

Memorandum 2008-4

Mechanics Lien Law: Preliminary Part of Recommendation

At the December 2007 meeting, the Commission approved a draft of the proposed legislation for inclusion in a final recommendation on *Mechanics Lien Law*. This memorandum presents a draft of the narrative “preliminary part” of the final recommendation.

The Commission should decide whether to approve the draft of this preliminary part for inclusion in a final recommendation.

Respectfully submitted,

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#H-821

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Mechanics Lien Law

January 2008

California Law Revision Commission
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SUMMARY OF 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 100 of the Statutes of 2007.

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MECHANICS LIEN LAW

INTRODUCTION

1
2 This report recommends comprehensive revision of the California mechanics
3 lien law. The mechanics lien law generally specifies obligations, rights, and
4 remedies for participants in any type of construction project.

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

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

17 The letter noted the existing general authority of the Commission in this area,² and
18 suggested that the Commission prioritize the matter.

19 The Commission agreed to the request and commenced work on the study. This
20 recommendation represents the completion of that work; it is preceded by two
21 interim recommendations³ and a prospectus for reform.⁴ Consistent with the
22 Judiciary Committee's vision, the Commission intends that this recommendation
23 make the existing law more understandable and usable, establishing a foundation
24 on which the Legislature may make improvements in the future.

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 (available from the Commission, 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 2007 Cal. Stat. res. ch. 100.

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 In general, the mechanics lien law applies to both private and public work.
2 However, the mechanics lien remedy itself is not available when the improved
3 property is publicly owned¹¹ — on this type of project, the principal remedies are
4 the stop notice and the payment bond.

5 Related construction remedies that are not part of the mechanics lien law include
6 a special lien available to design professionals,¹² and licensing remedies found in
7 the Contractors’ State License Law.¹³

8 **Mechanics Liens**

9 Every state grants a mechanics lien right on a private work of improvement.

10 The laws all operate similarly, generally giving a provider of labor or materials a
11 lien right against the improved property, to the extent of the value of the labor or
12 materials contributed and unpaid. The lien right is converted to a lien claim against
13 the property, by recordation of the lien in the county recorder’s office. If
14 necessary, the lien claim may then be enforced through a court action, in which a
15 sale of the property may be ordered to satisfy the lien claim.

16 As a practical matter, however, a lien claim is rarely enforced. Most property
17 owners are motivated to take whatever steps are necessary to ensure that a
18 legitimate lien claimant is paid, rather than risk the forced sale of their property.

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

32 The drafters of the Uniform Construction Lien Act (1987) note the extraordinary
33 variety of mechanics lien laws from state to state. “In fact, variation among the
34 states may be greater in this area than in any other statutory area.” The drafters
35 observe however that despite the diversity, state laws tend to fall into a limited
36 number of patterns on the major issues involved.

11. See *North Bay Construction, Inc. v. City of Petaluma*, 143 Cal. App. 4th 552, 49 Cal. Rptr. 3d 455 (2006).

12. See Civ. Code §§ 3081.1-3081.10.

13. See Bus. & Prof. Code §§ 7000-7191.

1 HISTORY OF CALIFORNIA STATUTE

2 **Constitution**

3 In California, the mechanics lien has a constitutional basis. Article XIV, Section
4 3, of the California Constitution provides:

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

10 This provision has remained in the Constitution essentially unchanged since it
11 was added in 1879. It was amended in 1974 to substitute “persons furnishing
12 materials” for “materialmen.” It was moved to its current location in 1976.

13 **Legislative History**

14 The statutory history of the California mechanics lien law predates the
15 constitutional provision. California’s first Legislature enacted a rudimentary
16 mechanics lien statute in 1850.¹⁴ Section 1 of that act granted a lien to “master
17 builders, mechanics, lumber merchants, and all other persons performing labor or
18 furnishing materials” in constructing any building or wharf. Section 2 provided a
19 stop notice procedure whereby a “sub-contractor, journeyman, or laborer” could
20 garnish payments from the owner. Section 3 provided for recordation and
21 commencement of an action to enforce the lien.

22 The California statute has been revised and recodified many times since. During
23 that process, the law made its way from the general statutes into the Code of Civil
24 Procedure, and then into the Civil Code. All told, since its codification in the 1872
25 Code of Civil Procedure, the mechanics lien law has been affected by more than
26 150 enacted bills.

27 Today’s mechanics lien law still contains language dating back to the 1872
28 codification. Recodifications in 1951 and 1969 continued much of the pre-
29 existing language, and were not intended to be substantive reforms.¹⁵ Since the
30 1969 recodification, the statute has been amended more than 70 times.

31 This process has taken its toll on a body of law that one California Supreme
32 Court justice labeled “confused and confusing” nearly 90 years ago.¹⁶

14. See Compiled Laws ch. 155.

15. 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”).

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

1 project are paid before a nonpayment progresses to a lien claim against the
2 property.

3 In recent years, the Legislature has also enacted prompt payment statutes.¹⁸
4 These statutes impose a monetary penalty on an owner or a general contractor that
5 is dilatory in paying a contributor an amount due for work performed.

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 a sale of the owner's property.

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

13 *Property Subject to Lien*

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

17 A mechanics lien is available only on a private work of improvement. There is
18 no lien right on property owned by a public entity. However, a claimant on a
19 public work of improvement is not without a remedy. On a state or local public
20 work, an unpaid subcontractor, supplier or laborer has stop notice and payment
21 bond rights. On a federal public work, an unpaid contributor may make a claim
22 against a federally mandated payment bond.

23 *Persons Entitled To Claim Lien*

24 The class of persons entitled to a lien includes a contractor, subcontractor,
25 supplier, equipment lessor, architect, engineer, land surveyor, builder, trucker,
26 laborer, and any other person that furnishes labor or material on a "work of
27 improvement" (a project intended to permanently improve real property). To be
28 entitled to claim the lien however, the claimant must contribute work or material
29 that is authorized by the owner, the owner's agent, or a contractor having charge
30 of all or part of the work of improvement or site improvement.

31 Thus, not every person that furnishes labor or material ultimately used in a work
32 of improvement may claim a lien. A person that supplies material to a general
33 contractor or subcontractor has a lien right, but a person that supplies material to
34 another supplier (who has no authority relating to the work of improvement) does
35 not. For example, a lumber yard that contracts with a contractor to supply finished
36 wood to a jobsite may claim a lien on the property that is improved, but the
37 sawmill that contracts to provide the raw lumber to that lumber yard may not.
38 Also, the labor or material provided must contribute to a permanent improvement

18. See, e.g., Civil Code § 3260.

1 of the property. Thus, a landscape contractor that supplies and installs plants on a
2 site has a lien right, but one that merely maintains the existing landscaping on the
3 site does not.

4 In addition, an unlicensed contractor is generally barred from enforcing a
5 mechanics lien for work provided.¹⁹

6 A right to assert a mechanics lien does not exist until commencement of the
7 work of improvement, marked either by delivery to the work site of material that
8 is thereafter used in the work of improvement, or by the beginning of visible work
9 at the site. However, California allows an architect, engineer, or surveyor to claim
10 a related design professionals lien for services provided before a work of
11 improvement has commenced.

12 *Interests Subject to 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 the 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 fee owner of the property is not responsible for the work
21 performed. In that event, the lien attaches only to the leasehold interest of the
22 tenant that ordered the improvement. However, if the tenant’s lease requires the
23 tenant to install the improvement, the owner’s interest is subject to the lien.

24 *Amount of Lien*

25 The lien is for the lesser of the reasonable value of the labor, services,
26 equipment, or material furnished or for the price agreed upon, including change
27 orders and extras. Attorney’s fees may not be included in a lien claim.

28 *Priority of Liens*

29 A mechanics lien has priority over any mortgage, deed of trust, or other
30 encumbrance that attaches after commencement of the work of improvement. All
31 mechanics liens on a work of improvement relate back to the commencement of
32 the work of improvement as a whole, regardless of when a particular lien claimant
33 began work, or when a lien claim is recorded.

34 As between each other, mechanics liens have the same priority.²⁰ If the total
35 amount of lien claims exceeds the amount available from a forced sale of the
36 property, the lien claims are satisfied pro rata.

19. See Bus. & Prof. Code § 7031.

20. However, if a site improvement is provided for in a contract separate from the contract for the remainder of the work of improvement, the site improvement is deemed a separate work of improvement, and a lien

1 **Completion**

2 Completion of a work of improvement triggers time limitations for a claimant to
3 pursue the various mechanics lien remedies.

4 Completion generally means that all work called for in the construction contract
5 is finished. Completion is defined differently depending on whether a project is a
6 private or public work.

7 On a private work, “actual completion” of the project constitutes completion.
8 Occupancy and use by the owner plus cessation of labor is also deemed to
9 constitute completion. Alternatively, if no work has occurred for a continuous
10 period of 60 days, the project is deemed to be completed. Acceptance of the
11 project by the owner also constitutes completion.

12 On a public work, completion generally occurs only upon acceptance of the
13 work by the public entity. On some public work, continuous cessation of labor for
14 30 days is also deemed to be completion.

15 Completion means completion of the entire work of improvement, not just one
16 subcontractor’s portion. However, if work is done under separate original
17 contracts with the owner, the owner may record a notice of completion for each
18 individual contract. The occasion for recording a separate notice of completion
19 arises, for example, when a subdivider or developer “subs everything out” to
20 subcontractors that then effectively become original contractors since each
21 contracts directly with the owner of the project.

22 An owner may record a notice of completion, which shortens time limitations
23 for a claimant to pursue a remedy. An owner will generally record this notice to
24 identify all potential claims as soon as possible.

25 An owner may also record a notice of cessation of labor, if labor on a job has
26 continuously ceased for 30 days. This recordation generally has the same effect as
27 the recordation of a notice of completion, but is generally used mid-project to take
28 stock of outstanding claims, typically upon a change of original contractors.

29 **Procedure for Enforcing Lien Claim**

30 Three steps are required to perfect a lien claim:

- 31 (1) Timely service of a preliminary 20-day notice (unless a claimant is
32 statutorily exempted from this requirement).
33 (2) Timely recordation of a claim of lien in a county recorder’s office.
34 (3) Timely initiation of a foreclosure action in court.

35 **Preliminary Notice**

36 A preliminary 20-day notice must be given by all claimants, except persons that
37 directly contract with the owner of the property, or those that perform actual labor
38 for wages. The notice protects an owner or lender against a “secret lien.” By virtue

for the site work has priority over liens that attach after commencement of the site improvement. Civ. Code § 3137.

1 of the notice, an owner or lender is made aware of the identity of a potential lien
2 claimant, so it may attempt to ensure that the potential claimant is properly paid.

3 The 20-day preliminary notice must describe the work or material provided and
4 give an estimate of the total cost, together with a warning in statutory language
5 regarding the possibility of the recording of a mechanics lien claim.

6 The preliminary notice is to be given within 20 days of starting work. Giving the
7 notice more than 20 days after starting work does not bar a lien claim entirely, but
8 does bar a lien claim for work performed more than 20 days before the notice is
9 given.

10 The notice must be served on the owner, the construction lender (if any), and the
11 owner's contractor. Service is made by registered mail, certified mail, or personal
12 delivery. If service is by mail, proof of service requires an affidavit accompanied
13 by a return receipt. A copy of the notice may be recorded with the county recorder.

14 The failure of a licensed contractor to give a required 20-day preliminary notice
15 may subject the contractor to disciplinary action.

16 *Notice and Claim of Lien*

17 A lien claim is recorded in the county recorder's office in the county in which
18 the property is located. The claim must contain a description of the work or
19 material supplied and a statement of the balance due. Willful misstatement of the
20 amount provided or due invalidates the lien.

21 The earliest a claimant may record a lien claim is after the claimant has
22 completed its own work. The latest a lien claim can be recorded is 90 days after
23 completion of the entire work of improvement. If the owner or owner's agent
24 records either a notice of completion or notice of cessation, the time for an
25 owner's contractor to record a lien claim is reduced to 60 days from the
26 recordation of the notice, and the time for all other lien claimants is reduced to 30
27 days from the recordation of the notice.

28 A lien can be released by using a statutory form of release, by obtaining a lien
29 claim release bond, or by a court order granting a petition to release the lien claim.

30 *Foreclosure Action*

31 The final step in perfecting a mechanics lien is the timely filing of a lawsuit to
32 foreclose the lien. The lawsuit must be filed within 90 days from whatever date the
33 lien claim is recorded.

34 The lawsuit to enforce the lien must be filed in the county in which the property
35 is situated. Once the foreclosure suit has been filed, the lien claimant must
36 prosecute the suit with due diligence. Failure to bring a lien claim enforcement
37 action to trial within two years gives the court discretion to dismiss the action.

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

1 If a lien claimant fails to file a foreclosure action within 90 days after recording
2 a lien claim, the owner may petition the court for an order to release the claim.

3 An owner may also agree to an extension of time for a claimant to bring the
4 action to foreclose the lien claim. The owner and the claimant must execute a
5 “notice of credit” and record it in the county recorder’s office.

6 **Stop Notice Right**

7 A claimant that has a mechanics lien right also has a stop notice right.

8 A stop notice is a notice to an owner, construction lender, or public entity to
9 withhold a portion of the construction funds sufficient to satisfy the claimant’s
10 claim. Rather than attaching to real property, the stop notice attaches to the
11 construction loan fund, or to money in the hands of the owner or public entity that
12 is to be paid to the original contractor. The stop notice has the effect of
13 intercepting these funds. The ultimate result of the enforcement of a stop notice is
14 entry of a judgment against the holder of the fund for the amount claimed in the
15 stop notice.

16 An original contractor may not give a stop notice on a public work, or to an
17 owner on a private work.

18 A stop notice must include a description of the work performed, the value of the
19 work already done and of the entire work agreed to be done.

20 On a private work, except in the case of a stop notice given to a lender by an
21 original contractor, the recipient of a stop notice need not withhold funds if a
22 payment bond has been recorded prior to the giving of the first stop notice on the
23 project.

24 As with a mechanics lien claim, serving a preliminary 20-day notice is a
25 prerequisite to asserting a stop notice. A stop notice must be given no later than
26 the expiration of the time within which to record a mechanics lien. However,
27 unlike a mechanics lien claim which may only be given upon the claimant’s
28 completion of the claimant’s work, a stop notice may be given at any time after a
29 claimant commences work.

30 In order to compel a construction lender on a private work to withhold funds, the
31 stop notice must be accompanied by a stop notice bond. A stop notice to an owner
32 or public entity does not have to be bonded.

33 A stop notice must be served personally or by registered or certified mail. A
34 lawsuit to enforce the stop notice must be filed in the proper court within the same
35 time limitation applicable to the enforcement of a mechanics lien claim. Typically,
36 an action to enforce the stop notice is part of the same complaint as an action to
37 foreclose a lien claim.

38 If more than one stop notice attaches to a construction fund and the amount of
39 the fund is insufficient to satisfy all notices, the funds are disbursed pro rata.
40 Distribution is made without regard to the relative timing of the stop notices.
41 There is no priority among valid stop notice claims.

1 **Protection of Owner and Construction Lender**

2 The law gives the owner and lender several ways to protect against a mechanics
3 lien or stop notice.

4 ***Waiver and Release***

5 The owner and lender may require a claimant to release a potential lien claim or
6 stop notice before making payment for the work that would be the subject of the
7 lien claim. In order to be effective, the release must be in the form prescribed by
8 the statute.

9 ***Release Bond***

10 An owner or contractor may release a lien or stop notice claim by obtaining and
11 recording a release bond. The bond obligates the surety to pay any sum the
12 claimant may recover on the claimant's claim, together with costs of suit.

13 On recordation of a release bond, the owner's property is released from the lien,
14 and from any action brought to foreclose the lien. The claimant's claim is
15 effectively converted to a claim against the bond, thereby freeing the owner to sell
16 or finance the property free from any encumbrance, and freeing up the
17 construction fund.

18 ***Attacking Lien or Stop Notice in Court***

19 An owner on a private work may challenge a recorded lien by petitioning the
20 court in a summary proceeding to release the lien.

21 On a public work, a contractor may challenge a stop notice in a summary court
22 proceeding.

23 ***Notice of Completion***

24 The recordation of a notice of completion by an owner or a public entity
25 shortens the time in which a claimant may record a lien claim or give a stop notice
26 from 90 days after completion of the project to 30 days after recordation of the
27 notice of completion (or, in the case of the lien of a contractor dealing directly
28 with a private owner, to 60 days after the recordation of the notice of completion).

29 ***Retention***

30 An owner on a private work is permitted to retain a portion of the contract
31 amount owed to the general contractor until 45 days after completion of the work
32 of improvement. Because a lien claim of a subcontractor or supplier must be
33 recorded within 30 days after the recordation of a notice of completion, these two
34 provisions together enable an owner to identify and attempt to resolve any lien
35 claims that have been recorded before making final payment to the original
36 contractor.

1 **Payment Bond**

2 A payment bond is a bond issued by a surety that guarantees payment to
3 claimants on a project in the event they are not otherwise paid. On most public
4 work, the original contractor is required to provide a payment bond. On a private
5 work, the payment bond is optional.

6 An owner or developer on a private work can limit exposure to a lien claim by
7 recording the construction contract and a payment bond for 50% of the contract
8 price, before the work commences. The recorded contract precludes a lien claim
9 for labor or material not included in the recorded contract, and the payment bond
10 obligates the surety on the bond to assume responsibility for paying potential lien
11 claimants any amount due that exceeds the owner's contractual obligation to the
12 original contractor.

13 A bond claimant must either give the 20-day preliminary notice required by law,
14 or give the surety and principal written notice of the bond claim within 75 days of
15 completion, or 15 days from the recordation of a notice of completion.

16 **REFORM OF CALIFORNIA LAW**

17 **CONTEXT OF MECHANICS LIEN LAW**

18 The mechanics lien law implements a policy intended to protect an unpaid
19 contributor to a work of improvement against the unjust enrichment of a property
20 owner. The law also fosters other public policies. It promotes development of
21 property by protecting the construction industry. It also recognizes the reality of an
22 industry characterized by independent contractors that contribute to a work of
23 improvement without having a direct contractual relationship with the owner of
24 the improvement.

25 Mechanics lien remedies are not the only remedies available to the construction
26 industry. Other remedies include liability under a theory of contract, quasi-
27 contract, common law tort, attachment, constructive trust, and imputed liability.²¹

28 But the mechanics lien remedies are undoubtedly the most effective remedies
29 available in the event of nonpayment. The remedies are relatively simple, and
30 relief is often available quite expeditiously. In fact, after making an initial claim a
31 claimant often need take no further action, because an owner will almost always
32 seek resolution rather than have property encumbered by a lien, or have
33 construction come to a halt due to interruption of the flow of funds.

34 The importance of the construction industry, the informality of credit extension
35 in the industry, and the frequency of conflict and litigation, among other factors,
36 all find expression in the mechanics lien law. For these reasons, despite

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

1 availability of other remedies, the legislative focus on the mechanics lien and stop
2 notice remedies continues unabated.

3 GENERAL APPROACH

4 The Law Revision Commission has undertaken this review and revision of the
5 mechanics lien law and related provisions in order to modernize, simplify, and
6 clarify the law, so as to make it more user friendly, efficient, and effective for all
7 stakeholders.²²

8 The Commission has taken a moderate approach in this revision, starting with
9 the existing statute and then seeking to improve it by simplifying and streamlining
10 within the existing statutory framework. This approach offers a number of
11 advantages. It makes revisions within a known structure, enabling a stakeholder to
12 understand and evaluate the effect of the changes in the law. It preserves to a
13 maximum extent the knowledge, experience, and body of interpretation
14 accumulated over years of operation under the existing scheme. It reflects the
15 Commission's experience that reform of the law in a highly contentious area often
16 proceeds on an evolutionary rather than revolutionary basis.

17 The proposed legislation also includes a limited number of substantive and
18 procedural improvements, in addition to statutory simplification. The Commission
19 has taken care to ensure that the proposed improvements represent a fair balance
20 for all stakeholders.

21 These improvements are summarized below. Unless otherwise specified, the
22 proposed revisions would affect both private and public works of improvement.

23 DRAFTING ISSUES

24 **General Drafting Considerations**

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

32 Because the technical revisions in the legislation are so minor and so numerous,
33 they are generally not described in this part of this recommendation. However,
34 each section of the proposed legislation includes a Comment that identifies its
35 source in existing law, and details more significant technical revisions. In addition,
36 the proposed legislation includes a disposition table that identifies the specific

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

1 section or sections in the proposed legislation where each provision of existing law
2 is continued.

3 **Relocation of Public Work Provisions**

4 Public work construction remedies are presently contained within the mechanics
5 lien law. This placement is confusing because a mechanics lien claim is not
6 available on a public work.²³

7 The principal “mechanics lien” remedies provided by the statute for a claimant
8 on a public work are the stop notice and the payment bond. The statute also
9 contains provisions relating to a stop payment notice and a payment bond on a
10 private work. But there are significant differences between the private work and
11 public work provisions relating to these remedies.²⁴

12 When the public work remedies were first incorporated into the mechanics lien
13 law, the Public Contract Code did not exist. That code, created in 1981,²⁵ has as
14 one of its goals to consolidate statutory material relating to public contracts,
15 because “placing all public contract law in one code will make that law clearer and
16 easier to find.”²⁶ The Public Contract Code thus now contains substantial statutory
17 material governing public work construction contracts, including payment bond
18 and prompt payment requirements.

19 The proposed legislation moves all mechanics lien law provisions relating to
20 public work into the Public Contract Code.²⁷ This relocation also results in a
21 significant simplification of the mechanics lien law, which will no longer have
22 multiple sets of corresponding but dissimilar provisions.

23 While it may have been a convenience for persons involved in both private and
24 public work to have all mechanics lien remedies located in one code, any person
25 presently doing work on a public project already has to look to the Public Contract
26 Code in any event. Virtually all the prompt payment requirements for a public
27 work are in the Public Contract Code, as is the main payment bond requirement
28 applicable to most state agency construction contracts exceeding \$5,000.²⁸
29 Moreover, all of the provisions governing public work contract terms, bidding
30 processes, awards, conduct of performance, and the like are also located in the
31 Public Contract Code.

23. See Civ. Code § 3109.

24. 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).

25. 1981 Cal. Stat. ch. 306.

26. Pub. Cont. Code § 100.

27. See proposed Pub. Cont. Code §§ 41010-45090 *infra*.

28. See Pub. Cont. Code § 7103.

1 Removal of the public work remedies to the Public Contract Code does
2 necessitate duplication of some generally applicable provisions found in the
3 mechanics lien law. For example, some definitions and provisions of the existing
4 statute relating to notice, construction of bonds, and completion are equally
5 applicable to both a private and a public work. The proposed legislation largely
6 duplicates these provisions in the Public Contract Code, tailoring them to a public
7 work.

8 **Location, Numbering, and Organization of Private Work Provisions**

9 The mechanics lien law has been housed in various places in the California
10 codes during its long existence. Most recently it resided in the Code of Civil
11 Procedure, before being moved to its current Civil Code location in 1969.²⁹

12 The proposed legislation relocates the provisions of the mechanics lien law
13 relating to a private work of improvement to the end of the Civil Code, beginning
14 with Section 8000.³⁰ The relocation accomplishes several purposes. It will avoid
15 the confusing situation of using old section numbers for new and different
16 provisions under the reorganized statute. It will position the statute in an easy-to-
17 find spot at the end of the Civil Code. And the new location will allow room for
18 future expansion of the law without having to resort to decimal section numbering.
19 If the history of the mechanics lien law teaches us anything, it is that the statute
20 will undergo continuing revision.

21 **Terminology**

22 Many of the definitional provisions in the mechanics lien statute are confusing
23 and disorganized. For example, Civil Code Section 3097 — purporting to define
24 “preliminary 20-day notice (private work)” — is the longest section in the
25 mechanics lien statute. It is twice as long as the entire mechanics lien statute in the
26 1872 Code of Civil Procedure. The section, amended over 15 times since 1969, is
27 almost a mini-practice guide in itself, containing substantive and procedural
28 material that would be better located with related substantive provisions.

29 Many other labeled definitions in the existing statute are in reality substantive
30 rules that also should be integrated with related provisions.³¹

31 Some terms are defined by existing law but then never used, such as
32 “materialman”³² and “subdivision.”³³ Other defined terms are largely unused, such
33 as the term “site”³⁴ which is generally ignored in favor of references to land, real

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

30. See proposed Civ. Code §§ 8000-8848 *infra*.

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

32. See Civ. Code § 3090.

33. See Civ. Code § 3105.

34. See Civ. Code § 3101.

1 property, or jobsite. Archaic language, such as the references to flumes and
2 aqueducts in the definition of “work of improvement,”³⁵ remain in existing law.

3 The proposed legislation cleans up and systematizes the statutory definitions, in
4 order to provide for consistent usage throughout the mechanics lien law.

5 Three terminological issues are noteworthy.

6 **“Mechanics Lien”**

7 The proposed legislation retains the term “mechanic’s lien” (but drops the
8 apostrophe), even though the term is a 19th century relic. Despite the archaism,
9 there is a common understanding of the term’s meaning in the construction
10 industry, and it is useful shorthand.

11 **“Original Contractor”**

12 Existing law distinguishes between an “original contractor” — who contracts
13 directly with the owner — and a subcontractor, who contracts with another
14 contractor. The distinction is important, since questions of privity, notice, and
15 various rights and responsibilities depend on it.

16 The term “original contractor” is confined to the mechanics lien law; it does not
17 appear to be in common use outside of the statute.³⁶ Terms more commonly in use
18 in the construction industry include “prime contractor” and “general contractor.”
19 None of these terms is completely satisfactory, particularly in the owner-builder
20 context, in which an owner effectively acts as a general contractor.

21 The proposed legislation substitutes the term “direct contractor” for “original
22 contractor.”³⁷ It is more descriptive than the other commonly used terms, and
23 invokes the operative fact that a direct contractor is in privity with the owner by
24 virtue of a direct contractual relationship.

25 In a similar vein, the proposed legislation incorporates a special definition of the
26 term “direct contract” to specifically identify a contract on a work of improvement
27 between a direct contractor and an owner.³⁸

28 **“Contract Change”**

29 Existing law does not clearly address whether a “contract” for a work of
30 improvement referenced in the statute includes a contract change.

31 The proposed legislation deals with the issue globally by defining the terms
32 “contract” and “contract price” to include a “contract change.”³⁹ The term

35. See Civ. Code § 3106.

36. 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.

37. See proposed Civ. Code § 8014 *infra*.

38. See proposed Civ. Code § 8013 *infra*.

39. See proposed Civ. Code §§ 8008, 8010 *infra*.

1 “contract change” is then used consistently throughout the statute, replacing terms
2 such as “extras.”⁴⁰

3 Existing law requires that an owner notify the original contractor and
4 construction lender on a private work of a change in the original contract, if the
5 change increases the contract amount by 5% or more.⁴¹ The statute does not
6 specify when the notification must be made, the manner of notification, or the
7 consequences of failure to notify.⁴² Practitioners indicate that this provision is not
8 observed in the industry and serves no useful purpose.

9 The proposed legislation eliminates this provision.

10 **Design Professionals Lien**

11 An architect, engineer, or land surveyor that provides design services on a
12 private work of improvement has a lien right under the mechanics lien law.⁴³ This
13 right is supplemented by a separate statutory lien, known as a design professionals
14 lien.⁴⁴

15 The design professionals lien was statutorily authorized in 1990.⁴⁵ It is intended
16 to cover services that are provided by a design professional prior to
17 commencement of a work of improvement that is ultimately never commenced.⁴⁶
18 The lien is terminated by commencement of the work of improvement, at which
19 time the design professional may use the mechanics lien remedy.

20 A design professionals lien is similar in concept to a mechanics lien. However,
21 the statutory provisions authorizing the design professionals lien expressly
22 incorporate only the mechanics lien enforcement procedure.

23 The proposed legislation retains the substance of the design professionals lien
24 provisions, but relocates them to a chapter among the other private work
25 provisions of the proposed legislation.⁴⁷ This relocation makes it easier to apply
26 standard mechanics lien law definitions. However, the proposed legislation
27 otherwise expressly retains the limited application of the other mechanics lien
28 provisions to a design professionals lien.⁴⁸

40. See, e.g., Civ. Code § 3193, proposed Pub. Cont. Code § 44340(a) *infra*.

41. See Civ. Code § 3123(c).

42. The intent may be that if the owner fails to give the required notification, a lien may not extend to the work contemplated by 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).

43. See Civ. Code § 3110.

44. See Civ. Code §§ 3081.1-3081.10.

45. 1990 Cal. Stat. ch. 1615.

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

47. See proposed Civ. Code §§ 8300-8318 *infra*.

48. See proposed Civ. Code § 8308 *infra*.

1 **Operative Date and Transitional Provisions**

2 The proposed revision of the mechanics lien law is complex, with many changes
3 in language, forms, and procedure. The proposed legislation therefore includes a
4 one year deferral of its operative date, for transitional purposes.⁴⁹ That will allow
5 ample time for education about the new law, revision of forms, and any necessary
6 corrective legislation.

7 The proposed legislation would apply generally to contracts entered into both
8 before and after the operative date.⁵⁰ However, any specific action taken on a
9 project before the operative date of the new law would be governed by the
10 applicable law in effect at the time of the action, and not by the new law.⁵¹

11 GENERAL PROVISIONS

12 In the interest of simplification and clarity, the proposed legislation standardizes
13 treatment of various issues common to the lien, stop notice, and payment bond
14 remedies for a work of improvement. These include issues relating to notice,
15 completion, waiver and release, and miscellaneous other matters.

16 NOTICE

17 The mechanics lien law is replete with notices. There is preliminary notice, stop
18 notice, notice of overdue laborer compensation, notice of nonresponsibility, notice
19 to principal and surety, stop work notice, notice of completion, notice of cessation,
20 and so forth. Each notice is subject to unique provisions governing its content,
21 manner of service, proof of service, and the like.

22 The proposed legislation standardizes these provisions in order to simplify
23 procedures and provide consistency throughout the range of remedies.⁵²

24 **Terminology**

25 The existing law employs a variety of terms for communicating information. A
26 party may be required to “notify” or “give notice to” another party, “serve notice”
27 or make a “demand” on a party, or “advise” a party.

28 The proposed legislation standardizes this usage, generally speaking in terms of
29 “giving notice.”

30 Many of the notice provisions in existing law require information to the extent
31 “known” to the person giving the notice.

32 The proposed legislation codifies an objective standard of knowledge —
33 information the person “knows or should have known.”⁵³

49. See proposed Civ. Code § 8051(a), Pub. Cont. Code § 42005(a) *infra*.

50 See proposed Civ. Code § 8051(b), Pub. Cont. Code § 42005(b) *infra*.

51. See proposed Civ. Code § 8051(c), Pub. Cont. Code § 42005(c) *infra*.

52. See proposed Civ. Code §§ 8100-8118, Pub. Cont. Code §§ 42110-42190 *infra*.

1 **Contents of Notice**

2 The various notices under the mechanics lien law typically require similar
3 information, such as the name and address of the owner or public entity, original
4 contractor, and construction lender, and a description of the site sufficient for
5 identification. Each of these notices varies slightly; often there is no apparent
6 reason for the variation.

7 For example, many notices require a description of the site and the street
8 address, but excuse an erroneous address if there is an accurate legal description.
9 Some simply require a description without elaboration. Others require a legal
10 description.

11 While the purpose of each notice is unique, there is no compelling reason for
12 basic identifying information in each notice to vary.

13 The proposed legislation therefore prescribes (except where otherwise expressly
14 provided), standard content applicable to all notices, to include:

- 15 • The name and address of the owner or reputed owner, or the public entity on
16 a public work.
- 17 • The name and address of the direct contractor.
- 18 • The name and address of the construction lender, if any.
- 19 • A description of the site sufficient for identification, including the street
20 address of the site, if any. If a sufficient legal description of the site is given,
21 the effectiveness of the notice is not affected by the fact that the street
22 address is erroneous or is omitted.
- 23 • The name, address, and relationship to the parties of the person giving the
24 notice.
- 25 • If the person giving the notice is a claimant:
 - 26 (1) A general statement of the work provided.
 - 27 (2) The name of the person to or for which the work is provided.
 - 28 (3) A statement or estimate of the claimant's demand, if any, after
29 deducting all just credits and offsets.⁵⁴

30 **Manner of Notice**

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

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

53. See proposed Civ. Code § 8016 *infra*.

54. See proposed Civ. Code § 8102, Pub. Cont. Code § 42120 *infra*.

1 The proposed legislation establishes a general procedure for giving notice, to be
2 applied throughout the mechanics lien law (again, except as otherwise expressly
3 provided).⁵⁵ The general procedure would replace the individual variants in
4 existing law applicable to one type of notice or another. Any notice could be given
5 by personal delivery, mail, or by leaving the notice for the person and mailing a
6 copy in the manner provided for service of summons in a civil action.⁵⁶

7 ***Mailed Notice***

8 Under existing law, mailed notice ordinarily must be given by registered or
9 certified mail. A few notices may be given by first class mail evidenced by a
10 certificate of mailing.

11 The proposed legislation requires that all first class mail be registered or
12 certified, but authorizes Express Mail, or another method of delivery providing for
13 overnight delivery, as alternatives.⁵⁷

14 ***Posted Notice***

15 A few notices on a private work must be posted.⁵⁸ The posting requirement is
16 generally augmented by a supplemental means of notice, such as recording or
17 giving a copy to subcontractors.

18 The proposed legislation standardizes the posting provisions, requiring display
19 in a conspicuous location at the site and at the main office of the site, if one
20 exists.⁵⁹

21 ***Recordation of Notice***

22 Recordation is used to give constructive notice under the mechanics lien law.

23 The proposed legislation generalizes and standardizes provisions governing
24 recordation.⁶⁰

25 A unique feature of the mechanics lien law is that, while most instruments are
26 generally not recordable unless acknowledged,⁶¹ both a claim of lien and a notice
27 of completion must be accepted by the recorder and are deemed duly recorded
28 without acknowledgment.⁶² These provisions reflect a legislative judgment that

55. See proposed Civ. Code §§ 8106-8114, Pub. Cont. Code §§ 42140-42170 *infra*.

56. Code Civ. Proc. § 415.20.

57. See proposed Civ. Code § 8110, Pub. Cont. Code § 42160 *infra*.

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

59. See proposed Civ. Code § 8114 *infra*.

60. See proposed Civ. Code § 8058, Pub. Cont. Code § 42250 *infra*.

61. See Gov't Code § 27287.

62. See Civ. Code §§ 3084, 3093.

1 verification provides sufficient proof of authenticity, and that a faster and more
2 efficient recording procedure is desirable for mechanics liens.⁶³

3 The proposed legislation generalizes these provisions for application to all
4 recorded notices provided for throughout the mechanics lien law.⁶⁴

5 *Electronic Notice*

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

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

15 Much of the construction industry remains paper based, however, and the law
16 should move slowly in this area. The proposed legislation thus makes electronic
17 notification permissible, but only where the party to be notified has agreed to
18 receive the notice by electronic means.⁶⁵

19 This approach is consistent with the California Uniform Electronic Transactions
20 Act.⁶⁶ It is possible that the agreement provisions of California law may be
21 preempted by the federal Electronic Signatures in Global and National Commerce
22 Act, which contains more extensive requirements for consent in the case of a
23 consumer.⁶⁷ To ensure that the California law is compliant in the event of federal
24 preemption, the proposed legislation requires that in the case of a consumer
25 construction contract, federal standards must be satisfied.⁶⁸

63. 69 Ops. Cal. Atty. Gen. 97 (1986).

64. See proposed Civ. Code § 8058(b), Pub. Cont. Code § 42250(a) *infra*.

65. See proposed Civ. Code § 8112, Pub. Cont. Code § 42170 *infra*.

66. Under that act, 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. The existence of an agreement is determined from the context and surrounding circumstances, including the parties' conduct; 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).

67. 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 U.S.C. § 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 U.S.C. § 7006(1). This would appear to extend to a construction contract for building, remodeling, or otherwise making an improvement to a home.

68. See proposed Civ. Code § 8112(c), Pub. Cont. Code § 42170(c) *infra*.

1 **Proof of Notice**

2 Like the manner of notice, proof of notice is treated inconsistently under
3 existing mechanics lien law.

4 The proposed legislation standardizes proof of mailing and proof of delivery
5 provisions, and adds a provision relating to proof of electronic notice.⁶⁹

6 ***Proof of Mailing***

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

12 Because the post office might not return either the proof of mailing or the
13 envelope, the proposed legislation expands proof of proper mailing to include
14 either proof of mailing issued by the post office (or an express service carrier), in
15 addition to proof of delivery. Under the proposed legislation, proof of mailing may
16 be made by:

- 17 (1) Documentation provided by the United States Post Office showing that
18 payment was made to mail the notice using registered or certified mail.
19 (2) Documentation provided by an express service carrier showing that payment
20 was made to send the notice using an overnight delivery service.⁷⁰

21 ***Proof of Personal Delivery***

22 The proposed legislation includes general provisions on proof of notice by
23 personal delivery.⁷¹ The provisions are generalized from the proof of delivery
24 models in the statutes governing preliminary notice and the stop work notice.⁷²

25 Under the proposed legislation, proof of notice by personal delivery is made by
26 a proof of notice affidavit, which shows (1) the type or description of the notice
27 given, (2) the date, place, and manner of notice, and facts showing that notice was
28 given in the manner required by statute, and (3) the name and address of the
29 person to which notice was given, and, if appropriate, the title or capacity in which
30 the person was given notice.

31 **Address at Which Notice is Given**

32 Under existing law, the address at which notice is given varies with the type of
33 notice.

34 The proposed legislation standardizes the address at which notice is given.⁷³

69. See proposed Civ. Code § 8118, Pub. Cont. Code § 42190 *infra*.

70. See proposed Civ. Code § 8118(b)(1) and (2), Pub. Cont. Code § 42190(b)(1) and (2) *infra*.

71. See proposed Civ. Code § 8118(a), Pub. Cont. Code § 42190(a) *infra*.

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

1 Under the proposed legislation, all notice is given at the address of the
2 recipient's residence or place of business. These locations include but are not
3 limited to the following specified addresses:

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

21 **When Notice is Complete**

22 Under existing law, a variety of rules determine when particular notices are
23 complete.

24 The proposed legislation standardizes these provisions by eliminating the
25 variants, and providing that notice is complete at the following times:

- 26 • If given by personal delivery, when delivered.
- 27 • 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
29 Procedure.
- 30 • If given by leaving the notice and mailing a copy in the manner provided in
31 Section 415.20 of the Code of Civil Procedure for service of summons in a
32 civil action, five days after leaving the notice.
- 33 • If given by posting, when posted.
- 34 • If given by recording, when filed for record in the office of the county
35 recorder.
- 36 • If given in the form of an electronic record, when the electronic record is
37 transmitted.⁷⁴

73. See proposed Civ. Code § 8108, Pub. Cont. Code § 42150 *infra*.

74. See proposed Civ. Code § 8116, Pub. Cont. Code § 42180 *infra*.

1

COMMENCEMENT AND COMPLETION

2

Commencement and completion of a work of improvement are fundamental to the operation of the mechanics lien system. 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;⁷⁵ the proposed legislation codifies the cases in order to make the concept clear and accessible.⁷⁶

9

Completion of a work of improvement triggers time limits for recording a claim of lien, giving a stop notice, enforcing the liability on a payment bond, and paying the direct contractor a retention withheld by the owner, among other consequences.⁷⁷

13

Completion is defined differently by existing law depending on whether the work of improvement is a private or a public work.

15

On a private work, completion is deemed to have occurred in a number of circumstances. In addition to actual completion, completion is also deemed to occur on cessation of labor for a continuous period of 60 days, on acceptance by the owner, on acceptance by a public entity, or on occupation or use by the owner accompanied by cessation of labor.⁷⁸

20

On a public work, completion generally occurs on acceptance of the work by the public entity. On some public work, completion is also deemed to occur upon 30 days continuous cessation of labor.⁷⁹

23

The proposed legislation would make several changes relating to completion.

24

Completion of a Private Work

25

“Actual” Completion

26

Although the existing statute provides that “actual” completion constitutes completion, there is a general consensus among appellate courts that completion of a private work occurs when a project is “substantially” complete, i.e., when only “punchlist” or remedial work is left to be done.⁸⁰ The term “substantial

75. See, e.g., *Walker v. Lytton Sav. & Loan Ass’n*, 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) (commencement occurs when material or supplies are delivered to site or there is actual visible work of a permanent nature on site).

76. See proposed Civ. Code § 8004 *infra*.

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

78. See Civ. Code § 3086.

79. See Civ. Code § 3086.

80. See Bronstein, *Trivial(?) Imperfections: The California Mechanics’ Lien Recording Statutes*, 27 Loy. L.A. L. Rev. 735 (1994).

1 completion” is also much better understood by the average contractor, as it is used
2 in the two statutes of limitation that govern construction actions.⁸¹

3 The proposed legislation substitutes the term “substantial completion” for
4 “actual completion” as a statutory basis for completion of a private work of
5 improvement.⁸²

6 *Acceptance by Owner*

7 Under existing law, completion of a private work of improvement is also
8 deemed to occur when an owner “accepts” the work.

9 The provision is ambiguous, as it fails to provide for any particular manner of
10 acceptance, or specify how that acceptance is communicated to persons who need
11 to know that completion has occurred.

12 The proposed legislation eliminates the provision. The owner’s recordation of a
13 notice of completion is a preferable means for an owner to mark completion, since
14 it occurs on a readily identifiable date and is communicated to interested persons.

15 **Completion of a Public Work**

16 The existing definition of completion causes a number of difficulties of
17 interpretation in its application to a public work:

18 3086. “Completion” means, in the case of any work of improvement other than
19 a public work, actual completion of the work of improvement. Any of the
20 following shall be deemed equivalent to a completion:

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

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

24 (c) After the commencement of a work of improvement, a cessation of labor
25 thereon for a continuous period of 60 days, or a cessation of labor thereon for a
26 continuous period of 30 days or more if the owner files for record a notice of
27 cessation.

28 If the work of improvement is subject to acceptance by any public entity, the
29 completion of such work of improvement shall be deemed to be the date of such
30 acceptance; provided, however, that, except as to contracts awarded under the
31 State Contract Act, Chapter 3 (commencing with Section 14250), Part 5, Division
32 3, Title 2 of the Government Code, a cessation of labor on any public work for a
33 continuous period of 30 days shall be a completion thereof.⁸³

34 The first sentence of Civil Code Section 3086 defines completion as “actual
35 completion,” *except* in the case of a public work. This exception apparently also
36 extends to the other grounds for completion set out in subdivisions (a) through (c)
37 of the section (occupation or use, acceptance, and cessation of labor), but this is
38 far from clear.

81. See Code Civ. Proc. §§ 337.1, 337.15.

82. See proposed Civ. Code § 8150(a)(1).

83. Civil Code Section 3086.

1 The proposed legislation makes clear that completion of a public work occurs
2 only as provided in the last paragraph of Section 3086.⁸⁴

3 *Cessation of Labor*

4 The second clause of the last paragraph of Section 3086 provides that cessation
5 of labor for a continuous period of 30 days is considered completion on certain
6 public works. On a private work, cessation of labor does not constitute completion
7 until 60 days of continuous cessation of labor have elapsed.⁸⁵

8 The concept that cessation of labor for 30 days is deemed completion entered
9 California law in 1887. That was extended to 60 days in the case of a private work
10 in 1951, but there is no legislative history to shed light on the reasons, if any, for
11 the difference in treatment.⁸⁶

12 Given the complexity and scope of modern public work projects, the proposed
13 legislation extends the time period to 60 days, paralleling the private work
14 provision.⁸⁷

15 **Notice of Completion or Cessation**

16 Once completion has occurred, an owner or public entity may shorten the time
17 limits for a claimant remedy by recording a notice of completion.⁸⁸

18 The proposed legislation generally continues provisions relating to the
19 recordation of a notice of completion, with some revision.

20 *Time for Recording Notice of Completion*

21 Under existing law, a notice of completion must be recorded within 10 days
22 after completion, or the notice is ineffective.⁸⁹ This period may be too short to
23 enable an owner or public entity to determine that completion has occurred.

24 The proposed legislation allows an owner or public entity to record the notice up
25 to 15 days after completion.⁹⁰ The small increase allows the owner or public entity
26 a reasonable amount of additional time, without disrupting basic time limits
27 associated with completion and the notice of completion.

28 *Notice of Recordation*

29 If a private owner records a notice of completion, the owner must notify a
30 potential lien claimant of the recordation, within 10 days of the date of

84. See proposed Pub. Cont. Code § 42210 *infra*.

85. See Civ. Code § 3086(c).

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

87. See proposed Pub. Cont. Code § 42210(b) *infra*.

88. See Civ. Code §§ 3115, 3116, 3159, 3160, 3184, 3242, 3252 *infra*.

89. See Civ. Code § 3093.

90. See proposed Civ. Code § 8152, Pub. Cont. Code § 42250 *infra*.

1 recordation.⁹¹ Failure to notify a claimant of the recordation of a notice of
2 completion renders the notice ineffective for purposes of affecting that claimant’s
3 time limits for pursuing a remedy.

4 A lien claimant may find it difficult to identify the claim to which the notice
5 relates, due to incomplete information in the notice.

6 The proposed legislation addresses this problem by requiring that the owner
7 provide the potential lien claimant with a copy of the notice of completion.⁹²

8 ***Notice by County Recorder***

9 When a notice of completion is recorded on a private work, existing law requires
10 the county recorder to give notice of the recordation to any person who has
11 previously recorded a preliminary notice on the work of improvement.⁹³ However,
12 there is no consequence for the recorder’s failure to do this, and most recorders do
13 not give the notice.

14 Due to the marginal benefit of the county recorder notice scheme, and in the
15 interest of greater simplicity of the mechanics lien law, the proposed legislation
16 eliminates this requirement. The owner’s notice of recordation is a better way to
17 notify potential lien claimants that a notice of completion has been recorded.

18 ***Separate Contracts on Single Job***

19 Under existing law, where there are contracts for different parts of a private
20 work of improvement, a notice of completion may be recorded separately as to
21 each contract.⁹⁴ That technique may be advantageous for an owner, in order to
22 narrow lien exposure. It can also benefit a subcontractor whose right to receive a
23 retention may be triggered by the notice of completion.

24 The proposed legislation retains this provision, and extends it to make it
25 applicable to a public work.⁹⁵

26 ***Notice of Acceptance***

27 Civil Code Section 3184 provides that a notice of completion on a public work
28 is “sometimes referred to in public works as a notice of acceptance.” That is the
29 only place the term “notice of acceptance” is used in the mechanics lien law. The
30 term is not used at all in the Public Contract Code.

31 Use of that term as a synonym for a notice of completion is problematic, as the
32 concept of “acceptance” may have legal consequences.

33 The proposed legislation eliminates the “notice of acceptance” from the
34 statute.⁹⁶

91. See Civ. Code § 3259.5.

92. See proposed Civ. Code § 8156, *infra*.

93. See Civ. Code § 3097(o)(2).

94. See Civ. Code § 3117.

95. See proposed Civ. Code § 8154, Pub. Cont. Code § 42240 *infra*.

1

WAIVER AND RELEASE

2 Existing law prescribes forms that must be used in order for a claimant to
3 execute a valid waiver and release.⁹⁷

4 The proposed legislation revises the statutory waiver and release forms for
5 clarity.⁹⁸

6

PRELIMINARY NOTICE

7 **Function of Preliminary Notice**

8 Preliminary notice serves a number of important functions in the operation of
9 the system in its current form.

- 10 (1) It alerts the owner or public entity to the existence of a potential claim of a
11 subcontractor or material provider, and the corresponding possibility of
12 double payment liability.
- 13 (2) It enables the owner to structure payment to the direct contractor so as to
14 ensure that the claimant is paid (for example, by use of a joint check,
15 release, or similar approach) or take whatever other protective measures
16 appear appropriate.
- 17 (3) It provides general information about mechanics lien law to an owner
18 unfamiliar with the subject.

19 **Simplification of Statute**

20 The preliminary notice provisions run several pages, and despite their
21 substantive nature, are located among the definitional provisions of the existing
22 statute.⁹⁹

23 In the proposed legislation, the preliminary notice provisions are moved to an
24 appropriate location among the substantive provisions.¹⁰⁰ The proposed legislation
25 also breaks the provisions into smaller, more comprehensible pieces, thereby
26 streamlining and simplifying their wording, and clarifies the language of the notice
27 on a private work.

28 The proposed legislation retains most of the substance of the preliminary notice
29 provisions of existing law, with a few revisions.

96. The proposed legislation 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.”

97. See Civ. Code § 3262.

98. See proposed Civ. Code §§ 8170-8176, Pub. Cont. Code §§ 42360-42390 *infra*.

99. See Civ. Code §§ 3097, 3098.

100. See proposed Civ. Code §§ 8200-8214, Pub. Cont. Code §§ 43010-43050 *infra*.

1 **Notice to Construction Lender**

2 On a private work, some lien claimants are required to give preliminary notice to
3 the construction lender as well as to the owner.

4 Existing law appears to both (1) require a direct contractor to give a preliminary
5 notice to the construction lender and (2) exempt a direct contractor from the
6 requirement.¹⁰¹ This internal contradiction has not gone unnoticed.¹⁰²

7 The proposed legislation generally clarifies that a direct contractor must give
8 preliminary notice to the lender.¹⁰³

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

10 Existing law provides that if a subcontractor fails to give a preliminary notice
11 where the contract price exceeds \$400, the subcontractor is subject to disciplinary
12 action under the Contractors State License Law.¹⁰⁴

13 The proposed legislation eliminates this provision. Failure to give the
14 preliminary notice precludes a subcontractor from making a lien claim or giving a
15 stop notice. There seems to be no compelling reason why a subcontractor that
16 wishes to voluntarily forego these remedies should be disciplined simply for
17 making this election.¹⁰⁵

18 As a more appropriate disciplinary provision, the proposed legislation expands
19 the requirement under existing law that any contractor (subcontractor or direct
20 contractor) that employs laborers and fails to pay those laborers full compensation
21 when due shall notify the laborers, their bargaining representatives, and the
22 construction lender notice of the delinquency (thus providing notice of a potential
23 lien claim), or face disciplinary action.¹⁰⁶ The proposed legislation requires that
24 this notice also be given to the owner.¹⁰⁷

101. See Civ. Code § 3097(b).

102. See *Kodiak Industries, Inc. v. Ellis*, 185 Cal. App. 3d 75, 82 n.3, 229 Cal. Rptr. 418 (1986).

103. See proposed Civ. Code § 8200 *infra*.

104. See Civ. Code § 3097(h).

105. There is an argument that this requirement is necessary to protect the interest of an express trust fund, a fund that collects and pay out benefits to laborers. 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 preserve the interests of the express trust fund, by either recording or enforcing a claim of lien.

106. See Civ. Code § 3097(k).

107. See proposed Civ. Code § 8103, Pub. Cont. Code § 42130 *infra*.

1 **Recordation of Preliminary Notice**

2 Under existing law, a copy of the preliminary notice may be recorded in the
3 recorder's office. Recordation of the notice obligates the county recorder to notify
4 the claimant if a notice of completion or notice of cessation of labor is recorded.¹⁰⁸

5 That option is seldom used, for several reasons:

- 6 (1) County recorders often do not comply with their statutory obligation to
7 provide notice to claimants.
- 8 (2) Recording fees may be high.
- 9 (3) A claimant usually has little difficulty in keeping track of job progress.
10 Notice from the recorder would not be very useful.

11 The proposed legislation simplifies the law by eliminating the recordation
12 provision and corresponding obligation of the county recorder to provide notice of
13 the recordation of a notice of completion or cessation.

14 **MECHANICS LIENS**

15 The proposed legislation generally continues the provisions of existing law
16 governing the operation and effect of a mechanics lien, but adds the improvements
17 noted below.

18 **Notice of Claim of Lien**

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

24 Until 2004, the county recorder was required to notify a property owner when an
25 involuntary lien of any kind (not just a mechanics lien) was recorded against the
26 property.¹⁰⁹ The notification is no longer mandatory; the law encourages this
27 notice by the county recorder, but no longer requires it. Under current practice,
28 most county recorders will not send notice unless requested to do so, and paid a
29 fee for the service by the lien claimant.¹¹⁰

30 The law facilitates the recordation of a claim of lien, notwithstanding its
31 encumbrance of property. A claimant may record a lien claim based on a simple
32 allegation that money is owed, without bonding against damage caused by a false

108. See Civ. Code § 3097(o).

109. See Gov't Code § 27297.5.

110. 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.

1 claim.¹¹¹ This procedure has been upheld by the California Supreme Court against
2 a due process challenge.¹¹² The court held that the preliminary notice and the right
3 to bring an immediate court action to discharge a false claim provide adequate
4 procedural protection for the owner.¹¹³

5 However, the constitutionality of the mechanics lien law, as well as its fairness,
6 would be enhanced if the lien claimant were required to notify the owner on
7 recording a claim of lien against the property.

8 The proposed legislation would implement this policy. Before recording a lien
9 claim, a claimant would be required to give notice of the intended recording to the
10 owner of the work of improvement,¹¹⁴ and show proof of mailing to the county
11 recorder.¹¹⁵

12 **Time for Commencement of Enforcement Action**

13 Under existing law, a lien enforcement action must be commenced within 90
14 days after recordation of the claim of lien, unless that time is extended by a
15 recorded extension of time. If the time is extended, an enforcement action must be
16 commenced within 90 days of the extension, but in no event more one year after
17 completion of the work of improvement.¹¹⁶

18 The existing provision is somewhat ambiguous as to who must agree to this
19 extension of time, and does not clearly provide that the owner must be a party to
20 the agreement.¹¹⁷

21 As it is the owner's property that is affected by enforcement of a lien, the time to
22 commence enforcement should not be extended without the owner's consent.¹¹⁸

23 The proposed legislation makes clear that the owner must agree to an extension
24 of the time to enforce a lien.¹¹⁹

25 **Invalid or Unenforceable Claim of Lien**

26 A person that has not been paid for labor, service, equipment, or material
27 provided for a work of improvement may record a claim of lien against the

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

112. See *Connolly Dev., Inc. v. Superior Court*, 17 Cal. 3d 803, 553 P.2d 637, 132 Cal. Rptr. 477 (1976).

113. The court did not discuss the fact that some claimants are not required by the statute to give preliminary notice.

114. See proposed Civ. Code § 8418 *infra*.

115. See proposed Civ. Code § 8420 *infra*.

116. See Civ. Code § 3144.

117. See *Dorer v. McKinsey*, 188 Cal. App. 2d 199, 200, 10 Cal. Rptr. 287, 288 (1961), *Richards v. Hillside Development Co*, 177 Cal. App. 2d 776, 780, 2 Cal. Rptr. 693, 696 (1960).

118. *Cf.* 10 Miller & Starr, *California Real Estate* § 28:68, at 217 (3d ed. 2001).

119. See proposed Civ. Code § 8460(b) *infra*.

1 property. No preliminary judicial determination of probable validity of the claim is
2 necessary, nor is any security required.

3 A claim of lien may prove to be unenforceable, but remains as a cloud on title.
4 This can happen, for example, where the owner has paid off the amount owed but
5 the lien claimant has not provided a release of the lien. It can also happen where
6 the lien claimant has not acted to enforce the lien within the statutory period (90
7 days after recordation). Or the lien claimant may have falsely recorded the claim
8 of lien for purposes of obtaining leverage in a dispute with the owner or for other
9 reasons.

10 The Law Revision Commission regularly receives communications from owners
11 whose property is burdened with an invalid or unenforceable claim of lien but who
12 lack an effective remedy. The Commission has no statistics concerning how
13 common this circumstance is, but the communications demonstrate the utility of a
14 curative provision.

15 An owner has some remedies under existing law:

- 16 (1) A claim of lien made with intent to defraud is invalid.¹²⁰
- 17 (2) An owner may post a release bond.¹²¹
- 18 (3) An owner may obtain a release order if the lien claimant fails to enforce the
19 lien or obtain an extension of time within statutory time limits.
- 20 (4) Under case law, an owner may seek declaratory and injunctive relief against
21 an invalid claim immediately on receipt of a preliminary notice or on the
22 filing of a claim of lien.

23 None of these remedies is expedient. A determination that a claim of lien has
24 been made with intent to defraud requires a court proceeding. A release bond may
25 be unavailable or too costly for many owners. The release order process is not
26 available for immediate attack on a fraudulent lien, as the owner must wait for the
27 statutory enforcement period to run. Court remedies are costly and time
28 consuming. It is easy to impose a lien but hard to clear the record of it.

29 The proposed legislation addresses this problem in two ways. It would add a
30 new *lis pendens* requirement in order to enforce a lien claim, and improve the
31 existing judicial procedure for release of a lien claim.

32 ***New Lis Pendens Requirement***

33 Under existing law, a claim of lien is voided by operation of law without the
34 need for a court order, if no enforcement action has been commenced within the
35 statutory time limits.¹²² This is not an effective remedy however, because the
36 commencement of an enforcement action is an off-record event that a title insurer
37 cannot readily determine from inspection of the record. The Commission has been

120. See Civ. Code § 3118.

121. See Civ. Code § 3143.

122. See Civ. Code § 3144(b).

1 informed that most title companies will not insure title until a full year has elapsed
2 after the recordation of a lien claim.

3 The proposed legislation would require that a claimant who commences an
4 action to enforce a lien claim record a *lis pendens* disclosing the enforcement
5 action within 110 days of recording the lien claim.¹²³ If the *lis pendens* is not
6 recorded, the claim of lien expires and is unenforceable.

7 In most cases, this will allow title insurers to insure title within a few months
8 after recordation of an unenforced lien claim, rather than having to wait a year or
9 more.

10 ***Judicial Procedure for Release of Lien***

11 Existing law provides an expedited court proceeding for release of a claim of
12 lien that is not enforced within the statutory limitation period (including any
13 recorded extension of that period).¹²⁴

14 However, the judicial release remedy under existing law is limited. The only
15 basis for relief is failure of the lien claimant to commence enforcement of the lien
16 claim within 90 days after recordation of the claim. The waiting period is
17 problematic, as is the ground for relief. If a fraudulent lien is recorded, no purpose
18 is served by requiring an owner to wait 90 days to challenge it.

19 The proposed legislation would allow an immediate action to remove a lien on
20 the following grounds:

- 21 (1) The claimant's demand stated in the claim of lien has been paid to the
22 claimant in full.
- 23 (2) None of the work stated in the claim of lien has been provided.
- 24 (3) The claimant was not licensed as required by statute.
- 25 (4) There is a final judgment in another proceeding that the petitioner is not
26 indebted to the claimant for the demand on which the claim of lien is
27 based.¹²⁵

28 The proposed legislation would make a number of other minor improvements to
29 the lien release procedure:

- 30 (1) Require that an owner demand the release of the lien claim before
31 commencing the lien release proceeding.
- 32 (2) Require more factual detail in the owner's petition for release.
- 33 (3) Clarify the burden of proof.
- 34 (4) Require the court to rule on the petition within 60 days after commencement
35 of the proceeding.

123. See proposed Civ. Code § 8460 *infra*.

124. See Civ. Code § 3154.

125. See proposed Civ. Code § 8480(a)(2)-(5) *infra*.

- 1 (5) Eliminate the existing \$2,000 cap on the award of attorney’s fees to the
2 prevailing party.
- 3 (6) Make clear that a release order issued by the court is a recordable
4 instrument.
- 5 (7) Delay the effective date of a release order for 20 days after service of the
6 entry of the order, to allow a claimant an opportunity to seek appellate
7 relief.¹²⁶

8 **Lien Rights of a Laborer’s Benefit Fund**

9 Existing law gives lien rights to a fund established to collect and distribute funds
10 to secure employee benefits for laborers. These provisions have been heavily
11 litigated and the subject of significant legislative attention. A key issue has been
12 whether these provisions are preempted by federal law governing employee
13 benefits.¹²⁷

14 The existing provisions on this issue are confusing, sometimes referring to these
15 funds as a laborer’s compensation fund,¹²⁸ sometimes as an express trust fund,¹²⁹
16 and sometimes as a “laborer.”¹³⁰ It is not clear whether these differences in
17 treatment are intentional, or are simply the result of inconsistent drafting over
18 several legislative sessions.

19 The proposed legislation simplifies drafting by including these funds within an
20 expanded definition of “laborer,” and making corresponding changes throughout
21 the statute.¹³¹ This treatment also avoids individualized statutory treatment of these
22 funds in a manner that might give rise to federal preemption.

23 **Use of Material in Structure**

24 A material supplier has a lien for material that is provided “to be used or
25 consumed in” a work of improvement.¹³² The implication of this language is that
26 the material supplier is entitled to the lien whether or not the material is in fact
27 used in the work of improvement.

28 However, the courts have held that the material must actually be used in the
29 work of improvement in order for the material supplier to have a lien.¹³³ This
30 interpretation of the statutes stems from the unjust enrichment theory underlying
31 the mechanics lien right. A person whose material permanently improves real

126. See proposed Civ. Code §§ 8482-8490 *infra*.

127. See *Betancourt v. Storke Housing Investors*, 31 Cal. 4th 1157, 82 P.3d 286, 8 Cal. Rptr. 3d 259 (2003).

128. See Civ. Code § 3089(b).

129. See Civ. Code § 3111.

130. See Civ. Code § 3097.

131. See proposed Civ. Code § 8020, Pub. Cont. Code § 41070 *infra*.

132. See Civ. Code §§ 3090, 3110.

133. See *Consolidated Elec. Distributors v. Kirkham, Cnaon & Kirkham, Inc.*, 18 Cal. App. 3d 54, 58, 95 Cal. Rptr. 673 (1971).

1 property should be paid because value has been added to the property. However, if
2 the material does not actually improve the property, the owner of the property has
3 not been unjustly enriched.

4 Under existing law, before claiming a lien a material supplier must therefore
5 prove that the material was actually used in the particular construction project.
6 While delivery provides “some evidence of use and consumption if coupled with
7 other evidence tending to show use,”¹³⁴ mere delivery does not create a
8 presumption of use.

9 Once a material supplier has delivered material to a jobsite however, it is often
10 difficult to determine whether the material was actually used on the job, especially
11 if the delivered materials are fungible.

12 Under the proposed legislation, delivery of materials to the jobsite would create
13 a rebuttable presumption that the materials were used in the construction
14 project.¹³⁵

15 STOP PAYMENT NOTICE

16 The proposed law generally continues existing provisions relating to a
17 claimant’s stop notice rights, with the improvements noted below.

18 **Terminology**

19 *Stop Payment Notice*

20 A “stop notice” under existing law is a directive to an owner, construction
21 lender, public entity, or other person holding construction funds not to pay out the
22 funds until resolution of the dispute over payment. The term “stop notice” is
23 somewhat cryptic, and can be confused with the “stop work order.”

24 The proposed legislation replaces the term with the more descriptive “stop
25 payment notice.”¹³⁶

26 *Bonded Stop Payment Notice*

27 A stop payment notice may be bonded, which provides the claimant giving the
28 notice greater rights. For many purposes, the law treats a bonded stop payment
29 notice the same as an unbonded stop payment notice.

30 In order to simplify drafting, the proposed legislation uses the generic term “stop
31 payment notice” to include both a bonded and an unbonded notice, except where a
32 bonded notice receives special treatment.

134. Marsh & Marsh, California Mechanics’ Lien Law and Construction Industry Practice § 4.13 (6th ed. 2003).

135 . See proposed Civ. Code § 8026(b) *infra*.

136. See proposed Civ. Code §§ 8044, Pub. Cont. Code § 41140 *infra*.

1 **Contents of Notice**

2 ***Amount of Claimant's Claim***

3 Existing law requires a claimant to include in a stop payment notice the amount
4 in value, as near as may be, of the claimant's claim. The meaning of the phrase "as
5 near as may be" is obscure.¹³⁷

6 The proposed legislation replaces the existing standard with the requirement that
7 the notice state the claimant's demand after deducting all just credits and offsets.¹³⁸
8 That is the same standard used for a claim of lien, and will help achieve
9 consistency in the statute.

10 ***Claim for Contract Changes and Damages for Breach***

11 Existing law allows a lien claimant to include in the claim of lien an amount due
12 as a result of rescission, abandonment, or breach of the contract.¹³⁹ The provision
13 governing the amount of a stop payment notice is silent on this issue.

14 No court has yet addressed whether a stop payment notice can include such
15 amounts. However, many practitioners believe the stop payment notice is co-
16 extensive with the mechanics lien, and that whatever amounts may be included in
17 a mechanics lien may also be included in a stop payment notice.

18 The proposed legislation clears up the ambiguity by stating expressly that these
19 items may be included in a claim covered by a stop payment notice.¹⁴⁰

20 **Demand for Notice**

21 An owner on a private work may demand that a claimant give the owner a stop
22 payment notice. If the claimant fails to do so, the claimant forfeits the mechanics
23 lien right.¹⁴¹

24 The proposed legislation makes clear that a claimant may comply with this
25 requirement by giving either a bonded or an unbonded stop payment notice.¹⁴²

26 **Duty to Withhold Funds**

27 ***Withholding by Owner***

28 Existing law states that if the owner on a private work is given a stop payment
29 notice, it is the duty of the owner to:

137. See Civ. Code § 3103.

138. See proposed Civ. Code §§ 8102, Pub. Cont. Code § 42120 *infra*.

139. See Civ. Code § 3123.

140. See proposed Civ. Code § 8502, Pub. Cont. Code § 44120 *infra*.

141. "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.

142. See proposed Civ. Code § 8520(b).

1 withhold from the original contractor or from any person acting under his or her
2 authority and to whom labor or materials, or both, have been furnished, or agreed
3 to be furnished, sufficient money due or to become due to such contractor to
4 answer such claim and any claim of lien that may be recorded therefore.¹⁴³

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

9 The comparable provision of the public work stop payment notice, from which
10 this statute evolved, states simply that the public entity must withhold from the
11 direct contractor, or from any person acting under the direct contractor's authority,
12 an amount sufficient to pay the claim stated in the notice.¹⁴⁴

13 That interpretation is sensible, and the proposed legislation adopts it.¹⁴⁵

14 ***Amount of Withholding***

15 Existing law provides that the funds withheld pursuant to a stop payment notice
16 be sufficient to cover the amount claimed both in the stop payment notice and “in
17 any claim of lien that is recorded.”¹⁴⁶

18 The claim of lien reference is problematic, as the amounts claimed in a stop
19 payment notice and a lien claim may overlap. Moreover, that rule would require
20 the recipient of a stop payment notice to do a title search for recorded lien claims.

21 The proposed legislation would require only that the stop payment notice
22 recipient withhold an amount sufficient to pay the amount claimed in the stop
23 payment notice.¹⁴⁷

24 **Claim Against Construction Lender**

25 Existing law provides that a contractor giving a stop payment notice to a
26 construction lender may only recover “the net amount due the original contractor
27 or subcontractor after deducting the stop notice claims of all subcontractors or
28 material suppliers who have filed bonded stop notices on account of work done on
29 behalf of the original contractor or the subcontractor.”¹⁴⁸

30 This provision appears to contain a defect. A construction lender, although not
31 obligated to do so, may choose to accept an *unbonded* stop payment notice from a
32 lower tier subcontractor or material supplier. The stop payment notice claim of a
33 direct contractor or higher tier subcontractor should thus properly be reduced by

143. See Civ. Code § 3161.

144. Civ. Code § 3186.

145. See proposed Civ. Code § 8522(a).

146. See Civ. Code §§ 3161, 3162.

147. See proposed Civ. Code §§ 8522(a), 8536(a) *infra*.

148. Civ. Code §3162(b).

1 the *amount withheld* by the lender pursuant to stop payment notices of lower tier
2 subcontractors or material suppliers (whether such notices are bonded or
3 unbonded).

4 The proposed legislation corrects this problem.¹⁴⁹

5 **Notification of Stop Payment Claimant on Public Work**

6 On a public work, within 10 days after completion or the recordation of notice
7 of completion, whichever is later, a public entity must notify each person that has
8 given a stop payment notice of the expiration of “such period.”¹⁵⁰ The quoted
9 language is probably intended to refer to the period for enforcement of the stop
10 payment notice.¹⁵¹

11 The proposed legislation adopts this interpretation.¹⁵²

12 The proposed legislation provides that recordation of a notice of cessation
13 (which generally has the same impact on time requirements as a recorded notice of
14 completion) also triggers the public entity’s duty of notification.

15 The existing provision only requires that notice be given to stop payment notice
16 claimants who have paid a fee of two dollars (\$2.00).

17 That fee was established in 1969. It would amount to about \$10.00 in today’s
18 buying power. The proposed legislation increases the fee to \$10.00.

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

20 *Who May Give Bond*

21 On a private work, “an owner, construction lender, direct contractor, or
22 subcontractor that disputes the correctness or validity of a stop payment notice”
23 may obtain the release of funds withheld pursuant to the notice by giving the
24 person withholding the funds a release bond.¹⁵³

25 There is no apparent reason to limit who may give such a bond. The proposed
26 legislation simplifies the statute by eliminating the restriction.¹⁵⁴

27 *Sureties on Bond*

28 The release bond for funds held pursuant to a stop payment notice is analogous
29 to a lien release bond. Under existing law, a lien release bond must be issued by an

149. See proposed Civ. Code § 8542 *infra*.

150. See Civ. Code § 3185.

151. *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.

152. See proposed Pub. Cont. Code § 44170 *infra*.

153. See Civ. Code § 3171.

154. See proposed Civ. Code § 8510(a) *infra*.

1 admitted surety insurer,¹⁵⁵ whereas the stop payment notice release bond need not
2 be.¹⁵⁶

3 The two bonds are similar in function, as they both stand in place of funds or
4 property that have been sequestered for a claim.

5 The proposed legislation requires that a stop payment notice release bond also
6 be issued by admitted surety insurer.¹⁵⁷

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

8 The statutory waiver and release forms¹⁵⁸ need not be used for a claimant's
9 release or reduction of a stop payment notice given to an owner.¹⁵⁹ It is unclear
10 whether that provision applies to a public work, but it appears the Legislature
11 intended such application.¹⁶⁰

12 The proposed legislation would eliminate the ambiguity by making the provision
13 expressly applicable to both types of work.¹⁶¹ Further, the proposed legislation
14 would make the provision applicable to a stop payment notice given to a
15 construction lender.¹⁶²

16 For clarity, the proposed legislation also provides that any written release shall
17 expressly state whether it is a full release of the stop payment notice claim, or only
18 a reduction.¹⁶³

19 **Public Work Summary Release Procedure**

20 Under existing law, a direct contractor on a public work may obtain the release
21 of funds withheld pursuant to an improper stop payment notice by a summary
22 proceeding. The matter is determined by the court sitting without a jury, based on
23 affidavits of the parties.

24 One of the summary proceeding provisions notes that “Nothing in this article
25 shall be construed to deprive any party of the right to a trial by jury in any case
26 where such right is given by the California Constitution, but a jury trial may be
27 waived in like manner as in the trial of an action.”¹⁶⁴

155. An “admitted surety insurer” is a corporate insurer to which the state Insurance Commissioner has issued a certificate of authority to transact surety insurance within the state. See Civ. Code § 8140, Code Civ. Proc. § 995.120.

156. See Civ. Code §§ 3143, 3171.

157. See proposed Civ. Code § 8510(b) *infra*.

158. The forms are prescribed in Civil Code Section 3262.

159. See Civ. Code § 3262(b)(2).

160. See, e.g., Assembly Judiciary Committee, Analysis of SB 130 (Margett) (June 6, 2005).

161. See proposed Civ. Code § 8166(a), Pub. Cont. Code § 42340(a) *infra*.

162. See proposed Civ. Code § 8166(a) *infra*.

163. See proposed Civ. Code § 8166(b), Pub. Cont. Code § 42340(b) *infra*.

164. See Civ. Code § 3204.

1 The California Constitution states that “Trial by jury is an inviolate right and
2 shall be secured to all.”¹⁶⁵ It is generally accepted that this provision codifies the
3 right to jury trial as it existed at common law in 1850, when the Constitution was
4 adopted.

5 Because the mechanics lien law remedies generally, and the summary release
6 procedure for a stop payment claim specifically, were unknown to the common
7 law and are equitable in nature, there would ordinarily be no constitutional right to
8 a jury trial.¹⁶⁶ The summary release procedure for funds withheld pursuant to a
9 stop payment notice does not implicate the loss of any rights for which a jury trial
10 would be required.

11 The jury trial provision thus serves no useful purpose, and the proposed
12 legislation eliminates it.

13 ***Notice of Hearing in Summary Proceeding***

14 Under existing law, a party moving for the summary adjudication of a stop
15 payment notice on a public work need give only five days’ notice of a hearing in
16 the matter.¹⁶⁷

17 The proposed legislation extends the time to 10 days, if the notice of hearing is
18 given by mail.¹⁶⁸

19 **PAYMENT BOND**

20 Provisions relating to payment bonds on a work of improvement differ
21 significantly depending on whether the work is private or public. The two contexts
22 are discussed separately below.

23 **Private Work Provisions**

24 An owner on a private work may limit lien claims by obtaining a payment bond
25 covering 50% of the contract price and recording it with the original construction
26 contract. The owner’s total liability for lien claims is then limited to the unpaid
27 balance on the contract.¹⁶⁹ If the owner pays the direct contractor in full, the owner
28 has no lien liability.

29 While it is clear that the contract must be recorded before commencement of
30 work, it is not entirely clear that the payment bond must be recorded before
31 commencement:

165. Cal. Const. art. I, § 16.

166. 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).

167. See Civ. Code § 3201.

168. See proposed Pub. Cont. Code § 44250(c) *infra*.

169. See Civ. Code §§ 3235, 3236.

1 In case the original contract for a private work of improvement is filed in the
2 office of the county recorder of the county where the property is situated before
3 the work is commenced, and the payment bond of the original contractor in an
4 amount not less than 50 percent of the contract price named in such contract is
5 recorded in such office, then the court must, where it would be equitable so to do,
6 restrict the recovery under lien claims to an aggregate amount equal to the amount
7 found to be due from the owner to the original contractor¹⁷⁰

8 The Commission believes this was simply a drafting error. Leading authorities
9 construe the provision as requiring recordation of the payment bond prior to
10 commencement of work.¹⁷¹

11 The proposed legislation clarifies the issue by expressly providing that in order
12 to obtain the lien protection offered by the provision, the payment bond must be
13 recorded prior to commencement of work.¹⁷²

14 ***Admitted Surety Insurer***

15 Most bonds provided for under existing mechanics lien law must be issued by an
16 admitted surety insurer (a corporate insurer to which the state Insurance
17 Commissioner has issued a certificate of authority to transact surety insurance
18 within the state).¹⁷³

19 The proposed legislation generalizes that requirement so that a payment bond
20 that provides the owner lien protection on a private work must also be issued by an
21 admitted surety insurer.¹⁷⁴

22 ***Payment Bond Required by Construction Lender***

23 Existing law provides that if a construction lender requires a payment bond as a
24 condition of making the loan and accepts the bond that is offered, the lender may
25 question the bond and go back on the loan commitment “only if the bond
26 underwriter was licensed by the Department of Insurance.”¹⁷⁵ The provision seems
27 counterintuitive. A bond given by a licensed surety should be more reliable than a
28 bond from an unlicensed surety, and therefore less subject to challenge.

170. Civ. Code § 3235.

171. See Hunt, *California Mechanics Lien and Related Construction Remedies* (3d ed.), § 8.38, p. 555 (Cal. Cont. Ed. Bar 2006), Miller & Starr, *California Real Estate* (3rd edition), § 28.39, pp. 136-137 (2006).

172. See proposed Civ. Code § 8602(a) *infra*.

173. See Civ. Code §§ 3110.5 (payment bond as security for large project), 3143 (mechanics lien release bond), 3196 (public work stop notice release bond), Code Civ. Proc. § 995.311(a) (public work payment bond); *cf.* Code Civ. Proc. § 995.120.

174. See proposed Civ. Code § 8606(a) *infra*.

175. See Civ. Code § 3237.

1 The provision was enacted as part of an effort to preclude a construction lender
2 from renegeing on a loan commitment.¹⁷⁶ The opposite rule was probably intended,
3 to prevent a lender from questioning a bond executed by a licensed surety.¹⁷⁷

4 The proposed legislation codifies that rule.¹⁷⁸

5 ***Statute of Limitation for Enforcement of Bond***

6 Existing law provides a shortened six month statute of limitations for an action
7 against a surety on a private work payment bond that is recorded before
8 completion of a work of improvement.¹⁷⁹

9 In the interest of simplicity and standardization, the proposed legislation extends
10 this provision to an action against the principal on the bond.¹⁸⁰

11 **Public Work Provisions**

12 The existing public work payment bond provisions are confusing, both in their
13 application and in their coverage. The proposed legislation addresses these
14 problems, as discussed below.

15 ***Overview of Provisions***

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

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

21 For purposes of this section, “state entity” means every state office department
22 [sic], division, bureau, board, or commission, but does not include the Legislature,
23 the courts, any agency in the judicial branch of government, or the University of
24 California. All other public entities shall be governed by the provisions of Section
25 3247 of the Civil Code.

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

30 The judicial branch, for example, understands the intent of the existing statutory
31 scheme to be that it is exempt from any payment bond requirement. The judicial
32 branch indicates that, in any event, separation of powers doctrine would immunize

176. See SB 1851 (Ayala) (1984).

177. Miller & Starr, 12 California Real Estate § 36:4 at 11 n.10 (3d ed. 2001) interprets the provision in this way.

178. See proposed Civ. Code § 8604 *infra*.

179. See Civ. Code § 3240. The limitation period is otherwise four years. See Code. Civ. Proc. § 337(1).

180. See proposed Civ. Code § 8610 *infra*.

1 it from a statutory payment bond requirement. The judicial branch voluntarily
2 requires a payment bond for any contract over \$25,000. This has not been a
3 significant issue in the past because most court facilities were county owned.
4 However, the judicial branch will be more heavily involved with construction
5 contract matters in the future, now that the state has taken control of the trial
6 courts.

7 The University of California also believes it is constitutionally exempt from any
8 statutory payment bond requirement.¹⁸¹ Nonetheless, the university voluntarily
9 adheres to the rule of Section 7103 and requires a payment bond for any contract
10 over \$5,000.

11 *State Contract Act*

12 To complicate matters, there are additional payment bond requirements under
13 the State Contract Act that are applicable to some public works.¹⁸² Subject to a
14 number of exceptions, that act applies to a state project for which the total cost
15 exceeds \$100,000, as adjusted to reflect changes in the annual California
16 Construction Index.¹⁸³

17 The exact scope of the State Contract Act is not defined. A bond under that act
18 is subject to approval of the “department,”¹⁸⁴ which is defined to mean the
19 Department of Water Resources, General Services, Boating and Waterways, or
20 Corrections, with respect to a project within its jurisdiction, or the Department of
21 Transportation with respect to all other projects.¹⁸⁵ This may be intended as a
22 limitation on the scope of the act. There is no case law on the matter.

23 The act requires that every contract to which the act is applicable include a
24 payment bond executed by an admitted surety insurer.¹⁸⁶ Subject to exceptions, the
25 bond must be for at least one-half the contract price.¹⁸⁷

26 A key exception to the one-half contract price requirement is “as otherwise
27 provided in Section 3248 of the Civil Code.”¹⁸⁸ At the time the exception was
28 written, Civil Code Section 3248 provided a sliding scale for the amount of the
29 payment bond required for a public work, based on the contract price. Section
30 3248 now requires that, “The bond shall be in a sum not less than one hundred
31 percent of the total amount payable by the terms of the contract.”¹⁸⁹

181. See Cal. Const. art. IX, § 9.

182. See Pub. Cont. Code §§ 10100-10285.1.

183. See Pub. Cont. Code § 10105.

184. See Pub. Cont. Code § 10221.

185. See Pub. Cont. Code § 10106.

186. See Pub. Cont. Code § 10221.

187. See Pub. Cont. Code § 10222.

188. See Pub. Cont. Code § 10222.

189. Civ. Code § 3248(a).

1 **Reconciliation of Existing Provisions**

2 Reading all these statutes together and interpreting legislative intent as rationally
3 as possible, the Law Revision Commission concludes:

- 4 • A public entity other than the state must require a 100% payment bond in a
5 construction project over \$25,000.
- 6 • The state, other than the Legislature, the judiciary, or the University of
7 California, must require a 100% payment bond in a construction project
8 over \$5,000.
- 9 • It is unclear what, if any, requirements apply to the Legislature, the
10 judiciary, and the University of California. There are constitutional
11 considerations affecting these entities, and their practices with respect to a
12 payment bond vary.
- 13 • Special rules may apply to specific types of state projects that are the subject
14 of an express statute. For example, the Department of Transportation may
15 specify a smaller than 100% payment bond in a project over \$250,000,000,
16 subject to limitations.¹⁹⁰

17 The proposed legislation does not attempt to provide uniform rules applicable to
18 all public works contracts, state and local, as the public cost implications could be
19 significant. Instead, the proposed legislation preserves the status quo as to these
20 issues (as stated above), in a more understandable fashion.¹⁹¹

21 **Supplemental Contract**

22 After a payment bond is posted in connection with a public work contract, the
23 public entity may enter into another contract supplementing the work called for in
24 the original contract. Existing law provides that work may proceed on that
25 supplemental contract without obtaining a new payment bond, if the public entity
26 consents to that result.¹⁹² It is unclear whether claimants that provide work under
27 the supplemental contract may make a claim against the payment bond
28 corresponding to the original contract.

29 The proposed legislation clarifies this issue by expressly providing that the
30 original bond will also provide coverage for work performed under the
31 supplemental contract.¹⁹³

32 **Statute of Limitations for Enforcement of Bond**

33 Existing law provides that an action against a surety on a public work payment
34 bond must be commenced within six months after the period in which a stop
35 payment notice may be given.¹⁹⁴

190. See Pub. Cont. Code § 10222.

191. See proposed Pub. Cont. Code §§ 41080, 45010-45030 *infra*.

192. See Civ. Code § 3247(b).

193. See proposed Pub. Cont. Code § 45010(c) *infra*.

1 In the interest of simplicity and standardization, the proposed legislation extends
2 this provision to an action against the principal on the bond.¹⁹⁵

3 **Provisions Applicable to Both Private and Public Work**

4 *Claimants on Bond*

5 It is not entirely clear whether persons that provide work to lower tier
6 subcontractors (i.e., subcontractors that report to other subcontractors, rather than
7 to a direct contractor) may make a claim against a payment bond, on either a
8 private or a public work:

9 Nothing contained in this title shall be construed to give to any person any right
10 of action on any original contractor's private or public work payment bond
11 described in Chapter 6 (commencing with Section 3235) or Chapter 7
12 (commencing with Section 3247), unless the work forming the basis for his claim
13 was performed by such person for the principal on such payment bond, *or one of*
14 *his subcontractors*, pursuant to the contract between the original contractor and
15 the owner.¹⁹⁶

16 One could read that language to limit bond rights to persons who provide work
17 for the direct contractor or a first tier subcontractor (i.e., one of “his”
18 subcontractors). Under that reading, a person who provides work for a
19 subcontractor of a subcontractor could not make a claim against the bond.

20 The Commission has uncovered no legislative history suggesting an intent to
21 preclude payment bond claims from claimants that provide work to subcontractors
22 below the first tier. The court in *Union Asphalt v. Planet Ins.*, 21 Cal. App. 4th
23 1762, 27 Cal. Rptr. 2d 371 (1994) reached the same conclusion.

24 The proposed legislation clarifies this issue by expressly providing that a
25 claimant that provides work to *any* subcontractor may make a claim against a
26 payment bond.¹⁹⁷

27 OTHER REMEDIES

28 **Security for Large Project**

29 In addition to the main remedies of the lien, stop notice, and payment bond, the
30 mechanics lien law also requires the owner of a large private work project to
31 provide security for payment of the contractor. The security may take the form of
32 a payment bond, irrevocable letter of credit, or escrow account.¹⁹⁸

194. See Civ. Code § 3249.

195. See proposed Pub. Cont. Code § 45050 *infra*.

196. Civ. Code § 3267 (emphasis added).

197. See proposed Civ. Code § 8608(a), Pub. Cont. Code § 45090(a) *infra*.

198. See Civ. Code § 3110.5.

1 The remedy is presently contained in one extremely long section of the code.

2 The proposed legislation rewrites the section in a nonsubstantive way to make it
3 more comprehensible, by simplifying language, standardizing terminology, and
4 breaking the section into smaller pieces.¹⁹⁹

5 **Stop Work Notice**

6 Existing mechanics lien law also provides a contractor on a private work that
7 has not been paid with some practical leverage — the contractor may serve notice
8 on the owner that the contractor intends to stop work, unless paid within 10 days.
9 Thereafter, the contractor is statutorily authorized to stop work on the project
10 without liability to the owner or to subcontractors.

11 The proposed legislation preserves the substance of the statute. However, it
12 denominates the remedy a stop work “notice” rather than an order, since it is not a
13 court order and it should be given and proved in the same manner as other notices
14 under the mechanics lien law.²⁰⁰

15 The proposed legislation also clarifies provisions that address direct contractor
16 and subcontractor rights and liabilities upon the giving of a stop work notice.
17 These provisions are apparently an artifact of the legislative process. Under the
18 proposed legislation, only the direct contractor may give a stop work notice.²⁰¹

19 Existing law provides for an expedited court proceeding that a direct contractor
20 or the direct contractor’s surety may use to resolve a stop work notice dispute.

21 The proposed legislation expands that procedure to permit its use by an
22 owner.²⁰²

23

199. See proposed Civ. Code §§ 8700-8730 *infra*.

200. See proposed Civ. Code § 8830 *infra*.

201. See proposed Civ. Code § 8838 *infra*.

202. See proposed Civ. Code § 8844 *infra*.