040 ("direct contractor" defined), 41090 ("payment bond " defined),  
11 41100 ("person" defined).

#### 12 § 45040. Construction of bond

13 45040. (a) A payment bond shall be construed most strongly against the surety  
14 and in favor of the beneficiary.

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

18 (c) The sole conditions of recovery on the bond are that the beneficiary is a  
19 person authorized under Section 42030 to assert a claim against a payment bond  
20 and has not been paid the full amount of the claim.

21 **Comment.** Section 45040 restates former Civil Code Section 3226.

22 See also Sections 41040 ("direct contractor" defined), 41090 ("payment bond" defined), 41100  
23 ("person" defined), 41120 ("public entity" defined).

24 Cf. Code Civ. Proc. § 995.130 ("beneficiary" defined).

#### 25 § 45050. Statute of limitations

26 45050. A claimant may commence an action against a surety to enforce the  
27 liability on a payment bond at any time after the claimant ceases to provide labor,  
28 service, equipment, or material, but not later than six months after the period in  
29 which a stop payment notice may be given under Section 44140.

30 **Comment.** Section 45050 restates former Civil Code Section 3249.

31 See also Sections 41020 ("claimant" defined), 41070 ("labor, service, equipment, or material"  
32 defined), 41090 ("payment bond" defined), 41150 ("stop payment notice" defined).

#### 33 § 45060. Notice required

34 45060. A claimant may not enforce the liability on a payment bond unless the  
35 claimant has given notice under one of the following provisions:

36 (a) Preliminary notice under Chapter 3 (commencing with Section 43010).

37 (b) Notice to the principal and surety under Section 45070.

38 **Comment.** Section 45060 supersedes former Civil Code Section 3252(a). The former  
39 limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

40 See also Sections 41020 ("claimant" defined), 41090 ("payment bond" defined), 41110  
41 ("preliminary notice" defined).

1    **§ 45070. Notice to principal and surety**

2    45070. (a) Whether or not the claimant has given preliminary notice under  
3 Chapter 3 (commencing with Section 43010), a claimant may enforce the liability  
4 on a payment bond if the claimant gives the notice provided in this section to the  
5 principal and surety within 15 days after recordation of a notice of completion or,  
6 if a notice of completion is not recorded, within 75 days after completion.

7    (b) Notice to the principal and surety shall include all of the following  
8 information:

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

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

13   (3) A statement of the claimant’s demand, after deducting all just credits and  
14 offsets, for the labor, service, equipment, or material already provided and for the  
15 whole amount agreed to be provided.

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

18   (d) Notice given by mail shall be at the address provided in the bond for service  
19 of notices, papers, and other documents.

20    **Comment.** Subdivision (a) of Section 45070 restates former Civil Code Section 3252. See also  
21 42210 (completion (including acceptance and cessation)).

22    Subdivisions (b)-(d) restate former Civil Code Section 3227, except that mailed notice to the  
23 principal or surety on a bond must be given at the address specified in the bond. See Code Civ.  
24 Proc. § 995.320. See also Sections 42060 (written notice), 42080 (mailed notice).

25    See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”  
26 defined), 41090 (“payment bond” defined), 41100 (“person” defined), 41110 (“preliminary  
27 notice” defined), 41130 (“public works contract” defined).

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

29    **§ 45080. Action on bond**

30    45080. (a) A claimant may maintain an action to enforce the liability of a surety  
31 on a payment bond whether or not the claimant has given the public entity a stop  
32 payment notice.

33    (b) A claimant may maintain an action to enforce the liability on the bond  
34 separately from and without commencement of an action against the public entity.

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

37    **Comment.** Section 45080 restates former Civil Code Section 3250. The provision that a  
38 reasonable attorney’s fee is “to be taxed as costs” is deleted as surplus. See Code Civ. Proc. §  
39 1033.5(a)(10)(B) (attorney’s fee allowable as costs). See also Section 42050 (rules of practice).

40    See also Sections 41020 (“claimant) defined), 41090 (“payment bond” defined), 41120 (“public  
41 entity” defined), 41150 (“stop payment notice” defined).

1 § 45090. Limitation on chapter

2 45090. (a) A claimant does not have a right to recover on a payment bond unless  
3 the claimant provided labor, service, equipment or material to the direct contractor  
4 or one of the direct contractor's subcontractors pursuant to a public works  
5 contract.

6 (b) Nothing in this section affects the stop payment notice rights of, and relative  
7 priorities among, design professionals.

8 **Comment.** Section 45090 restates former Civil Code Section 3267. This section omits the  
9 reference in former law to holders of secured interests in the land; although the relevance of that  
10 provision to a public works contract is limited, this section is not intended to affect priorities  
11 among those interests to the extent they may exist.

12 See also Sections 41020 ("claimant" defined), 41030 ("design professional" defined), 41040  
13 ("direct contractor" defined), 41070 ("labor, service, equipment, or material" defined), 41090  
14 ("payment bond" defined), 41130 ("public works contract" defined), 41150 ("stop payment  
15 notice" defined).

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DISPOSITION OF EXISTING LAW

**Note.** This table shows the proposed disposition of Chapter 8 (commencing with Section 3081.1) of Title 14, and of Title 15 (commencing with Section 3082), of Part 4 of Division 3 of the Civil Code. Unless otherwise indicated, all proposed dispositions are to the Civil Code. For further detail, see the Comment to the appropriate section in this draft, *supra*.

Existing Provision	New Provision	Existing Provision	New Provision
3081.1.....	7010	3103 .....	7502, 7506, Pub. Cont. Code §§ 41150, 42090, 44120, 44130(a)
3081.2.....	7300	3104 .....	7044
3081.3.....	7302	3105 .....	not continued
3081.4.....	7304	3106 .....	7046
3081.5.....	7306	3109 .....	not continued
3081.6.....	7308	3110 .....	7400, 7406, 7430
3081.7.....	7310	3110.5(a) .....	7710
3081.8.....	7312	3110.5(a)(1).....	7700(b)
3081.9.....	7314	3110.5(a)(2).....	7700(a)
3081.10.....	7316	3110.5(b).....	7710, 7720
3082.....	7000, Pub. Cont. Code § 41010	3110.5(b)(1) .....	7722
3083.....	7506, 7532	3110.5(b)(2) .....	7724
3084.....	7418	3110.5(b)(3) .....	7726, 7728
3085.....	7002, Pub. Cont. Code § 41020	3110.5(c) .....	7712, 7730
3086.....	7150, Pub. Cont. Code § 42210	3110.5(d) .....	7716
3087.....	7004	3110.5(e) .....	7702
3088.....	7006	3110.5(f).....	7704
3089(a).....	7018	3110.5(g).....	7714
3089(b).....	7020, 7070, Pub. Cont. Code § 41080	3111 .....	7014, 7402, Pub. Cont. Code § 41050
3090.....	7026	3112 .....	7404, 7406
3092.....	7152, Pub. Cont. Code § 42220	3114 .....	7410
3093.....	7152, Pub. Cont. Code § 42220	3115 .....	7412
3094.....	7444	3116 .....	7414
3095.....	7012, Pub. Cont. Code § 41040	3117 .....	7154
3096.....	7030, 7606, Pub. Cont. Code §§ 41090, 45030	3118 .....	7424
3097.....	7034, 7200, 7202, 7204	3123 .....	7008, 7430
3097(d).....	7206	3124 .....	7432
3097(e).....	7214	3128 .....	7440, 7442
3097(g).....	7208	3129 .....	7442
3097(h).....	7216	3130 .....	7446
3097(k).....	7072	3131 .....	7416, 7448
3097(i).....	7132	3134 .....	7450
3097(j).....	7134	3135 .....	7454
3097(l)-(m).....	7130, 7210	3136 .....	7456
3097(n).....	7212	3137 .....	7458(a)
3097(o).....	7218	3138 .....	7452
3098.....	Pub. Cont. Code §§ 41110, 43010 through 43060	3139 .....	7458(b)
3098(a).....	Pub. Cont. Code § 42070	3140 .....	7434
3098(b).....	Pub. Cont. Code § 43060	3143 .....	7428
3099.....	7036, Pub. Cont. Code § 41120(a)	3144 .....	7460
3100.....	Pub. Cont. Code §§ 41130, 42010(a)	3144.5 .....	7428(d)
3101.....	7038, Pub. Cont. Code § 41140	3145 .....	7460
3102.....	7040	3146 .....	7464
		3147 .....	7466

## DISPOSITION OF EXISTING LAW

Existing Provision	New Provision	Existing Provision	New Provision
3148.....	7468	3210.....	Pub. Cont. Code § 44420
3149.....	not continued	3211.....	Pub. Cont. Code § 44430
3150.....	7470	3212.....	Pub. Cont. Code § 44450
3151.....	7472	3213.....	Pub. Cont. Code § 44460
3152.....	7474	3214.....	Pub. Cont. Code § 44440
3153.....	7476	3225.....	7142, Pub. Cont. Code § 42100
3154.....	7488	3226.....	7144, Pub. Cont. Code § 45040
3154(a).....	7480(a)(1)	3227.....	Pub. Cont. Code § 45070(b)-(d)
3154(b).....	7484	3235.....	7602(a), 7602(b)
3154(c).....	7486	3236.....	7600, 7602(a)
3154(d).....	7486	3237.....	7022, 7604
3154(e).....	7486	3239.....	7610
3154(f).....	7490(b)	3240.....	7610
3156.....	not continued	3242.....	7612
3158.....	7520	3247.....	Pub. Cont. Code § 45010
3159.....	7530(a)	3248.....	Pub. Cont. Code § 45030
3159(a).....	7536, 7538	3249.....	Pub. Cont. Code § 45050
3159(b).....	7542	3250.....	Pub. Cont. Code § 45080
3159(c).....	7542	3251.....	Pub. Cont. Code § 45020
3160.....	7508	3252.....	Pub. Cont. Code § 45070(a)
3161.....	7522	3252(a).....	Pub. Cont. Code § 45060
3162(a).....	7536, 7538	3258.....	7056(c), 7056(d)
3162(b).....	7542	3259.....	7054, Pub. Cont. Code § 42050
3162(c).....	7542	3259.5.....	7156
3163.....	7534	3260(a).....	not continued
3166.....	7544	3260(b).....	7810
3167.....	7540	3260(c).....	7812
3168.....	7504	3260(d).....	7814
3171.....	7510	3260(e).....	7814
3172.....	7550	3260(f).....	7816
3173.....	7554	3260(g).....	7818
3174.....	7556	3260(h).....	7820
3175.....	7552	3260(i).....	7822
3176.....	7558	3260.1.....	7800
3176.5.....	7560	3260.2(a).....	7830, 7832, 7834, 7836, 7840
3179.....	Pub. Cont. Code § 42010(a)	3260.2(b).....	7842
3181.....	Pub. Cont. Code § 42030	3260.2(c).....	7838
3183.....	Pub. Cont. Code § 44410(a)	3260.2(d).....	7844
3184.....	Pub. Cont. Code § 44140	3260.2(e).....	7846
3185.....	Pub. Cont. Code § 44170	3260.2(f).....	7848
3186.....	Pub. Cont. Code § 44150	3261.....	7424
3187.....	Pub. Cont. Code § 44160	3262(a).....	7160, 7162, Pub. Cont. Code §§ 42310, 42320
3190.....	Pub. Cont. Code § 44310	3262(b).....	7164, 7166, Pub. Cont. Code §§ 42330, 42340
3191.....	Pub. Cont. Code § 44320	3262(c).....	7168, Pub. Cont. Code § 42350
3192.....	Pub. Cont. Code § 44330	3262(d)(1).....	7170, Pub. Cont. Code § 42360
3193.....	Pub. Cont. Code § 44340	3262(d)(2).....	7172, Pub. Cont. Code § 42370
3196.....	Pub. Cont. Code § 44180	3262(d)(3).....	7174, Pub. Cont. Code § 42380
3197.....	Pub. Cont. Code § 44210	3262(d)(4).....	7176, Pub. Cont. Code § 42390
3198.....	Pub. Cont. Code § 44220	3262.5.....	7802
3199.....	Pub. Cont. Code § 44230	3263.....	7057
3200.....	Pub. Cont. Code § 44240	3264.....	7500, Pub. Cont. Code § 44110
3201.....	Pub. Cont. Code § 44250	3265.....	Pub. Cont. Code § 44410(b)
3202.....	Pub. Cont. Code § 44260	3266(a).....	7062(a)
3203.....	Pub. Cont. Code § 44270	3266(b).....	Pub. Cont. Code § 42010
3204.....	not continued		
3205.....	Pub. Cont. Code § 44280		

DISPOSITION OF EXISTING LAW

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<b>Existing Provision</b>	<b>New Provision</b>	<b>Existing Provision</b>	<b>New Provision</b>
3267 .....	7608, 45090		

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