

Memorandum 2010-53

**Mechanics Lien Law: Clean-Up Legislation
(Draft Tentative Recommendation)**

The Commission's recommendation on *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007), was enacted into law earlier this year, with an operative date of July 1, 2012. See 2010 Cal. Stat. ch. 697 (SB 189 (Lowenthal)). The recommendation reorganized and recodified the mechanics lien statute (Civ. Code §§ 3082-3267), and related code sections.

Before the legislation becomes operative, some statutory clean-up is needed to fully effectuate the statutory reorganization and address related matters. Attached is a draft of a tentative recommendation that explains and sets forth the needed clean-up legislation. If this clean-up legislation can be introduced in early 2011, it can become operative at the same time as the legislation implementing the mechanics lien recodification.

The staff recommends that **the Commission (1) approve the attached draft as a tentative recommendation (with or without revisions), (2) set a short time period for submitting comments (e.g., a comment deadline of January 21, 2011), and (3) authorize the staff to seek preparation of a bill draft based on the tentative recommendation.** Doing so should allow for introduction and enactment of the necessary clean-up legislation in 2011.

Note that we are also aware of some complications that arose in connection with a conforming revision to Government Code Section 7480. We are not proposing any clean-up revisions to address those complications, because we have been informed that they will be addressed through another vehicle.

Respectfully submitted,

Steve Cohen
Staff Counsel

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Mechanics Lien Law: Clean-Up Legislation

December 2010

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

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

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

California Law Revision Commission

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SUMMARY OF TENTATIVE RECOMMENDATION

In 2010, the Legislature enacted Chapter 697 of the Statutes of 2010, which implemented a Commission recommendation to reorganize and recodify statutory mechanics lien law. The legislation will become operative on July 1, 2012.

Before the statutory reorganization becomes operative, the Commission recommends the enactment of a clean-up bill to accomplish the following:

- Implement conforming revisions that were chaptered out by other bills enacted in 2010.
- Correct minor technical errors.

This recommendation was prepared pursuant to Resolution Chapter 98 of the Statutes of 2009.

MECHANICS LIEN LAW: CLEAN-UP LEGISLATION

1 Chapter 697 of the Statutes of 2010, introduced as Senate Bill 189 (Lowenthal),
2 implemented a Law Revision Commission recommendation¹ to reorganize and
3 recodify the existing mechanics lien statute.²

4 In conjunction with the recodification, SB 189 also proposed technical
5 conforming revisions to many other code sections. For example, the legislation
6 proposed the revision of numerous cross-references to provisions of the former
7 mechanics lien statute to reflect the new location of the referenced provisions
8 following recodification.

9 Senate Bill 189 was enacted with a delayed operative date of July 1, 2012. That
10 delayed operative date affords an opportunity to accomplish certain statutory
11 clean-up before the new statutory scheme takes effect. In particular, the
12 Commission recommends clean-up legislation to address the matters described
13 below.

14 **Conforming Revisions Chaptered Out by Other Bills**

15 When two bills would amend the same code section in different ways, the bills
16 conflict. If both bills are enacted in the same year, one of the amendments will
17 become law and the other will be “chaptered out” (i.e., nullified).³ This problem
18 can be avoided through carefully drafted bill coordination amendments, but
19 preparation of such amendments is complicated, time-consuming, and difficult
20 when a bill affects numerous code sections and thus involves numerous bill
21 conflicts.⁴

22 In such a situation, another means of addressing the problem is to include a
23 subordination clause in a bill, which provides that if the bill conflicts with another
24 bill, the other bill will prevail.⁵ This type of approach is appropriate when the
25 revisions made by a bill are relatively minor, such as spelling or grammatical
26 corrections, conforming revisions, or other technical changes. The subordination
27 clause ensures that these minor revisions do not nullify more significant revisions
28 made by other bills. If a minor revision is chaptered out due to the subordination
29 clause, the problem can be corrected by reintroducing the minor revision in
30 another bill the following year.

31 This approach to potential conflicts with other bills was taken with respect to the
32 conforming revisions in Senate Bill 189.⁶ Based on operation of the subordination

1. *Mechanics Lien Law*, 37 Cal. L. Revision Comm’n Reports 527 (2007).

2. Civ. Code §§ 3082-3267.

3. See Gov’t Code § 9605.

4. See, e.g., 2010 Cal. Stat. ch. 711, §§ 6.01-6.103, 8.01-8.103.

5. See, e.g., 2010 Cal. Stat. ch. 178, § 108; 2010 Cal. Stat. ch. 328, § 266.

6. See 2010 Cal. Stat. ch. 697, § 106.

1 clause, two sections of Senate Bill 189 that contained conforming revisions were
2 chaptered out by conflicting bills enacted in 2010.⁷

3 The Commission recommends that those sections be reintroduced.⁸

4 **Technical Errors in Conforming Revisions**

5 The Commission's recommendation included conforming revisions of four
6 sections of the Business and Professions Code, to update cross-references to
7 former Civil Code Section 3114.⁹ Those conforming revisions contained technical
8 errors that require correction.

9 While Senate Bill 189 was pending, three of those provisions were amended by
10 another bill.¹⁰ Those amendments changed the cross-references to Civil Code
11 Section 3114 to instead refer to a *different* mechanics lien provision, Civil Code
12 Section 3110. Parallel amendments should therefore have been made to the
13 conforming revisions in Senate Bill 189, so that the revised provisions would refer
14 to the new provisions that would continue Section 3110. Those corrections were
15 inadvertently not made. The Commission recommends that the references be
16 corrected in clean-up legislation.¹¹

17 The fourth provision that contained a cross-reference to Civil Code Section 3114
18 was not amended. However, the conforming revision recommended for that
19 provision was erroneous, as it did not correctly refer to the new provision that
20 continues former Section 3114. The Commission recommends that this error be
21 corrected.¹²

7. Revisions to Business and Professions Code Section 7159 were chaptered out by 2010 Cal. Stat. ch. 698 (SB 392 (Florez)); revisions to Government Code Section 66499.7 were chaptered out by 2010 Cal. Stat. ch. 174 (SB 1019 (Correa)).

8. See proposed amendments to Business and Professions Code Section 7159(e)(4) and Government Code Section 66499.7, *infra*.

9. Bus. & Prof. Code §§ 7159, 7159.5, 7159.14, 8153. Note that the proposed amendment to Business and Professions Code Section 7159 was chaptered out and did not take effect.

10. See 2009 Cal. Stat. ch. 307.

11. See the proposed amendments to Bus. & Prof. Code §§ 7159, 7159.5, 7159.14 *infra*.

12. See the proposed amendment to Bus. & Prof. Code § 8153 *infra*.

PROPOSED LEGISLATION

1 **Bus. & Prof. Code § 7159 (amended). Home improvement contract**

2 SECTION 1. Section 7159 of the Business and Professions Code is amended to
3 read:

4 7159. (a)(1) This section identifies the projects for which a home improvement
5 contract is required, outlines the contract requirements, and lists the items that
6 shall be included in the contract, or may be provided as an attachment.

7 (2) This section does not apply to service and repair contracts that are subject to
8 Section 7159.10, if the contract for the applicable services complies with Sections
9 7159.10 to 7159.14, inclusive.

10 (3) This section does not apply to the sale, installation, and servicing of a fire
11 alarm sold in conjunction with an alarm system, as defined in subdivision (n) of
12 Section 7590.1, if all costs attributable to making the fire alarm system operable,
13 including sale and installation costs, do not exceed five hundred dollars (\$500),
14 and the licensee complies with the requirements set forth in Section 7159.9.

15 (4) This section does not apply to any costs associated with monitoring a burglar
16 or fire alarm system.

17 (5) Failure by the licensee, his or her agent or salesperson, or by a person subject
18 to be licensed under this chapter, to provide the specified information, notices, and
19 disclosures in the contract, or to otherwise fail to comply with any provision of
20 this section, is cause for discipline.

21 (b) For purposes of this section, “home improvement contract” means an
22 agreement, whether oral or written, or contained in one or more documents,
23 between a contractor and an owner or between a contractor and a tenant,
24 regardless of the number of residence or dwelling units contained in the building
25 in which the tenant resides, if the work is to be performed in, to, or upon the
26 residence or dwelling unit of the tenant, for the performance of a home
27 improvement, as defined in Section 7151, and includes all labor, services, and
28 materials to be furnished and performed thereunder, if the aggregate contract price
29 specified in one or more improvement contracts, including all labor, services, and
30 materials to be furnished by the contractor, exceeds five hundred dollars (\$500).
31 “Home improvement contract” also means an agreement, whether oral or written,
32 or contained in one or more documents, between a salesperson, whether or not he
33 or she is a home improvement salesperson, and an owner or a tenant, regardless of
34 the number of residence or dwelling units contained in the building in which the
35 tenant resides, which provides for the sale, installation, or furnishing of home
36 improvement goods or services.

37 (c) In addition to the specific requirements listed under this section, every home
38 improvement contract and any person subject to licensure under this chapter or his
39 or her agent or salesperson shall comply with all of the following:

40 (1) The writing shall be legible.

1 (2) Any printed form shall be readable. Unless a larger typeface is specified in
2 this article, text in any printed form shall be in at least 10-point typeface and the
3 headings shall be in at least 10-point boldface type.

4 (3)(A) Before any work is started, the contractor shall give the buyer a copy of
5 the contract signed and dated by both the contractor and the buyer. The buyer's
6 receipt of the copy of the contract initiates the buyer's rights to cancel the contract
7 pursuant to Sections 1689.5 to 1689.14, inclusive, of the Civil Code.

8 (B) The contract shall contain on the first page, in a typeface no smaller than
9 that generally used in the body of the document, both of the following:

10 (i) The date the buyer signed the contract.

11 (ii) The name and address of the contractor to which the applicable "Notice of
12 Cancellation" is to be mailed, immediately preceded by a statement advising the
13 buyer that the "Notice of Cancellation" may be sent to the contractor at the address
14 noted on the contract.

15 (4) The contract shall include a statement that, upon satisfactory payment being
16 made for any portion of the work performed, the contractor, prior to any further
17 payment being made, shall furnish to the person contracting for the home
18 improvement or swimming pool work a full and unconditional release from any
19 potential lien claimant claim or mechanic's lien authorized pursuant to ~~Section~~
20 Sections 8400 and 8404 of the Civil Code for that portion of the work for
21 which payment has been made.

22 (5) A change-order form for changes or extra work shall be incorporated into the
23 contract and shall become part of the contract only if it is in writing and signed by
24 the parties prior to the commencement of any work covered by a change order.

25 (6) The contract shall contain, in close proximity to the signatures of the owner
26 and contractor, a notice stating that the owner or tenant has the right to require the
27 contractor to have a performance and payment bond.

28 (7) If the contract provides for a contractor to furnish joint control, the
29 contractor shall not have any financial or other interest in the joint control.

30 (8) The provisions of this section are not exclusive and do not relieve the
31 contractor from compliance with any other applicable provision of law.

32 (d) A home improvement contract and any changes to the contract shall be in
33 writing and signed by the parties to the contract prior to the commencement of
34 work covered by the contract or an applicable change order and, except as
35 provided in paragraph (8) of subdivision (a) of Section 7159.5, shall include or
36 comply with all of the following:

37 (1) The name, business address, and license number of the contractor.

38 (2) If applicable, the name and registration number of the home improvement
39 salesperson that solicited or negotiated the contract.

40 (3) The following heading on the contract form that identifies the type of
41 contract in at least 10-point boldface type: "Home Improvement."

1 (4) The following statement in at least 12-point boldface type: “You are entitled
2 to a completely filled in copy of this agreement, signed by both you and the
3 contractor, before any work may be started.”

4 (5) The heading: “Contract Price,” followed by the amount of the contract in
5 dollars and cents.

6 (6) If a finance charge will be charged, the heading: “Finance Charge,” followed
7 by the amount in dollars and cents. The finance charge is to be set out separately
8 from the contract amount.

9 (7) The heading: “Description of the Project and Description of the Significant
10 Materials to be Used and Equipment to be Installed,” followed by a description of
11 the project and a description of the significant materials to be used and equipment
12 to be installed. For swimming pools, the project description required under this
13 paragraph also shall include a plan and scale drawing showing the shape, size,
14 dimensions, and the construction and equipment specifications.

15 (8) If a downpayment will be charged, the details of the downpayment shall be
16 expressed in substantially the following form, and shall include the text of the
17 notice as specified in subparagraph (C):

18 (A) The heading: “Downpayment.”

19 (B) A space where the actual downpayment appears.

20 (C) The following statement in at least 12-point boldface type:

21 **“THE DOWNPAYMENT MAY NOT EXCEED \$1,000 OR 10 PERCENT OF**
22 **THE CONTRACT PRICE, WHICHEVER IS LESS.”**

23 (9) If payments, other than the downpayment, are to be made before the project
24 is completed, the details of these payments, known as progress payments, shall be
25 expressed in substantially the following form, and shall include the text of the
26 statement as specified in subparagraph (C):

27 (A) A schedule of progress payments shall be preceded by the heading:
28 “Schedule of Progress Payments.”

29 (B) Each progress payment shall be stated in dollars and cents and specifically
30 reference the amount of work or services to be performed and materials and
31 equipment to be supplied.

32 (C) The section of the contract reserved for the progress payments shall include
33 the following statement in at least 12-point boldface type:

34 **“The schedule of progress payments must specifically describe each phase of**
35 **work, including the type and amount of work or services scheduled to be supplied**
36 **in each phase, along with the amount of each proposed progress payment. IT IS**
37 **AGAINST THE LAW FOR A CONTRACTOR TO COLLECT PAYMENT FOR**
38 **WORK NOT YET COMPLETED, OR FOR MATERIALS NOT YET**
39 **DELIVERED. HOWEVER, A CONTRACTOR MAY REQUIRE A**
40 **DOWNPAYMENT.”**

41 (10) The contract shall address the commencement of work to be performed in
42 substantially the following form:

1 (A) A statement that describes what constitutes substantial commencement of
2 work under the contract.

3 (B) The heading: “Approximate Start Date.”

4 (C) The approximate date on which work will be commenced.

5 (11) The estimated completion date of the work shall be referenced in the
6 contract in substantially the following form:

7 (A) The heading: “Approximate Completion Date.”

8 (B) The approximate date of completion.

9 (12) If applicable, the heading: “List of Documents to be Incorporated into the
10 Contract,” followed by the list of documents incorporated into the contract.

11 (13) The heading: “Note About Extra Work and Change Orders,” followed by
12 the following statement:

13 “Extra Work and Change Orders become part of the contract once the order is
14 prepared in writing and signed by the parties prior to the commencement of work
15 covered by the new change order. The order must describe the scope of the extra
16 work or change, the cost to be added or subtracted from the contract, and the effect
17 the order will have on the schedule of progress payments.”

18 (e) Except as provided in paragraph (8) of subdivision (a) of Section 7159.5, all
19 of the following notices shall be provided to the owner as part of the contract form
20 as specified or, if otherwise authorized under this subdivision, may be provided as
21 an attachment to the contract:

22 (1) A notice concerning commercial general liability insurance. This notice may
23 be provided as an attachment to the contract if the contract includes the following
24 statement: “A notice concerning commercial general liability insurance is attached
25 to this contract.” The notice shall include the heading “Commercial General
26 Liability Insurance (CGL),” followed by whichever of the following statements is
27 both relevant and correct:

28 (A) “(The name on the license or “This contractor”) does not carry commercial
29 general liability insurance.”

30 (B) “(The name on the license or “This contractor”) carries commercial general
31 liability insurance written by (the insurance company). You may call (the
32 insurance company) at _____ to check the contractor’s insurance coverage.”

33 (C) “(The name on the license or “This contractor”) is self-insured.”

34 (D) “(The name on the license or ‘This contractor’) is a limited liability
35 company that carries liability insurance or maintains other security as required by
36 law. You may call (the insurance company or trust company or bank) at ____ to
37 check on the contractor’s insurance coverage or security.”

38 (2) A notice concerning workers’ compensation insurance. This notice may be
39 provided as an attachment to the contract if the contract includes the statement: “A
40 notice concerning workers’ compensation insurance is attached to this contract.”
41 The notice shall include the heading “Workers’ Compensation Insurance”
42 followed by whichever of the following statements is correct:

1 (A) “(The name on the license or “This contractor”) has no employees and is
2 exempt from workers’ compensation requirements.”

3 (B) “(The name on the license or “This contractor”) carries workers’
4 compensation insurance for all employees.”

5 (3) A notice that provides the buyer with the following information about the
6 performance of extra or change-order work:

7 (A) A statement that the buyer may not require a contractor to perform extra or
8 change-order work without providing written authorization prior to the
9 commencement of work covered by the new change order.

10 (B) A statement informing the buyer that extra work or a change order is not
11 enforceable against a buyer unless the change order also identifies all of the
12 following in writing prior to the commencement of work covered by the new
13 change order:

14 (i) The scope of work encompassed by the order.

15 (ii) The amount to be added or subtracted from the contract.

16 (iii) The effect the order will make in the progress payments or the completion
17 date.

18 (C) A statement informing the buyer that the contractor’s failure to comply with
19 the requirements of this paragraph does not preclude the recovery of compensation
20 for work performed based upon legal or equitable remedies designed to prevent
21 unjust enrichment.

22 (4) A notice with the heading “Mechanics’ Lien Warning” written as follows:

23 “MECHANICS’ LIEN WARNING:

24 Anyone who helps improve your property, but who is not paid, may record what
25 is called a mechanics’ lien on your property. A mechanics’ lien is a claim, like a
26 mortgage or home equity loan, made against your property and recorded with the
27 county recorder.

28 Even if you pay your contractor in full, unpaid subcontractors, suppliers, and
29 laborers who helped to improve your property may record mechanics’ liens and
30 sue you in court to foreclose the lien. If a court finds the lien is valid, you could be
31 forced to pay twice or have a court officer sell your home to pay the lien. Liens
32 can also affect your credit.

33 To preserve their right to record a lien, each subcontractor and material supplier
34 must provide you with a document called a ‘~~20-day~~ Preliminary Notice.’ This
35 notice is not a lien. The purpose of the notice is to let you know that the person
36 who sends you the notice has the right to record a lien on your property if he or
37 she is not paid.

38 BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the
39 subcontractor starts work or the supplier provides material. This can be a big
40 problem if you pay your contractor before you have received the Preliminary
41 Notices.

1 You will not get Preliminary Notices from your prime contractor or from
2 laborers who work on your project. The law assumes that you already know they
3 are improving your property.

4 **PROTECT YOURSELF FROM LIENS.** You can protect yourself from liens by
5 getting a list from your contractor of all the subcontractors and material suppliers
6 that work on your project. Find out from your contractor when these
7 subcontractors started work and when these suppliers delivered goods or materials.
8 Then wait 20 days, paying attention to the Preliminary Notices you receive.

9 **PAY WITH JOINT CHECKS.** One way to protect yourself is to pay with a joint
10 check. When your contractor tells you it is time to pay for the work of a
11 subcontractor or supplier who has provided you with a Preliminary Notice, write a
12 joint check payable to both the contractor and the subcontractor or material
13 supplier.

14 For other ways to prevent liens, visit CSLB's Internet Web site at
15 www.cslb.ca.gov or call CSLB at 800-321-CSLB (2752).

16 **REMEMBER, IF YOU DO NOTHING, YOU RISK HAVING A LIEN**
17 **PLACED ON YOUR HOME.** This can mean that you may have to pay twice, or
18 face the forced sale of your home to pay what you owe.”

19 (5) The following notice shall be provided in at least 12-point typeface:

20 “Information about the Contractors’ State License Board (CSLB): CSLB is the
21 state consumer protection agency that licenses and regulates construction
22 contractors.

23 Contact CSLB for information about the licensed contractor you are
24 considering, including information about disclosable complaints, disciplinary
25 actions, and civil judgments that are reported to CSLB.

26 Use only licensed contractors. If you file a complaint against a licensed
27 contractor within the legal deadline (usually four years), CSLB has authority to
28 investigate the complaint. If you use an unlicensed contractor, CSLB may not be
29 able to help you resolve your complaint. Your only remedy may be in civil court,
30 and you may be liable for damages arising out of any injuries to the unlicensed
31 contractor or the unlicensed contractor’s employees.

32 For more information:

33 Visit CSLB’s Internet Web site at www.cslb.ca.gov

34 Call CSLB at 800-321-CSLB (2752)

35 Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

36 (6)(A) The notice set forth in subparagraph (B) and entitled “Three-Day Right to
37 Cancel,” shall be provided to the buyer unless the contract is:

38 (i) Negotiated at the contractor’s place of business.

39 (ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph (7).

40 (iii) Subject to licensure under the Alarm Company Act (Chapter 11.6
41 (commencing with Section 7590)), provided the alarm company licensee complies
42 with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

1 (B) “Three-Day Right to Cancel

2 You, the buyer, have the right to cancel this contract within three business days.
3 You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the
4 contractor at the contractor’s place of business by midnight of the third business
5 day after you received a signed and dated copy of the contract that includes this
6 notice. Include your name, your address, and the date you received the signed
7 copy of the contract and this notice.

8 If you cancel, the contractor must return to you anything you paid within 10
9 days of receiving the notice of cancellation. For your part, you must make
10 available to the contractor at your residence, in substantially as good condition as
11 you received them, goods delivered to you under this contract or sale. Or, you
12 may, if you wish, comply with the contractor’s instructions on how to return the
13 goods at the contractor’s expense and risk. If you do make the goods available to
14 the contractor and the contractor does not pick them up within 20 days of the date
15 of your notice of cancellation, you may keep them without any further obligation.
16 If you fail to make the goods available to the contractor, or if you agree to return
17 the goods to the contractor and fail to do so, then you remain liable for
18 performance of all obligations under the contract.”

19 (C) The “Three-Day Right to Cancel” notice required by this paragraph shall
20 comply with all of the following:

- 21 (i) The text of the notice is at least 12-point boldface type.
- 22 (ii) The notice is in immediate proximity to a space reserved for the owner’s
23 signature.
- 24 (iii) The owner acknowledges receipt of the notice by signing and dating the
25 notice form in the signature space.
- 26 (iv) The notice is written in the same language, e.g., Spanish, as that principally
27 used in any oral sales presentation.
- 28 (v) The notice may be attached to the contract if the contract includes, in at least
29 12-point boldface type, a checkbox with the following statement: “The law
30 requires that the contractor give you a notice explaining your right to cancel.
31 Initial the checkbox if the contractor has given you a “Notice of the Three-Day
32 Right to Cancel.” “
- 33 (vi) The notice shall be accompanied by a completed form in duplicate,
34 captioned “Notice of Cancellation,” which also shall be attached to the agreement
35 or offer to purchase and be easily detachable, and which shall contain the
36 following statement written in the same language, e.g., Spanish, as used in the
37 contract:

38 “Notice of Cancellation”
39 /enter date of transaction/
40 _____
41 (Date)

1 “You may cancel this transaction, without any penalty or obligation, within
2 three business days from the above date.

3 If you cancel, any property traded in, any payments made by you under the
4 contract or sale, and any negotiable instrument executed by you will be returned
5 within 10 days following receipt by the seller of your cancellation notice, and any
6 security interest arising out of the transaction will be canceled.

7 If you cancel, you must make available to the seller at your residence, in
8 substantially as good condition as when received, any goods delivered to you
9 under this contract or sale, or you may, if you wish, comply with the instructions
10 of the seller regarding the return shipment of the goods at the seller’s expense and
11 risk.

12 If you do make the goods available to the seller and the seller does not pick them
13 up within 20 days of the date of your notice of cancellation, you may retain or
14 dispose of the goods without any further obligation. If you fail to make the goods
15 available to the seller, or if you agree to return the goods to the seller and fail to do
16 so, then you remain liable for performance of all obligations under the contract.”

17 To cancel this transaction, mail or deliver a signed and dated copy of this
18 cancellation notice, or any other written notice, or send a telegram
19 to _____,

20 /name of seller/

21 at _____

22 /address of seller’s place of business/

23 not later than midnight of _____.

24 (Date)

25 I hereby cancel this transaction. _____

26 (Date)

27 _____
28 (Buyer’s signature)

29 (7)(A) The following notice entitled “Seven-Day Right to Cancel” shall be
30 provided to the buyer for any contract that is written for the repair or restoration of
31 residential premises damaged by any sudden or catastrophic event for which a
32 state of emergency has been declared by the President of the United States or the
33 Governor, or for which a local emergency has been declared by the executive
34 officer or governing body of any city, county, or city and county:

35 “Seven-Day Right to Cancel

36 You, the buyer, have the right to cancel this contract within seven business days.
37 You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the

1 contractor at the contractor’s place of business by midnight of the seventh business
2 day after you received a signed and dated copy of the contract that includes this
3 notice. Include your name, your address, and the date you received the signed
4 copy of the contract and this notice.

5 If you cancel, the contractor must return to you anything you paid within 10
6 days of receiving the notice of cancellation. For your part, you must make
7 available to the contractor at your residence, in substantially as good condition as
8 you received them, goods delivered to you under this contract or sale. Or, you
9 may, if you wish, comply with the contractor’s instructions on how to return the
10 goods at the contractor’s expense and risk. If you do make the goods available to
11 the contractor and the contractor does not pick them up within 20 days of the date
12 of your notice of cancellation, you may keep them without any further obligation.
13 If you fail to make the goods available to the contractor, or if you agree to return
14 the goods to the contractor and fail to do so, then you remain liable for
15 performance of all obligations under the contract.”

16 (B) The “Seven-Day Right to Cancel” notice required by this subdivision shall
17 comply with all of the following:

18 (i) The text of the notice is at least 12-point boldface type.

19 (ii) The notice is in immediate proximity to a space reserved for the owner’s
20 signature.

21 (iii) The owner acknowledges receipt of the notice by signing and dating the
22 notice form in the signature space.

23 (iv) The notice is written in the same language, e.g., Spanish, as that principally
24 used in any oral sales presentation.

25 (v) The notice may be attached to the contract if the contract includes, in at least
26 12-point boldface type, a checkbox with the following statement: “The law
27 requires that the contractor give you a notice explaining your right to cancel.
28 Initial the checkbox if the contractor has given you a “Notice of the Seven-Day
29 Right to Cancel.’ “

30 (vi) The notice shall be accompanied by a completed form in duplicate,
31 captioned “Notice of Cancellation,” which shall also be attached to the agreement
32 or offer to purchase and be easily detachable, and which shall contain the
33 following statement written in the same language, e.g., Spanish, as used in the
34 contract:

35 “Notice of Cancellation”

36 /enter date of transaction/
37 _____

38 (Date)

39 “You may cancel this transaction, without any penalty or obligation, within
40 seven business days from the above date.

1 If you cancel, any property traded in, any payments made by you under the
2 contract or sale, and any negotiable instrument executed by you will be returned
3 within 10 days following receipt by the seller of your cancellation notice, and any
4 security interest arising out of the transaction will be canceled.

5 If you cancel, you must make available to the seller at your residence, in
6 substantially as good condition as when received, any goods delivered to you
7 under this contract or sale, or you may, if you wish, comply with the instructions
8 of the seller regarding the return shipment of the goods at the seller's expense and
9 risk.

10 If you do make the goods available to the seller and the seller does not pick them
11 up within 20 days of the date of your notice of cancellation, you may retain or
12 dispose of the goods without any further obligation. If you fail to make the goods
13 available to the seller, or if you agree to return the goods to the seller and fail to do
14 so, then you remain liable for performance of all obligations under the contract.”
15 To cancel this transaction, mail or deliver a signed and dated copy of this
16 cancellation notice, or any other written notice, or send a telegram
17 to _____,

18 /name of seller/

19 at _____

20 /address of seller's place of business/

21 not later than midnight of _____.

22 (Date)

23 I hereby cancel this transaction. _____

24 (Date)

25 _____
26 (Buyer's signature)

27 **Comment.** Paragraph (4) of subdivision (c) of Section 7159 is amended to correct a cross-
28 reference.

29 Paragraph (4) of subdivision (e) is amended to add a nonsubstantive clarification. See Civ.
30 Code § 8034 (“preliminary notice”).

31 **Bus. & Prof. Code § 7159.5 (amended). Home improvement contract violation**

32 SEC. 2. Section 7159.5 of the Business and Professions Code is amended to
33 read:

34 7159.5. This section applies to all home improvement contracts, as defined in
35 Section 7151.2, between an owner or tenant and a contractor, whether a general
36 contractor or a specialty contractor, that is licensed or subject to be licensed
37 pursuant to this chapter with regard to the transaction.

1 (a) Failure by the licensee or a person subject to be licensed under this chapter,
2 or by his or her agent or salesperson, to comply with the following provisions is
3 cause for discipline:

4 (1) The contract shall be in writing and shall include the agreed contract amount
5 in dollars and cents. The contract amount shall include the entire cost of the
6 contract, including profit, labor, and materials, but excluding finance charges.

7 (2) If there is a separate finance charge between the contractor and the person
8 contracting for home improvement, the finance charge shall be set out separately
9 from the contract amount.

10 (3) If a downpayment will be charged, the downpayment may not exceed one
11 thousand dollars (\$1,000) or 10 percent of the contract amount, whichever is less.

12 (4) If, in addition to a downpayment, the contract provides for payments to be
13 made prior to completion of the work, the contract shall include a schedule of
14 payments in dollars and cents specifically referencing the amount of work or
15 services to be performed and any materials and equipment to be supplied.

16 (5) Except for a downpayment, the contractor may neither request nor accept
17 payment that exceeds the value of the work performed or material delivered.

18 (6) Upon any payment by the person contracting for home improvement, and
19 prior to any further payment being made, the contractor shall, if requested, obtain
20 and furnish to the person a full and unconditional release from any potential lien
21 claimant claim or mechanics lien authorized pursuant to ~~Section 8410~~ Sections
22 8400 and 8404 of the Civil Code for any portion of the work for which payment
23 has been made. The person contracting for home improvement may withhold all
24 further payments until these releases are furnished.

25 (7) If the contract provides for a payment of a salesperson's commission out of
26 the contract price, that payment shall be made on a pro rata basis in proportion to
27 the schedule of payments made to the contractor by the disbursing party in
28 accordance with paragraph (4).

29 (8) A contractor furnishing a performance and payment bond, lien and
30 completion bond, or a bond equivalent or joint control approved by the registrar
31 covering full performance and payment is exempt from paragraphs (3), (4), and
32 (5), and need not include, as part of the contract, the statement regarding the
33 downpayment specified in subparagraph (C) of paragraph (8) of subdivision (d) of
34 Section 7159, the details and statement regarding progress payments specified in
35 paragraph (9) of subdivision (d) of Section 7159, or the Mechanics Lien Warning
36 specified in paragraph (4) of subdivision (e) of Section 7159. A contractor
37 furnishing these bonds, bond equivalents, or a joint control approved by the
38 registrar may accept payment prior to completion. If the contract provides for a
39 contractor to furnish joint control, the contractor shall not have any financial or
40 other interest in the joint control.

41 (b) A violation of paragraph (1), (3), or (5) of subdivision (a) by a licensee or a
42 person subject to be licensed under this chapter, or by his or her agent or
43 salesperson, is a misdemeanor punishable by a fine of not less than one hundred

1 dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment in
2 a county jail not exceeding one year, or by both that fine and imprisonment.

3 (1) An indictment or information against a person who is not licensed but who is
4 required to be licensed under this chapter shall be brought, or a criminal complaint
5 filed, for a violation of this section, in accordance with paragraph (4) of
6 subdivision (d) of Section 802 of the Penal Code, within four years from the date
7 of the contract or, if the contract is not reduced to writing, from the date the buyer
8 makes the first payment to the contractor.

9 (2) An indictment or information against a person who is licensed under this
10 chapter shall be brought, or a criminal complaint filed, for a violation of this
11 section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the
12 Penal Code, within two years from the date of the contract or, if the contract is not
13 reduced to writing, from the date the buyer makes the first payment to the
14 contractor.

15 (3) The limitations on actions in this subdivision shall not apply to any
16 administrative action filed against a licensed contractor.

17 (c) Any person who violates this section as part of a plan or scheme to defraud
18 an owner or tenant of a residential or nonresidential structure, including a
19 mobilehome or manufactured home, in connection with the offer or performance
20 of repairs to the structure for damage caused by a natural disaster, shall be ordered
21 by the court to make full restitution to the victim based on the person's ability to
22 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In
23 addition to full restitution, and imprisonment authorized by this section, the court
24 may impose a fine of not less than five hundred dollars (\$500) nor more than
25 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.
26 This subdivision applies to natural disasters for which a state of emergency is
27 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or
28 for which an emergency or major disaster is declared by the President of the
29 United States.

30 **Comment.** Paragraph (6) of subdivision (a) of Section 7159.5 is amended to correct a cross-
31 reference.

32 **Bus. & Prof. Code § 7159.14 (amended). Service and repair contract**

33 SEC. 3. Section 7159.14 of the Business and Professions Code is amended to
34 read:

35 7159.14. (a) This section applies to a service and repair contract as defined in
36 Section 7159.10. A violation of this section by a licensee or a person subject to be
37 licensed under this chapter, or by his or her agent or salesperson, is cause for
38 discipline.

39 (1) The contract may not exceed seven hundred fifty dollars (\$750).

40 (2) The contract shall be in writing and shall state the agreed contract amount,
41 which may be stated as either a fixed contract amount in dollars and cents or, if a

1 time and materials formula is used, as an estimated contract amount in dollars and
2 cents.

3 (3) The contract amount shall include the entire cost of the contract including
4 profit, labor, and materials, but excluding finance charges.

5 (4) The actual contract amount of a time and materials contract may not exceed
6 the estimated contract amount without written authorization from the buyer.

7 (5) The prospective buyer must have initiated contact with the contractor to
8 request work.

9 (6) The contractor may not sell the buyer goods or services beyond those
10 reasonably necessary to take care of the particular problem that caused the buyer
11 to contact the contractor.

12 (7) No payment may be due before the project is completed.

13 (8) A service and repair contractor may charge only one service charge. For
14 purposes of this chapter, a service charge includes such charges as a service or trip
15 charge, or an inspection fee.

16 (9) A service and repair contractor charging a service charge must disclose in all
17 advertisements that there is a service charge and, when the customer initiates the
18 call for service, must disclose the amount of the service charge.

19 (10) The service and repair contractor must offer to the customer any parts that
20 were replaced.

21 (11) Upon any payment by the buyer, the contractor shall, if requested, obtain
22 and furnish to the buyer a full and unconditional release from any potential lien
23 claimant claim or mechanics lien authorized pursuant to ~~Section 8410~~ Sections
24 8400 and 8404 of the Civil Code for any portion of the work for which payment
25 has been made.

26 (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of subdivision (a) by
27 a licensee or a person subject to be licensed under this chapter, or by his or her
28 agent or salesperson, is a misdemeanor punishable by a fine of not less than one
29 hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by
30 imprisonment in a county jail not exceeding one year, or by both that fine and
31 imprisonment.

32 (1) An indictment or information against a person who is not licensed but who is
33 required to be licensed under this chapter shall be brought, or a criminal complaint
34 filed, for a violation of this section, in accordance with paragraph (4) of
35 subdivision (d) of Section 802 of the Penal Code, within four years from the date
36 of the contract or, if the contract is not reduced to writing, from the date the buyer
37 makes the first payment to the contractor.

38 (2) An indictment or information against a person who is licensed under this
39 chapter shall be brought, or a criminal complaint filed, for a violation of this
40 section, in accordance with paragraph (2) of subdivision (d) of Section 802 of the
41 Penal Code, within two years from the date of the contract or, if the contract is not
42 reduced to writing, from the date the buyer makes the first payment to the
43 contractor.

1 (3) The limitations on actions in this subdivision shall not apply to any
2 administrative action filed against a licensed contractor.

3 (c) Any person who violates this section as part of a plan or scheme to defraud
4 an owner or tenant of a residential or nonresidential structure, including a
5 mobilehome or manufactured home, in connection with the offer or performance
6 of repairs to the structure for damage caused by a natural disaster, shall be ordered
7 by the court to make full restitution to the victim based on the person's ability to
8 pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In
9 addition to full restitution, and imprisonment authorized by this section, the court
10 may impose a fine of not less than five hundred dollars (\$500) nor more than
11 twenty-five thousand dollars (\$25,000), based upon the defendant's ability to pay.
12 This subdivision applies to natural disasters for which a state of emergency is
13 proclaimed by the Governor pursuant to Section 8625 of the Government Code, or
14 for which an emergency or major disaster is declared by the President of the
15 United States.

16 **Comment.** Paragraph (11) of subdivision (a) of Section 7159.14 is amended to correct a cross-
17 reference.

18 **Bus. & Prof. Code § 8513 (amended). Notice to owner by pest control company**

19 SEC. 4. Section 8513 of the Business and Professions Code is amended to read:

20 8513. (a) The board shall prescribe a form entitled "Notice to Owner" that shall
21 describe, in nontechnical language and in a clear and coherent manner using words
22 with common and everyday meaning, the pertinent provisions of this state's
23 mechanics' lien laws and the rights and responsibilities of an owner of property
24 and a registered pest control company thereunder. Each company registered under
25 this chapter, prior to entering into a contract with an owner for work for which a
26 company registration is required, shall give a copy of this "Notice to Owner" to
27 the owner, his or her agent, or the payer.

28 (b) No company that is required to be registered under this chapter shall require
29 or request a waiver of lien rights from any subcontractor, employee, or supplier.

30 (c) Each company registered under this chapter that acts as a subcontractor for
31 another company registered under this chapter shall, within 20 days of
32 commencement of any work for which a company registration is required, give the
33 preliminary notice in accordance with Chapter 2 (commencing with Section 8200)
34 of Title 2 of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent,
35 or the payer.

36 (d) Each company registered under this chapter that acts as a prime contractor
37 for work for which a company registration is required shall, prior to accepting
38 payment for the work, furnish to the owner, his or her agent, or the payer a full and
39 unconditional release from any claim of mechanics lien by any subcontractor
40 entitled to enforce a mechanics' lien pursuant to Section ~~8172~~ 8410 of the Civil
41 Code.

1 (e) Each company registered under this chapter that subcontracts to another
2 company registered under this chapter work for which a company registration is
3 required shall furnish to the subcontractor the name of the owner, his or her agent,
4 or the payer.

5 (f) The provisions of this section shall be applicable only to those registered
6 companies, as defined in Section 8506.1, operating pursuant to a Branch 1 or
7 Branch 3 registration.

8 (g) A violation of the provisions of this section is a ground for disciplinary
9 action.

10 **Comment.** Subdivision (d) of Section 8513 is amended to correct a cross-reference.

11 **Gov't Code § 66499.7 (amended). Release of improvement security**

12 SEC. 5. Section 66499.7 of the Government Code is amended to read:

13 66499.7. The security furnished by the subdivider shall be released in whole or
14 in part in the following manner:

15 (a) Security given for faithful performance of any act or agreement shall be
16 released upon the performance of the act or final completion and acceptance of the
17 required work. The legislative body may provide for the partial release of the
18 security upon the partial performance of the act or the acceptance of the work as it
19 progresses, consistent with the provisions of this section. The security may be a
20 surety bond, a cash deposit, a letter of credit, escrow account, or other form of
21 performance guarantee required as security by the legislative body that meets the
22 requirements as acceptable security pursuant to law. If the security furnished by
23 the subdivider is a documentary evidence of security such as a surety bond or a
24 letter of credit, the legislative body shall release the documentary evidence and
25 return the original to the issuer upon performance of the act or final completion
26 and acceptance of the required work. In the event that the legislative body is
27 unable to return the original documentary evidence to the issuer, the security shall
28 be released by written notice sent by certified mail to the subdivider and issuer of
29 the documentary evidence within 30 days of the acceptance of the work. The
30 written notice shall contain a statement that the work for which the security was
31 furnished has been performed or completed and accepted by the legislative body, a
32 description of the project subject to the documentary evidence and the notarized
33 signature of the authorized representative of the legislative body.

34 (b) At the time that the subdivider believes that the obligation to perform the
35 work for which security was required is complete, the subdivider may notify the
36 local agency in writing of the completed work, including a list of work completed.
37 Upon receipt of the written notice, the local agency shall have 45 days to review
38 and comment or approve the completion of the required work. If the local agency
39 does not agree that all work has been completed in accordance with the plans and
40 specifications for the improvements, it shall supply a list of all remaining work to
41 be completed.

1 (c) Within 45 days of receipt of the list of remaining work from the local
2 agency, the subdivider may then provide cost estimates for all remaining work for
3 review and approval by the local agency. Upon receipt of the cost estimates, the
4 local agency shall then have 45 days to review, comment, and approve, modify, or
5 disapprove those cost estimates. No local agency shall be required to engage in
6 this process of partial release more than once between the start of work and
7 completion and acceptance of all work; however, nothing in this section prohibits
8 a local agency from allowing for a partial release as it otherwise deems
9 appropriate.

10 (d) If the local agency approves the cost estimate, the local agency shall release
11 all performance security except for security in an amount up to 200 percent of the
12 cost estimate of the remaining work. The process allowing for a partial release of
13 performance security shall occur when the cost estimate of the remaining work
14 does not exceed 20 percent of the total original performance security unless the
15 local agency allows for a release at an earlier time. Substitute bonds or other
16 security may be used as a replacement for the performance security, subject to the
17 approval of the local agency. If substitute bonds or other security is used as a
18 replacement for the performance security released, the release shall not be
19 effective unless and until the local agency receives and approves that form of
20 replacement security. A reduction in the performance security, authorized under
21 this section, is not, and shall not be deemed to be, an acceptance by the local
22 agency of the completed improvements, and the risk of loss or damage to the
23 improvements and the obligation to maintain the improvements shall remain the
24 sole responsibility of the subdivider until all required public improvements have
25 been accepted by the local agency and all other required improvements have been
26 fully completed in accordance with the plans and specifications for the
27 improvements.

28 (e) The subdivider shall complete the works of improvement until all remaining
29 items are accepted by the local agency.

30 (f) Upon the completion of the improvements, the subdivider, or his or her
31 assigns, shall be notified in writing by the local agency within 45 days.

32 (g) Within 45 days of the issuance of the notification by the local agency, the
33 release of any remaining performance security shall be placed upon the agenda of
34 the legislative body of the local agency for approval of the release of any
35 remaining performance security. If the local agency delegates authority for the
36 release of performance security to a public official or other employee, any
37 remaining performance security shall be released within 60 days of the issuance of
38 the written statement of completion.

39 (h) Security securing the payment to the contractor, his or her subcontractors
40 and to persons furnishing labor, materials or equipment shall, after passage of the
41 time within which claims of lien are required to be recorded pursuant to Article 3
42 2 (commencing with Section ~~3114~~ 8410) of Chapter 2 4 of Title ~~15~~ 2 of ~~Part 4~~ Part
43 6 of Division 3 4 of the Civil Code and after acceptance of the work, be reduced to

1 an amount equal to the total claimed by all claimants for whom claims of lien have
2 been recorded and notice thereof given in writing to the legislative body, and if no
3 claims have been recorded, the security shall be released in full.

4 (i) The release shall not apply to any required guarantee and warranty period
5 required by Section 66499.9 for the guarantee or warranty nor to the amount of the
6 security deemed necessary by the local agency for the guarantee and warranty
7 period nor to costs and reasonable expenses and fees, including reasonable
8 attorneys' fees.

9 (j) The legislative body may authorize any of its public officers or employees to
10 authorize release or reduction of the security in accordance with the conditions
11 hereinabove set forth and in accordance with any rules that it may prescribe.

12 (k) This section shall remain in effect only until January 1, 2016, and as of that
13 date is repealed, unless a later enacted statute, that is enacted before January 1,
14 2016, deletes or extends that date.

15 **Comment.** Subdivision (h) of Section 66499.7 is amended to correct a cross-reference.
