

Memorandum 2011-4

**Mechanics Lien Law: Clean-Up Legislation
(Comments on 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.

At the December 2010 meeting, the Commission approved a draft tentative recommendation proposing minor clean-up legislation needed to fully effectuate this statutory reorganization, subject to decisions described below. See Minutes (Dec. 2010), p. 3. The Commission also authorized the staff to submit a bill draft request to implement the approved language. *Id.* That step was necessary in order to meet the deadlines for introduction of implementing legislation in 2011.

One significant change was made to the draft tentative recommendation. In response to a request by the Building Industry Credit Association (hereafter, “BICA”), the Commission decided to add a provision to the tentative recommendation. The new provision would amend Civil Code Section 8422 to delete a reference to “slander of title” and would replace it with language drawn closely from Section 3118. The Commission directed the staff to draft the necessary language and present it to the Chair for review and approval prior to the release of the tentative recommendation.

Comments on the tentative recommendation have been submitted by the following stakeholders, and are attached as an Exhibit:

	<i>Exhibit p.</i>
• William Porter, Sacramento (1/24/11)	1
• John Nicolaus, American Society of Landscape Architects (1/27/11)	2
• Dale Ortmann, Building Industry and Credit Association (2/7/11)	3

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.

The Commission needs to decide whether to approve the tentative recommendation as a final recommendation, with or without changes, for submission to the Legislature and the Governor.

Except as otherwise indicated, all statutory references in this memorandum are to the Civil Code.

PROPOSED REVISION OF SECTION 8422

Section 8422, which was added on the Commission's recommendation as part of the recodification of mechanics lien law, generally addresses when a claim of lien submitted by a lien claimant will be invalidated. The section (and its Comment) presently read as follows:

8422. (a) Except as provided in subdivision (b), erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, the work provided, or the description of the site, does not invalidate the claim of lien.

(b) Erroneous information contained in a claim of lien relating to the claimant's demand, credits and offsets deducted, or the work provided, invalidates the claim of lien if the court determines either of the following:

(1) The claim of lien was made with intent to slander title or defraud.

(2) An innocent third party, without notice, actual or constructive, became the bona fide owner of the property after recordation of the claim of lien, and the claim of lien was so deficient that it did not put the party on further inquiry in any manner.

Comment. Section 8422 combines the substance of former Sections 3118 and 3261. The terminology of the combined provision is conformed to Section 8416 (contents of claim of lien).

Subdivision (b)(1) expands the bases for invalidity to include intent to slander title.

See also Sections 8004 ("claimant"), 8048 ("work"), 8026 ("lien"), 8040 ("site").

At the December 2010 meeting, the Commission decided to delete the reference to "intent to slander title" (which is not part of former law), and replace it with language drawn closely from former Section 3118.

Intent to Slander Title

As discussed at the December 2010 meeting, BICA was concerned that a reference to "intent to slander title" as a basis for *defending* against a lien claim

might be misunderstood as authorizing an *affirmative cause of action* for slander of title. Memorandum 2010-53, Exhibit pp. 1-3. As BICA pointed out, under existing case law such a cause of action is generally understood to be barred, as a lien claim is deemed to be a privileged publication under Section 47.

The Commission was persuaded that the potential for confusion on that point was a legitimate concern. As neither the Commission nor the Legislature had intended that Section 8422 authorize an affirmative action for slander of title, the Commission decided to delete the reference to an intent to slander title.

Addition of Language From Section 3118

In order to avoid any possible gap in the mechanics lien law that might result from the deletion of the slander of title language, the Commission decided to add language drawn from Section 3118, so as to clearly continue the substance of that former provision. Section 3118 provides:

3118. Any person who shall willfully include in his claim of lien labor, services, equipment, or materials not furnished for the property described in such claim shall thereby forfeit his lien.

The revision prepared by the staff would add a new subdivision (c) to Section 8422, which would continue the existing language almost verbatim (with minor changes to avoid gendered pronouns, delete the word “such,” and add a comma to make the provision easier to understand):

8422. (a) Except as provided in ~~subdivision (b)~~ subdivisions (b) and (c), erroneous information contained in a claim of lien relating to the claimant’s demand, credits and offsets deducted, the work provided, or the description of the site, does not invalidate the claim of lien.

(b) Erroneous information contained in a claim of lien relating to the claimant’s demand, credits and offsets deducted, or the work provided, invalidates the claim of lien if the court determines either of the following:

(1) The claim of lien was made with intent to ~~slander title or~~ defraud.

(2) An innocent third party, without notice, actual or constructive, became the bona fide owner of the property after recordation of the claim of lien, and the claim of lien was so deficient that it did not put the party on further inquiry in any manner.

(c) Any person who shall willfully include in a claim of lien labor, services, equipment, or materials not furnished for the property described in the claim, shall thereby forfeit the person’s lien.

Comment. Section 8422 is amended to avoid any misunderstanding that might result from the reference to slander of title. Subdivision (c) continues former Section 3118 without substantive change.

COMMENT FROM STAKEHOLDERS

The Commission has received three brief comments on the tentative recommendation from stakeholders, including BICA. Exhibit pp. 1, 2, 3. All of the comments are supportive, and none of the commenters raise any objection to any aspect of the tentative recommendation.

Recommendation

The staff recommends that **the Commission approve the tentative recommendation as a final recommendation for submission to the Legislature.**

Respectfully submitted,

Steve Cohen
Staff Counsel

**EMAIL FROM WILLIAM L. PORTER, PORTER LAW GROUP
(JANUARY 24, 2011)**

Hello Steve,

I hope you are well. I just wanted you to know that we ran the SB 189 clean up legislation by those on the Attorney SB 189 Lien Law Revision Committee as well as with others. The only item that really seemed to merit any discussion at all was the “slander of title” issue from 8422, but no change was suggested. I believe that all the participants in the Committee and from the broader group who chimed in on the subject are fine with the clean up legislation. I am aware of no objections to the clean up language and I received no requests for further revisions or additions to the language. I therefore conclude that we are “good to go” with the clean up language as you have drafted it.

Thank you for your continuing work on SB 189. If you have any questions please don't hesitate to contact me.

Thanks,

Bill

William L. Porter





AMERICAN SOCIETY OF LANDSCAPE ARCHITECTS

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January 27, 2011

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via email

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Re: Incorporation of the Profession of Landscape Architecture into Mechanics Lien Law Language

Dear Mr. Cohen:

As you know, the California Council of the American Society of Landscape Architects has been in contact with your office, and is very supportive of the revisions you have made to include reference in the law to our profession as it pertains to liens.

Thank you for your support to date, and for including the term 'Landscape Architects' in language where appropriate. We have reviewed the Draft as it stands, and have no comments, only to remind you and your committee that Section 5615 of the State Business and Professions Code defines the profession of Landscape Architecture, which formed the basis for our request for said inclusion initially.

If any questions arise relative to the profession of Landscape Architecture or if we can support you in any way possible to be assured that we will be included in this revision, please do not hesitate to contact us.

Thank you again for your cooperation and assistance on this very important matter.

Very truly yours,
California Council American Society of Landscape Architects

John H. Nicolaus, FASLA
President

cc: CCASLA Executive Committee

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February 7, 2011

VIA EMAIL AND U.S. MAIL

Steve Cohen, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: SB 189 - Comment Regarding December 15, 2010 "Mechanic's Lien Law"
Cleanup Legislation (Draft Tentative Recommendation)

Dear Mr. Cohen:

As you know, the offices of the undersigned are general counsel to the Building Industry and Credit Association ("BICA"). On December 14, 2010, we corresponded with you, expressing concern about certain language within new *Civil Code* §8422, and subsequently attended a meeting to discuss this with the Commission.

We have reviewed the proposed amended language in *Civil Code* §8422 which is annexed to the Commission's tentative recommendation for clean up legislation. The proposed amendment satisfactorily addresses BICA's concern.

We appreciate the Commission's consideration in response to BICA's concerns. Please contact the undersigned should you have further questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dale A. Ortmann', written in a cursive style.

Dale A. Ortmann

DAO:ljs

cc: Eddie Bernacchi, Politico Group (via email)
Andrea Parisi, BICA (via email)

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EX 3