June 2006

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

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN September 30, 2006.

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.
SUMMARY OF TENTATIVE RECOMMENDATION

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

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

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

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

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

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

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

The letter noted the existing general authority of the Commission in this area,\(^2\) and suggested that the Commission prioritize the matter.

The Commission agreed to the request and commenced work on the study. This recommendation represents the completion of that work; it is preceded by two interim recommendations\(^3\) and a prospectus for reform.\(^4\) Consistent with the Judiciary Committee’s vision, the Commission intends that this recommendation make the existing law more understandable and usable, establishing a foundation on which the Legislature may make improvements in the future.

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1. See Letter from Assembly Members Sheila James Kuehl (Chair) and Rod Pacheco (Vice Chair), to Nat Sterling (Executive Secretary, California Law Revision Commission), June 28, 1999 (attached to Commission Staff Memorandum 99-85 (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 2006 Cal. Stat. res. ch. 1.
BACKGROUND OF RECOMMENDATION

MECHANICS LIEN LAW IN PERSPECTIVE

Forces at Work
The construction industry represents about 3.5% of California’s gross domestic product — roughly $50 billion annually (combined residential and nonresidential construction). The industry employs about 4.5% of California’s workforce — somewhere around 800,000 workers. These numbers fluctuate greatly with general economic conditions.

Stakeholders involved in a typical project may include the owner of the property being improved (as well as co-owners, and perhaps the owner of a less than fee interest such as a leasehold or easement), the construction lender (or lenders), a surety company (or companies), a design professional (or professionals), a construction manager, a prime contractor, multiple subcontractors, multiple materials suppliers and equipment lessors, and laborers, among others. Their relationships and obligations to each other may be spelled out in detailed contractual arrangements that are subsequently ignored or altered orally with change orders. The practice in the industry is to extend credit readily and rely on prompt payment. Many of the stakeholders may not be well capitalized, and the default of one may trigger a chain reaction resulting in nonpayment of many. In addition, disputes over construction delays or quality are not uncommon, triggering withholding of payment and the problems that engenders.

Ultimately, the improved property stands as security for the entire project. With numerous parties, and many adverse interests involved, the mechanics lien law is the focus of ongoing pressure as each party tries, legitimately, to protect its interest.

Construction Contract Remedies
The “mechanics lien law” is a loosely used term, referring generally to the construction contract remedies for a work of improvement provided in the Civil Code. Those remedies include not only lien rights for site work and for construction, but also a garnishment remedy (the stop notice), a bond remedy (the payment bond), and various other prompt payment rights and remedies.

10. See, e.g., Civ. Code §§ 3110.5 (security for large project), 3260 (retention payment), 3260.2 (stop work notice).
The mechanics lien law applies to both private work and public works contracts. However, the lien itself is unavailable for a public works contract — the principal public works contract remedies are the stop notice and the payment bond. Related construction contract remedies that are not part of the mechanics lien law include the design professionals lien\(^\text{11}\) and licensing remedies found in the Contractors’ State License Law.\(^\text{12}\)

**Operation of Mechanics Lien Law**

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

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

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

**HISTORY OF CALIFORNIA STATUTE**

**Constitution**

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

\(^{11}\) Civ. Code §§ 3081.1-3081.10.

\(^{12}\) Bus. & Prof. Code §§ 7000-7191.
Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

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

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

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

Today’s mechanics lien law still contains language dating back to the 1872 codification and before. The 1951 and 1969 recodifications continued much of the pre-existing language and were not intended to be substantive reforms. The statute has been amended more than 70 times in the 35 years since the 1969 recodification.

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

SUMMARY OF CALIFORNIA STATUTE

Key features of the California mechanics lien law and its operation are summarized below. The summary includes a discussion of policy considerations,

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

**Policy Considerations**

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

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

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

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

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

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

**Mechanics Lien**

A mechanics lien gives a claimant a security interest in real property, similar to that provided by a deed of trust or mortgage. It secures for a claimant a right to be

paid from funds generated by sale of the owner’s property. A lien claimant that
complies with all steps necessary may foreclose the lien.

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

Property Subject to Lien
The mechanics lien attaches to the work of improvement for which the claimant
provided work or material. A claimant cannot assert a lien on other property of the
owner not related to the work of improvement.
A mechanics lien applies only to a private work of improvement. There is no
lien right on property owned by the government. A claimant on a public work of
improvement is not without a remedy. On a state or local public work, an unpaid
subcontractor or supplier has stop notice and payment bond rights. On a federal
public work, an unpaid subcontractor or supplier has a right against the Miller Act
payment bond.

Persons Entitled To Claim Lien
The class of persons entitled to claim a lien includes a contractor, subcontractor,
supplier, equipment lessor, architect, engineer, land surveyor, builder, trucker,
laborer, and any other person that furnishes labor or material used in a work of
improvement. To be entitled to claim a lien the claimant must contribute work or
material to a “work of improvement” (a project intended permanently to improve
specific property) at the request of the owner, the owner’s agent, or the owner’s
statutory agent. The owner’s contractor on the project is considered to be the
owner’s agent.
While the list of lien claimants is expansive, not every person that furnishes
labor or material that ultimately is used in a work of improvement is entitled to
claim a lien. A supplier to a general contractor or subcontractor has a lien right,
but a supplier to another supplier does not. For example, a sawmill that furnishes
lumber to a lumber yard is not entitled to a lien. In addition, the labor or material
provided must contribute to a permanent improvement of the property. Thus, a
landscape contractor that supplies and installs plants has a lien right, but one that
simply maintains existing landscaping does not.
An unlicensed contractor is barred from enforcing a mechanics lien to recover
the amount due for the work.
A right to assert a mechanics lien does not generally exist until visible work
begins on a work of improvement. However, California has a separate lien statute
that allows an architect, engineer, or surveyor to recover for services provided
before a work of improvement has commenced.
Effect of Lien

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

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

The lien is for the lesser of the reasonable value of the labor, services, equipment, or material furnished or for the price agreed upon, including change orders and extras. Attorney’s fees cannot be included in the amount of the lien.

Lien Priority

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

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

Procedures for Enforcing Lien Claim

Three steps are required to perfect a claim of lien:

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

Preliminary Notice

The preliminary 20-day notice is required of all claimants except a person that directly contracts with the owner of the property or a person that performs actual labor for wages. The notice protects an owner or lender against a “secret lien.” An owner or lender is given the identity of a potential lien claimant so that it may take the necessary measures to insure that a potential lien claimant is paid.
The 20-day preliminary notice must describe the work or material provided and give an estimate of the total cost, together with a warning in statutory language that the property might be subject to a mechanics lien.

The preliminary notice protects the lien right beginning 20 days before the notice is given. Delay in giving the notice does not bar the lien claim entirely — it only bars the claim for work performed more than 20 days before the notice was given.

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

The contractors license law makes it mandatory that a licensed contractor give the 20-day preliminary notice.

Notice and Claim of Lien

The lien is recorded in the county recorder’s office in the county in which the property is located. The lien must contain a description of the work or material supplied and a statement of the balance due (willful misstatement of the amount provided or due invalidates the lien).

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

Completion

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

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

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

**Foreclosure Action**

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

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

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

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

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

**Arbitration**

Many construction contracts contain an arbitration clause, requiring the parties to submit a dispute, including a payment dispute, to binding arbitration. Filing a demand for arbitration is not sufficient to protect a claimant’s lien right. Suit must be timely filed in the proper court.

A claimant desiring to protect both its right to arbitration and its lien right must timely file the foreclosure suit in the proper court, along with an allegation of intent to preserve arbitration rights or an application for an order staying the litigation pending the outcome of the arbitration proceeding. A motion to stay litigation pending arbitration must be noticed within 30 days after service of summons in the foreclosure proceeding.

**Stop Notice Right**

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

A stop notice must include a description of the work performed, the value of the work already done and the value of the entire work agreed to be done, and the balance due.
If the stop notice is forwarded to a construction lender, it may also include (1) a request for notice in the event that the construction lender elects not to withhold funds on the ground that a payment bond has been previously recorded and (2) a self-addressed envelope for the lender to use in furnishing the claimant with a copy of the recorded payment bond.

As with a mechanics lien, serving a preliminary 20-day notice is a prerequisite to asserting a stop notice. A stop notice must be given before the expiration of the time within which to record a mechanics lien.

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

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

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

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

**Protection of Owner and Construction Lender**

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

**Lien Release**

The owner and lender may insist on receiving a statutory release form before making payment. In order to be effective, the release must be in the form prescribed by the statute.

**Retention**

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

**Notice of Completion**

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

**Payment Bond**

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

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

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

**Lien Release Bond**

An owner or contractor may remove a lien claim from the title by recording a lien release bond. The bond must be executed by a corporate surety in 1-1/2 times the amount of the claim of lien. The bond obligates the surety to pay any sum the lien claimant may recover on the claim, together with costs of suit.

On recording a release bond, the owner’s property is released from the lien and from any action brought to foreclose the lien. The bond becomes substitute security — the lien claimant is protected by the financial solvency of the surety, and the owner is free to sell or finance its property pending the outcome of the lien foreclosure action. The lien claimant has six months from notice of the bond to file its action against the surety.

**Attacking Lien by Motion**

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

**REFORM OF CALIFORNIA LAW**

**CONTEXT OF MECHANICS LIEN LAW**

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

The mechanics lien and stop notice rights are not the only remedies available to the construction industry. Other remedies include liability under a theory of contract, prompt payment statute, quasi-contract, common law tort, attachment, constructive trust, and imputed liability.\textsuperscript{17} But the mechanics lien and stop notice are undoubtedly the most effectual of the remedies. They are quick, and the claimant need take no further action because as a practical matter the owner will settle rather than have the property encumbered by a lien or have construction come to a halt due to interruption of the flow of funds.

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

\textbf{General Approach}

The Law Revision Commission has undertaken this review and revision of the mechanics lien law and related provisions in order to modernize, simplify, and clarify the law, making it more user friendly, efficient, and effective for all stakeholders.\textsuperscript{18}

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

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

\textbf{Moderate Revision of Existing Statute}

The moderate approach starts with the existing statute and seeks to improve the law by simplifying and streamlining within the existing statutory framework. This approach offers a number of advantages. It makes revisions within a known


\textsuperscript{18} See also Mechanic’s Lien Law Reform, 31 Cal. L. Revision Comm’n Reports 343 (2001).
structure, enabling a stakeholder to understand and evaluate the effect of proposed changes in the law. It preserves to a maximum extent the knowledge, experience, and body of interpretation accumulated over years of operation under the existing scheme. It reflects the Commission’s experience that often reform of the law in a highly contentious area must proceed on an evolutionary rather than revolutionary basis.

Radical Revision of Existing Statute

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

The California statutes have evolved for more than 150 years and are lengthy, ambiguous, technical, and hard to understand. One Commission consultant has advocated radical simplification, maintaining the need for reform is self-evident, and making the following indictment of the existing statute:19

- The right of a supplier of materials to enforce a mechanics lien claim depends on a meaningless distinction — whether the materials were ordered by a contractor or another supplier.
- A design professionals lien is provided for under a separate and confusing set of rules.
- The time periods for recording and enforcing claims are unduly complex and confusing and the time period dealing with enforcement of a stop notice is different from that governing the enforcement of a mechanics lien.
- A stop notice claim includes attorney’s fees but a mechanics lien claim does not.
- It takes a court action to clear a mechanics lien claim from title if an enforcement action has not timely been filed.
- The preliminary notice requirement is lengthy, complex, and unduly technical.
- The definition of “completion” for a work subject to acceptance by a public agency is different from the definition of “completion” for all other works.
- A developer under certain circumstances has the right to record an early notice of completion and thus take potential claimants by surprise.
- An extraordinarily complex and ambiguous statute imposes on certain project owners the obligation to furnish a payment bond.
- Venue requirements are unduly technical.
- The provisions allowing arbitration of mechanics lien claims are complex and can lead to injustice.
- A superfluous and unused provision allows a preliminary 20-day notice to be recorded.

19. See comments of James Acret in Commission Staff Memorandum 2004-4 (available from the Commission, www.clrc.ca.gov). Mr. Acret states, “The present statute is an unruly beast that cannot easily be beaten into submission. This writer believes that the mechanics lien statute should be rewritten from scratch rather than redlined. That approach got us to where we are now!”
• A complex set of time limits and procedures governs recording of a notice of nonresponsibility.

• The statutory release forms imposed by the legislature are complex and misleading.

• An unnecessary separate preliminary notice requirement applies to a payment bond claim.

• More than a dozen separate statutes establish prompt payment requirements for different classes of debtors and creditors and their inconsistent and conflicting provisions should be simplified and provided for in a single paragraph.

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

Uniform Construction Lien Act (1987)

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

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

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

Commission Recommendation

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

A practical consideration is the politics of this area of law. Given the many competing interests that aggressively seek to protect their rights in the legislative process, proposed legislation that does not continue existing stakeholder

protections is unlikely to fare well. Radical simplification cannot be achieved unless stakeholders believe that on balance their interests are adequately protected. The Commission’s experience to date is that stakeholders in the construction industry are unwilling to engage in a balancing process if that may result in erosion of any existing protections.21

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

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

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

DRAFTING CONSIDERATIONS

Drafting Approach

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

Because the technical revisions are so minor and so numerous, they are not generally noted in this part of the recommendation. However, each section of the proposed law includes a Comment that identifies its source in existing law, and details the more significant technical revisions. In addition, this recommendation

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

includes a disposition table that points to the specific location in the proposed law of each provision of existing law.

Location, Numbering, and Organization of Statute

The mechanics lien law has been housed in various places in the California codes during its long career. Most recently it resided in the Code of Civil Procedure, before being moved to its current Civil Code location in 1969. The proposed law relocates the statute to the end of the Civil Code, at Section 7000 et seq. The relocation accomplishes several purposes. It will avoid the confusing situation of using old section numbers for new and different provisions under the reorganized statute. It will position the statute in an easy-to-find spot at the end of the code. And the new location will allow room for future expansion of the law without having to resort to hybrid decimal numbering. If the history of the mechanics lien law teaches us anything, it is that the statute will undergo continuing revision.

One concern is that relocating the statute will necessitate conforming revisions to nearly 100 other code sections that cross-refer to the mechanics lien law. However, the vast majority of the cross-references are to the public work portions of the mechanics lien law. These will require revision in any event, to reflect relocation of the public work provisions of the mechanics lien law to the Public Contract Code.

Public Works Contract

Public works contract remedies are physically located in the mechanics lien law. This placement is confusing because the lien remedy is not available for a public works contract dispute. The principal remedies for a public works contract dispute are the stop payment notice and the payment bond. The mechanics lien law deals with stop payment notices and payment bonds for both private work and public work. But there is no commonality among the private work and public work statutes; each statute is sui generis. At the time the public work remedies were originally incorporated into the mechanics lien law, the Public Contract Code did not exist. That code was created

25. See “Conforming Revisions” below.
in 1981.\textsuperscript{29} It seeks to consolidate statutory material relating to public contracts because “placing all public contract law in one code will make that law clearer and easier to find.”\textsuperscript{30}

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

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

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

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

### Design Professionals Lien

An architect, engineer, or land surveyor that provides design services to the owner and is not paid is entitled to a lien under the mechanics lien law.\textsuperscript{32} The mechanics lien right of a design professional is supplemented by a separate statutory lien — the design professionals lien.\textsuperscript{33}

\begin{itemize}
  \item \textsuperscript{29} 1981 Cal. Stat. ch. 306.
  \item \textsuperscript{30} Pub. Cont. Code § 100.
  \item \textsuperscript{31} Pub. Cont. Code § 7103.
  \item \textsuperscript{32} Civ. Code § 3110.
  \item \textsuperscript{33} Civ. Code §§ 3081.1-3081.10.
\end{itemize}
The design professionals lien was enacted in 1990. It is intended to cover the situation where services are provided by a design professional but construction on the work of improvement is not commenced.34

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

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

**Terminology**

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

Some terms are defined and never used, such as “materialman”36 and “subdivision”.37 Others are defined, but largely unused in later provisions, such as “site”,38 which is ignored in favor of references to land, real property, or jobsite. Some are defined and used only once, such as “notice of nonresponsibility”.39

Archaic language, such as the references to flumes and aqueducts in the definition of “work of improvement”40 should be eliminated or subsumed in general language.

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34. 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).
35. See, e.g., Civ. Code §§ 3083 (bonded stop notice), 3084 (claim of lien), 3092 (notice of cessation), 3093 (notice of completion).
The proposed law cleans up and systematizes the statutory definitions for consistent usage throughout the mechanics lien law and related remedies. Two terminological issues are noteworthy.

“Mechanics Lien”

The proposed law retains the term “mechanics lien”, even though it is a 19th century relic. Despite the archaism, there is a common understanding of its meaning in the construction industry, and it is useful shorthand. The existing statute, however, rarely uses the term. The law provides a number of liens besides the “mechanics” lien, including the site improvement lien and the design professionals lien. The proposed law follows the current practice of referring to a particular lien, where appropriate, without attaching a label to it.

“Original Contractor”

Existing law distinguishes between an “original contractor” — one who contracts directly with the owner — and other contractors such as a subcontractor, who does not contract directly with the owner. The distinction is important, since questions of privity, notice, and the like, depend on it. The term “original contractor” is confined to the mechanics lien law; it does not appear to be in common use outside of the statute. Terms more commonly in use in the construction industry include “prime contractor” and “general contractor”. None of these terms is completely satisfactory, particularly in the owner-builder context.

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

Operative Date and Transitional Provisions

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

The proposed law would apply to existing as well as new contracts. However, any notice given or action taken before the operative date of the new law would be governed by the applicable law in effect at that time and not by the new law.

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

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

NOTIFICATION

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

Terminology

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

Many of the notice provisions require information to the extent “known” to the person giving the notice. The proposed law codifies an objective standard of knowledge — such a requirement applies to information the person knows or should have known.

Contents of Notice

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

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

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

- The name and address of the owner or reputed owner.
- The name and address of the direct contractor.
- The name and address of the construction lender, if any.
• A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.

• The name, address, and relationship to the parties of the person giving the notice.

• If the person giving the notice is a claimant:
  (1) A general statement of the kind of labor, services, equipment, or material provided.
  (2) The name of the person to or for which the labor, services, equipment, or material is provided.
  (3) A statement of the claimant’s demand, after deducting all just credits and offsets.

**Manner of Notice**

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

Mailed notice ordinarily must be given by registered or certified mail. A few notices may be given by first class mail evidenced by a certificate of mailing. Some notice requirements do not specify a manner — the information is simply communicated by notifying a person, making a demand, advising a person, providing a copy, making information available, and so on. The statute does not indicate how this is to be done.

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

**Mailed Notice**

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

**Posted Notice**

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

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

**Recorded Notice**

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

A unique feature of the mechanics lien law is that, while generally an instrument is not recordable unless acknowledged, both a claim of lien and a notice of completion must be accepted by the recorder and are deemed duly recorded without acknowledgment. These provisions reflect a legislative judgment that verification provides sufficient proof of authenticity and that a faster and more efficient recording procedure is desirable for mechanics liens. The proposed law generalizes these provisions for application throughout the mechanics lien law.

**Electronic Notice**

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

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

Much of the construction industry remains paper based, however, and the law should move slowly in this area. The proposed law makes clear that electronic notification is permissible only where the party to be notified has agreed to receive the notice by electronic means.

This approach is consistent with the California Uniform Electronic Transactions Act. It is possible, but it has not yet been determined, that the agreement

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43. These are the notice of nonresponsibility, and its cancellation, as well as the stop work notice.
44. See Gov’t Code § 27287.
47. 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’
provisions of California law are preempted by the federal Electronic Signatures in Global and National Commerce Act, which contains more extensive requirements for consent in the case of a consumer.\textsuperscript{48} To ensure that the California law is compliant in the event of federal preemption, the proposed law requires that in the case of a consumer construction contract, federal standards must be satisfied.

**Proof of Notice**

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

**Proof of Mailing**

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

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

\begin{enumerate}
\item A return receipt, delivery confirmation, signature confirmation, or other proof of delivery or attempted delivery provided by the United States Postal Service.
\item A proof of mailing certified by the United States Postal Service.
\item A tracking record certified by an express service carrier showing delivery or attempted delivery.
\end{enumerate}

It should be noted that the United States Postal Service’s certificate of mailing shows only that something was mailed, not that it was delivered. However, the United States mail is reasonably reliable, and proof of mailing may be sufficient.

The Law Revision Commission seeks comment of people in the industry about their experience with the reliability of mail delivery by the United States Postal Service.

\textsuperscript{48}. 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.
Proof of Personal Delivery

The proposed law includes general provisions on proof of notice by personal delivery. The provisions are generalized from the proof of delivery models in the statutes governing preliminary notice and the stop work notice.\(^\text{49}\)

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

Address at Which Notice is Given

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

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

- If the person to be notified is an owner, at the address shown on the contract, the building permit, or a construction trust deed.
- If the person to be notified is a construction lender, at the address shown on the construction loan agreement or construction trust deed.
- If the person to be notified is a direct contractor, at the address shown on the contract or building permit, or on the records of the Contractors’ State License Board.
- If the person to be notified is a claimant, at the address shown on the contract, preliminary notice, claim of lien, stop payment notice, or claim against a payment bond, or on the records of the Contractors’ State License Board.
- If the person to be notified is the principal or surety on a bond, at the address provided in the bond for service of notices, papers, and other documents.

When Notice is Complete

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

- If given by personal delivery, when delivered.
- If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.
- If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after leaving the notice.

\(^{49}\) See Civ. Code §§ 3097, 3199, 3260.2.
• If given by posting, when posted.
• If given by recording, when filed for record in the office of the county recorder.

COMMENCEMENT AND COMPLETION

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; the proposed law codifies the cases in order to make the concept clear and accessible.

Completion of a work of improvement triggers time limits for recording a claim of lien, enforcing the liability on a payment bond, and paying the direct contractor a retention withheld by the owner, among other consequences. Completion may be deemed to have occurred in a number of circumstances, in addition to actual completion, for purposes of triggering time limits. For example, completion occurs 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.

Acceptance by Owner

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

Acceptance by Public Entity

Under existing law, if a work of improvement “is subject to acceptance by any public entity,” completion is deemed to be the date of acceptance by the public entity. The provision has been construed to apply to private work that includes elements of public dedication.

50. 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).

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

52. See Civ. Code § 3086.


54. See, e.g., A.J. Raisch Paving Co. v. Mountain View Sav. & Loan Ass’n, 28 Cal. App. 3d 832, 105 Cal. Rptr. 96 (1972) (private developer’s contract for installation of streets, sewers, landscaping, etc., in
Practitioners have suggested that this provision should be eliminated. The apparent purpose of the provision is to hold the lien claim period open so that, in a dedication situation, the owner can require the contractor to make changes demanded by the public entity as a condition to acceptance. The Law Revision Commission requests public comment on whether this provision in fact serves a useful purpose.

Notice of Completion

The owner may shorten applicable time limits by recording a notice of completion. The owner may also record a notice of cessation of labor, which is deemed completion. Recordation of the notice triggers the statutory period for a claimant to record a claim of lien.

Consolidation of Notice of Completion and Notice of Cessation

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

Time for Recording Notice of Completion

A notice must be recorded within 10 days after the date of actual completion or it is ineffective. This period may be unduly short to enable an owner to determine that the contract has been fully performed. The proposed law allows the notice to be recorded up to 15 days after actual completion; that allows the owner additional time without disrupting basic time limits associated with completion and the notice of completion.

Notice of Recordation

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

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

Notice by County Recorder

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

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

Separate Contracts on Single Job

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

On the other hand, a partial notice of completion may cause problems by triggering a lien claim or foreclosure as to a portion of the project. If that portion is stand-alone, the foreclosure may be feasible; if it is part of an integrated whole, foreclosure may be difficult.

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

WAIVER AND RELEASE

Existing law prescribes forms that must be used in order for a lien claimant to execute a valid waiver and release — conditional release for a progress payment, unconditional release for a progress payment, conditional release for a final payment, and unconditional release for a final payment. The statutory forms are inadequate in a number of respects, including:

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

The industry operates on the assumption that if the claimant is paid through a given date, all of the claimant’s lien, stop notice, and bond rights through that date are waived with the exceptions noted in the release form. The industry believes that the waiver and release forms provide full protection, when in fact they do not. (Some of these concerns may be tempered by case law construing the statutory language to provide for release of a lien with respect to all labor, service,

equipment, and material to the date of the release, but not to waive other legal remedies to the extent labor, service, equipment, or material has not been paid for.60)

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

MISCELLANEOUS MATTERS

Ownership Issues

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

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

A few provisions of the mechanics lien law deal with the question of co-ownership.61 The provisions raise more questions than they resolve. If a statute requires notice by an owner and is silent as to co-ownership, is notice by one effective for all? Is notice to one effective as to all? Does a lien against the interest of one co-owner affect the interests of all co-owners?

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

Under the proposed law, however, notice to the owner of a leasehold interest would not bind the owner of the fee. The proposed law preserves the existing doctrine of reputed ownership in that circumstance — if the owner of the leasehold is the reputed owner of the fee, notice to the reputed owner may bind the owner of the fee. The proposed law codifies the case law definition of reputed ownership — the reputed owner is a person the claimant reasonably and in good faith believes to be the owner.62


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

Authority of Agent

Existing law refers on occasion to the authority of an owner’s agent, or to action by a claimant’s or another person’s agent in other circumstances. These provisions should not be read to imply that an agent cannot perform other acts under the mechanics lien law.

In some instances, verification of a document may be necessary, suggesting that the principal and not an agent should be required to act. But existing law authorizes an agent to make a verification in a number of instances. Moreover, the principal may be an artificial person and action must necessarily be taken through an agent.

The proposed law provides systematically that notice by or to, or action by, an agent binds the owner. It also makes clear that the ability of an agent to act on behalf of the principal is limited to the authority conferred by the agency. Thus, to the extent a direct contractor is deemed to be the agent of the principal for the purpose of engaging a subcontractor, the scope of the agency does not include other acts, such as compromise of litigation.

Contract Change

Existing law deals haphazardly with the effect of a contract change on provisions of the statute relating to the terms of the contract, particularly the contract price. The proposed law deals with the issue globally by defining the terms “contract” and “contract price” to include a contract change, and using those terms consistently throughout the statute.

Existing law requires that an owner notify the original contractor and construction lender of a change in the original contract if the change increases the contract amount by 5% or more. The statute does not specify when the notification must be made, the manner of notification, or the consequences of failure to notify. Practitioners indicate that this provision is not observed in the

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

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


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

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

68. Civ. Code § 3123(c).

69. The intent may be that if the owner fails to give the required notification, a lien does not cover the amount of the change order. Civ. Code § 3123(a). But if that were the case, it would not be in the owner’s interest to give the notification (except where the change order actually reduces the contract price).
industry and serves no useful purpose. The proposed law would eliminate it. The Commission particularly solicits comment on this proposal.

PRELIMINARY NOTICE

Function of Preliminary Notice

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

(1) Preliminary notice alerts the owner to existence of a potential claim of a subcontractor or material provider, and the corresponding possibility of double payment liability. It enables the owner to monitor the claim and structure payment to the direct contractor so as to ensure that the claimant is paid (for example, by use of a joint check, release, or similar approach) or take whatever other protective measures appear appropriate.

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

Simplification of Statute

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

Notice to Construction Lender

Some lien claimants must give preliminary notice to the construction lender as well as to the owner. There are several avenues by which the lien claimant can discover the existence and identity of a construction lender, including building permit records. Under existing law, a building permit is supposed to include information about the construction lender. Failure of the permit to include that information (which is ordinarily the case) does not excuse the duty to give preliminary notice.

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


72. Case law interpreting this requirement indicates that a lien claimant need only check for the existence of a construction lender at the commencement of the lien claimant’s work and may give preliminary notice on that basis. The lien claimant is not charged with the obligation continually to monitor public records to see...
Existing law appears to both (1) require a direct contractor to give a preliminary notice to the construction lender and (2) exempt a direct contractor from the requirement.\(^73\) The internal contradiction has not gone unnoticed.\(^74\) The apparent policy supporting preliminary notice to the construction lender is that, while a direct contractor is properly exempted from the general preliminary notice requirement because known to the owner, a direct contractor should not be exempt from preliminary notice to the lender because, although a direct contractor may be known to the lender, that is not necessarily the case. The proposed law clarifies the requirement that a direct contractor notify the construction lender.

### Disciplinary Action Against Subcontractor

Existing law provides that if a subcontractor fails to give a preliminary notice where the contract price exceeds $400, the subcontractor is subject to disciplinary action under the Contractors State License Law.\(^75\) The proposed law would eliminate this provision. A subcontractor should not be forced to the trouble and expense of serving a preliminary notice in every case. The contract amount may be small enough that the subcontractor is willing to skip enforcement remedies if not paid. Or the subcontractor may simply be willing to take a risk with a responsible contractor.\(^76\)

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73. Civ. Code § 3097(b).


The exception of the “contractor” is puzzling here. Presumably it refers to someone other than “all persons who have a direct contract with the owner.” But section 3088 defines a “contract” as an “agreement between an owner and any original contractor providing for the work of improvement or any part thereof.” And section 3095 in turn defines “original contractor” as “any contractor who has a direct contractual relationship with the owner.” As has been noted, “[t]he Mechanic’s Lien Law often is inartfully drawn and leaves much room for doubt, as in this instance.” (Killeen, The 20-Day Preliminary Notice in Private Construction Work (1977) 53 L.A. Bar J. 113, 120, fn. 42.) Despite this apparent contradiction because the single word “contractor” is not defined, it has sensibly been construed to mean the general or prime contractor for the entire project. (See Korherr v. Bumb (9th Cir. 1958) 262 F.2d 157, 161-162, construing the phrase “except the contractor” in former Code Civ. Proc., § 1190.1, subd. (h) [Stats. 1951, ch. 1382, § 1, p. 3305], the predecessor of § 3097, as referring to the general or prime contractor; see also 1 Miller & Starr, Current Law of Cal. Real Estate (rev. pt. 2, 1975) Pre-lien Notice, § 10:20, pp. 550-552, noting that if the term “contractor” referred to the original contractor, § 3097, subd. (b) “would read that ‘all persons having a direct contract with the owner, except any contractor who has a direct contractual relationship with the owner’ must give the notice to the lender.”) (Ibid.)

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

75. Civ. Code § 3097(h), § 1.

76. There is an argument that the requirement is necessary to protect the interest of an express trust fund. See Civ. Code § 3097(h), § 2. However, an express trust fund may exercise lien rights without the need for a preliminary notice. Civ. Code § 3097(a). Moreover, a subcontractor’s giving of a preliminary notice does
County Recorder
A copy of the preliminary notice may be recorded in the recorder’s office. Recordation of the notice obligates the county recorder to provide notification when a notice of completion or notice of cessation of labor is recorded.\textsuperscript{77} The preliminary notice recording procedure is seldom used for several reasons:

1. Recording fees may be high.
2. A potential mechanics lien claimant usually has little difficulty in keeping track of job progress sufficiently to be sure of recording the claim of mechanics lien within 30 days after completion of the project.
3. Failure of the county recorder to give notice does not excuse prompt recording of a mechanics lien.

The process whereby a claimant may file a preliminary notice with the county recorder and the county recorder should notify claimants when a notice of completion or cessation is recorded is of marginal value and serves to complicate the statute. The proposed law eliminates the provision in the interest of simplifying mechanics lien law.

MECHANICS LIEN

CLARIFICATION AND SIMPLIFICATION OF LIEN LAW

Laborers Compensation Fund
The law gives lien rights to a laborer’s employment benefits fund that is not paid the amount due. These provisions have been heavily litigated and the subject of significant legislative attention. A key issue has been federal preemption under ERISA.\textsuperscript{78} However, the statute itself is confusing. For example, the statute defines “laborer” to include such a benefit fund, but generally ignores the definition in favor of specific provisions that prescribe rights and duties relating to the fund. Moreover, the statute grants extensive remedies to a laborer’s compensation fund\textsuperscript{79} but appears to limit the lien right of an express trust fund.\textsuperscript{80} The preliminary notice statutes refer sometimes to an express trust fund, sometimes to an express trust fund as described in Section 3111, and sometimes to a “laborer” in its broadly

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\textsuperscript{77} Civ. Code § 3097(o).
\textsuperscript{78} The current version of the statute appears to be free of ERISA preemption. See Betancourt v. Storke Housing Investors, 31 Cal. 4th 1157, 82 P. 3d 286, 8 Cal. Rptr. 3d 259 (2003).
\textsuperscript{79} Civ. Code § 3089(b).
\textsuperscript{80} Civ. Code § 3111.
defined sense including a laborer’s compensation fund. It is not clear whether these differences in treatment are intentional, or are simply the result of inconsistent drafting over several legislative sessions.

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

Use of Material in Structure

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

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

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

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

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

Notice of Claim of Lien

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

Until 2004, the county recorder was required to notify a property owner when an involuntary lien of any kind (not just a mechanics lien) was recorded against the property.\(^{85}\) The notification requirement is no longer mandatory; the law encourages, but does not mandate, county recorder notice. Under current practice, a county recorder will not send notice unless requested to do so and is paid a fee for the service by the lien claimant.\(^{86}\)

The law facilitates a claim of lien. The claimant may record a claim of lien that encumbers property on a simple allegation that money is owed, without bonding against damage caused by a false claim.\(^{87}\) This procedure has been upheld against a due process challenge — the property owner has preliminary notice of a potential claim and, on recordation of a claim of lien, can bring an immediate court action to discharge a false claim, assuming the owner is aware of the recordation.\(^{88}\)

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

**Lien Release Bond**

The owner may obtain release of the property from a claim of lien by giving a release bond equal to 1-1/2 times the amount of the claim.\(^{89}\) By comparison a stop notice release bond must be in an amount 1-1/4 times the claimant’s claim. The greater amount required for a lien release bond is anomalous, since the lien release bond does not cover attorney’s fees in a proceeding to enforce the claim, whereas the stop notice release bond may be required to cover attorney’s fees awarded in a proceeding to enforce the claim. The proposed law standardizes both release bonds at the 1-1/4 level.

**Time for Commencement of Enforcement Action**

Under existing law, a lien enforcement action must be commenced within 90 days after recordation of the claim of lien, unless an extension of credit is obtained within that time, in which case an enforcement action must be commenced within 90 days of the extension, but in no event more one year after completion of the

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85. Gov’t Code § 27297.5.

86. 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.

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


work of improvement. As a matter of practice, a title company will not insure title until a full year has elapsed, whether or not an extension of credit is recorded.

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

**Attorney’s Fees**

Existing law allows attorney’s fees in some types of stop notice and payment bond enforcement actions, but not for enforcement of a mechanics lien. The Law Revision Commission seeks public comment concerning the disparity of treatment.

**INVALID OR UNENFORCEABLE CLAIM OF LIEN**

A person that has not been paid for labor, service, equipment, or material provided for a work of improvement may record a claim of lien against the property. No preliminary judicial determination of probable validity of the claim is necessary, nor is any security required.

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

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

An owner has some remedies under existing law:

1. A claim of lien made with intent to defraud is invalid.
2. An owner may post a release bond.

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


An owner may obtain a release order if the lien claimant fails to enforce the lien within statutory time limits.\(^\text{94}\) Under case law, an owner may seek declaratory and injunctive relief against an invalid claim immediately on receipt of a preliminary notice or on the filing of a claim of lien.

None of these remedies is expedient. A determination that a claim of lien has been made with intent to defraud requires a court proceeding. A release bond may be unavailable or too costly for many owners. The release order process is not available for immediate attack on a fraudulent lien, but must await the lien claimant’s inaction for the statutory period. Court remedies are costly and time consuming. It is easy to impose a lien but hard to clear the record of it.

The proposed law includes a number of provisions that address the problem. The proposals include (1) improvement of the judicial procedure for release of a claim of lien, (2) protection of a good faith purchaser or encumbrancer from a stale claim of lien, and (3) common law damages for fraudulently recording a claim of lien.

### Judicial Procedure for Release of Lien

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

### Extension of Credit

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

There is some confusion in the case law concerning who may agree to an extension of credit on behalf of the owner.\(^\text{95}\) In *Dorer v. McKinsey*,\(^\text{96}\) the lien claimant was a subcontractor that had not been paid by the direct contractor. The lien claimant recorded an extension of credit without the property owner’s consent. The court held the property owner’s consent was not necessary, since the debtor in this case was the direct contractor rather than the owner.

The direct contractor is in theory the owner’s agent in engaging a subcontractor to provide labor or materials. Whether the scope of the agency should be considered to extend to waiver of the owner’s statutory rights is doubtful. It would defeat the purpose of the law to allow the direct contractor to waive a protection.

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\(^{94}\) Civ. Code § 3154.

\(^{95}\) An extension of credit can be granted only by mutual agreement between the lien claimant and the debtor. The claimant may not unilaterally grant an extension. Richards v. Hillside Development Co, 177 Cal. App. 2d 776, 780, 2 Cal. Rptr. 693, 696 (1960).

\(^{96}\) 188 Cal. App. 2d 199, 200, 10 Cal. Rptr. 287, 288 (1961).
intended for the owner.\footnote{Cf. 10 Miller & Starr, California Real Estate § 28:68, at 217 (3d ed. 2001) (the conclusion of Dorer v. McKinsey is “bizarre and of questionable value as future precedent”).} The proposed law makes clear that the owner must agree to an extension of credit.

\textbf{90 Day Delay}

Under existing law, the judicial release remedy is limited. Relief is not available until 90 days after recordation of the claim, and the only basis for relief is failure of the lien claimant to proceed promptly. The waiting period is problematic, as is the ground for relief. If the lien was fraudulently recorded, the owner should be able to challenge it in court immediately. It was the assumption of the availability of prompt judicial relief that satisfied the California Supreme Court of the constitutionality of the mechanics lien law.\footnote{Connolly Dev., Inc. v. Superior Court, 17 Cal. 3d 803, 827, 132 Cal. Rptr. 477 (1976).}

The proposed law would allow an immediate action by the owner to remove the lien on the basis of its invalidity, without the 90 day delay.

\textbf{Other Improvements}

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

\begin{itemize}
  \item[(1)] The grounds for the expedited release procedure would be expanded to include (i) the claim was made with intent to defraud or slander title, (ii) the claim has been paid in full, (iii) no work has been done, (iv) the lien claimant was unlicensed for all or part of the time of performance of the work for which the lien is claimed, or (v) there is a final judgment in another proceeding invalidating the claim on which the lien is based.
  \item[(2)] As a prerequisite to use of the expedited procedure, the owner must, at least 10 days before commencement of the proceeding, demand that the lien claimant execute and record a release of the claim of lien. Relief is conditioned on failure of the lien claimant to release the lien on demand of the owner.
  \item[(3)] The petition in the proceeding would include more detail concerning the facts on which the petition is based.
  \item[(4)] The court must make its determination within 75 days after commencement of the proceeding.
  \item[(5)] The $2,000 cap on the award of attorney’s fees to the prevailing party is eliminated.
  \item[(6)] The statute makes clear that the release order issued by the court is a recordable instrument.
\end{itemize}
**Bona Fide Purchaser or Encumbrancer**

A claim of lien is voided by operation of law, without the need for a court order, if no enforcement action has been commenced within the statutory time limits.\(^9^9\)

This is not an efficacious remedy because (1) the commencement of an enforcement action is an off-record event that a title insurer cannot readily determine from inspection of the record, and (2) there is the possibility of an extension of credit that extends enforceability of the lien.

The proposed law addresses these problems by providing that a lien expires and is unenforceable if no lis pendens or extension of credit is recorded within the statutory period for enforcement. The objective of this provision is to enable a title company to insure title immediately on expiration of the statutory enforcement period without having to wait for a full year after a lien is recorded. The proposed law makes clear that, on expiration of the statutory period, the claim of lien “does not constitute actual or constructive notice of any of the matters contained, claimed, alleged, or contended in the claim of lien, or create a duty of inquiry in any person thereafter dealing with the affected property.”\(^10^0\)

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

A claim of lien is invalid if made with intent to defraud. The existing statute does not address potential liability of a fraudulent claimant. The matter is left to common law. One problem with reliance on common law remedies is that under California law a claim of lien in conjunction with an enforcement action is privileged.\(^10^1\)

A claim of lien should not be privileged if made with fraudulent intent or intent to slander title.\(^10^2\) The proposed law makes clear that common law remedies are available against a lien claimant that records a fraudulent claim of lien. Relief would be conditioned on the lien claimant’s failure to release the lien in response to the owner’s request. The burden of proof would be on the owner that the claim of lien was made with intent to defraud or slander title.

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102. Slander of title is the false and unprivileged disparagement of title to property resulting in pecuniary damage. 5 B. Witkin, Summary of California Law *Torts* § 642 (10th ed. 2005).
STOP PAYMENT NOTICE

Terminology

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

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

Giving Stop Payment Notice
Existing law refers inconsistently to giving the notice, filing the notice, or serving the notice. A stop payment notice is not filed in the traditional sense of registering it with the county recorder or lodging it with the clerk of court. Nor is it served with the formalities of court process. It is delivered by the claimant to the owner or construction lender either personally or by mail. The proposed law standardizes the giving of the notice.

Contents of Notice

Amount of Claimant’s Claim
Existing law requires a claimant to include in a stop payment notice the amount in value, as near as may be, of the work already provided and of the whole agreed to be provided. The meaning of the phrase “as near as may be” is obscure. Presumably it refers to the market value, rather than the contract price, of the claimant’s work. Perhaps it is intended to mean the claimant’s good faith and reasonable estimate of the value of the work.

The proposed law replaces the existing standard with the requirement that the notice state the claimant’s demand after deducting all just credits and offsets. That is the same standard used for a claim of lien, and will help achieve consistency in the statute.
Claim for Contract Changes and Damages for Breach

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

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

Demand for Notice

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

Release Bond for Funds Withheld Pursuant to Notice

Who May Give Bond

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

Conditions for Giving Bond

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

104. “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.
Sureties on Bond

The release bond for funds held pursuant to a stop payment notice is analogous to a lien release bond. Under existing law, a lien release bond requires an admitted surety insurer, whereas the stop payment notice release bond does not. Because the two bonds are similar in function and the release bond stands in place of funds or property that have been sequestered for a claim, the proposed law requires an admitted surety insurer for a stop payment notice release bond.

Release of Notice or Reduction of Amount of Claim

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

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

Duty to Withhold Funds

Existing law states that if the owner is given a stop payment notice, it is the duty of the owner to:

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

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

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

106. The forms are prescribed in Civil Code Section 3262.
107. See, e.g., Assembly Committee on Judiciary Analysis of SB 130 (June 6, 2005).
The proposed law also omits the requirement that funds be withheld to cover the amount claimed both in the stop payment notice and “in any claim of lien that is recorded.” The claim of lien reference is problematic since any amount withheld pursuant to a stop payment notice reduces the claim of lien. The Law Revision Commission solicits comment on this issue.

Enforcement of Payment of Claim Stated in Notice

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

The consequences of failure to give the five day notice are unclear. The Sunlight Electric\textsuperscript{110} case indicates that the five day notice requirement is directory rather than mandatory.

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

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

The Law Revision Commission solicits comment on whether the five day notice requirement after commencement of a stop payment notice proceeding should be made mandatory, in place of the existing directory provision.

PAYMENT BOND

Under the mechanics lien law, the owner may avoid the full impact of a lien, and particularly the potential for double payment liability, by obtaining a payment bond from the contractor. A subcontractor, material supplier, or other party that is not paid by the contractor may supplement its lien remedy by recovering on the payment bond.

A bond covering 50% of the contract price protects the owner against having to pay more than the contract price if the bond is recorded before commencement of work. A bond covering 75% of the contract price gives a construction lender’s security interest a priority over liens.

A payment bond is relatively inexpensive, and it would seem to be a simple solution for many of the complexities of the mechanics lien law. But the Law Revision Commission understands that many private work contractors are unbondable, making the remedy largely illusory. The Commission has been unable

to collect statistics on the frequency of a payment bond in a private work of improvement.\textsuperscript{111}

\textbf{Limitation of Owner’s Liability}

If the owner files a copy of the contract for the work of improvement with the county recorder, and records a payment bond in an amount not less than the 50\% of the contract price, the owner’s liability for lien claims is limited to the contract price for the work of improvement.

There is some statutory confusion about whether the owner’s liability is limited “in all cases”\textsuperscript{112} or only “where it would be equitable to do so.”\textsuperscript{113} The equitable standard appears to be used in practice, but its use is limited to circumstances where sureties are insufficient.\textsuperscript{114}

The proposed law resolves the issue by codifying the limitation of the owner’s liability where the payment bond is given with sufficient sureties.

\textbf{Bond Underwriter Licensed by Department of Insurance}

Existing law provides that if a construction lender requires a payment bond as a condition of making the loan and accepts the bond that is offered, the lender may question the bond and go back on the loan commitment “only if the bond underwriter was licensed by the Department of Insurance.”\textsuperscript{115} The provision seems counterintuitive — a bond given by a licensed surety is perhaps the one type a lender should not be allowed to question.

The provision was enacted as part of an effort to preclude a construction lender from reneging on a loan commitment.\textsuperscript{116} It seems probable that the problematic language was the result of a last minute political compromise on the bill that was inartfully executed. It is likely that the intent was to enable the lender to question the bond unless executed by a licensed surety.\textsuperscript{117} The proposed law codifies that rule.

\textsuperscript{111}. The situation with respect to a public work is different. See discussion of “Public Works Contract” infra.
\textsuperscript{112}. Civ. Code § 3236.
\textsuperscript{113}. Civ. Code § 3235.
\textsuperscript{114}. See, e.g., S.R. Frazee Co. v. Arnold, 46 Cal. App. 74, 76, 188 P. 822 (1920) (personal sureties were family members of contractor and had insufficient assets — “it would not be equitable to restrict the recovery against the owner to the amount of the contract price”). See also Sudden Lumber Co. v. Singer, 103 Cal. App. 386, 284 P. 477 (1930); Simpson v. Bergmann, 125 Cal. App. 1, 13 P.2d 531 (1932).
\textsuperscript{115}. Civ. Code § 3237.
\textsuperscript{117}. Miller & Starr, 10 California Real Estate § 36:4 at 11 n.10 (3d ed. 2001) interprets the provision in this way.
Statute of Limitations for Enforcement of Bond

Existing law provides a six month statute of limitations for an action against a surety on a payment bond recorded before completion of a work of improvement. In the interest of simplicity and standardization, the proposed law extends this provision to an action against the principal, and eliminates the provision for shortening the statute of limitations.

It has been suggested to the Commission that the owner be required to provide a copy of a payment bond to each claimant that has given preliminary notice. That would help direct the claimant to the bond as a source of recovery rather than to the property or to a loan fund. The consequence of failure to provide a copy of the bond would be to toll the six month statute of limitations for enforcement of a recorded bond until a copy is provided. Such a provision is not included in the proposed law, but the Commission solicits public comment on the concept.

OTHER REMEDIES

Stop Work Notice

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

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

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

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

Security for Large Project

In addition to the classical remedies of the lien, stop notice, and payment bond, the mechanics lien law now requires that the owner of a large construction project...

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120. Under Wm. R. Clarke Corp. v. Safeco Ins. Co., 5 Cal. 4th 882, 938 P. 2d 372, 64 Cal. Rptr. 2d 578 (1997), a contractor that has not been paid by the owner must nonetheless pay subcontractors and material suppliers.
provide security for payment of the contractor.\textsuperscript{121} The security may take the form of a payment bond, irrevocable letter of credit, or escrow account. The remedy relates only to a private work of improvement, not to a public work.

The provision for security responds to the same concern as the stop work notice — case law invalidating a “pay if paid” clause in a contract between the prime contractor and a subcontractor or material supplier.\textsuperscript{122}

The remedy is contained in one extremely long section of the code.\textsuperscript{123} The proposed law substantially rewriting the statute to make it more comprehensible (by simplifying language, standardizing terminology, breaking it into smaller pieces, and reorganizing it). The revision is nonsubstantive.

**PUBLIC WORKS CONTRACT**

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

The proposed law relocates the public works contract remedies to the Public Contract Code from their current location among the mechanics lien provisions of the Civil Code.\textsuperscript{124}

**GENERAL PROVISIONS**

**Notification**

As with private work remedies, the public work remedies contain notice requirements that vary unnecessarily with respect to contents of the notice, persons served, addresses, manner of giving notice, proof of service, and the like. The proposed law standardizes notice provisions to replace the many variants, to the extent practicable.

Existing law specifies that preliminary notice to the state is delivered to the Department of General Services or Department of Transportation.\textsuperscript{125} This provision is unduly narrow for notice under a public works contact.

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

\textsuperscript{121} The new requirement was enacted in 2002.

\textsuperscript{122} See discussion of “Stop Work Notice” \textit{supra}.

\textsuperscript{123} See Civ. Code § 3110.5.

\textsuperscript{124} See discussion of “Drafting Considerations” \textit{supra}.

\textsuperscript{125} Civ. Code § 3098.
Jurisdiction and Venue

The jurisdiction and venue provisions of existing law refer variously to the “proper court,”126 “the appropriate superior court,”127 “the court first acquiring jurisdiction,”128 and “the superior court in the county in which the private work of improvement is located.”129

Reference to the court first acquiring jurisdiction is evidently a relic of the pre-unification era when jurisdiction under the mechanics lien law could be in the municipal court or the superior court, depending on the amount in controversy. The proposed law does not eliminate that provision since it could have continued relevance in the context of a work of improvement that straddles a county line. That may be a significant factor in a public work such as a road or waterway. If the public work extends across a county line, the superior court in either county could have jurisdiction.130

Assignment

A direct (or “original”) contractor is a person that contracts directly with a public entity on a public works contract. The existing statute refers to a direct contractor’s assignee in two instances.131 Yet it is apparent that the statute should apply systematically to a direct contractor’s assignee as well as to the direct contractor. The proposed law expands the definition of “direct contractor” to include an assignee.

Completion

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

The term is defined in Civil Code Section 3086:

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

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

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130. See Civ. Code § 3214 (joinder, consolidation, and interpleader).
131. Existing law gives a stop payment notice priority over a direct contractor’s assignment of receivables, but a public entity may make payment to the direct contractor or assignee if payment is made before the public entity is served with a stop payment notice. Civ. Code §§ 3187, 3193.
(c) After the commencement of a work of improvement, a cessation of labor thereon for a continuous period of 60 days, or a cessation of labor thereon for a continuous period of 30 days or more if the owner files for record a notice of cessation.

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

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

**Actual Completion or its Equivalent**

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

**Acceptance by a Public Entity**

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

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

**Cessation of Labor**

There may be circumstances where completion of a public work is deemed to occur even though there has been no acceptance by the public entity. The second clause of the unnumbered paragraph at the end of Section 3086 deals with one such circumstance — cessation of labor. Cessation of labor on a public work for a continuous period of 30 days is considered completion for purposes of exercise of the stop payment notice and payment bond remedies. This should be compared with the rule for private work, where cessation of labor is generally not considered completion until 60 days have elapsed.\(^\text{132}\)

\(^\text{132}\). Civ. Code § 3086(c).
Is there a sound reason to provide a different period of time for completion by cessation of labor on a public work of improvement and on private work of improvement? The concept that cessation of labor for 30 days is deemed completion entered California law in 1887. That was extended to 60 days in the case of a private work in 1951, but there is no legislative history to shed light on the reasons, if any, for the difference in treatment.\textsuperscript{133}

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

\textit{Contract Awarded Under State Contract Act}

The second clause of the unnumbered paragraph at the end of Section 3086 excludes from the 30 day cessation rule a contract awarded under the State Contract Act.\textsuperscript{134}

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

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

\textit{Notice of Cessation}

In the case of a private work, an owner may record a notice of cessation after labor has ceased for 30 days or more, and completion is deemed to have occurred at that time.\textsuperscript{135} May a public entity — the “owner” of a public work — also record a notice of cessation under the statutory scheme?

The Law Revision Commission does not believe these provisions were intended to apply to a public work. They would not seem to have a major effect on a public work in any event, since completion is deemed to have occurred on a work stoppage of 30 days on most public works.\textsuperscript{136}

Nonetheless, a public work stop payment notice must be served within 30 days after the recording of a notice of cessation.\textsuperscript{137} It is not clear why a public entity would record a notice of cessation, since such a notice can only be recorded on or

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\textsuperscript{134} The existing statutory reference to the Government Code is obsolete. The State Contract Act has been relocated, along with other statutes affecting public works contracts, to the Public Contract Code. See Pub. Cont. Code § 10100 \textit{et seq}.
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\textsuperscript{135} Civ. Code § 3086(c). See also Civ. Code § 3092 (“notice of cessation” defined).
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\textsuperscript{136} Civ. Code § 3086 (unnumbered paragraph, 2d clause).
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\textsuperscript{137} Civ. Code § 3184(a).
\end{flushleft}
after 30 days of work stoppage, and by operation of law completion is deemed to
have occurred on the 30th day.

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

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

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

Notice of Completion

The statutes allow a public entity to record a notice of completion.138 This has
the effect of reducing the time within which a claimant may give stop payment
notice from 90 days after completion to 30 days after recordation.

Recordation of a notice of completion also triggers the 10 day period during
which the public entity must notify a stop payment notice claimant of the time for
enforcing the claim.139

Finally, recordation of a notice of completion reduces the time for a claimant on
a payment bond to notify the principal and surety on the bond from 75 days after
completion to 15 days after recordation.140

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

Notice of Acceptance

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

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

The Law Revision Commission questions whether a notice of completion and a
notice of acceptance are indeed synonymous. A public works contract may be

139. Civ. Code § 3185. It is not clear how the timing on this duty works, however, since it is possible that
the public entity will not receive a claimant’s stop payment notice until 30 days after recordation of the
notice of completion.
substantially complete and the public entity may start a limitation period running
by recording a notice of completion. But that does not require the public entity to
have accepted the work of improvement. Further work may be necessary before
the public entity accepts the work of improvement.

The proposed law eliminates the “notice of acceptance” from the statute. 141

PRELIMINARY NOTICE

A claimant on a public works contract must give a preliminary notice to the
public entity and the direct contractor as a prerequisite to exercise of stop payment
notice and payment bond remedies. 142

Contents of Preliminary Notice

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

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

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

Disciplinary Action for Failure to Give Preliminary Notice

Under existing law, if the amount to be paid a licensed subcontractor exceeds
$400 and the subcontractor fails to give preliminary notice, the subcontractor is
subject to disciplinary licensing action. 143

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

In many small jobs, giving a preliminary notice is not practical. The
subcontractor may elect not to incur the administrative effort and expense of
giving preliminary notice.

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

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141. The proposed law also eliminates the term “acceptance of completion,” which likewise is used only in
one provision. See Civ. Code § 3184. That term is evidently a longhand for “acceptance”.
142. See, e.g., Civ. Code § 3098 (“preliminary 20-day notice (public work)” defined).
Transitional Provision

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

STOP PAYMENT NOTICE

Terminology

The proposed law redesignates the public work stop notice as a “stop payment notice” consistent with proposed usage in the private work portion of the mechanics lien law. This terminological change is intended to improve clarity.

Notification of Stop Payment Claimant

Existing law provides that within 10 days after completion of a public works contract, the public entity must notify each person that has given a stop payment notice of the expiration of “such period.” This cryptic provision probably is intended to refer to the period for enforcement of payment of the claim stated in a stop payment notice. The proposed law clarifies the matter by codifying this interpretation.

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

Summary Release Procedure

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

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

144. Civ. Code § 3098(e).
146. 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.
The California Constitution states that “Trial by jury is an inviolate right and shall be secured to all.”\(^{148}\) It is generally accepted that this provision codifies the right to jury trial as it existed at common law in 1850, when the Constitution was adopted.

Because the mechanics lien law remedies generally, and the summary release procedure for a stop payment claim specifically, were unknown to the common law and are equitable in nature, there would ordinarily be no constitutional right to a jury trial.\(^{149}\) The summary release procedure for funds withheld pursuant to a stop payment notice does not implicate the loss of any rights for which a jury trial would be required. The jury trial provision serves no useful purpose; the proposed law eliminates it.

**Amount Due for Extras**

“No assignment by the original contractor of any money due or to become due to the original contractor under the contract, or for ‘extras’ in connection therewith whether made before or after the service of a stop notice, takes priority over a stop notice.”\(^{150}\) Although the grammatical construction of this provision is confusing, the provision apparently intends that a stop payment notice has priority over an assignment of an amount due for extras.

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

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

**PAYMENT BOND**

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

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149. 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).

Existing Practice

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

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

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

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

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

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

State Contract Act

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

The State Contract Act requires that every contract covered by it include a payment bond executed by an admitted surety insurer. Subject to exceptions, the

bond must be at least one-half the contract price.\textsuperscript{155}
A key exception to the one-half contract price requirement is “as otherwise provided in Section 3248 of the Civil Code.”\textsuperscript{156} At the time the exception was written, Civil Code Section 3248 provided a sliding scale for the amount of the payment bond required for a public work, based on the contract price. That scheme was changed beginning in 1998 and 2000, so that now Section 3248 requires that, “The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract.”\textsuperscript{157}

Another problem is that the exact scope of the State Contract Act is not defined. A bond under that act is subject to approval of the “department”,\textsuperscript{158} which is defined to mean the Department of Water Resources, General Services, Boating and Waterways, or Corrections, with respect to a project within its jurisdiction, or the Department of Transportation with respect to all other projects.\textsuperscript{159} This may suggest a limited scope. There is no case law on the matter.

**Preserve Status Quo**

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

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

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

\textsuperscript{156} Pub. Cont. Code § 10222.
\textsuperscript{157} Civ. Code § 3248(a).
\textsuperscript{159} Pub. Cont. Code § 10106.
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PROPOSED LEGISLATION
CONSTRUCTION REMEDIES

Cal. Const. Art 14, § 3 (unchanged). Lien on property for labor and material
SEC. 3. Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

Civ. Code §§ 3081.1-3081.10 (repealed). Design professionals lien
SEC. ____. Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 of the Civil Code is repealed.
Comment. Former Chapter 8 (former Sections 3081.1-3081.10) is replaced by Chapter 3 (Sections 7300-7316) of Part 6 of Division 4. For the disposition of the provisions of former Chapter 8, see [Table in Note]. The source of each section in the new law is indicated in its Comment.

☞ Note. This table shows the disposition of Chapter 8 (commencing with Section 3081.1) of Title 14 of the Civil Code. All dispositions are to the Civil Code. For further detail, see the Comment to the appropriate section in this draft infra.

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SEC. ____. Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code is repealed.
Comment. Former Title 15 (former Sections 3082-3267) is replaced by new Part 6 (Sections 7000-7848) of Division 4 of the Civil Code (private work of improvement) and by new Part 6 (Sections 41010-45090) of Division 2 of the Public Contract Code (public works contract remedies). For the disposition of the provisions of former Title 15, see [Table in Note]. The source of each section in the new law is indicated in its Comment.

☞ Note. This table shows the disposition of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. Unless otherwise indicated, all dispositions are to the Civil Code. For further detail, see the Comment to the appropriate section in this draft infra.
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Civ. Code §§ 7100-7106 (repealed). Automatic checkout system

SEC. ____. Part 8 (commencing with Section 7100) of Division 4 of the Civil Code is repealed.

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

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

☞ Note. This table shows the disposition of Part 8 (commencing with Section 7100) of Division 4 of the Civil Code. All dispositions are to the Civil Code. For further detail, see the Comment to the appropriate section in this draft infra.

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PRIVATE WORK OF IMPROVEMENT

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

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

PART 6. PRIVATE WORK OF IMPROVEMENT

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

§ 7000. Application of definitions

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

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

§ 7002. Claimant

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

Comment. Section 7002 restates former Section 3085, omitting reference to the combination of remedies as unnecessary.
See also Sections 7024 (“lien” defined), 7030 (“payment bond” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

§ 7003. Commencement

7003. A work of improvement “commences” when either of the following occurs:
(a) Material or supplies that are used, consumed, or incorporated in the work of improvement are delivered to the site.
(b) There is actual visible work of a permanent nature on the site.


§ 7004. Construction lender

7004. “Construction lender” means either of the following:
(a) A mortgagee or beneficiary under a deed of trust lending funds for payment of construction costs for all or part of a work of improvement, or the assignee or successor in interest of the mortgagee or beneficiary.
(b) An escrow holder or other person holding funds provided by an owner, lender, or another person as a fund for payment of construction costs for all or part of a work of improvement.

Comment. Section 7004 continues former Section 3087 without substantive change. See also Sections 14 (present includes future), 7028 (“owner” defined), 7032 (“person” defined), 7046 (“work of improvement” defined).

§ 7006. Contract

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

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

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

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

§ 7008. Contract price

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

Comment. Section 7008 generalizes provisions found in former Section 3123 (amount of lien) and throughout the mechanics lien law.
See also Sections 7006 ("contract" defined), 7016 ("labor, service, equipment, or material" defined).

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

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

See also Sections 7006 ("contract" defined), 7046 ("work of improvement" defined).

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

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

See also Sections 7028 ("owner" defined), 7032 ("person" defined).

§ 7014. Express trust fund
7014. “Express trust fund” means a laborers compensation fund to which a portion of a laborer’s total compensation is to be paid pursuant to an employment agreement or a collective bargaining agreement for the provision of benefits, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations.

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

See also Sections 7018 ("laborer" defined), 7020 ("laborers compensation fund" defined).

§ 7015. Know or knowledge
7015. A person “knows” or “has knowledge” of information if the person knows or should have known that information.

Comment. Section 7015 is new.

See also Section 7032 ("person" defined).

§ 7016. Labor, service, equipment, or material
7016. “Labor, service, equipment, or material” includes but is not limited to labor, skills, services, material, supplies, equipment, appliances, transportation, power, surveying, construction plans, and construction management provided for a work of improvement.
Comment. Section 7016 is a new definition. It is included for drafting convenience. The phrase is intended to encompass all things of value provided for a work of improvement, and replaces various phrases used throughout the former law, including “labor or material,” “labor, services, equipment, or materials,” “appliances, teams, or power,” and the like. The definition applies to variant grammatical forms of the phrase used in this part, such as “labor, services, equipment, and material.” See also Section 7046 (“work of improvement” defined).

§ 7018. Laborer

7018. “Laborer” means a person who, acting as an employee, performs labor on, or bestows skill or other necessary services on, a work of improvement.

Comment. Section 7018 continues former Section 3089(a) without substantive change. “Laborer” is no longer defined to include a compensation fund, which is treated separately in this part. Cf. Section 7020 (“laborers compensation fund” defined). See also Section 7046 (“work of improvement” defined).

§ 7020. Laborers compensation fund

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

Comment. Section 7020 continues the first sentence of former Section 3089(b) without substantive change. See also Section 7070 (standing to enforce laborer’s rights). See also Sections 7014 (“express trust fund” defined), 7018 (“laborer” defined), 7032 (“person” defined).

§ 7022. Lending institution

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

Comment. Section 7022 continues the second paragraph of former Section 3237. See also Section 7032 (“person” defined).

§ 7024. Lien

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

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

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

§ 7026. Material supplier

7026. (a) “Material supplier” means a person that provides material or supplies to be used or consumed in a work of improvement.
(b) Materials or supplies delivered to a site are presumed to have been used or consumed in the work of improvement. The presumption established by this subdivision is a presumption affecting the burden of proof.

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


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

§ 7028. Owner
7028. “Owner” means:
(a) With respect to a work of improvement, a person that contracts for the work of improvement.
(b) With respect to property on which a work of improvement is situated or planned, a person that owns the fee or a lesser interest in the property, including but not limited to an interest as lessee or as vendee under a contract of purchase.
(c) A successor in interest of a person described in subdivision (a) or (b).

Comment. Section 7028 is a new definition. It is included for drafting convenience. For the authority of an owner to act on behalf of co-owners, and for the effect of notice to a co-owner or the owner of a lesser interest, see Section 7058 (co-owners). For general provisions on the authority of an agent, see Section 7060 (agency).

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

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

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

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

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

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

§ 7034. Preliminary notice
7034. “Preliminary notice” means the notice provided for in Chapter 2 (commencing with 7200).
Comment. Section 7034 supersedes former Section 3097. The substantive requirements for preliminary notice are relocated to Section 7200 et seq.

§ 7036. Public entity

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

Comment. Section 7036 continues former Section 3097 without substantive change. This part does not apply to a public work, including a work of improvement governed by federal law. See Section 7050 (application of part). For public works contract remedies, see Pub. Cont. Code §§ 41010-42390.

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

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

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

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

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

Comment. Section 7037 is new. It codifies case law. See Kodiak Industries, Inc. v. Ellis, 185 Cal. App. 3d 75, 85, 229 Cal. Rptr. 418 (1986). A reference in this part to a reputed owner, contractor, or lender, includes co-owners, contractors, or lenders. See Section 14 (the singular includes the plural).

§ 7038. Site

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

Comment. Section 7038 continues former Section 3101, with the addition of a reference to a planned work of improvement. See Section 7300 (design professionals lien). See also Section 7046 (“work of improvement” defined).

§ 7040. Site improvement

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

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

(b) Drilling test holes.

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

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

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

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

Comment. Section 7040 continues former Section 3102 without substantive change. Subdivision (f) makes clear that the reference in former law to “making any improvements” means preparatory work, including infrastructure, and does not include construction of a structure.
§ 7042. Stop payment notice
7042. (a) “Stop payment notice” means the notice given under Chapter 5 (commencing with Section 7500). A reference in another statute to a “stop notice” in connection with the remedies provided in this part means a stop payment notice.
(b) A stop payment notice may be bonded or unbonded. A “bonded stop payment notice” is a notice given with a bond under Section 7532. An “unbonded stop payment notice” is a notice not given with a bond under Section 7532.
(c) Except to the extent this part distinguishes between a bonded and an unbonded stop payment notice, a reference in this part to a stop payment notice includes both a bonded and an unbonded notice.

Comment. Subdivision (a) of Section 7042 is new. The term “stop payment notice” replaces the term “stop notice” used in former law.
Subdivision (b) supersedes former Section 3083.

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

Comment. The first sentence of Section 7044 continues former Section 3104 without substantive change. The second sentence is new; it makes clear that the term “subcontractor” includes a subcontractor below the first tier.
See also Section 7028 (“owner” defined).

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

§ 7046. Work of improvement
7046. (a) “Work of improvement” includes but is not limited to:
(1) Construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.
(2) Seeding, sodding, or planting of property for landscaping purposes.
(3) Filling, leveling, or grading of property.
(b) Except as otherwise provided in this part, “work of improvement” means the entire structure or scheme of improvement as a whole, and includes site improvement.

Comment. Section 7046 restates former Section 3106. The section is revised to reorganize and tabulate the different types of works falling within the definition, to expand the coverage of the definition, and to make various technical, nonsubstantive revisions. The term “property” replaces “lot or tract of land.”
A site improvement is treated under this part in the same manner as a work of improvement generally, except as specifically provided in this part. See Sections 7448 (claim against separate residential units), 7450 (priority of lien), 7458 (priority of site improvement lien). See also Section 7040 (“site improvement” defined).

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

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


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

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

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

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

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

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

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

§ 7056. Filing and recording of papers
7056. (a) If this part provides for filing a contract, plan, or other paper with the county recorder the provision is satisfied by filing the paper in the office of the county recorder of the county in which the work of improvement or part of it is situated.

(b) If this part provides for recording a notice, claim of lien, payment bond, or other paper, the provision is satisfied by filing the paper for record in the office of the county recorder of the county in which the work of improvement or part of it is situated. A paper in otherwise proper form, verified and containing the information required by this part, shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.

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

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

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

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

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

§ 7057. Effect of act by owner

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

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

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

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

§ 7058. Co-owners

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

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

Comment. Section 7058 is new. It generalizes provisions found in former Sections 3092 (notice of cessation) and 3093 (notice of completion), and clarifies the effect of giving notice by a co-owner.

Under subdivision (c), notice to the owner of a leasehold may be effective as to the owner of the fee where the owner of the leasehold is the reputed owner of the fee and notice is given pursuant to statutory authority to notify the reputed owner. See, e.g., Section 7202 (preliminary notice requirement). This subdivision deals only with the effect of notice to the owner of a less than fee interest. It does not deal with knowledge of the owner of the fee. See, e.g., Section 7442 (lien attaches to interest of person for work provided with knowledge of that person).

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

§ 7060. Agency

7060. An act that may be done by or to a person under this part may be done by or to the person’s agent to the extent the act is within the scope of the agent’s authority.
Comment. Section 7060 is a specific application of Section 2305 (agent may perform acts required of principal by code). This section makes clear that an agent’s authority is limited to the scope of the agency. Thus, to the extent a direct contractor is deemed to be the agent of the principal for the purpose of engaging a subcontractor, the scope of the agency does not include other acts, such as compromise of litigation.

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

See also Section 7032 (“person” defined).

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

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

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

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

Article 3. Laborers Compensation Fund

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

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

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

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

§ 7072. Notice of overdue laborer compensation
7072. (a) A contractor or subcontractor that employs a laborer and fails to pay the full compensation due the laborer or laborers compensation fund shall, not later than the date the compensation became delinquent, give the laborer, the laborer’s bargaining representative, if any, and the construction lender or reputed construction lender, if any, notice that includes all of the following information:
(1) The name and address of any express trust fund to which employer payments are due.
(2) The total number of straight time and overtime hours on each job.
(3) The amount then past due and owing.
(b) Failure to give the notice required by subdivision (a) constitutes grounds for disciplinary action under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

Comment. Section 7072 restates former Section 3097(k) without substantive change. See also Sections 7100-7116 (notice). The reference to the Registrar of Contractors in the final sentence of former Section 3097(k) is revised to refer to the Contractors' State License Law. This is a technical, nonsubstantive change.
The information required in this notice is in addition to the information required by Section 7102 (contents of notice).
See also Sections 7004 (“construction lender” defined), 7014 (“express trust fund” defined), 7018 (“laborer” defined), 7020 (“laborers compensation fund” defined), 7028 (“owner” defined), 7038 (“site” defined), 7044 (“subcontractor” defined), 7050 (application of part).

Article 4. Notice

§ 7100. Written notice
7100. (a) Notice under this part shall be in writing.
(b) Written notice under this part may be given by electronic communication to the extent authorized under Section 7110.

Comment. Subdivision (a) of Section 7100 generalizes various provisions of former law. See, e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3094 (notice of nonresponsibility), 3097 (preliminary notice (private work)), 3103 (stop notice).
Subdivision (b) is new.
See also Section 14 (writing includes printing and typewriting).

§ 7102. Contents of notice
7102. (a) Notice under this part shall, in addition to any other information required by statute for that type of notice, include all of the following information to the extent known to the person giving the notice:
(1) The name and address of the owner or reputed owner.
(2) The name and address of the direct contractor.
(3) The name and address of the construction lender, if any.
(4) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.
(5) The name, address, and relationship to the parties of the person giving the notice.
(6) If the person giving the notice is a claimant:
(i) A general statement of the labor, service, equipment, or material provided.
(ii) The name of the person to or for which the labor, service, equipment, or
material is provided.

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

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

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

§ 7104. Manner of giving notice

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

(a) Personal delivery.

(b) Mail in the manner provided in Section 7108.

(c) Leaving the notice and mailing a copy in the manner provided in Section
415.20 of the Code of Civil Procedure for service of summons and complaint in a
civil action.

Comment. Section 7104 is new. It generalizes and standardizes provisions found throughout
former law. See, e.g., former Sections 3097 (preliminary notice), 3103 (stop notice), 3144.5
(notice of release bond), 3227 (notice to principal and surety), 3259.5 (notice of recordation of
notice of completion), 3260.2 (stop work notice).

When notice is given in the manner provided in Code of Civil Procedure Section 415.20 for
service of summons and complaint, the notice is complete five days after leaving the notice. See
Section 7114 (when notice complete). The 10 day delay provided in the Code of Civil Procedure
for completion of service under that code is inapplicable.

This part may prescribe a different or more limited manner of giving a particular notice. See,
e.g., Section 7486 (service of petition for order releasing lien).

§ 7106. Address at which notice is given

7106. (a) Notice under this part shall be given to the person to be notified at an
address prescribed in this section. If the person giving notice knows of more than
one address for the person to be notified, notice shall be given at the last known
address of the person to be notified.

(b) Notice under this part shall be given to the person to be notified at the
address of the person’s residence or place of business, or at any of the following
addresses:

(1) If the person to be notified is an owner, at the address shown on the contract,
the building permit, or a construction trust deed.

(2) If the person to be notified is a construction lender, at the address shown on
the construction loan agreement or construction trust deed.
(3) If the person to be notified is a direct contractor, at the address shown on the contract or building permit, or on the records of the Contractors’ State License Board.

(4) If the person to be notified is a claimant, at the address shown on the contract, preliminary notice, claim of lien, stop payment notice, or claim against a payment bond, or on the records of the Contractors’ State License Board.

(5) If the person to be notified is the principal or surety on a bond, at the address provided in the bond for service of notices, papers, and other documents.

Comment. Section 7106 is new. It generalizes and standardizes provisions found throughout former law.

Subdivision (b)(5) does not continue the unique provisions found in former Section 3227 for notice to alternate persons in the case of a personal surety or admitted surety insurer. The bond and undertaking law requires every bond to include the address at which the principal and sureties may be served with notices, papers, and other documents. Code Civ. Proc. § 995.320.

§ 7108. Mailed notice

7108. (a) Notice given by mail under this part shall be by (1) first class registered or certified mail or by (2) Express Mail or another method of delivery providing for overnight delivery.

(b) Proof that the notice was given in the manner provided in this section may be made by any of the following means:

(1) A return receipt, delivery confirmation, signature confirmation, or other proof of delivery or attempted delivery provided by the United States Postal Service, or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the returned envelope itself.

(2) Proof of mailing certified by the United States Postal Service.

(3) A tracking record or other documentation certified by an express service carrier showing delivery or attempted delivery of the notice.

Comment. Section 7108 is a new provision included for drafting convenience. It generalizes a number of provisions of former law, expands the methods of proof to include a certification of the mailing by the United States Postal Service, and expands the methods of giving notice to include delivery by express service carrier.

☞ Note. The Commission proposes to expand the allowable methods of notice to include express delivery service, and to expand proof of notice by mail to include the United States Postal Service’s certification of mailing. The Commission solicits comment on the proposed changes. Query, should overnight delivery in this draft be replaced by express service carrier?

§ 7110. Electronic communication

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

(b) A notice under this title may be given to a person in the form of an electronic record if the person has agreed to receive the record by electronic means.

(c) If a person that has agreed to receive a record by electronic means is a consumer within the meaning of Section 7006 of Title 15 of the United States
Code, the person’s agreement shall satisfy the requirements of Section 7001 of Title 15 of the United States Code relating to consumer consent to an electronic record.

**Comment.** Section 7110 is new. It combines the agreement requirement of the California Uniform Electronic Transactions Act (UETA) (Sections 1633.1-1633.17) with the consumer protections of the federal Electronic Signatures in Global and National Commerce Act (E-Sign) (15 U.S.C. § 7001 et seq.).

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

See also Section 7032 (“person” defined).

§ 7112. Posting

7112. A notice required by this part to be posted shall be displayed in a conspicuous location at the site and at the main office of the site, if one exists.

**Comment.** Section 7112 is new. It generalizes and standardizes provisions found in former law. See, e.g., former Sections 3094 (notice of nonresponsibility), 3260.2 (stop work notice).

§ 7114. When notice complete

7114. Notice under this part is complete and deemed to have been given at the following times:

(a) If given by personal delivery, when delivered.
(b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.
(c) If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after leaving the notice.
(d) If given by posting, when displayed.
(e) If given by recording, when filed for record in the office of the county recorder.

**Comment.** Section 7114 is new. It generalizes and standardizes provisions found in former law. See, e.g., former Section 3097(f)(3) (service of preliminary notice).

Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure Section 1013, the notice is complete when deposited in the mail or with an express service carrier. The 10 and 20 day delays provided in the Code of Civil Procedure for completion of service under that code are inapplicable. For an exception to this rule, see Section 7486 (notice of hearing on lien release petition).

Under subdivision (c), when notice is given in the manner provided in Code of Civil Procedure Section 415.20 for service of summons and complaint, the notice is complete five days after leaving the notice. The 10 day delay provided in the Code of Civil Procedure for completion of service under that code is inapplicable.

§ 7116. Proof of notice

7116. (a) Proof that notice was given to a person in the manner required by this part shall be made by the proof of notice affidavit provided in subdivision (b) and,
if given by mail, shall be accompanied by proof in the manner provided in Section 7108.

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

(1) The type or description of the notice given.
(2) The time, place, and manner of notice and facts showing that notice was given in the manner required by statute.
(3) The name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice.

Comment. Section 7116 is new. It generalizes and standardizes provisions found throughout former law. See, e.g., former Sections 3097 (preliminary notice), 3260.2 (stop work notice).

Article 5. Construction Documents

§ 7130. Contract forms

7130. (a) A written contract entered into between an owner and a direct contractor shall provide a space for the owner to enter the following information:

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

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

Comment. Section 7130 continues the parts of former Section 3097(l)-(m) relating to the content of contracts, deleting the limitation to the owner’s residence address. The reference to “lender or lenders” in subdivision (a) is shortened to “lender” for consistency with subdivision (b). See Section 14 (singular includes plural, and plural includes singular). These and other minor wording changes are technical, nonsubstantive revisions. For the direct contractor’s duty to provide information to persons seeking to serve a preliminary notice, see Section 7210.

See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

§ 7132. Designation of construction lender on building permit

7132. (a) A public entity that issues building permits shall, in its application form for a building permit, provide space and a designation for the applicant to enter the name, branch designation, if any, and address of the construction lender and shall keep the information on file open for public inspection during the regular business hours of the public entity.

(b) If there is no known construction lender, the applicant shall note that fact in the designated space.
(c) Failure of the applicant to indicate the name and address of the construction lender on the application does not relieve a person required to give the construction lender preliminary notice from that duty.

Comment. Section 7132 continues former Section 3097(i) without substantive change. See also Sections 7004 ("construction lender" defined), 7032 ("person" defined), 7034 ("preliminary notice" defined), 7036 ("public entity" defined).

Note. We have corrected a typographical error in the existing statute, which includes a stray comma between the words “branch” and “designation” in subdivision (a). Branch information may be important because a stop payment notice must be given at the office or branch of the lender administering or holding construction funds.

A random sampling of building permit application forms, however, indicates that half the cities don’t provide any space for construction lender information, and those that do provide space don’t inquire about branches. Does this provision serve a useful purpose? But see Health & Safety Code § 19825 (building permit).

§ 7134. Construction trust deed

7134. (a) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for a work of improvement, shall bear the designation “Construction Trust Deed” prominently on its face and shall state all of the following:

(1) The name and address of the construction lender.

(2) The name and address of the owner of the property described in the instrument.

(3) A legal description of the property that secures the loan and, if known, the street address of the property.

(b) Failure to comply with subdivision (a) does not affect the validity of the mortgage, deed of trust, or other instrument.

(c) Failure to comply with subdivision (a) does not relieve a person required to give preliminary notice from that duty.

(d) The county recorder of the county in which the instrument is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

Comment. Section 7134 continues former Section 3097(j) without substantive change. See also Sections 7004 ("construction lender" defined), 7028 ("owner" defined), 7032 ("person" defined), 7034 ("preliminary notice" defined), 7046 ("work of improvement" defined).

Article 6. Bonds

§ 7140. Application of Bond and Undertaking Law

7140. The Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond given under this part.

Comment. Section 7140 is new. It is a specific application of Code of Civil Procedure Section 995.020 (application of Bond and Undertaking Law)
Former Section 3227, relating to notice to principal and surety, is not continued. Its substance is superseded by Sections 7100-7116 (notice).

§ 7142. Release of surety from liability

7142. None of the following releases a surety from liability on a bond given under this part:

(a) A change to a contract, plan, specification, or agreement for a work of improvement or for labor, service, equipment, or material provided for a work of improvement.

(b) A change to the terms of payment or an extension of the time for payment for a work of improvement.

(c) A rescission or attempted rescission of a contract, agreement, or bond.

(d) A condition precedent or subsequent in the bond purporting to limit the right of recovery of a claimant otherwise entitled to recover pursuant to a contract, agreement, or bond.

(e) In the case of a bond given for the benefit of claimants, the fraud of a person other than the claimant seeking to recover on the bond.

Comment. Section 7142 restates former Section 3225 without substantive change. See also Section 7057 (effect of act by owner).

See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7016 (“labor, service, equipment, or material” defined), 7032 (“person” defined), 7046 (“work of improvement” defined).

§ 7144. Construction of bond

7144. (a) A bond given under this part shall be construed most strongly against the surety and in favor of the beneficiary.

(b) A surety is not released from liability to the beneficiary by reason of a breach of the contract between the owner and direct contractor or on the part of the beneficiary.

(c) The sole conditions of recovery on the bond are that the beneficiary is a person described in Article 1 (commencing with Section 7400) of Chapter 4 and has not been paid the full amount of the claim.

Comment. Section 7144 restates former Section 3226 without substantive change. See also Sections 7400-7406 (who is entitled to lien).

See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined).


Article 7. Completion

§ 7150. Completion

7150. (a) For the purpose of this part, completion of a work of improvement occurs at the earliest of the following times:

(1) Actual completion.

(2) Occupation or use by the owner accompanied by cessation of labor.
(3) Cessation of labor for a continuous period of 60 days.
(4) Recordation of a notice of completion after cessation of labor for a continuous period of 30 days.
(b) Notwithstanding subdivision (a), if a work of improvement is subject to acceptance by a public entity, completion occurs on acceptance.

Comment. Section 7150 restates former Section 3086 to the extent it applied to a private work, but omits the provision of the former law that defined completion to include “acceptance” by the owner. References to occupation or use by an owner include those actions by the owner’s agent. See Section 7028 (“owner” defined).

The provision in subdivision (b) for acceptance by a public entity refers to acceptance pursuant to a legislative enactment of the public entity and not to inspection and approval or issuance of a certificate of occupancy under building regulations. See also Sections 7036 (“public entity” defined), 7046 (“work of improvement” defined).

☞ Note. The Commission particularly solicits comment on:
• Whether the provision of existing law for completion on “acceptance” by the owner is useful. That provision is not continued in the current draft because it appears to be rarely used, and there is no mechanism for communication of acceptance to the claimant.
• Whether subdivision (b), relating to acceptance by a public entity, is useful.

§ 7152. Notice of completion
7152. (a) On or within 15 days after completion of a work of improvement an owner may record a notice of completion.
(b) The notice of completion shall be signed and verified by the owner, and include all of the following information:
(1) If the notice is given only of completion of a contract for a particular portion of the work of improvement as provided in Section 7154, the name of the direct contractor under that contract and a general statement of the kind of labor, service, equipment, or material provided pursuant to the contract.
(2) If signed by the owner’s successor in interest, the name and address of the successor’s transferor.
(3) The nature of the interest or estate of the owner.
(4) The date of completion. An erroneous statement of the date of completion does not affect the effectiveness of the notice if the true date of completion is on or before the date of recordation of the notice.
(5) If the notice is based on cessation of labor, the date on or about which labor ceased, and that cessation of labor has been continuous until recordation of the notice.
(6) An affidavit of mailing in the manner provided in Section 1013a of the Code of Civil Procedure, showing all persons given notice under Section 7156.

Comment. Section 7152 combines former Section 3093 (notice of completion) with former Section 3092 (notice of cessation). For the date of completion of a work of improvement, see Section 7150. For the effect of a notice of completion, see Sections 7412-7414 (time for claim of lien), 7460 (time for commencement of enforcement action). See also Sections 7100-7116 (notice). The information required in this notice is in addition to the information required by Section 7102 (contents of notice).
This section extends the 10-day period for recording a notice of completion under former law to 15 days. A claim of lien must be filed within 30 or 60 days after recording a notice of completion (depending on the nature of the claimant). See Sections 7412 and 7414 (recording of claim of lien).

A notice of completion is ineffective to shorten the time for a claim of lien unless notice of recording is given to the person whose claim of lien is affected. See Section 7156 (notice of recording by owner). The requirement of an affidavit of mailing in subdivision (b)(6) is new. See also Code Civ. Proc. § 2015.5 (declaration or certificate under penalty of perjury).

A notice of completion is recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. Section 7056(a) (filing and recording of papers). A notice of completion is recorded when it is filed for record. Section 7056(b).

As used in this section, the owner is the person that causes a building, improvement, or structure, to be constructed, altered, or repaired (or the owner’s successor in interest at the date of a notice of completion is recorded) whether the interest or estate of the owner is in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a cotenant. A notice of completion may be signed and verified by the owner’s agent. See Sections 7028 (“owner” defined), 7058 (co-owners).

The reference to a successor’s “transferors” is omitted from subdivision (b)(2). See Section 14 (singular includes plural).

See also Sections 7016 (“labor, service, equipment, or material” defined), 7012 (“direct contractor” defined), 7038 (“site” defined), 7046 (“work of improvement” defined), Section 7056 (filing and recording of papers).

§ 7154. Notice of completion of contract for portion of work of improvement

7154. If a work of improvement is made pursuant to two or more contracts, each covering a portion of the work of improvement:

(a) The owner may record a notice of completion of a contract for a portion of the work of improvement. On recordation of the notice of completion, for the purpose of Sections 7412 and 7414 a direct contractor is deemed to have completed the contract for which the notice of completion is recorded and a claimant other than a direct contractor is deemed to have ceased providing labor, service, equipment, or material.

(b) If the owner does not record a notice of completion under this section, the period for recording a claim of lien is that provided in Sections 7412 and 7414.

Comment. Section 7154 continues the substance of former Section 3117, but eliminates the 10-day period for recording a notice of completion. A claim of lien must be filed within 60 days after recording a notice of completion (depending on the nature of the claimant), subject to a maximum of 90 days after actual completion. See Sections 7412 and 7414 (recording of claim of lien). However, an owner that records a notice of completion that states an incorrect date of completion may be estopped from asserting the running of the filing period. See Doherty v. Carruthers, 171 Cal. App. 2d 214, 340 P.2d 58 (1959).

This section omits the rules found in former law governing the time for recording a claim of lien after a notice of completion for a portion of a work of improvement. The general rules governing the time for recording do not distinguish among types of notice of completion, and appear to be satisfactory for purposes of this section, with the clarification set out in subdivision (a). See Sections 7412 and 7414 (recording of claim of lien).

See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).
Note. The Commission solicits comment on the policy of this section. Where there are two
or more separate contracts on a single job, it may be advantageous for an owner-builder, for
example, to narrow liability exposure. A notice of completion as to a portion of a project can also
benefit a subcontractor whose right to received a retention may be triggered by the notice of
completion. On the other hand, a notice of completion as to a portion of a project can also cause
problems by triggering a lien claim or foreclosure as to that portion of the project. If that portion
of the project is stand-alone, the foreclosure may be feasible; if it is part of an integrated whole,
foreclosure may be difficult.

§ 7156. Notice of recordation by owner

7156. (a) An owner that records a notice of completion shall on recordation give
a copy of the notice to all of the following persons:
   (1) A direct contractor.
   (2) A claimant that has given the owner preliminary notice.
   (b) If the owner fails to give notice to a person under subdivision (a), the notice
       of completion is ineffective to shorten the time within which the person may
       record a claim of lien under Sections 7412 and 7414. The ineffectiveness of the
       notice of completion is the sole liability of the owner for failure to give notice to a
       person under subdivision (a).
   (c) This section does not apply to any of the following owners:
       (1) A person that occupies the property as a personal residence, if the dwelling
           contains four or fewer residential units.
       (2) A person that has a security interest in the property.
       (3) A person that obtains an interest in the property pursuant to a transfer
           described in subdivision (b), (c), or (d) of Section 1102.2.

Comment. Section 7156 restates former Section 3259.5, replacing the notice of recordation
with a copy of the recorded notice and expanding the manner of notice. See Section 7104
(manner of giving notice). This provision is limited to a private work. See Section 7050
(application of part). The section eliminates the former 10 day notice period and requires
immediate notice. See also Section 7152(b)(7) and Code Civ. Proc. § 1013a(c) (affidavit of
mailing). As used in this section “owner” includes a person who has an interest in property (or the
person’s successor in interest on the date a notice of completion is recorded) that causes a
building, improvement, or structure, to be constructed, altered, or repaired on the property), and
includes a cotenant. See Section 7028 (“owner” defined). A notice is recorded when it is filed for
record. Section 7056 (filing and recording of papers). The references to a “mechanic’s” lien in
subdivision (a) are deleted. Subdivision (a) is intended to apply to a site improvement lien as
well.

The notice may no longer be given by regular mail. For service and proof of service by mail,
see Section 7108 (mailed notice).

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

See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7012 (“direct contractor”
defined), 7032 (“person” defined), 7034 (“preliminary notice” defined).
Article 8. Waiver and Release

§ 7160. Terms of contract

7160. An owner or direct contractor may not, by contract or otherwise, waive, affect, or impair a claimant’s rights under this part, whether with or without notice, and any term of a contract that purports to do so is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.

Comment. Section 7160 continues the first and second sentences of former Section 3262(a) without substantive change. See Section 7002 (“claimant” defined). See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).

§ 7162. Waiver and release

7162. A claimant’s waiver and release does not release the owner, construction lender, or surety on a payment bond from a claim or lien unless both of the following conditions are satisfied:

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

(b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be (1) the claimant’s endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn or (2) written acknowledgment of payment by the claimant.

Comment. Section 7162 continues the third and fourth sentences of former Section 3262(a) without substantive change. The waiver and release may be signed by the claimant’s agent. See Section 7060 (agency). The term “financial institution” replaces “bank” in subdivision (b) and in the forms provided in this article. See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7024 (“lien” defined), 7028 (“owner” defined).

§ 7164. Statement of claimant

7164. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim or lien is void and unenforceable and does not create an estoppel or impairment of the claim or lien unless either of the following conditions is satisfied:

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

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

Comment. Section 7164 continues former Section 3262(b) without substantive change. See also Section 7002 (“claimant” defined).

§ 7166. Reduction or release of stop payment notice

7166. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a form of waiver and release prescribed in this article.

(b) A claimant’s reduction or release of a stop payment notice has the following effect:
(1) The reductio or release releases the claimant’s right to enforce payment of the claim stated in the notice to the extent of the reduction or release.

(2) The reduction or release releases the person given the notice from the obligation to withhold funds pursuant to the notice to the extent of the reduction or release.

(3) The reduction or release does not preclude the claimant from giving a subsequent stop payment notice that is timely and proper.

(4) The reduction or release does not release any right of the claimant other than the right to enforce payment of the claim stated in the stop payment notice to the extent of the reduction or release.

Comment. Section 7166 restates the second, third, and fourth sentences of subdivision (b) of former Section 3262. The provisions apply to a stop payment notice given to a construction lender as well as to a stop payment notice given to the owner.

See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

§ 7168. Accord and satisfaction or settlement agreement not affected

7168. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the claim or lien.

Comment. Section 7168 continues former Section 3262(c) without substantive change.

See also Section 7024 (“lien” defined).

§ 7170. Conditional waiver and release on progress payment

7170. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

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

Identifying Information
Name of Claimant: __________________________________________
Name of Customer: __________________________________________
Job Location: ______________________________________________
Owner: _____________________________________________________
Through Date: ______________________________________________
Conditional Waiver and Release
This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor, service, equipment, and material provided to the customer on this job through the Through Date of this document. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

   Maker of Check: ___________________________________
   Amount of Check: $_________________________________
   Check Payable to: __________________________________

Exceptions
This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
   Date of waiver and release: ___________________________
   Amount remaining unpaid: $__________________________
(4) Contract rights, including (i) a right based on rescission, abandonment, or breach of contract, and (ii) the right to recover compensation for labor, service, equipment, or material not compensated by the payment.

Signature
Claimant’s Signature: _______________________________________
Claimant’s Title: ___________________________________________

Comment. Section 7170 restates former Section 3262(d)(1), with the addition of language relating to progress payments covered by previous releases that have not been paid. The statutory form is recast for clarity.
See also Section 7002 (“claimant” defined).

§ 7172. Unconditional waiver and release on progress payment
7172. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall be in substantially the following form, with the text of the “Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

   UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

   NOTICE TO CLAIMANT: This document waives and releases rights unconditionally and states that you have been paid for giving up those rights. This
document is enforceable against you if you sign it, even if you have not been paid.

If you have not been paid, use a conditional waiver and release form.

**Identifying Information**

Name of Claimant: ____________________________________________

Name of Customer: ____________________________________________

Job Location: ________________________________________________

Owner: ____________________________

Through Date: ________________________________________________

**Unconditional Waiver and Release**

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

Amount of payment: $___________________

**Exceptions**

This document does not affect any of the following:

(1) Retentions.

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

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

**Signature**

Claimant’s Signature: _______________________________________

Claimant’s Title: ___________________________________________

**Comment.** Section 7172 restates former Section 3262(d)(2) without substantive change. The references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals lien or a site improvement lien as well. The statutory form is recast for clarity.

See also Section 7002 (“claimant” defined).

§ 7174. Conditional waiver and release on final payment

7174. If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be in substantially the following form:
CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

Identifying Information
Name of Claimant: __________________________________________
Name of Customer: __________________________________________
Job Location: _______________________________________________
Owner: _____________________________________________________
Date: ______________________________________________________

Conditional Waiver and Release
This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor, service, equipment, and material provided to the customer on this job. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:
  Maker of Check: _____________________________________
  Amount of Check: $_____________________________
  Check Payable to: _____________________________________

Exceptions
This document does not affect any of the following:
(1) Disputed claims for extras in the amount of $____________________
(2) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
  Date of waiver and release: ______________________________
  Amount remaining unpaid: $_____________________________

Signature
Claimant’s Signature: __________________________________________
Claimant’s Title: ______________________________________________

Comment. Section 7174 continues former Section 3262(d)(3), with the addition of language relating to progress payments covered by previous releases that have not been paid, and the addition of a line for identification of the waivant’s customer. The references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals lien or a site improvement lien as well. The statutory form is recast for clarity.

See also Section 7002 (“claimant” defined).

§ 7176. Unconditional waiver and release on final payment
7176. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall be
in substantially the following form, with the text of the “Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

Identifying Information
Name of Claimant: __________________________________________
Name of Customer: __________________________________________
Job Location: _______________________________________________
Owner: ___________________________ ___________________________
Date: _____________________________________________________

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

Exceptions
This document does not affect any of the following:
(1) Disputed claims for extras in the amount of $_____________________

Signature
Claimant’s Signature: __________________________________________
Claimant’s Title: ______________________________________________

Comment. Section 7176 continues former Section 3262(d)(4) without substantive change. The references to a “mechanic’s” lien are deleted from this section; it applies to a design professionals lien or a site improvement lien as well. The statutory form is recast for clarity. See also Section 7002 (“claimant” defined).

CHAPTER 2. PRELIMINARY NOTICE

§ 7200. Preliminary notice prerequisite to remedies
7200. (a) Except as otherwise provided in this section, preliminary notice is a necessary prerequisite to the validity of a lien, stop payment notice, or claim against a payment bond.
(b) A laborer or laborers compensation fund is not required to give preliminary notice.
(c) A direct contractor is required to give preliminary notice only to a construction lender.
Comment. Subdivision (a) of Section 7200 restates part of the introductory clause of former Section 3097 without substantive change. This chapter is limited to private work. See Section 7050 (application of part).

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

Subdivision (c) restates parts of former Section 3097(a) and (b), omitting the exception of “the contractor”. Although a direct contractor is generally excused from the preliminary notice requirement, the direct contractor must give preliminary notice to a construction lender under Section 7202(c).

The transitional provisions of former Section 3097(p) are not continued due to lapse of time.

See also Sections 7002 (“claimant” defined), 7018 (“laborer” defined), 7020 (“laborers compensation fund” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined).

§ 7202. Preliminary notice requirement

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

(a) The owner or reputed owner.

(b) The direct contractor or reputed contractor.

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

Comment. Section 7202 restates parts of the introductory clause and subdivision (a) of former Section 3097, without substantive change. Some repetitive detail is omitted in reliance on defined terms and other substantive provisions. The preliminary notice must be in writing. Section 7204 (contents of preliminary notice).

For an exception to the requirement that preliminary notice must be given before asserting a claim against a payment bond, see Section 7612.

Former Sections 3097(f) and 3097.1 are not continued. General provisions of this part expand the methods of notice. See Sections 7100-7116 (notice). See also Code Civ. Proc. § 2015.5 (declaration or certificate under penalty of perjury).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined).

§ 7204. Contents of preliminary notice

7204. (a) Preliminary notice shall include the following statement in boldface type:

NOTICE TO PROPERTY OWNER

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

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

(b) If preliminary notice is given by a subcontractor that has not paid all
compensation due to a laborer or laborers compensation fund, the notice shall
include the name and address of the laborer and any laborers compensation fund to
which payments are due.

(c) If an invoice for material or certified payroll contains the information
required by this section and Section 7102, a copy of the invoice or payroll, given
in the manner provided by this part for giving of notice, is sufficient.

Comment. Section 7204 continues the substance of former Section 3097(c)(1)-(6), the
unnumbered paragraph following paragraph (6), and the requirement of former Section 3097(a)
that the preliminary notice be written. See also Sections 7100-7116 (notice). The reference to an
“express trust fund” is replaced by the defined term, “laborers compensation fund.” See Section
7020 (“laborers compensation fund” defined).

The information required in this notice is in addition to the information required by Section
7102 (contents of notice).

See also Sections 7008 (“contract price” defined), 7016 (“labor, service, equipment, or
material” defined), 7018 (“laborer” defined), 7024 (“lien” defined), 7032 (“person” defined),
7038 (“site” defined), 7044 (“subcontractor” defined).

§ 7206. Effect of preliminary notice

7206. (a) A claimant may record a claim of lien, file a stop payment notice, or
assert a claim against a payment bond only for labor, service, equipment, or
material provided within 20 days before giving preliminary notice and at any time
thereafter.

(b) Notwithstanding subdivision (a), a design professional may record a claim of
lien, file a stop payment notice, or assert a claim against a payment bond for
design professional services provided for the design of the work of improvement if
the design professional gives preliminary notice not later than 20 days after the
work of improvement has commenced.

Comment. Subdivision (a) of Section 7206 supersedes former Section 3097(d). The provision
is simplified so that it refers only to the effect of giving preliminary notice.

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

See also Sections 7002 (“claimant” defined), 7010 (“design professional” defined), 7016
(“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7046 (“work of
improvement” defined).

§ 7208. Coverage of preliminary notice

7208. (a) Except as provided in subdivision (b), a claimant need give only one
preliminary notice to each person to which notice must be given under this chapter
with respect to all labor, service, equipment, and material provided by the claimant
for a work of improvement.
(b) If a claimant provides labor, service, equipment, or material pursuant to contracts with more than one subcontractor, the claimant shall give a separate preliminary notice with respect to labor, service, equipment, or material provided to each contractor.

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

Comment. Section 7208 restates former Section 3097(g) without substantive change. See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material” defined), 7032 (“person” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

§ 7210. Direct contractor’s duty to provide information

7210. A direct contractor shall make available to any person seeking to give preliminary notice the following information:

(a) The name and address of the owner.

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

Comment. Section 7210 continues the parts of former Section 3097(l)-(m) relating to the direct contractor’s duty to provide information, deleting the limitation to the owner’s residence address. For provisions concerning the content of contracts, see Section 7130 (contract forms). See also Sections 14 (singular includes plural), 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined).

§ 7212. Owner’s duty to give notice of construction loan

7212. If a construction loan is obtained after commencement of work, the owner shall provide the name and address of the construction lender to each person that has given the owner preliminary notice.

Comment. Section 7212 continues former Section 3097(n) without substantive change. The reference to commencement of construction is changed to commencement of work for consistency with the remainder of this part. See also Sections 7004 (“construction lender” defined), 7028 (“owner” defined), 7032 (“person” defined).

§ 7214. Waiver void

7214. An agreement made or entered into by an owner whereby the owner agrees to waive the rights conferred on the owner by this chapter is void and unenforceable.

Comment. Section 7214 continues former Section 3097(e) without substantive change. See also Section 7028 (“owner” defined).

§ 7216. Disciplinary action

7216. A licensed subcontractor is subject to disciplinary action under the Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of
Division 3 of the Business and Professions Code, if all of the following conditions are satisfied:
   (a) The subcontractor does not pay all compensation due to a laborers compensation fund.
   (b) The subcontractor fails to give preliminary notice or include in the notice the information required by subdivision (b) of Section 7204.
   (c) The subcontractor’s failure results in the laborers compensation fund recording a claim of lien, filing a stop payment notice, or asserting a claim against a payment bond.
   (d) The amount due the laborers compensation fund is not paid.

Comment. Section 7216 continues the substance of the second paragraph of former Section 3097(h). The first paragraph, relating to disciplinary action if a subcontractor fails to give preliminary notice on a work of improvement exceeding $400, is not continued.

The reference to an “express trust fund” is replaced by the defined term, “laborers compensation fund” which arguably expands the scope of the provision. See Section 7020 (“laborers compensation fund” defined).

See also Sections 7024 (“lien” defined), 7034 (“preliminary notice” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

§ 7218. Notices filed with county recorder

7218. The county recorder may cause to be destroyed all documents filed under subdivision (o) of former Section 3097.

Comment. Section 7218 supersedes former Section 3097(o) relating to filing preliminary notice with the county recorder. This part no longer provides for filing a preliminary notice with the county recorder or for the county recorder to give notice to persons who filed preliminary notice of the recording of a notice of completion or notice of cessation.

The former reference to the date after which the county recorder is authorized to act (January 1, 2007) is deleted as a transitional provision that is now obsolete.

CHAPTER 3. DESIGN PROFESSIONALS LIEN

§ 7300. Lien

7300. (a) A design professional has, from the date of recordation of a claim of lien under this chapter, a lien on the site notwithstanding the absence of commencement of the planned work of improvement, if the owner that contracted for the design professional’s services is also the owner of the site at the time of recordation of the claim of lien.

(b) The lien of the design professional is for the amount of the design professional’s fee for services provided under the contract or the reasonable value of those services, whichever is less. The amount of the lien is reduced by the amount of any deposit or prior payment under the contract.

(c) A design professional may not record a claim of lien, and a lien may not be created, under this chapter unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services provided by the design professional.
Comment. Section 7300 restates former Section 3081.2. See also Section 7060 (agency). The amount of the lien is limited to the fee for services provided under the contract, rather than the amount provided before commencement of work, since the lien provided by this section is available even though construction is not commenced. See also Section 7304 (lien terminates on commencement of work).

See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7038 (“site” defined), 7046 (“work of improvement” defined).

§ 7302. Prerequisites for lien

7302. A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied:

(a) The work of improvement for which the design professional provided services has not commenced.

(b) The owner defaults in a payment required under the contract or refuses to pay the demand of the design professional made under the contract.

(c) Not less than 10 days before recording a claim of lien, the design professional gives the owner notice making a demand for payment and stating that a default has occurred under the contract and the amount of the default.

(d) The design professional records a claim of lien. The claim of lien shall include all of the following information:

(1) The name of the design professional.

(2) The amount of the claim.

(3) The current owner of record of the site.

(4) A legal description of the site.

(5) Identification of the building permit or other governmental approval for the work of improvement.

Comment. Section 7302 restates former Section 3081.3, with the clarification that a lien under this chapter is unavailable if construction has commenced. See subdivision (a). See also Sections 7100-7116 (notice), 7056 (filing and recording of papers).

A building permit or other governmental approval for the work of improvement obtained in connection with or utilizing the services provided by the design professional is required as a condition of recording the claim of lien under Section 7300 (lien).

See also Sections 7006 (“contract” defined), 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7038 (“site” defined), 7046 (“work of improvement” defined).

§ 7304. Creation, expiration, and release of lien

7304. (a) On recordation of the claim of lien, a lien is created in favor of the named design professional.

(b) The lien automatically expires and is null and void and of no further force or effect on the occurrence of either of the following events:

(1) The commencement of the work of improvement for which the design professional provided services.

(2) The expiration of 90 days after recording the claim of lien, unless the design professional commences an action to enforce the lien within that time.
(c) If the owner partially or fully satisfies the lien, the design professional shall execute and record a waiver and release under Article 8 (commencing with Section 7160) of Chapter 2.

Comment. Section 7304 restates former Section 3081.4. On expiration of the lien as a result of commencement of the work of improvement, the design professional may obtain a lien under Section 7400 (mechanics lien). See Section 7308 (mechanics lien right not affected).

See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

§ 7306. Enforcement of lien
7306. A lien created under this chapter is enforceable under Article 7 (commencing with Section 7460) of Chapter 4.

Comment. Section 7306 restates former Section 3081.5.

See also Section 7024 (“lien” defined).

§ 7308. Mechanics lien right not affected
7308. This chapter does not affect the ability of a design professional to obtain a lien for a work of improvement under Section 7400.

Comment. Section 7308 restates former Section 3081.6.

See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7046 (“work of improvement” defined).

§ 7310. Time for claim of lien
7310. A design professional shall record a claim of lien under this chapter no later than 90 days after the design professional knows or has reason to know that the work of improvement will not be commenced.

Comment. Section 7310 restates former Section 3081.7.

See also Sections 7010 (“design professional” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

§ 7312. Right to pursue other remedies
7312. The creation of a lien under this chapter does not affect the ability of the design professional to pursue other remedies.

Comment. Section 7312 restates former Section 3081.8.

See also Sections 7010 (“design professional” defined), 7024 (“lien” defined).

§ 7314. Priorities
7314. (a) No lien created under this chapter affects or takes priority over the interest of record of a purchaser, lessee, or encumbrancer, if the interest of the purchaser, lessee, or encumbrancer in the property was duly recorded before recordation of the claim of lien.

(b) No lien created under this chapter affects or takes priority over an encumbrance of a construction lender that funds the loan for the work of improvement for which the design professional provided services.

Comment. Section 7314 restates former Section 3081.9.
See also Sections 7004 ("construction lender" defined), 3083.024 ("design professional" defined), 7024 ("lien" defined), 7028 ("owner" defined), ("work of improvement" defined).

§ 7316. Exemption

7316. A design professional may not obtain a lien under this chapter for services provided for a work of improvement relating to a single-family owner occupied residence for which the expected construction cost is less than one hundred thousand dollars ($100,000).

Comment. Section 7316 restates former Section 3081.10. The exemption is based on expected construction cost, since the lien is only available if the work of improvement is not constructed. See Section 7304 (creation, expiration, and release of lien).

See also Sections 7008 ("contract price" defined), 3083.024 ("design professional" defined), 7024 ("lien" defined), 7028 ("owner" defined), 7046 ("work of improvement" defined).

CHAPTER 4. MECHANICS LIEN

Article 1. Who Is Entitled to Lien

§ 7400. Persons entitled to lien

7400. A person that provides labor, service, equipment, or material authorized for a work of improvement, including but not limited the following persons, has a lien right under this chapter:

(a) Direct contractor.
(b) Subcontractor.
(c) Material supplier.
(d) Equipment lessor.
(e) Laborer.
(f) Design professional.
(g) Builder.

Comment. Section 7400 supersedes the part of former Section 3110 providing a lien for contributions to a work of improvement. It implements the directive of Article XIV, Section 3, of the California Constitution that, “Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.”

The reference in the introductory portion of Section 7400 to labor, service, equipment, or material “authorized” replaces the references in former Section 3110 to the “instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise).”

See Section 7406 (who may authorize work).

The type of contribution to the work of improvement that qualifies for a lien right is described in the introductory portion of Section 7400 as provision of “labor, service, equipment, or material.” Elimination of the former references to “bestowing skill or other necessary services” or “furnishing appliances, teams, or power” or “work done or materials furnished” is not a substantive change. See Section 7016 (“labor, service, equipment, or material” defined).

The listing of classes of persons with lien rights in subdivisions (a)-(g) restates without substantive change the comparable part of former Section 3110. This provision does not continue the former listing of types of contractors, subcontractors, laborers, and design professionals, such
as mechanics, artisans, machinists, builders, teamsters, draymen, architects, registered engineers, and licensed land surveyors. This is not a substantive change; these classes are included in the defined terms used in this section.

See also Sections 7010 (“design professional” defined), 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or material” defined), 7018 (“laborer” defined), 7024 (“lien” defined), 7026 (“material supplier” defined), 7032 (“person” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

§ 7402. Lien right of express trust fund

7402. An express trust fund has the same lien right under this chapter as a laborer on a work of improvement, to the extent of the compensation agreed to be paid to the express trust fund for labor on that work of improvement only.

Comment. Section 7402 continues a portion of former Section 3111 without substantive change. The duplicative description of the laborer’s lien right and other unneeded language is omitted. These are technical, nonsubstantive changes.

See also Sections 7014 (“express trust fund” defined), 7018 (“laborer” defined), 7024 (“lien” defined).

§ 7404. Site improvement lien

7404. A person that provides labor, service, equipment, or material authorized for a site improvement has a lien right under this chapter.

Comment. Section 7404 supersedes former Section 3112. The reference to work done or material furnished is superseded by the reference to labor, service, equipment, or material. See Section 7016 (“labor, service, equipment, or material” defined). The reference to work at the instance or request of the owner or any person acting by or under authority of the owner as contractor or otherwise is replaced by the reference to work authorized. See Section 7406 (who may authorize work).

A site improvement is treated in the same manner as a work of improvement under this chapter, except as provided in Sections 7448 (claim against separate residential units), 7450 (priority of lien), 7458 (priority of site improvement lien). See also Section 7046 (“work of improvement” defined).

See also Sections 7024 (“lien” defined), 7032 (“person” defined), 7040 (“site improvement” defined).

§ 7406. Who may authorize work

7406. Labor, service, equipment, or material is authorized for a work of improvement or for a site improvement in any of the following circumstances:

(a) It is provided at the request of or agreed to by the owner.

(b) It is provided or authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the work of improvement or site improvement.

Comment. Section 7406 restates parts of former Sections 3110 and 3112.

The reference to work provided at the request of an owner in subdivision (a) includes work provided at the instance of the owner, or of a person acting by or under the owner’s authority. See Section 7028 (“owner” defined).

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

The references in former law to sub-subcontractors and builders are omitted as surplus. A contractor either has a contract with the owner (direct contractor) or does not (subcontractor). This part does not distinguish among levels of subcontractor. The term “builder” was not defined.
in former law and was used only in former Section 3110. A work of improvement includes a site improvement. See Section 7046 (“work of improvement” defined).
See also Sections 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or material” defined), 7032 (“person” defined), 7044 (“subcontractor” defined).

Article 2. Conditions to Enforcing a Lien

§ 7410. Preliminary notice required
7410. A claimant may enforce a lien only if the claimant has given preliminary notice to the extent required by Chapter 2 (commencing with Section 7200) and made proof of notice.

Comment. Section 7410 continues former Section 3114 without substantive change. A claimant must give preliminary notice to the extent provided in the preliminary notice provisions of this part. See Section 7200 et seq. Preliminary notice is not required of a direct contractor or a laborer or laborers compensation fund. Section 7200(b) (preliminary notice prerequisite to remedies).
See also Section 7116 (proof of notice).
See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7034 (“preliminary notice” defined).

§ 7412. Time for claim of lien by direct contractor
7412. A direct contractor may not enforce a lien unless the contractor records a claim of lien within the following times:
(a) After the contractor completes the contract.
(b) Before the earlier of the following times:
(1) Ninety days after completion of the work of improvement.
(2) Sixty days after the owner records a notice of completion.

Comment. Section 7412 restates former Section 3115. A contract is complete within the meaning of this section when the contractor’s obligations under it are substantially performed, excused, or otherwise discharged. See Howard S. Wright Construction Co. v. BBIC Investors, LLC, 136 Cal. App. 4th 228, 38 Cal. Rptr. 3d 769 (2006).
For “completion” of a work of improvement, see Section 7150. For recordation of a notice of completion, see Section 7152 (notice of completion). The notice of completion includes notice of cessation.
See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

§ 7414. Time for claim of lien by claimant other than direct contractor
7414. A claimant other than a direct contractor may not enforce a lien unless the claimant records a claim of lien within the following times:
(a) After the claimant ceases to provide labor, service, equipment, or material.
(b) Before the earlier of the following times:
(1) Ninety days after completion of the work of improvement.
(2) Thirty days after the owner records a notice of completion.

Comment. Section 7414 restates former Section 3116. For “completion” of a work of improvement, see Section 7150. For recordation of a notice of completion, see Section 7152 (notice of completion). The notice of completion includes notice of cessation.
An express trust fund may have a longer period in the case of a claim against a separate residential unit. See Section 7416.

See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

§ 7416. Time for claim of lien on separate residential unit in condominium

7416. Notwithstanding any other provision of this chapter, completion of a residential structure containing multiple condominium units, together with any common area, garage, or other appurtenant improvements, does not operate in any manner to impair the lien right of an express trust fund under Section 7402 if the claim of lien is recorded within 120 days after completion of the residential structure.

Comment. Section 7416 continues the last paragraph of former Section 3131 without substantive change. See also Sections 7002 (“claimant” defined), 7014 (“express trust fund” defined), 7024 (“lien” defined).

§ 7418. Contents of claim of lien

7418. A claim of lien shall be in writing, signed and verified by the claimant, and shall include all of the following information:

(a) A statement of the claimant’s demand after deducting all just credits and offsets.

(b) The name of the owner or reputed owner, if known.

(c) A general statement of the kind of labor, service, equipment, or material provided by the claimant.

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

(e) A description of the site sufficient for identification.

(f) The claimant’s address.

Comment. Subdivisions (a)-(e) of Section 7418 continue former Section 3084 without substantive change. The claim of lien may be executed by the claimant’s authorized agent. See Section 7060 (agency).

Subdivision (d) requires the name of the person that “contracted for” the labor, service, equipment, or material, rather than who “employed” the claimant. See Section 7406 (who may authorize work). See also Section 7056 (filing and recording of papers).

Subdivision (f) is new. It implements other provisions that invoke a claimant’s address. Cf. Sections 7428 (release bond), 7486 (notice of hearing).

See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032 (“person” defined), 7038 (“site” defined).

§ 7420. Notice of intended recording of claim of lien

7420. (a) Before recording a claim of lien, the claimant shall give notice of the intended recording to the owner or reputed owner of property subject to the claim of lien.
(b) Notice of the intended recording of a claim of lien shall include a copy of the claim of lien and a statement of the date and place where the claim of lien is to be recorded.

Comment. Section 7420 is new. A claim of lien may not be recorded unless accompanied by proof of notice to the owner. Section 7422 (notice prerequisite to recording claim of lien).

See also Sections 7100-7116 (notice).

§ 7422. Notice prerequisite to recording claim of lien

7422. The county recorder shall not record a claim of lien that is filed for record unless accompanied by the claimant’s proof of notice showing compliance with Section 7420.

Comment. Section 7422 is new. Cf. Gov’t Code § 27297.5 (notification by county recorder of person against which involuntary lien is recorded). See also Section 7116 (proof of notice).

§ 7424. Forfeiture of lien for false claim

7424. (a) Except as provided in subdivision (b), erroneous information contained in a claim of lien relating to the claimant’s demand, credits and offsets deducted, the labor, service, equipment, or material provided, or the description of the site, does not invalidate the claim of lien.

(b) Erro"neous information contained in a claim of lien relating to the claimant’s demand, credits and offsets deducted, or the labor, service, equipment, or material provided, invalidates the 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 7424 combines former Sections 3118 and 3261. The terminology of the combined provision is conformed to Section 7418 (claim of lien).

Subdivision (b)(1) expands the bases for invalidity to include intent to slander title. If the court finds intent to slander (i.e., falsely disparage) title or defraud, common law damages are available. See Section 7426 (damages for false claim of lien).

See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7038 (“site” defined).

§ 7426. Damages for false claim of lien

7426. (a) If a claimant records a claim of lien containing erroneous information with intent to slander title or defraud, the claimant is liable for damages caused by the recordation, including costs and a reasonable attorney’s fee incurred in a proceeding to invalidate the claim of lien and recover damages.

(b) An owner may not commence an action for damages under this section unless at least 10 days before commencement the owner gave the claimant notice demanding that the claimant execute and record a verified release of the claim of
lien and the claimant failed to do so. A demand given under Section 7482 satisfies the requirement of this subdivision.

(c) The owner has the burden of proof of all elements of an action for damages under this section.

Comment. Section 7426 is new. It reverses case law to the effect that recordation of a claim of mechanics lien is privileged. See, e.g., Pisano & Associates v. Hyman, 29 Cal. App. 3d 1, 105 Cal. Rptr. 414 (1972). See also Section 7482 (demand prerequisite to petition).

See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7028 (“owner” defined).

§ 7428. Release bond

7428. (a) An owner of property subject to a recorded claim of lien or a direct contractor or subcontractor affected by the claim of lien that disputes the correctness or validity of the claim may obtain release of the property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property or the contractor or subcontractor.

(b) The bond shall be conditioned on payment of any judgment and costs the claimant recovers on the lien. The bond shall be in an amount equal to 125 percent of the amount of the claim of lien or 125 percent of the amount allocated in the claim of lien to the property to be released. The bond shall be executed by an admitted surety insurer.

(c) The bond may be recorded either before or after commencement of an action to enforce the lien. On recordation of the bond the property is released from the claim of lien and from any action to enforce the lien.

(d) A person that obtains and records a lien release bond shall give notice to the claimant by mailing a copy of the bond to the claimant. Failure to give the notice required by this section does not affect the validity of the bond, but the statute of limitations for an action on the bond is tolled until notice is given. The claimant shall commence an action on the bond within six months after notice is given.

Comment. Subdivisions (a)-(c) of Section 7428 continue former Section 3143. The amount of the release bond is reduced to 125 percent of the amount of the claim of lien, consistent with the stop payment notice release bond. See Section 7510 (release bond). The language of the section is harmonized with the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure.

Subdivision (d) restates former Section 3144.5. See also Sections 7100-7116 (notice).

The owner of an interest in property may obtain a release bond. See Section 7028 (“owner” defined). The reference to recordation of the bond in the county in which the claim of lien is recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. Section 7056 (filing and recording of papers).

See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7024 (“lien” defined), 7032 (“person” defined), 7044 (“subcontractor” defined).

Article 3. Amount of Lien

§ 7430. Amount of lien

7430. (a) The lien is a direct lien for the lesser of the following amounts:
(1) The reasonable value of the labor, service, equipment, and material provided by the claimant.

(2) The price agreed to by the claimant and the person that contracted for the labor, service, equipment, or material. The lien is not limited in amount by the contract price for the work of improvement except as provided in Section 7602.

(b) This section does not preclude the claimant from including in a claim of lien an amount due as a result of rescission, abandonment, or breach of the contract. If there is a rescission, abandonment, or breach of the contract, the amount of the lien may not exceed the reasonable value of the labor, service, equipment, or material provided by the claimant.

Comment. Section 7430 restates subdivisions (a) and (b) of former Section 3123 and a portion of former Section 3110. See also Sections 7008 (“contract price” defined) and 7602 (payment bond). As used in this section, the reasonable value of labor, service, equipment, and material includes the reasonable use value of appliances, equipment, teams, and power.

The provision of former Section 3123(c) that required an owner to give notice of a change of 5 percent or more is not continued.

See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7032 (“person” defined), Section 7418 (claim of lien).

☞ Note. This draft omits from the law the provision of former Section 3123(c) that required an owner to give notice of a change of 5 percent or more. This provision did not appear to have an effective enforcement mechanism. The Commission particularly solicits comment on this proposed change.

§ 7432. Lien limited to work included in contract or modification

7432. (a) A lien does not extend to labor, service, equipment, or material not included in a contract between the owner and direct contractor if the labor, service, equipment, or material was authorized by the direct contractor or subcontractor and the claimant had actual knowledge or constructive notice of the contract before providing the labor, service, equipment, or material.

(b) The filing of a contract with the county recorder, before the commencement of work, is equivalent to giving actual notice of the provisions of the contract by the owner to a person providing labor, service, equipment, or material.

Comment. Section 7432 restates former Section 3124 without substantive change. “Direct contractor” is substituted for the undefined “contractor” in subdivision (a). The concept of “authorized” is substituted for “employed” in subdivision (a). See Section 7406 (who may authorize work). The reference to a modification of the contract is omitted in reliance of the definition of “contract”, which includes a contract change. See Section 7006 (“contract” defined).

See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032 (“person” defined), 7044 (“subcontractor” defined).

§ 7434. Amount of recovery

7434. A direct contractor or a subcontractor may enforce a lien only for the amount due pursuant to the contract after deducting all claims of other claimants for labor, service, equipment, and material provided and embraced within the contract.
Comment. Section 7434 continues former Section 3140 without substantive change.
See also Sections 7002 (“claimant” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined), 7044 (“subcontractor” defined).

Article 4. Property Subject to Lien

§ 7440. Property subject to lien
7440. Subject to Section 7442, a lien attaches to the work of improvement and to the property on which the work of improvement is situated, including as much space about the work of improvement as is required for the convenient use and occupation of the work of improvement.

Comment. Section 7440 restates the parts of former Sections 3128 and 3112 (site improvement lien on lot or tract of land) that described property subject to the lien, without substantive change. References to “property” are substituted for references to “land.” See also Sections 7024 (“lien” defined), 7046 (“work of improvement” defined).

§ 7442. Interest subject to lien
7442. The following interests in property to which a lien attaches are subject to the lien:
(a) The interest of a person that contracted for the work of improvement.
(b) The interest of a person that did not contract for the work of improvement, if labor, service, equipment, or material for which the lien is claimed was provided with the knowledge of the person. This subdivision does not apply to the interest of a person that gives notice of nonresponsibility under Section 7444.

Comment. Section 7442 restates former Section 3129 and the last portion of former Section 3128. A reference to “labor, service, equipment, or material” is substituted for the former reference to “commencement of the work or of the furnishing of the materials”. Cf. Section 7016 (“labor, service, equipment, or material” defined).
It should be noted that under this section, the interest of a person that contracts for a work of improvement indirectly, for example through a provision in a lease that requires a tenant to make the work of improvement, may be subject to the lien. Likewise, the interest of a person that did not contract for a work of improvement might in some circumstances be subject to the lien if the person is a “participating owner.” See, e.g., Los Banos Gravel Co. v. Freeman, 58 Cal. App. 3d 785, 130 Cal. Rptr. 180 (1976).
See also Sections 7024 (“lien” defined), 7032 (“person” defined), 7046 (“work of improvement” defined).

§ 7444. Notice of nonresponsibility
7444. (a) An owner of property on which a work of improvement is situated that did not contract for the work of improvement may give notice of nonresponsibility.
(b) A notice of nonresponsibility shall be signed and verified by the owner, and shall include all of the following information:
(1) The nature of the owner’s title or interest.
(2) The name of a purchaser under contract, if any, or lessee, if known.

(3) A statement that the person giving the notice is not responsible for claims arising from the work of improvement.

(c) A notice of nonresponsibility is not effective unless, within 10 days after the person giving notice has knowledge of the work of improvement, the person both posts and records the notice.

Comment. Section 7444 restates former Section 3094 without substantive change. See also Sections 7100-7116 (notice). The information required in this notice is in addition to the information required by Section 7102 (contents of notice). The notice of nonresponsibility may be signed and verified by the owner or person owning or claiming an interest in the property, or by the owner or other person’s agent. See Section 7028 (“owner” defined). A notice of nonresponsibility is recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. Section 7056 (filing and recording of papers).

See also Sections 7032 (“person” defined), 7038 (“site” defined), 7046 (“work of improvement” defined).

§ 7446. Multiple works of improvement

7446. A claimant may record one claim of lien on two or more works of improvement, subject to the following conditions:

(a) The works of improvement have or are reputed to have the same owner, or the labor, service, equipment, or material was contracted for by the same person for the works of improvement whether or not they have the same owner.

(b) The claimant in the claim of lien designates the amount due for each work of improvement. If the claimant contracted for a lump sum payment for labor, service, equipment, and material provided for the works of improvement and the contract does not segregate the amount due for each work of improvement separately, the claimant may estimate an equitable distribution of the amount due for each work of improvement based on the proportionate amount of labor, service, equipment, or material provided for each. If the claimant does not designate the amount due for each work of improvement, the lien is subordinate to other liens.

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

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

Comment. Section 7446 restates former Section 3130 without substantive change. The concept of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section 7406 (who may authorize work).

Subdivision (c) is intended to apply to a single work of improvement situated on two or more parcels of land that have distinct owners.
§ 7448. Claim against separate residential units

7448. (a) As used in this section, “separate residential unit” means one residential structure, including a residential structure containing multiple condominium units, together with any common area, garage, or other appurtenant improvements.

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

(1) Each unit is deemed a separate work of improvement, and completion of each unit is determined separately for purposes of the time for recording a claim of lien on that unit. This paragraph does not affect any lien right under Section 7404 or 7446.

(2) Material provided for the work of improvement is deemed to be provided for use or consumption in each separate residential unit in which the material is actually used or consumed; but if the claimant is unable to segregate the amounts used or consumed in separate residential units, the claimant has the right to all the benefits of Section 7446.

Comment. Section 7448 restates the first paragraph of former Section 3131 without substantive change. The reference to “filing” a claim of lien is changed to recording. See Sections 7412, 7414 (recordation of claim of lien). For the purpose of this section, a claim of lien is not considered recorded unless done in the manner provided by Section 7056 (filing and recording of papers). See also Sections 7404 (site improvement lien) and 7446 (multiple works of improvement).

The second paragraph of former Section 3131 is continued in Section 7416 (special rule for express trust fund claim on separate residential unit in condominium).

For “completion” of a work of improvement, see Section 7150.

See also Sections 7418 (claim of lien), 7002 (“claimant” defined), 7024 (“lien” defined), 7046 (“work of improvement” defined).

Article 5. Priorities

§ 7450. Priority of lien

7450. (a) A lien under this chapter, other than a lien provided for in Section 7404, has priority over a lien, mortgage, deed of trust, or other encumbrance on the work of improvement or the property on which the work of improvement is situated, that (1) attaches after commencement of the work of improvement, or (2) was unrecorded at the commencement of the work of improvement and of which the claimant had no notice.

(b) Subdivision (a) is subject to the exception provided for in Section 7452.

Comment. Section 7450 continues former Section 3134 without substantive change. For a site improvement lien, see Section 7458 (priority of site improvement lien). See also Sections 7404 (site improvement lien), 7452 (payment bond).
Section 7452. Payment bond covering mechanics lien

7452. A mortgage or deed of trust, otherwise subordinate to a lien under Section 7450, has priority over a lien for labor, service, equipment, or material provided after recordation of a payment bond that satisfies all of the following requirements:

(a) The bond refers to the mortgage or deed of trust.

(b) The bond is in an amount not less than 75 percent of the principal amount of the mortgage or deed of trust.

Comment. Section 7452 continues former Section 3138 without substantive change. See also Section 7056 (recordation of payment bond in county in which work of improvement is situated).

See also Sections 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7030 (“payment bond” defined).

Section 7454. Separate contract for site improvement

7454. 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 commencement of the site improvement is not commencement of the remainder of the work of improvement.

Comment. Section 7454 restates former Section 3135 without substantive change.

See also Sections 7040 (“site improvement” defined), 7046 (“work of improvement” defined).

Section 7456. Priority of advances by lender

7456. (a) This section applies to a construction loan secured by a mortgage or deed of trust that has priority over a lien under this chapter.

(b) An optional advance of funds by the construction lender that is used for construction costs has the same priority as a mandatory advance of funds by the construction lender, provided that the total of all advances does not exceed the amount of the original construction loan.

Comment. Section 7456 rewrites former Section 3136 for clarity.

See also Sections 7004 (“construction lender” defined), 7024 (“lien” defined).

Note. The Commission solicits comment on the fidelity of the rewrite to the original meaning of the section. The interpretation taken in this rewrite is consistent with that of 5 Miller & Starr, California Real Estate § 11:132, at 334-35 (3d ed. 2001) (completion of construction by lender).

Section 7458. Priority of site improvement lien

7458. (a) Except as provided in subdivision (b), a lien provided for in Section 7404 has priority over:

(1) A mortgage, deed of trust, or other encumbrance that attaches after commencement of the site improvement.

(2) A mortgage, deed of trust, or other encumbrance that was unrecorded at the commencement of the site improvement and of which the claimant had no notice.
(3) A mortgage, deed of trust, or other encumbrance that was recorded before commencement of the site improvement, if given for the sole or primary purpose of financing the site improvement. This subdivision does not apply if the loan proceeds are, in good faith, placed in the control of the lender pursuant to a binding agreement with the borrower to the effect that (i) the proceeds are to be applied to the payment of claimants and (ii) no portion of the proceeds will be paid to the borrower in the absence of satisfactory evidence that all claims have been paid or that the time for recording a claim of lien has expired and no claim of lien has been recorded.

(b) A mortgage or deed of trust, otherwise subordinate under subdivision (a), has priority over a lien provided for in Section 7404 if a payment bond in an amount not less than 50 percent of the principal amount of the mortgage or deed of trust is recorded before completion of the work of improvement.

Comment. Subdivision (a) of Section 7458 continues former Section 3137 without substantive change. See also Section 7404 (site improvement lien).

Subdivision (b) continues former Section 3139 without substantive change. See also Section 7056 (filing and recording of papers).

See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7030 (“payment bond” defined), 7040 (“site improvement” defined), 7046 (“work of improvement” defined).

Article 6. Enforcement of Lien

§ 7460. Time for commencement of enforcement action

7460. (a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien and record a notice of the pendency of the action within 100 days after recordation of the claim of lien. If the claimant does not commence an action and record notice of the pendency of the action within the time provided in this subdivision, the claim of lien expires and is unenforceable.

(b) Subdivision (a) does not apply if the claimant and owner agree to extend credit, and notice of the fact and terms of the extension of credit is recorded (1) within 90 days after recordation of the claim of lien or (2) more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. In that event the claimant shall commence an action to enforce the lien and record a notice of the pendency of the action within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action and record notice of the pendency of the action within the time provided in this subdivision, the claim of lien expires and is unenforceable.

Comment. Section 7460 restates former Sections 3144 and 3145, and adds the requirement that a claim of lien is unenforceable if a lis pendens is not recorded within the statutory periods.

Subdivision (b) makes clear that the owner must be a party to the extension of credit, and allows for late recording of the extension of credit. This codifies the rule in Richards v. Hillside Development Co., 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960), and overrules Dorer v. McKinsey, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961).
For completion of a work of improvement, see Section 7150.
See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7046 (“work of improvement” defined).

§ 7464. Lis pendens
7464. After commencement of an action to enforce a lien, the claimant may record a notice of the pendency of action under Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure.
Comment. Section 7464 restates former Section 3146 without substantive change. The reference to the lis pendens statute is corrected, to reflect the repeal of Code of Civil Procedure 409. See 1992 Cal. Stat. ch. 883, § 1. See also Section 7054 (rules of practice).
The second sentence of former Section 3146 is not continued. It is superseded by general provisions governing the effect of a lis pendens. See Code Civ. Proc. § 405.24 (constructive notice).
See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

§ 7466. Dismissal for lack of prosecution
7466. Notwithstanding Section 583.420 of the Code of Civil Procedure, the court may dismiss an action to enforce a lien that is not brought to trial within two years after commencement.
Comment. Section 7466 continues former Section 3147 without substantive change. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. See also Section 7054 (rules of practice).
See also Section 7024 (“lien” defined).

§ 7470. Costs
7470. In addition to any other costs allowed by law, the court in an action to enforce a lien shall allow as costs to each claimant whose lien is established the amount paid to verify and record the claim of lien, whether the claimant is a plaintiff or defendant.
Comment. Section 7470 continues former Section 3150 without substantive change.
See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

§ 7472. Deficiency
7472. If there is a deficiency of proceeds from the sale of property on a judgment for enforcement of a lien, a deficiency judgment may be entered against a party personally liable for the deficiency in the same manner and with the same effect as in an action to foreclose a mortgage.
Comment. Section 7472 restates former Section 3151 without substantive change.
See also Section 7024 (“lien” defined).

§ 7474. Personal liability
7474. (a) This chapter does not affect any of the following rights of a claimant:
(1) The right to maintain a personal action to recover a debt against the person liable, either in a separate action or in an action to enforce a lien.
(2) The right to a writ of attachment. In an application for a writ of attachment, the claimant shall refer to this section. The claimant’s recording of a claim of lien does not affect the right to a writ of attachment.

(3) The right to enforce a judgment.

(b) A judgment obtained by the claimant in a personal action described in subdivision (a) does not impair or merge the claim of lien, but any amount collected on the judgment shall be credited on the amount of the lien.

Comment. Section 7474 restates former Section 3152 without substantive change. The reference in the introductory portion of the section to “this title” is changed to “this chapter” consistent with the scope of the chapter.

For provisions relating to attachment, see Code Civ. Proc. § 481.010 et seq. For provisions relating to enforcement of a money judgment, see Code Civ. Proc. § 681.010 et seq.

See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7032 (“person” defined).

§ 7476. Liability of contractor for lien enforcement

7476. In an action to enforce a lien for labor, service, equipment, or material provided to a contractor:

(a) The contractor shall defend the action at the contractor’s own expense. During the pendency of the action the owner may withhold from the direct contractor the amount claimed in the action.

(b) If the judgment in the action is against the owner or the owner’s property, the owner may deduct the amount of the judgment and costs from any amount owed to the direct contractor. If the amount of the judgment and costs exceeds the amount owed to the direct contractor, or if the owner has settled with the direct contractor in full, the owner may recover from the contractor, or the sureties on a bond given by the contractor for faithful performance of the contract, the amount of the judgment and costs that exceed the contract price and for which the contractor was originally liable.

Comment. Section 7476 restates former Section 3153 without substantive change. See also Sections 7008 (“contract price” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).

Article 7. Release Order

§ 7480. Petition for release order

7480. (a) The owner of property subject to a claim of lien may petition the court for an order to release the property from the claim of lien for any of the following causes:

(1) The claimant has not commenced an action to enforce the lien within the time provided in Section 7460.

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

(3) The claimant’s demand stated in the claim of lien has been paid in full.
(4) None of the labor, service, equipment, or material stated in the claim of lien has been provided.

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

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

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

(c) Notwithstanding Section 7054, Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to a proceeding under this article.

Comment. Subdivision (a)(1) of Section 7480 continues former Section 3154(a) without substantive change. Subdivisions (a)(2)-(6) are new. The owner need not wait until expiration of the time to commence an enforcement action before bringing a petition to release an invalid claim of lien under this section. Cf. Section 7424 (forfeiture of lien for false claim).

Subdivision (b) continues former Section 3154(h) without substantive change, and codifies the holding in Solit v. Tokai Bank, Ltd. New York Branch, 68 Cal. App. 4th 1435, 81 Cal. Rptr. 2d 243 (1999). Subdivision (c) continues former Section 3154(i) without substantive change. As used in this section, the owner of property includes the owner of an interest in the property. See Section 7028 (“owner” defined).

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

§ 7482. Demand prerequisite to petition

7482. An owner of property may not petition the court for a release order under this article unless at least 10 days before filing the petition the owner gives the claimant notice demanding that the claimant execute and record a release of the claim of lien.

Comment. Section 7482 is new. If the lien claimant complies with the demand, a release proceeding is unnecessary. See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7028 (“owner” defined).

§ 7484. Contents of petition

7484. A petition for a release order shall be verified and shall allege all of the following:

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

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

(c) The book and page or series number of the place in the official records where the claim of lien is recorded.

(d) The legal description of the property subject to the claim of lien.
(e) The facts on which the petition is based. If the petition is based on expiration of the time to enforce the lien, the petition shall allege that no extension of credit has been recorded within the time required by Section 7460, that the time for commencement of an action to enforce the lien has expired.

(f) That the owner has given the claimant notice demanding that the claimant execute and record a release of the lien and that the claimant is unable or unwilling to do so or cannot with reasonable diligence be found.

(g) Whether an action to enforce the lien is pending.

(h) Whether the owner has filed for relief in bankruptcy or there is another restraint that prevents the claimant from commencing an action to enforce the lien.

Comment. Section 7484 supersedes subdivision (b) of former Section 3154. As used in this section, the owner of property includes the owner of an interest in the property. See Section 7028 (“owner” defined). See also Section 7100 (written notice).

The information included in the petition is intended to facilitate the court’s order under Section 7488 (hearing and order). The reference to series number is added to cover a county in which the recorder uses a sequence number for record location.

See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

§ 7486. Time of hearing

7486. (a) On the filing of a petition for a release order, the clerk shall set a hearing date. The date shall be not more than 30 days after the filing of the petition. The court may continue the hearing beyond the 30-day period on a showing of good cause, but in any event the court shall rule and make any necessary orders on the petition not later than 75 days after the filing of the petition.

(b) The petitioner shall serve a copy of the petition and notice of hearing on the claimant at least 10 days before the hearing. Service shall be made in the same manner as service of summons, or by mail addressed to the claimant.

(c) Notwithstanding Section 7114, when service is made by mail, service is complete on the fifth day following deposit of the petition and notice in the mail.

Comment. Section 7486 continues subdivisions (c), (d), and the first sentence of (e) of former Section 3154, with the addition of the requirement that the court act no later than 75 days after the petition is filed. The reference to “if there is no clerk, the judge” is deleted. All courts now have a clerk. See also Section 7052 (proper court).

See also Sections 7100-7116 (notice).

See also Sections 7002 (“claimant” defined), 7024 (“lien” defined), 7034 (“preliminary notice” defined).

§ 7488. Hearing and order

7488. (a) At the hearing both (i) the petition and (ii) the issue of compliance with the service and date for hearing requirements of this article are deemed controverted by the claimant, and the petitioner has the burden of proof on those matters.

(b) If judgment is in favor of the petitioner, the court shall order the property released from the claim of lien.
(c) The prevailing party is entitled to a reasonable attorney’s fee.

Comment. Subdivision (a) of Section 7488 continues the last sentence of former Section 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change. Subdivision (b) continues a portion of former Section 3154(f); the remainder of the former provision is continued in Article 8 (commencing with Section 7490) (removal of claim of lien from record). Subdivision (c) continues former Section 3154(g) with the exception of the $2,000 limitation.

See also Sections 7002 (“claimant” defined), 7024 (“lien” defined).

Article 8. Removal of Claim of Lien from Record

§ 7490. Court order

7490. (a) A court order dismissing an action to enforce a lien or releasing property from a claim of lien, or a judgment that no lien exists, shall include all of the following information:

(1) The date of recordation of the claim of lien.
(2) The county in which the claim of lien is recorded.
(3) The book and page or series number of the place in the official records where the claim of lien is recorded.
(4) The legal description of the property.

(b) A court order under this section is a recordable instrument. On recordation of a certified copy of the court order, the property described in the order is released from the claim of lien.

Comment. Subdivision (a) of Section 7490 generalizes a portion of former Section 3154(f). The reference to sequence number is added to cover a county in which the recorder uses a series number for record location. The reference to the city where the claim of lien is recorded is omitted as superfluous.

Subdivision (b) generalizes the second sentence of former Section 3154(f)(4).

See also Section 7024 (“lien” defined).

§ 7492. Effect of court order

7492. (a) A court order or judgment under Section 7490 is equivalent to cancellation of the claim of lien and its removal from the record.

(b) This section does not apply to a court order dismissing an action to enforce a lien that is expressly stated to be without prejudice.

Comment. Section 7492 generalizes former Section 3148.

See also Section 7024 (“lien” defined).

§ 7494. Effect of expiration or recordation of court order

7494. If a claim of lien expires and is unenforceable under Section 7460, or if a court order or judgment is recorded under Section 7490, the claim of lien does not constitute actual or constructive notice of any of the matters contained, claimed, alleged, or contended in the claim of lien, or create a duty of inquiry in any person thereafter dealing with the affected property.

Comment. Section 7494 is drawn from Code of Civil Procedure Section 405.60 (lis pendens).
See also Section 7024 (“lien” defined).

CHAPTER 5. STOP PAYMENT NOTICE


§ 7500. Stop payment notice exclusive remedy to reach construction funds

7500. (a) A person may not assert a legal or equitable right in a fund for payment of construction costs, other than a right created by direct written contract between the person and the holder of the fund, except as provided in this chapter.

(b) This chapter provides the exclusive remedy of a person that provides labor, service, equipment, or material against a fund for payment of construction costs.

Comment. Section 7500 restates former Section 3264, but is limited to a private work. See Section 7050 (application of part). For a comparable provision applicable to a public work, see Pub. Cont. Code § 44110 (stop payment notice exclusive remedy to reach construction funds).

This section is not intended to either ratify or abrogate the holding of Nibbi Brothers, Inc. v. Home Fed. Sav. & Loan Ass’n, 205 Cal. App. 3d 1415, 253 Cal. Rptr. 289 (1988), that in an appropriate case a person providing labor or materials may recover from a construction lender on a theory of unjust enrichment.

See also Sections 7016 (“labor, service, equipment, or material” defined), 7032 (“person” defined).

§ 7502. Contents of stop payment notice

7502. (a) A stop payment notice shall be signed and verified by the claimant.

(b) The claimant may include in a stop payment notice an amount due as a result of rescission, abandonment, or breach of the contract. If there is a rescission, abandonment, or breach of the contract, the amount of the stop payment notice may not exceed the reasonable value of the labor, service, equipment, and material provided by the claimant.

Comment. Subdivision (a) of Section 7502 supersedes subdivisions (a)-(d) of former Section 3103. See also Sections 7100-7116 (notice). A stop payment notice may be executed by the claimant’s agent. See Section 7060 (agency). This section does not preclude the claimant from including in a stop payment notice an amount due for labor, service, equipment, or material provided pursuant to a contract change. See Section 7006 (“contract” defined).

Subdivision (b) applies provisions applicable to a claim of lien to the stop payment notice. Cf. Section 7430 (amount of lien).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7016 (“labor, service, equipment, or material” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

§ 7504. False stop payment notice

7504. A claimant that willfully gives a false stop payment notice or that willfully includes in the notice labor, service, equipment, or material not provided or agreed to be provided to or for the person named in the notice forfeits all right to participate in the distribution of the funds withheld and all right to a lien under Chapter 4 (commencing with Section 7400).
**Comment.** Section 7504 restates former Section 3168 without substantive change.

See also Sections 7002 ("claimant" defined), Section 7016 ("labor, service, equipment, or material" defined), 7024 ("lien" defined), 7032 ("person" defined), 7042 ("stop payment notice" defined).

§ 7506. Manner of giving stop payment notice

7506. (a) A stop payment notice to an owner shall be given to the owner or to the owner’s architect, if any.

(b) A stop payment notice to a construction lender holding construction funds shall be given to the manager or other responsible officer or person at the office or branch of the lender administering or holding the construction funds.

**Comment.** Subdivisions (a) and (b) of Section 7506 restate a portion of the second paragraph of former Section 3103 and the last two sentences of former Section 3083, expanding the manner of notice. See Section 7104 (manner of giving notice).

A notice given to a construction lender under subdivision (b) is not effective as against the lender unless given as provided in that subdivision.

The effect of the last paragraph of former Section 3103 is continued in Section 7104 (manner of giving notice).

See also Sections 7004 ("construction lender" defined), 7028 ("owner" defined), 7032 ("person" defined), 7042 ("stop payment notice" defined).

§ 7508. Requirements for valid stop payment notice

7508. A stop payment notice is not valid unless both of the following conditions are satisfied:

(a) The claimant gave preliminary notice to the extent required by Chapter 2 (commencing with Section 7200).

(b) The claimant gave the stop payment notice before expiration of the time within which a claim of lien must be recorded under Chapter 4 (commencing with Section 7400).

**Comment.** Section 7508 restates former Section 3160 and a portion of the first sentence of former Section 3159 without substantive change. For the time within which a claim of lien must be recorded, see Sections 7412-7416 (time for claim of lien); see also Section 7154 (notice of completion of contract for portion of work of improvement).

See also Sections 7002 ("claimant" defined), 7028 ("owner" defined), 7034 ("preliminary notice" defined), 7042 ("stop payment notice" defined), 7046 ("work of improvement" defined).

§ 7510. Release bond

7510. (a) A person may obtain release of funds withheld pursuant to a stop payment notice by giving the person withholding the funds a release bond.

(b) A release bond shall be given by an admitted surety insurer and shall be conditioned for payment of any amount the claimant recovers on the claim, together with costs of suit awarded in the action. The bond shall be in an amount equal to 125 percent of the amount claimed in the stop payment notice.

(c) On receipt of a release bond, the person withholding funds pursuant to the stop payment notice shall release them.
Comment. Section 7510 restates former Section 3171 but eliminates the restrictions on the persons and the conditions under which a release bond may be given. The bond must be given by an admitted surety insurer. See Section 7140 (application of Bond and Undertaking Law); Code Civ. Proc. § 995.120 (“admitted surety insurer” defined).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined), 7044 (“subcontractor” defined).

Article 2. Stop Payment Notice to Owner

§ 7520. Stop payment notice to owner

7520. (a) A person that has a lien right under Chapter 4 (commencing with Section 7400), other than a direct contractor, may give the owner a stop payment notice.

(b) The owner may give notice demanding that a person that has a lien right under Chapter 4 (commencing with Section 7400) give the owner a stop payment notice. If the person fails to give the owner a bonded or unbonded stop payment notice, the person forfeits the right to a lien under Chapter 4 (commencing with Section 7400).

Comment. Section 7520 restates former Section 3158. It makes clear that the owner’s demand under this section requires only an unbonded stop payment notice. See also Section 7100 (written notice).

See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

§ 7522. Duty of owner

7522. (a) Except as provided in subdivision (b), on receipt of a stop payment notice an owner shall withhold from the direct contractor or from any person acting under authority of a direct contractor a sufficient amount due or to become due to the direct contractor to pay the claim stated in the notice.

(b) The owner may, but is not required to, withhold funds if the owner has recorded a payment bond under Section 7602. If the owner does not withhold funds, the owner shall, within 30 days after receipt of the stop payment notice, give notice to the claimant that a payment bond has been recorded and provide the claimant a copy of the bond.

Comment. Section 7522 restates former Section 3161 and makes it parallel to the stop payment notice for a public work. See Pub. Cont. Code § 44150 (duty to withhold funds). See also Sections 7100-7116 (notice).

See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7030 (“payment bond” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

Note. This draft deletes the provision of existing law that requires the owner to withhold an amount due to pay the amount of the claim stated in the notice “and any claim of lien that is recorded.” Under the draft, the amount claimed in a stop payment notice is the same as the amount in a claim of lien. Any amount paid pursuant to the stop payment notice reduces the claim of lien.
Article 3. Stop Payment Notice to Construction Lender

§ 7530. Stop payment notice to construction lender

7530. (a) A person that has a lien right under Chapter 4 (commencing with Section 7400) may give a construction lender a stop payment notice.
(b) If the person that gives a construction lender a stop payment notice is a claimant other than a direct contractor, the notice may only be given for labor, service, equipment, or material provided by the claimant.

Comment. Subdivision (a) of Section 7530 restates a portion of the first sentence of former Section 3159 without substantive change. See also Sections 7042 (“stop payment notice” defined), 7508 (requirements for valid stop payment notice).

For provisions governing the amount withheld where the person giving a stop payment notice is a direct contractor or subcontractor and there is a claim of another subcontractor or material supplier, see Section 7542 (amount withheld).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012 (“direct contractor” defined), Section 7016 (“labor, service, equipment, or material” defined), 7024 (“lien” defined), 7032 (“person” defined).

§ 7532. Bonded stop payment notice

7532. A claimant may give a construction lender a stop payment notice accompanied by a bond in an amount equal to 125 percent of the amount of the claim. The bond shall be conditioned that if the defendant recovers judgment in an action to enforce payment of the claim stated in the stop payment notice or to enforce a claim of lien recorded by the claimant, the claimant will pay all costs that are awarded to the owner, direct contractor, or construction lender, and all damages to the owner, direct contractor, or construction lender that result from the stop payment notice or recordation of the claim of lien, not exceeding the amount of the bond.

Comment. Section 7532 restates the first sentence of former Section 3083 without substantive change. The former reference to “good and sufficient sureties” on the bond is omitted as unnecessary. See Code Civ. Proc. § 995.310 (sufficient sureties on bond required). The second two sentences of former Section 3083 are continued in Section 7506(a)(2) (manner of giving notice).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7042 (“stop payment notice” defined).

☞ Note. Existing law states that the claimant’s bond covers costs that may be awarded “against” the defendant. This is evidently a garbled way of saying that the claimant must cover the prevailing defendant’s court costs. We have revised the provision accordingly.

§ 7534. Objection to bond

7534. (a) A construction lender that objects to the sufficiency of sureties on the bond given with a bonded stop payment notice shall give notice to the claimant of the objection within 20 days after the bonded stop payment notice is given.
(b) The claimant may within 10 days after notice of the objection is given substitute for the initial bond a bond executed by an admitted surety insurer. If the
claimant does not substitute a bond executed by an admitted surety insurer, the construction lender may disregard the bonded stop payment notice and release all funds withheld in response to that notice.

Comment. Section 7534 restates former Section 3163 without substantive change. Cf. Section 7100 (written notice); Code Civ. Proc. § 995.120 (“admitted surety insurer” defined).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7042 (“stop payment notice” defined).

§ 7536. Duty of construction lender

7536. (a) Except as provided in subdivision (b), on receipt of a stop payment notice a construction lender shall withhold from the borrower or other person to which the lender or the owner is obligated to make payments or advancement out of the construction fund sufficient funds to pay the claim.

(b) The construction lender may, at its option, elect not to withhold funds in any of the following circumstances:

(1) The stop payment notice is unbonded.

(2) A payment bond is recorded before the lender is given the first stop payment notice. This paragraph does not apply to a bonded stop payment notice given by a direct contractor.

Comment. Section 7536 restates paragraphs (1) and (2) of subdivision (a) of former Section 3159, and subdivision (a)(1)-(2) of former Section 3162. The requirement that the lender withhold sufficient funds to pay “any claim of lien that is recorded” is omitted; any amount paid pursuant to a stop payment notice reduces the claim of lien. The reference to recordation of a payment bond “in the office of the county recorder where the site is located” is omitted from subdivision (b)(2) as unnecessary. See Section 7056 (filing and recording of papers).

If a bonded stop payment notice is given by a direct contractor, the construction lender must withhold funds regardless of whether a payment bond has previously been recorded under Section 7602.

For provisions governing the amount withheld where the person giving a stop payment notice is a direct contractor or subcontractor and there is a claim of another subcontractor or material supplier, see Section 7542 (amount withheld).

See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7030 (“payment bond” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

☞ Note. We have radically recast this provision in an effort to simplify it. Knowledgeable persons should examine the provision to ensure that we have not inadvertently changed its meaning.

This draft deletes the provision of existing law that requires the owner to withhold an amount due to pay the amount of the claim stated in the notice “and any claim of lien that is recorded.” Under the draft, the amount claimed in a stop payment notice is the same as the amount in a claim of lien. Any amount paid pursuant to the stop payment notice reduces the claim of lien.

§ 7538. Notice of election

7538. (a) The claimant may make a written request for notice of an election by the construction lender under Section 7536 not to withhold funds. The request shall be made at the time the claimant gives the construction lender the stop payment notice and shall be accompanied by a preaddressed, stamped envelope.
(b) If the construction lender elects not to withhold funds under Section 7536, the lender shall, within 30 days after making the election give notice to a claimant that has requested notice of the election under subdivision (a). If the basis of the election is the recordation of a payment bond under Section 7602, the construction lender shall include a copy of the bond with the notice.

(c) A construction lender is not liable for failure to include a copy of the bond with the notice under this section if all of the following conditions are satisfied:

1. The failure was not intentional and resulted from a bona fide error.
2. The lender maintains reasonable procedures to avoid an error of that type.
3. The lender corrected the error not later than 20 days after the date the lender discovered the violation.

Comment. Section 7538 restates paragraph (3) of subdivision (a) of former Sections 3159 and 3162 without substantive change. The last sentence of former Section 3159(a)(3) is continued in Section 7530(b) (notice to construction lender to withhold funds).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7030 (“payment bond” defined), 7042 (“stop payment notice” defined).

Article 4. Priorities

§ 7540. Distribution of funds withheld pursuant to stop payment notice

7540. (a) Funds withheld pursuant to a stop payment notice shall be distributed in the following order of priority:

1. First, to pay claims of persons that have given a bonded stop payment notice. If funds are insufficient to pay the claims of those persons in full, the funds shall be distributed pro rata among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a bonded stop payment notice is given.

2. Second, to pay claims of persons that have given an unbonded stop payment notice. If funds are insufficient to pay the claims of those persons in full, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which an unbonded stop payment notice is given.

(b) Pro rata distribution under this section shall be made among the persons entitled to share in the distribution without regard to the order in which the person has given a stop payment notice or commenced an enforcement action.

Comment. Section 7540 restates former Section 3167 without substantive change. Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. Cf. Idaho Lumber Co. v. Northwestern S. & L. Ass’n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968). The amount of the claim for which payment is required is determined under Article 5 (commencing with Section 7550) (enforcement of stop payment notice).

See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

☞ Note. We believe this recasting of existing Section 3167 captures its meaning. Experts should examine the rewrite closely.

§ 7542. Amount withheld

7542. Notwithstanding Section 7540:
(a) A direct contractor or a subcontractor may recover pursuant to a stop payment notice given to a construction lender only the net amount due the direct contractor or subcontractor after deducting the claims of all subcontractors and material suppliers that have given a bonded stop payment notice for work done on behalf of the direct contractor or subcontractor.

(b) In no event is the construction lender required to withhold, pursuant to a bonded stop payment notice, more than the net amount provided in subdivision (a). Notwithstanding any other provision of this chapter, a construction lender is not liable for failure to withhold more than that net amount on receipt of a bonded stop payment notice.

Comment. Section 7542 restates subdivisions (b) and (c) of former Sections 3159 and 3162. See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7026 (“material supplier defined), 7042 (“stop payment notice” defined), 7044 (“subcontractor” defined).

Note. Subdivision (a) relates to either a bonded or an unbonded notice, and subdivision (b) relates only to a bonded notice. Yet they both seem to state the same rule. The Commission would appreciate some input on whether we can simply delete subdivision (b), or whether it serves a useful purpose.

In any event, the statute seems to be an exception to the general rules on priorities, so we have relocated it among the priorities statutes for ease of reference.

§ 7544. Effect of stop payment notice on assignment of funds

7544. The rights of a claimant that gives a construction lender a stop payment notice are not affected by an assignment of construction loan funds made by the owner or direct contractor, and the stop payment notice has priority over the assignment, whether the assignment is made before or after the stop payment notice is given.

Comment. Section 7544 restates former Section 3166 without substantive change. See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7042 (“stop payment notice” defined).

Article 5. Enforcement of Claim Stated in Stop Payment Notice

§ 7550. Time for enforcement of claim stated in stop payment notice

7550. (a) A claimant shall commence an action to enforce the claim stated in a stop payment notice not earlier than 10 days after the date the claimant gives the notice and not later than 90 days after expiration of the time within which a stop payment notice must be given. The action may not be brought to trial or judgment entered before expiration of the time prescribed in this subdivision.

(b) If a claimant does not commence an action to enforce payment of the claim stated in a stop payment notice within the time prescribed in subdivision (a), the notice ceases to be effective and the person withholding funds pursuant to the notice shall release them.
(c) Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice of commencement of the action to the persons to which the stop payment notice was given.

Comment. Section 7550 restates former Section 3172 without substantive change. A stop payment notice must be given before expiration of the time within which a claim of lien must be recorded under Chapter 4 (commencing with Section 7400). See Section 7508 (requirements for valid stop payment notice).

For the manner in which notice of commencement of an enforcement action is to be given, see Section 7506 (manner of giving notice).

Funds released for failure to timely commence an enforcement action must be paid or delivered to the person to which they are due.

See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

☞ Note. The Commission solicits comment on whether subdivision (c), purporting to require a five day notice, should be made mandatory. Under existing law, the provision is directory.


§ 7552. Joinder, consolidation, and interpleader

7552. If more than one claimant has given a stop payment notice:

(a) Any number of claimants may join in the same enforcement action.

(b) If claimants commence separate actions, the court first acquiring jurisdiction may order the actions consolidated.

(c) On motion of the owner or construction lender the court shall require all claimants to be impleaded in one action, to the end that the rights of all parties may be adjudicated in the action.

Comment. Section 7552 restates former Section 3175 without substantive change. Subdivision (a) is a specific application of the general rule stated in Section 7054 (rules of practice).

See also Sections 7002 (“claimant” defined), 7004 (“construction lender” defined), 7028 (“owner” defined), 7042 (“stop payment notice” defined).

☞ Note. The reference in this section to the court “first acquiring jurisdiction” is evidently a relic of pre-unification days when jurisdiction under the mechanics lien law could be in the municipal or the superior court, depending on the amount in controversy. We have not eliminated this provision because it arguably could still have relevance in the context of a work of improvement that straddles a county line, in which case the superior court in either county would have jurisdiction. See proposed Section 7052 (jurisdiction and venue). Is this a common enough occurrence that it is worth addressing in the statute?

§ 7554. Dismissal of enforcement action for lack of prosecution

7554. Notwithstanding Section 583.420 of the Code of Civil Procedure, the court may dismiss an action to enforce payment of the claim stated in a stop payment notice that is not brought to trial within two years after commencement.

Comment. Section 7554 restates former Section 3173 without substantive change. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. Cf. Section 7054 (rules of practice).

See also Section 7042 (“stop payment notice” defined).
§ 7556. Dismissal of action or judgment against claimant

7556. A stop payment notice ceases to be effective, and a person withholding funds pursuant to the notice shall release them, if an action to enforce payment of the claim stated in the stop payment notice is dismissed (unless expressly stated to be without prejudice) or if judgment in the action is against the claimant.

Comment. Section 7556 restates former Section 3174 without substantive change. Funds released as a result of dismissal of the action or judgment against the claimant must be paid or delivered to the person to which they are due.

See also Sections 7002 (“claimant” defined), 7032 (“person” defined), 7042 (“stop payment notice” defined).

§ 7558. Attorney’s fee in action to enforce payment of claim stated in bonded stop payment notice

7558. (a) In an action to enforce payment of the claim stated in a bonded stop payment notice, the prevailing party is entitled to a reasonable attorney’s fee in addition to costs and damages.

(b) The court, on notice and motion by a party, shall determine which is the prevailing party or that there is no prevailing party for the purpose of this section, regardless of whether the action proceeds to final judgment. The prevailing party is the party that recovers greater relief in the action, subject to the following limitations:

(1) If the action is voluntarily dismissed or dismissed pursuant to a settlement, there is no prevailing party.

(2) If the defendant tenders to the claimant the full amount to which the defendant is entitled, and deposits in court for the claimant the amount so tendered, and alleges those facts in the answer and the allegation is determined to be true, the defendant is deemed to be the prevailing party.

Comment. Section 7558 restates former Section 3176 without substantive change.

See also Sections 7002 (“claimant” defined), 7042 (“stop payment notice” defined).

Note. The existing statute refers to an action against an owner or construction lender to enforce payment of the claim stated in a bonded stop payment notice. But a bonded notice is only given to a construction lender under existing Section 3083, not to an owner. We have omitted the reference to particular defendants from this draft.

§ 7560. Interest in action to enforce payment of claim stated in bonded stop payment notice

7560. If the claimant is the prevailing party in an action to enforce payment of the claim stated in a bonded stop payment notice, any amount awarded on the claim shall include interest at the legal rate calculated from the date the stop payment notice is given.

Comment. Section 7560 restates former Section 3176.5 without substantive change.

See also Sections 7002 (“claimant” defined), 7042 (“stop payment notice” defined).

Note. The existing statute refers to an action against an owner or construction lender to enforce payment of the claim stated in a bonded stop payment notice. But a bonded notice is only given to a construction lender under existing Section 3083, not to an owner. We have omitted the reference to particular defendants from this draft.
The existing statute refers to the date the bonded notice is given to the owner or construction lender “pursuant to Section 3172.” This cross-reference is confusing because Section 3172 does not deal with the giving of a stop payment notice; it prescribes the limitation period for commencing an action to enforce payment of the claim stated in a notice. Perhaps a reference to Section 3162 was intended; that section deals with the duties of a construction lender on receipt of a stop payment notice. We have simply eliminated the cross-reference in this draft.

CHAPTER 6. PAYMENT BOND

§ 7600. Public policy of payment bond
7600. An owner may require a payment bond or other security as protection against a direct contractor’s failure to perform the contract or to make full payment for all labor, service, equipment, and material provided pursuant to the contract.

Comment. Section 7600 restates the second sentence of former Section 3236 without substantive change.

See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or material” defined), 7028 (“owner” defined), 7030 (“payment bond” defined), 7046 (“work of improvement” defined).

§ 7602. Limitation of owner’s liability
7602. (a) The court shall limit an owner’s liability to the contract price under subdivision (b) if, before the commencement of work, the owner in good faith files the contract with the county recorder and records a payment bond of the direct contractor given by sufficient sureties in an amount not less than 50 percent of the contract price.

(b) If the conditions of subdivision (a) are satisfied, the court shall restrict lien enforcement under this part to the aggregate amount due from the owner to the direct contractor and shall enter judgment against the direct contractor and surety on the bond for any deficiency that remains between the amount due to the direct contractor and the whole amount due to claimants.

Comment. Subdivision (a) of Section 7602 restates the first part of former Section 3235 and the first sentence of former Section 3236 without substantive change. It makes clear that the bond, as well as the contract, must be recorded before the commencement of work. See also Section 7056 (filing and recording of papers).

Subdivision (b) restates the last part of former Section 3235. It replaces the restriction of lien enforcement in cases where it would be equitable, with a restriction of lien enforcement in cases where the sureties are sufficient. See also Code Civ. Proc. § 995.310 (sufficient sureties on bond required). This codifies case law interpretation of former Section 3235 and is consistent with the “in all cases” language of former Section 3236. See, e.g., Simpson v. Bergmann, 125 Cal. App. 1, 13 P.2d 531 (1932), Sudden Lumber Co. v. Singer, 103 Cal. App. 386, 284 P. 477 (1930), S.R. Frazee Co. v. Arnold, 46 Cal. App. 74, 76, 188 P. 822 (1920). See also Section 14 (singular includes plural).

See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7008 (“contract price” defined), 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7030 (“payment bond” defined).
§ 7604. Bond required by lending institution

7604. If a lending institution requires that a payment bond be given as a condition of lending money to finance a work of improvement, and accepts in writing as sufficient a bond given in fulfillment of the requirement, the lending institution may not thereafter object to the borrower as to the validity of the bond or refuse to make the loan based on an objection to the bond if the bond is given by an admitted surety insurer.

Comment. Section 7604 supersedes former Section 3237. It makes clear that the lender may not object to the bond if given by an admitted surety insurer. Cf. Code Civ. Proc. § 995.120 (“admitted surety insurer” means corporate insurer to which Insurance Commissioner has issued certificate of authority to transact surety insurance in state).

See also Sections 7022 (“lending institution” defined), 7030 (“payment bond” defined), 7032 (“person” defined), 7046 (“work of improvement” defined).

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

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

§ 7606. Payment bond

7606. (a) A payment bond shall be conditioned for the payment in full of the claims of all claimants and shall by its terms inure to the benefit of all claimants so as to give a claimant a right of action to enforce the liability on the bond.

(b) An owner, direct contractor, or subcontractor may be the principal on the bond.

(c) A claimant may enforce the liability on the bond in an action to enforce a lien under this part or in a separate action on the bond.

Comment. Section 7606 restates former Section 3096 without substantive change. See also Section 7140 (application of Bond and Undertaking Law). The statute is relocated to the general provisions on payment bonds because it states substantive rules.

See also Sections 7002 (“claimant” defined), 7012 (“direct contractor” defined), 7024 (“lien” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

§ 7608. Limitation on part

7608. (a) This part does not give a claimant a right to recover on a direct contractor’s payment bond given under this chapter unless the claimant provided labor, service, equipment, or material to the direct contractor or one of the direct contractor’s subcontractors pursuant to a contract between the direct contractor and the owner.

(b) Nothing in this section affects the stop payment notice right of, and relative priorities among, design professionals and holders of secured interests in the property.

Comment. Section 7608 restates former Section 3267 without substantive change.

See also Sections 7002 (“claimant” defined), 7006 (“contract” defined), 7010 (“design professional” defined), 7012 (“direct contractor” defined), 3083.030 (“labor, service, equipment, or material” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).
§ 7610. Statute of limitations against surety on recorded bond

7610. If a payment bond is recorded before completion of a work of improvement, an action to enforce the liability on the bond may not be commenced later than six months after completion of the work of improvement.

Comment. Section 7610 restates former Section 3240, and broadens it to cover enforcement of any liability on the bond, not limited to the liability of the surety. Cf. Code Civ. Proc. § 996.440 (judgment on bond against principal and sureties). It supersedes former Section 3239 (provision shortening statute of limitations). See also Section 7056 (filing and recording of papers), completion.

See also Sections 7030 (“payment bond” defined), 7046 (“work of improvement” defined).

§ 7612. Notice prerequisite to enforcement

7612. A claimant may not enforce the liability on a payment bond unless any of the following conditions is satisfied:

(a) The claimant has given preliminary notice to the extent required by Chapter 2 (commencing with Section 7200).

(b) The claimant has given notice to the principal and surety within the earlier of 75 days after completion of the work of improvement or 15 days after recordation of a notice of completion.

Comment. Section 7612 restates former Section 3242 without substantive change. See also Sections 7100-7116 (notice). The former limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

See also Sections 14 (singular includes plural), 7108 (mailed notice and proof of notice), 7150 (completion), 7152 (notice of completion).

See also Sections 7002 (“claimant” defined), 7030 (“payment bond” defined), 7034 (“preliminary notice” defined), 7046 (“work of improvement” defined).

CHAPTER 7. SECURITY FOR LARGE PROJECT

Article 1. Application of Chapter

§ 7700. Application of chapter

7700. (a) This chapter applies if any of the following conditions is satisfied:

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

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

(b) For the purpose of this section:

(1) The owner of the fee interest in property is not deemed to be the owner of a less than fee interest by reason of a mortgage, deed of trust, ground lease, or other lien or encumbrance or right of occupancy that encumbers the fee interest.
(2) A lessee of property is deemed to be the owner of a fee interest in the property if all of the following conditions are satisfied:

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

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

Comment. Subdivision (a) of Section 7700 restates former Section 3110.5(a)(2) without substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive change.

This section standardizes terminology consistent with the remainder of the mechanics lien law. A less than fee interest includes a leasehold interest in the property. See Section 7028 (“owner” defined). See also Section 7046 (“work of improvement” defined).

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

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

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

§ 7702. Single-family residence and low income housing, excluded

7702. This chapter does not apply to any of the following works of improvement:

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

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

Comment. Section 7702 restates former Section 3110.5(e) without substantive change, omitting reference to a public work. This part does not apply to a public work. See Section 7050 (application of part).

§ 7704. Qualified publicly traded company and qualified private company excluded

7704. This chapter does not apply to any of the following owners:

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

(b) A qualified private company or a wholly owned subsidiary of a qualified
private company, if the obligations of the subsidiary pursuant to the contract for
the work of improvement are guaranteed by the parent. As used in this
subdivision, “qualified private company” means a company that has no equity
securities listed for trading on the New York Stock Exchange, the American Stock
Exchange, or the NASDAQ stock market, and that has a net worth determined in
accordance with generally accepted accounting principles in excess of fifty million
dollars ($50,000,000). If at any time before final payment of all amounts due
pursuant to the contract the net worth of the qualified private company is reduced
below that level, the owner is no longer exempt from this chapter.

Comment. Section 7704 restates former Section 3110.5(f) without substantive change.
See also Sections 7006 (“contract” defined), 7028 (“owner” defined), 7046 (“work of
improvement” defined).

Article 2. Security Requirement

§ 7710. Security for owner’s payment obligation

7710. An owner shall provide the direct contractor all of the following:
(a) Security for the owner’s payment obligation pursuant to the contract. The
security shall be used only if the owner defaults on the payment obligation to the
direct contractor. This subdivision does not apply to an owner that is the majority
owner of the direct contractor.
(b) A copy, certified by the county recorder, of any recorded mortgage or deed
of trust that secures the construction loan of a lending institution for the work of
improvement, disclosing the amount of the loan.

Comment. Section 7710 restates the first parts of subdivisions (a) and (b) of former Section
3110.5 without substantive change. As used in this section, “owner” includes the owner of the fee
simple absolute interest or any lesser interest in the property. See Section 7028 (“owner”
defined). The reference to a “work of improvement” includes construction, alteration, addition to,
or repair upon, the property. See Section 7046 (“work of improvement” defined).
See also Sections 7100-7116 (notice), 7134 (construction trust deed).
See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7022 (“lending
institution” defined).

☞ Note. We have applied the term “lending institution”, as used in the mechanics lien law in
subdivision (b). The term includes commercial bank, savings and loan institution, credit union, or
other organization or person engaged in the business of financing loans. The term apparently differs from “financial institution”, used elsewhere in this chapter.

§ 7712. Demand for security

7712. If an owner fails to provide or maintain the security required by this chapter, the direct contractor may give the owner notice demanding security. If the owner does not provide or maintain the security within 10 days after notice demanding security is given, the direct contractor may suspend work until the owner provides or maintains the security.

Comment. Section 7712 restates the second sentence of former Section 3110.5(c) without substantive change.

See also Sections 7100-7116 (notice).

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined).

§ 7714. Security not waivable

7714. It is against public policy by contract to waive the provisions of this chapter.

Comment. Section 7714 restates former Section 3110.5(g) without substantive change. This part does not apply to a public work. See Section 7050 (application of part).

See also Section 7006 (“contract” defined).

§ 7716. Rights of subcontractor not affected

7716. This chapter does not affect any statute providing a subcontractor the right to record a claim of lien, file a stop payment notice, assert a claim against a payment bond, or receive prompt payment, including the direct contractor’s payment responsibilities under Section 7108.5 of the Business and Professions Code.

Comment. Section 7716 restates former Section 3110.5(d), omitting the reference to Public Contract Code Section 10262. This chapter does not apply to a public works contract. Cf. Section 7050 (application of part).

See also Sections 7012 (“direct contractor” defined), 7024 (“lien” defined), 7030 (“payment bond” defined), 7044 (“subcontractor” defined).

Article 3. Form of Security

§ 7720. Form of security

7720. An owner shall provide security by any of the following means:

(a) A bond that satisfies Section 7722.

(b) An irrevocable letter of credit that satisfies Section 7724.

(c) An escrow account that satisfies Section 7726.

Comment. Section 7720 restates a part of former Section 3110.5(b) without substantive change.

See also Section 7028 (“owner” defined).
§ 7722. Bond

7722. A bond under this chapter shall satisfy all of the following requirements:
   (a) The bond shall be executed by an admitted surety insurer that is either listed in the Department of the Treasury’s Listing of Approved Sureties (Department Circular 570) or that has an A.M. Best rating of A or better and has an underwriting limitation, under Section 12090 of the Insurance Code, greater than the amount of the bond.
   (b) The bond shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.
   (c) The bond shall be conditioned for payment on default by the owner of any undisputed amount pursuant to the contract that is due and payable for more than 30 days.

Comment. Section 7722 restates former Section 3110.5(b)(1).

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

See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

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

§ 7724. Irrevocable letter of credit

7724. An irrevocable letter of credit under this chapter shall satisfy all of the following requirements:
   (a) The letter of credit shall be issued by a financial institution, as defined in Section 5107 of the Financial Code, inuring to the benefit of the direct contractor.
   (b) The letter of credit shall be in an amount not less than 15 percent of the contract price for the work of improvement or, if the work of improvement is to be substantially completed within six months after the commencement of work, not less than 25 percent of the contract price.
   (c) The maturity date and other terms of the letter of credit shall be determined by agreement between the owner, the direct contractor, and the financial institution, except that the owner shall maintain the letter of credit in effect until the owner has satisfied its payment obligation to the direct contractor.

Comment. Section 7724 restates former Section 3110.5(b)(2) without substantive change.

See also Sections 7008 (“contract price” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

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

§ 7726. Escrow account

7726. An escrow account under this chapter shall satisfy all of the following requirements:
   (a) The account shall be designated as a “construction security escrow account”.

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

(c) The owner shall deposit funds in the account in the amount provided in Section 7728. This chapter does not require a construction lender to agree to deposit proceeds of a construction loan in the account.

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

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

Comment. Section 7726 restates portions of former Section 3110.5(b)(3) without substantive change.

See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).

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

§ 7728. Deposits to and disbursements from escrow account

7728. The following provisions govern a deposit to or disbursement from a construction security escrow account under this chapter:

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

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

(c) The amount required to be maintained on deposit shall not exceed the total amount remaining to be paid to the direct contractor pursuant to the contract or as adjusted by agreement between the owner and the direct contractor. If the amount on deposit equals or exceeds the total amount remaining to be paid to the direct contractor, the owner and the direct contractor shall authorize disbursement to the
direct contractor for progress payments then due the direct contractor, but a party is not obligated to authorize disbursement that would cause the amount remaining on deposit following the disbursement to be less than the total amount remaining to be paid to the direct contractor.

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

Comment. Section 7728 restates portions of former Section 3110.5(b)(3) without substantive change.

See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

§ 7730. Contract price

7730. If the contract price for a work of improvement is not a fixed price, the amount of security provided under this chapter shall be the guaranteed maximum price or, if there is no guaranteed maximum price, the owner’s and direct contractor’s good faith estimate of the reasonable value of the labor, service, equipment, or material to be provided pursuant to the contract.

Comment. Section 7730 restates the first sentence of former Section 3110.5(c) without substantive change.

See also Sections 7006 (“contract” defined), 7008 (“contract price” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined), 7046 (“work of improvement” defined).

CHAPTER 8. PROMPT PAYMENT

Article 1. Progress Payment

§ 7800. Progress payment between owner and direct contractor

7800. (a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract, any progress payment due as to which there is no good faith dispute between them.

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

(c) An owner that violates this section is liable to the direct contractor for a penalty of two percent per month on the amount wrongfully withheld, in place of any interest otherwise due. In an action for collection of the amount wrongfully withheld, the prevailing party is entitled to costs and a reasonable attorney’s fee.
(d) This section does not supersede any requirement of Article 2 (commencing with Section 7810) relating to the withholding of a retention.

**Comment.** Section 7800 restates former Section 3260.1, with the addition of a reasonableness limitation on an attorney’s fee. This section is limited to a private work. See Section 7050 (application of part). The operative date provision of subdivision (a) of former Section 3260.1 is omitted due to lapse of time.

The owner’s duty runs from the time notice is complete, rather than the time of “receipt”. See Section 7114 (when notice is complete).

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

☞ **Note.** We have limited the introductory proviso of subdivision (a), relating to a written agreement between the owner and contractor, to subdivision (a), and have not extended the proviso to subdivisions (b) and (c). This appears to capture the intent of existing law.

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§ 7802. Progress payment between direct contractor and subcontractor on public utility

work

7802. (a) This section applies to a contract between a public utility and a direct contractor for all or part of a work of improvement.

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

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

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

**Comment.** Section 7802 restates former Section 3262.5, with the addition of a reasonableness limitation on an attorney’s fee. The reference to 15 “working days” is converted to 21 “days”, consistent with the remainder of the mechanics lien law. Cf. Section 9 (business day).

See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

☞ **Note.** Existing law makes this section applicable to a contract “to do business” with a public utility. We have limited it to a work of improvement contracted for by a public utility, consistent with placement of this section in the mechanics lien law.
Article 2. Retention Payment

§ 7810. Application of article

7810. This article governs a retention withheld by an owner from a direct contractor or by a direct contractor from a subcontractor.

Comment. Section 7810 restates subdivision (b) of former Section 3260 without substantive change. This article is limited to a private work. See Section 7050 (application of part). The transitional provision found in subdivision (a) of former Section 3260, relating to contracts entered into before 1991, 1993, and 1994, is omitted due to lapse of time.

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

§ 7812. Payment of retention by owner

7812. (a) If an owner withholds a retention from a direct contractor, the owner shall, within 45 days after completion of the work of improvement, pay the retention to the contractor.

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

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

Comment. Section 7812 restates subdivision (c) of former Section 3260, except that detailed provisions defining the date of completion are eliminated in reliance on the general provisions of this part governing completion. See Section 7150 (completion). The right of the owner to withhold disputed amounts is made subject to a condition of good faith, consistent with other provisions of this part.

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7036 (“public entity” defined), 7046 (“work of improvement” defined).

☞ Note. We have eliminated the definition of “date of completion” found in the existing statute, in reliance on general provisions relating to completion. See Section 7150 (completion). We have done this in the interest of simplification of the statute.

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

It is unclear why, under existing law, the owner may withhold regardless of whether the dispute is in good faith. The other provisions of this chapter require a good faith dispute. We have incorporated the general standard here.

§ 7814. Payment of retention by direct contractor

7814. (a) If a direct contractor has withheld a retention from a subcontractor, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay the subcontractor its share of the payment.

(b) If a retention payment received by the direct contractor is specifically designated for a particular subcontractor, the direct contractor shall pay the
retention payment to the designated subcontractor, if consistent with the terms of
the subcontract.
(c) If a good faith dispute exists between the direct contractor and a
subcontractor, the direct contractor may withhold from the retention payment to
the subcontractor an amount not in excess of 150 percent of the estimated value of
the disputed amount.

Comment. Section 7814 restates subdivisions (d) and (e) of former Section 3260 without
substantive change.
See also Sections 7012 (“direct contractor” defined), 7044 (“subcontractor” defined).

§ 7816. Payment for disputed work
7816. (a) If the direct contractor gives the owner, or a subcontractor gives the
direct contractor, notice that work in dispute has been completed in accordance
with the contract, the owner or direct contractor shall within 10 days give notice
advising the notifying party of the acceptance or rejection of the disputed work.
(b) Within 10 days after acceptance of disputed work, the owner or direct
contractor shall pay the portion of the retention relating to the disputed work.

Comment. Section 7816 restates subdivision (f) of former Section 3260 without substantive
change. See also Sections 7100-7116 (notice).
See also Sections 7006 (“contract” defined), 7012 (“direct contractor” defined), 7028 (“owner”
defined), 7044 (“subcontractor” defined).

§ 7818. Wrongful withholding
7818. If an owner or direct contractor does not make a retention payment within
the time required by this article:
(a) The owner or direct contractor is liable to the person to which payment is
owed for a penalty of two percent per month on the amount wrongfully withheld,
in place of any interest otherwise due.
(b) In an action for collection of the amount wrongfully withheld, the prevailing
party is entitled to costs and a reasonable attorney’s fee.

Comment. Section 7818 restates subdivision (g) of former Section 3260, with the addition of a
reasonableness limitation on an attorney’s fee.
See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7032 (“person”
defined).

§ 7820. Waiver against public policy
7820. It is against public policy by contract to waive the provisions of this
article.

Comment. Section 7820 restates subdivision (h) of former Section 3260 without substantive
change.

§ 7822. Construction loan exempt
7822. This article does not apply to a retention withheld by a lender pursuant to
a construction loan agreement.

Comment. Section 7822 restates subdivision (i) of former Section 3260.
Article 3. Stop Work Notice

§ 7830. “Stop work notice” defined
7830. “Stop work notice” means notice given under this article by a direct contractor to an owner that the contractor will stop work if the amount owed the contractor is not paid within 10 days after notice is given.

Comment. Section 7830 restates a part of the first sentence of former Section 3260.2(a) without substantive change. This article is limited to a private work. See Section 7050 (application of part).

Former Section 3260.2(g), relating to the mechanics of the notice, is superseded by Sections 7100-7116 (notice).

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined).

§ 7832. Stop work notice
7832. If a direct contractor is not paid the amount due pursuant to a written contract within 35 days after the date payment is due under the contract, and there is no dispute as to the satisfactory performance of the contractor, the contractor may give the owner a stop work notice.

Comment. Section 7832 restates a portion of the first sentence of former Section 3260.2(a) without substantive change.

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

§ 7834. Additional notice
7834. A direct contractor that gives an owner a stop work notice shall give the following additional notice:

(a) At least five days before giving the stop work notice, the contractor shall post notice of intent to give a stop work notice.

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

Comment. Section 7834 restates the second and third sentences of former Section 3260.2(a), and requires that the contractor give a copy of the stop work notice. See also Section 7112 (posting).

See also Sections 7012 (“direct contractor” defined), 7028 (“owner” defined), 7038 (“site” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

§ 7836. Notice to construction lender
7836. Within five days after receipt of a stop work notice from a direct contractor, the owner shall give a copy of the notice to the construction lender, if any.

Comment. Section 7836 restates the fourth sentence of former Section 3260.2(a). See also Sections 7100-7116 (notice).

See also Sections 7004 (“construction lender” defined), 7012 (“direct contractor” defined), 7028 (“owner” defined).
§ 7838. Immunity from liability

7838. (a) The direct contractor or the direct contractor’s surety is not liable for delay or damage that the owner or a subcontractor may suffer as a result of the direct contractor giving a stop work notice and subsequently stopping work for nonpayment, if the notice and posting requirements of this article are satisfied.

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

1. The direct contractor’s liability continues for labor, service, equipment, or material provided up to and including the 10 day notice period and not beyond.
2. This subdivision does not limit monetary damages for custom work, including materials that have been fabricated, manufactured, or ordered to specifications that are unique to the job.

Comment. Section 7838 restates former Section 3260.2(c), except that provisions that appear to suggest that a subcontractor may give a stop work notice are deleted.

See also Sections 7012 (“direct contractor” defined), 7016 (“labor, service, equipment, or material” defined), 7026 (“material supplier” defined), 7028 (“owner” defined), 7044 (“subcontractor” defined).

§ 7840. Notice of resolution of dispute or cancellation of stop work notice

7840. On resolution of the dispute or the direct contractor’s cancellation of the stop work notice, the contractor shall post, and give subcontractors with which the contractor has a direct contractual relationship on the work of improvement, notice of the resolution or cancellation.

Comment. Section 7840 restates the second paragraph of former Section 3260.2(a) without substantive change. See also Section 7112 (posting).

See also Sections 7012 (“direct contractor” defined), 7038 (“site” defined), 7044 (“subcontractor” defined), 7046 (“work of improvement” defined).

§ 7842. Stop work remedy not exclusive

7842. A direct contractor’s right to stop work under this article is in addition to other rights the direct contractor may have under the law.

Comment. Section 7842 restates former Section 3260.2(b) without substantive change.

See also Section 7012 (“direct contractor” defined).

§ 7844. Judicial proceeding

7844. If payment of the amount due is not made within 10 days after a stop work notice is given, the direct contractor or the direct contractor’s surety may in an expedited proceeding seek a judicial determination of liability for the amount due.

Comment. Section 7844 restates former Section 3260.2(d) without substantive change. See also section 7052 (jurisdiction and venue).

See also Section 7012 (“direct contractor” defined).
Note. It’s not clear what sort of expedited proceeding is referred to here. Is this a trial setting preference, or something else? The statute lacks detail. It may be best to simply delete the reference to expedition.

§ 7846. Waiver against public policy
7846. It is against public policy by contract to waive the provisions of this article.
Comment. Section 7846 restates former Section 3260.2(e) without substantive change.

§ 7848. Application of article
7848. (a) This article applies to a contract entered into on or after January 1, 1999.
(b) This article does not apply to a retention withheld by a lender pursuant to a construction loan agreement.
Comment. Section 7848 restates former Section 3260.2(f) without substantive change.

PUBLIC WORK OF IMPROVEMENT

SEC. ____. Part 6 (commencing with Section 41010) is added to Division 2 of the Public Contract Code, to read:

PART 6. PUBLIC WORKS CONTRACT REMEDIES

CHAPTER 1. DEFINITIONS

§ 41010. Application of definitions
41010. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.
Comment. Section 41010 supersedes former Civil Code Section 3082.

§ 41020. Claimant
41020. “Claimant” means a person that gives a stop payment notice or asserts a claim against a payment bond.
Comment. Section 41020 restates former Civil Code Section 3085, omitting as unnecessary the reference to the claimant’s “entitlement” and to the combination of remedies. For persons having the right to give a stop payment notice or assert a claim against a payment bond, see Section 42030 (who may use remedies).
See also Sections 41090 (“payment bond” defined), 41100 (“person” defined), 41150 (“stop payment notice” defined).
§ 41030. Design professional

41030. “Design professional” means a certificated architect, registered professional engineer, or licensed land surveyor that provides architectural, engineering, or land surveying services pursuant to a public works contract.

Comment. Section 41030 is drawn from Civil Code Section 7010. See also Sections 41100 (“person” defined), 41130 (“public works contract” defined).

§ 41040. Direct contractor

41040. “Direct contractor” means a person that has a direct contractual relationship with a public entity. With respect to the amount due or to become due to a direct contractor, the term includes the direct contractor’s assignee.

Comment. Section 41040 supersedes former Civil Code Section 3095 (“original contractor”). A direct contractor is not limited to a builder, and may include a surveyor, engineer, material supplier, artisan, or other person that contracts directly with the public entity. The definition generalizes provisions of former Civil Code Section 3187 relating to payment of the assignee of a direct contractor. See also Section 44340 (effect of assignment or garnishment). See also Sections 41100 (“person” defined), 41120 (“public entity” defined).

§ 41050. Express trust fund

41050. “Express trust fund” means a laborers compensation fund to which a portion of a laborer’s total compensation is to be paid pursuant to an employment agreement or a collective bargaining agreement for the provision of benefits, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations.

Comment. Section 41050 continues a portion of former Civil Code Section 3111 without substantive change. See also Section 41080 (“laborers compensation fund” defined).

§ 41060. Funds

41060. “Funds” means warrant, check, money, or bonds (if bonds are to be issued in payment of the public works contract).

Comment. Section 41060 is a new definition. It is included for drafting convenience. It generalizes provisions of former Civil Code Sections 3186, 3187, and 3196. See also Section 41130 (“public works contract” defined).

§ 41070. Labor, service, equipment, or material

41070. “Labor, service, equipment, or material” includes but is not limited to labor, skills, services, material, supplies, equipment, appliances, transportation, power, surveying, construction plans, and construction management provided for a public works contract.

Comment. Section 41070 is a new definition. It is included for drafting convenience. The phrase is intended to encompass all things of value provided for a public works contract, and replaces various phrases used throughout the former law, including “labor or material,” “labor, services, equipment, or materials,” “appliances, teams, or power,” “provisions, provender, or other supplies,” and the like. See also Section 41130 (“public works contract” defined).
§ 41080. Laborers compensation fund

41080. “Laborers compensation fund” means a person, including an express trust fund, to which a portion of the compensation of a laborer is paid by agreement with the laborer or the collective bargaining agent of the laborer.

Comment. Section 41080 continues the first sentence of former Civil Code Section 3089(b) without substantive change. See also Civ. Code § 7070 (standing to enforce laborer’s rights).
See also Sections 41050 (“express trust fund” defined), 41100 (“person” defined).

§ 41090. Payment bond

41090. “Payment bond” means a bond given under any of the following provisions:
(a) Section 7103.
(b) Chapter 5 (commencing with Section 45010).
(c) Another provision of this code that provides for a payment bond.

Comment. Section 41090 supersedes former Civil Code Section 3096.

§ 41100. Person

41100. “Person” means an individual, corporation, public entity, business trust, estate, trust, partnership, limited liability company, association, or other entity.

Comment. Section 41100 is a new definition. It is included for drafting convenience.
See also Section 41120 (“public entity” defined).

§ 41110. Preliminary notice

41110. “Preliminary notice” means the notice required by Chapter 3 (commencing with Section 43010) as a prerequisite to use of the remedies provided in this part.

Comment. Section 41110 supersedes former Civil Code Section 3098. The substantive requirements for preliminary notice are relocated to Chapter 3 (commencing with Section 43010).

§ 41120. Public entity

41120. (a) “Public entity” has the meaning provided in Section 1100 and includes all of the following:
(1) The Regents of the University of California.
(2) An officer authorized to act for a public entity.
(b) A reference in this part to a public entity means the public entity that awarded the public works contract.

Comment. Subdivision (a) of Section 41120 restates former Civil Code Section 3099. Under Section 1100, “public entity” means the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state. This part does not apply to a public works contract governed by federal law. See Section 42010 (application of part). The reference to an officer of the public entity is included for drafting convenience. Cf. former Civ. Code §§ 3247, 3250, 3251 (public entity or officer).
Subdivision (b) is new; it is intended for drafting convenience. Cf. former Civ. Code §§ 3247, 3250, 3251.
See also Section 41130 (“public works contract” defined).

§ 41130. Public works contract
41130. “Public works contract” has the meaning provided in Section 1101.

Comment. Section 41130 supersedes former Civil Code Section 3100 (“public work” defined).

Under Section 1101, “public works contract” means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. This part does not apply to a public works contract governed by federal law. See Section 42010 (application of part).

§ 41140. Site
41140. “Site” means the property on which a public works contract is performed.

Comment. Section 41140 restates former Civil Code Section 3101 to the extent it applied to a public works contract.

See also Section 41130 (“public works contract” defined).

§ 41150. Stop payment notice
41150. “Stop payment notice” means a notice given under Chapter 4 (commencing with Section 44110).

Comment. Section 41150 supersedes former Civil Code Section 3103.

§ 41160. Subcontractor
41160. “Subcontractor” means a contractor that does not have a direct contractual relationship with a public entity. The term includes a contractor that has a contractual relationship with a direct contractor or with another subcontractor.

Comment. The first sentence of Section 7044 continues former Section 3104 to the extent it applied to a public works contract. The second sentence is new; it makes clear that the term “subcontractor” includes a subcontractor below the first tier.

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

CHAPTER 2. GENERAL PROVISIONS


§ 42010. Application of part
42010. (a) This part applies to a public works contract awarded by a public entity.

(b) This part does not apply to any of the following:

(1) A public works contract governed by federal law.

(2) A transaction governed by Sections 20457 to 20464, inclusive.

Comment. Subdivision (a) of Section 42010 restates former Civil Code Sections 3100 and 3179.
Paragraph (1) of subdivision (b) is new.

Paragraph (2) of subdivision (b) restates former Civil Code Section 3266(b). This provision updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, § 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under Division 2 (commencing with Section 1600) (general provisions) of the Public Contract Code. See Pub. Cont. Code § 20457.

See also Sections 41120 (“public entity” defined), 41130 (“public works contract” defined).

§ 42020. Relation to other statutes

42020. (a) This part does not limit, and is not affected by, improvement security provided under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

(b) The Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, applies to a bond given under this part.

Comment. Subdivision (a) of Section 42020 is new. It clarifies the interrelation between this part and the Subdivision Map Act. For relevant provisions of that act, see Gov’t Code §§ 66499-66499.10 (improvement security).

Subdivision (b) is new. It is a specific application of Code of Civil Procedure Section 995.020 (application of Bond and Undertaking Law).

§ 42030. Who may use remedies

42030. (a) Except as provided in subdivision (b), any of the following persons that has not been paid in full may give a stop payment notice to the public entity or assert a claim against a payment bond:

(1) A person that provides labor, service, equipment, or material for a public works contract pursuant to an agreement with a direct contractor.

(2) An express trust fund, to the extent of the compensation agreed to be paid to the express trust fund for labor on that public works contract only.

(3) A person described in Section 4107.7.

(b) A direct contractor may not give a stop payment notice or assert a claim against a payment bond under this part.

Comment. Section 42030 restates former Civil Code Section 3181. The former references to site improvement work and to provisions, provender, or other supplies are included within the meaning of subdivision (a). See Section 41070 (“labor, service, equipment, or material” defined). See also Sections 41040 (“direct contractor” defined), 41050 (“express trust fund” defined), 41070 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41100 (“person” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined), 41150 (“stop payment notice” defined).

§ 42040. Jurisdiction and venue

42040. The proper court for proceedings under this part is the superior court in the county in which a public works contract, or part of it, is to be performed.

Comment. Section 42040 is a new provision included for drafting convenience. It generalizes a number of provisions of former law.
§ 42050. Rules of practice

42050. Except as otherwise provided in this part, Part 2 (commencing with Section 307) of the Code of Civil Procedure provides the rules of practice in proceedings under this part.

Comment. Section 42050 continues the first sentence of former Civil Code Section 3259 without substantive change. The second sentence of former Civil Code Section 3259 is not continued; this part does not include special provisions relating to new trials or appeals.

§ 42060. Written notice

42060. Notice under this part shall be in writing.

Comment. Section 42060 generalizes various provisions of former law. See, e.g., former Civ. Code §§ 3092 (notice of cessation), 3093 (notice of completion), 3098 (preliminary notice), 3103 (stop notice).

§ 42070. Notice to public entity

42070. Notice to a public entity shall be addressed to the public entity at the office of the disbursing officer of the public entity or at another address specified in the contract.

Comment. Section 42070 supersedes the third sentence of former Civil Code Section 3098(a) (preliminary notice of public work). Notice under this part may be given by mail or personal delivery as provided in Civil Code Section 7104 (manner of giving notice).

§ 42080. Mailed notice

42080. The following provisions apply to notice given by mail under this part:

(a) Notice shall be given by registered or certified mail or by another method of delivery providing for overnight delivery.

(b) Notice is complete when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

(c) Proof that the notice was given in the manner provided in this section shall be made by (1) a return receipt or a photocopy of the record of delivery and receipt maintained by the United States Postal Service, showing the date of delivery and to whom delivered, or in the event of nondelivery, by the returned envelope itself (2) proof of mailing certified by the United States Postal Service, or (3) a tracking record or other documentation certified by an express service carrier showing delivery of the notice.

Comment. Section 42080 is a new provision included for drafting convenience. It generalizes a number of provisions of former law, expands the methods of proof to include a certification of the mailing by the United States Postal Service, and expands the methods of giving notice to include delivery by express service carrier.
§ 42090. Agency
42090. An act that may be done by or to a person under this part may be done by
or to the person’s agent to the extent the act is within the scope of the agent’s
authority.

Comment. Section 42090 generalizes a provision of former Civil Code Section 3103. It makes
clear that an agent’s authority is limited to the scope of the agency. Thus, to the extent a direct
contractor is deemed to be the agent of the principal for the purpose of engaging a subcontractor,
the scope of the agency does not include other acts, such as compromise of litigation.
See also Section 41100 (“person” defined).

§ 42100. Liability of surety
42100. None of the following releases a surety from liability on a bond given
under this part:
(a) A change to a contract, plan, specification, or agreement for a public works
contract or for labor, service, equipment, or material provided for a public works
contract.
(b) A change to the terms of payment or an extension of the time for payment
for a public works contract.
(c) A rescission or attempted rescission of a contract, agreement, or bond.
(d) A condition precedent or subsequent in the bond purporting to limit the right
of recovery of a claimant otherwise entitled to recover pursuant to a contract,
agreement, or bond.
(e) In the case of a bond given for the benefit of claimants, the fraud of a person
other than the claimant seeking to recover on the bond.

Comment. Section 42100 restates former Civil Code Section 3225.
See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”
defined), 41100 (“person” defined), 41130 (“public works contract” defined).

Article 2. Completion

§ 42210. Completion (including acceptance and cessation)
42210. For the purpose of this part, completion of a public works contract
occurs at the earliest of the following times:
(a) Acceptance of performance by the public entity.
(b) Cessation of labor for a continuous period of 30 days. This subdivision does
not apply to a contract awarded under the State Contract Act, Part 2 (commencing
with Section 10100).

Comment. Section 42210 restates former Civil Code Section 3086, to the extent it applied to a
public works contract. See also Section 42220 (notice of completion).
See also Section 41120 (“public entity” defined).

Note. The Commission seeks comment on whether the 30 day cessation of labor period is too
short. Should it be changed to 60 days for consistency with the rule applicable to a private work
of improvement?
§ 42220. Notice of completion

42220. A public entity may record a notice of completion. The notice shall include all of the following information:

(a) The name and address of the public entity.
(b) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.
(c) The name of the direct contractor for the public works contract.

Comment. Section 42220 combines former Civil Code Section 3093 (notice of completion) with former Civil Code Section 3092 (notice of cessation), to the extent they applied to a public works contract. For the effect of recordation of a notice of completion, see Sections 44140 (time for giving stop payment notice) and 45070 (notice to principal and surety on payment bond).

A notice of completion is recorded in the office of the county recorder of the county in which the public works contract or part of it is performed. See also Sections 41040 (“direct contractor” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined), 41140 (“site” defined).

§ 42230. Recordation of notice

42230. (a) A notice of completion is recorded when filed for record in the office of the county recorder of the county in which the public works contract or part of it is performed. A notice in otherwise proper form containing the information required by Section 42220, shall be accepted by the recorder for recording and is deemed duly recorded without acknowledgment.

(b) The county recorder shall number, index, and preserve a notice of completion presented for filing under this part, and shall number, index, and transcribe into the official records, in the same manner as a conveyance of real property, a notice of completion recorded under this part.

(c) The county recorder shall charge and collect the fees provided in Article 5 (commencing with Section 27460) of Chapter 6 of Part 3 of Division 2 of Title 3 of the Government Code for performing duties under this section.

Comment. Section 42230 generalizes a number of provisions of former law, to the extent they applied to a public works contract. Cf. former Civ. Code § 3258.

See also Section 41130 (“public works contract” defined).

Article 3. Waiver and Release

§ 42310. Terms of contract

42310. (a) A public entity or direct contractor may not, by contract or otherwise, waive, affect, or impair a claimant’s rights under this part, whether with or without notice, except with the claimant’s written consent, and any term of a contract that purports to do so is void and unenforceable.

(b) A claimant’s written consent is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.
Comment. Section 42310 continues the first and second sentences of former Civil Code Section 3262(a) without substantive change, to the extent they related to a public works contract. See Section 41020 (“claimant” defined). See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41040 (“public entity” defined).

§ 42320. Waiver and release

42320. A claimant’s waiver and release does not release the public entity or surety on a payment bond from a claim unless both of the following conditions are satisfied:

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

(b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be (1) the claimant’s endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn or (2) written acknowledgment of payment by the claimant.

Comment. Section 42320 continues the third and fourth sentences of former Civil Code Section 3262(a) without substantive change, to the extent they related to a public works contract. The waiver and release may be signed by the claimant’s agent. See Section 42090 (agency). See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined), 41040 (“public entity” defined).

§ 42330. Statement of claimant

42330. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a claim is void and unenforceable and does not create an estoppel or impairment of the claim unless either of the following conditions is satisfied:

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

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

Comment. Section 42330 continues former Civil Code Section 3262(b) without substantive change, to the extent it related to a public works contract. See also Section 41020 (“claimant” defined).

§ 42340. Reduction or release of stop payment notice

42340. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a form of waiver and release prescribed in this article.

(b) A claimant’s reduction or release of a stop payment notice has the following effect:

(1) The reduction or release releases the claimant’s right to enforce payment of the claim stated in the notice to the extent of the reduction or release.

(2) The reduction or release releases the public entity from the obligation to withhold funds pursuant to the notice to the extent of the reduction or release.

(3) The reduction or release does not preclude the claimant from giving a subsequent stop payment notice that is timely and proper.
(4) The reduction or release does not release any right of the claimant other than
the right to enforce payment of the claim stated in the stop payment notice to the
extent of the reduction or release.

Comment. Section 42340 restates the second, third, and fourth sentences of subdivision (b) of
former Civil Code Section 3262, to the extent they related to a public works contract.
See also Sections 41020 (“claimant” defined), 41100 (“person” defined), 41120 (“public
entity” defined), 41150 (“stop payment notice” defined).

§ 42350. Accord and satisfaction or settlement agreement not affected
42350. This article does not affect the enforceability of either an accord and
satisfaction concerning a good faith dispute or an agreement made in settlement of
an action pending in court if the accord and satisfaction or agreement and
settlement make specific reference to the claim.

Comment. Section 42350 continues former Civil Code Section 3262(c) without substantive
change, to the extent it related to a public works contract.

§ 42360. Conditional waiver and release on progress payment
42360. If a claimant is required to execute a waiver and release in exchange for,
or in order to induce the payment of, a progress payment and the claimant is not,
in fact, paid in exchange for the waiver and release or a single payee check or joint
payee check is given in exchange for the waiver and release, the waiver and
release shall be in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

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

Identifying Information
Name of Claimant: _________________________________________
Name of Customer: _________________________________________
Job Location: _______________________________________________
Public Entity: _______________________________________________
Through Date: _______________________________________________

Conditional Waiver and Release
This document waives and releases stop payment notice and payment bond rights
the claimant has for labor, service, equipment, and material provided to the
customer on this job through the date of this document. This document is effective
only on the claimant’s receipt of payment from the financial institution on which
the following check is drawn:
Maker of Check: ______________________________________
Amount of Check: $____________________________________
Check Payable to: _____________________________________

Exceptions
This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) The following progress payments for which the claimant has previously given
a conditional waiver and release but has not received payment:
   Date of waiver and release: _____________________________
   Amount remaining unpaid: $____________________________
(4) Contract rights, including (i) a right based on rescission, abandonment, or
breach of contract, and (ii) the right to recover compensation for labor, service,
equipment, or material not compensated by the payment.

Signature
Claimant’s Signature: __________________________________________
Claimant’s Title: ______________________________________________

Comment. Section 42360 restates former Civil Code Section 3262(d)(1), to the extent it
related to a public works contract, with the addition of language relating to progress payments
covered by previous releases that have not been paid. The statutory form is recast for clarity.
See also Section 41020 (“claimant” defined).

§ 42370. Unconditional waiver and release on progress payment
42370. If the claimant is required to execute a waiver and release in exchange
for, or in order to induce payment of, a progress payment and the claimant asserts
in the waiver it has, in fact, been paid the progress payment, the waiver and release
shall be in substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

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

Identifying Information
Name of Claimant: __________________________________________
Name of Customer: __________________________________________
Job Location: _______________________________________________
Public Entity: _______________________________________________
Through Date: _______________________________________________
Unconditional Waiver and Release
This document waives and releases stop payment notice and payment bond rights the claimant has for labor, service, equipment, and material provided to the customer on this job through the date of this document. The claimant has received the following payment:
   Amount of payment: $____________________________

Exceptions
This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) Contract rights, including (i) a right based on rescission, abandonment, or breach of contract, and (ii) the right to recover compensation for labor, service, equipment, or material not compensated by the payment.

Signature
Claimant’s Signature: _______________________________________
Claimant’s Title: ___________________________________________

Comment. Section 42370 continues former Civil Code Section 3262(d)(2) without substantive change, to the extent it related to a public works contract. The statutory form is recast for clarity.
See also Section 41020 (“claimant” defined).

§ 42380. Conditional waiver and release on final payment
42380. If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

Identifying Information
Name of Claimant: _______________________________________
Name of Customer: _______________________________________
Job Location: _____________________________________________
Public Entity: _____________________________________________
Date: ___________________________________________________
Conditional Waiver and Release
This document waives and releases stop payment notice and payment bond rights the claimant has for all labor, service, equipment, and material provided to the customer on this job. This document is effective only on the claimant’s receipt of payment from the financial institution on which the following check is drawn:

- Maker of Check: ______________________________________
- Amount of Check: $________________________________
- Check Payable to: _____________________________________

Exceptions
This document does not affect any of the following:
1. Disputed claims for extras in the amount of $_____________________
2. The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
   - Date of waiver and release: ______________________________
   - Amount remaining unpaid: $_____________________________

Signature
- Claimant’s Signature: __________________________________________
- Claimant’s Title: ______________________________________________

Comment. Section 42380 continues former Civil Code Section 3262(d)(3), to the extent it related to a public works contract, with the addition of language relating to progress payments covered by previous releases that have not been paid, and the addition of a line for identification of the waivant’s customer. The statutory form is recast for clarity.

See also Section 41020 (“claimant” defined).

§ 42390. Unconditional waiver and release on final payment
42390. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall be in substantially the following form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

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

Identifying Information
- Name of Claimant: __________________________________________
- Name of Customer: __________________________________________
- Job Location: _______________________________________________
Unconditional Waiver and Release
This document waives and releases stop payment notice and payment bond rights the claimant has for all labor, service, equipment, and material provided to the customer on this job. The claimant has been paid in full.

Exceptions
This document does not affect any of the following:
(1) Disputed claims for extras in the amount of $____________________

Comment. Section 42390 continues former Civil Code Section 3262(d)(4) without substantive change, to the extent it related to a public works contract. The statutory form is recast for clarity. See also Section 41020 (“claimant” defined).

CHAPTER 3. PRELIMINARY NOTICE

§ 43010. Preliminary notice prerequisite to remedies
43010. (a) Except as otherwise provided by statute, preliminary notice is a necessary prerequisite to the validity of a stop payment notice or a claim against a payment bond under this part.
(b) Preliminary notice is not required of a laborer or a laborers compensation fund.
(c) Preliminary notice is not required of a claimant that has a direct contractual relationship with the direct contractor.

Comment. Subdivision (a) of Section 43010 restates part of the introductory clause of former Civil Code Section 3098. For a statutory exception to the preliminary notice requirement, see Section 45070 (notice to principal and surety).
Subdivision (b) restates former Civil Code Section 3098(c).
Subdivision (c) restates a portion of former Civil Code Section 3098(a).
The transitional provision of former Civil Code Section 3098(e) is not continued due to lapse of time.
See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41080 (“laborers compensation fund” defined), 41090 (“payment bond” defined), 41110 (“preliminary notice” defined), 41150 (“stop payment notice” defined).

§ 43020. Persons to be given preliminary notice
43020. Before giving a stop payment notice or asserting a claim against a payment bond, a claimant shall give preliminary notice to the public entity and the direct contractor.
Comment. Section 43020 restates part of the introductory clause and subdivision (a) of former Civil Code Section 3098. Repetitive detail is omitted, in reliance on defined terms and other substantive provisions.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41070 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41110 (“preliminary notice” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

§ 43030. Contents of preliminary notice

43030. A preliminary notice shall state with substantial accuracy all of the following:

(1) A general description of the labor, service, equipment, or material provided or to be provided.

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

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

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

Comment. Section 43030 restates part of the first sentence of former Civil Code Section 3098(a), and revises it for conformity with the preliminary notice for private work.

See also Section 41070 (“labor, service, equipment, or material” defined), 41100 (“person” defined), 41110 (“preliminary notice” defined), 41140 (“site” defined).

§ 43040. Giving preliminary notice

43040. (a) Preliminary notice shall be given by mail or personal delivery.

(b) Notice to a direct contractor shall be addressed to the contractor at any place the contractor maintains an office or conducts business or at the contractor’s residence.

(c) Notice to a public entity shall be addressed to the public entity as provided in Section 42070.

Comment. Subdivision (a) of Section 43040 restates the second and fourth sentences of former Civil Code Section 3098(a). See also Section 42080 (mailed notice).

Subdivision (b) restates the third sentence of former Civil Code Section 3098(a).

Subdivision (c) supersedes the fourth sentence of former Civil Code Section 3098(a). See Section 42070 (notice to public entity).

See also Sections 41040 (“direct contractor” defined), 41110 (“preliminary notice” defined).

§ 43050. Effect of preliminary notice

43050. A claimant may give a stop payment notice or assert a claim against a payment bond only for labor, service, equipment, or material provided within 20 days before giving preliminary notice and at any time thereafter.

Comment. Section 43050 restates parts of subdivisions (a) and (d) of former Civil Code Section 3098.

See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41110 (“preliminary notice” defined), 41150 (“stop payment notice” defined).
**Note.** Although the language of this provision is radically simplified, it is believed to capture the essence of existing law.

§ 43060. Disciplinary action for failure to give notice

43060. A licensed subcontractor is subject to disciplinary action under the Contractors’ State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if all of the following conditions are satisfied:

(a) The subcontractor does not pay all compensation due to a laborers compensation fund.

(b) The subcontractor fails to give a required preliminary notice.

(c) The subcontractor’s failure results in the laborers compensation fund filing a stop payment notice or asserting a claim against a payment bond.

(d) The amount due the laborers compensation fund is not paid.

**Comment.** Section 43060 supersedes former Civil Code Section 3098(b); the provision relating to disciplinary action if a subcontractor fails to give preliminary notice on a work of improvement exceeding $400, is not continued. Section 43060 is drawn from former Civil Code Section 3097(h), relating to a private work of improvement.

See also Sections 41080 (“laborers compensation fund” defined), 41090 (“payment bond” defined), 41110 (“preliminary notice” defined), 41150 (“stop payment notice” defined).

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**CHAPTER 4. STOP PAYMENT NOTICE**


§ 44110. Stop payment notice exclusive remedy to reach construction funds

44110. (a) A person may not assert a legal or equitable right in funds for payment of construction costs, other than a right created by direct written contract between the person and the holder of the funds, except as provided in this chapter.

(b) This chapter provides the exclusive remedy of a person that provides labor, service, equipment, or material against funds for payment of construction costs.

**Comment.** Section 44110 restates former Civil Code Section 3264 to the extent it applied to a public works contract. See Section 42010 (application of part). For a comparable provision applicable to a private work, see Civ. Code § 7500.

See also Sections 41060 (“funds” defined), 41070 (“labor, service, equipment, or material” defined), 41100 (“person” defined).

§ 44120. Contents of stop payment notice

44120. (a) A stop payment notice shall be signed and verified by the claimant and shall state in general terms all of the following:

1. The kind of labor, service, equipment, or material provided or agreed to be provided by the claimant.

2. The name of the person to or for which the labor, service, equipment, or material was provided.
(3) The amount in value, as near as may be, of that already provided and of the whole agreed to be provided.

(4) The name and address of the claimant.

(b) A stop payment notice is not invalid by reason of any defect in form if it is sufficient to substantially inform the public entity of the information required.

Comment. Subdivision (a) of Section 44120 restates subdivisions (a)-(d) of former Civil Code Section 3103. See also Section 42090 (agency).

Subdivision (b) continues the third sentence of the first unnumbered paragraph of former Civil Code Section 3103.

See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material” defined), 41100 (“person” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

§ 44130. Giving of stop payment notice

44130. A stop payment notice shall be given to the public entity by mailing or personally delivering the notice to the following person:

(a) In the case of a public works contract of the state, the director of the department that awarded the contract.

(b) In the case of a public works contract of a public entity other than the state, the office of the controller, auditor, or other public disbursing officer whose duty it is to make payment pursuant to the contract, or the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by which the contract was awarded.

Comment. Subdivision (a) of Section 44130 restates the second sentence of the first unnumbered paragraph of former Civil Code Section 3103.

Subdivision (b) restates the second unnumbered paragraph of former Civil Code Section 3103.

See also Section 42080 (mailed notice).

A claimant wishing to receive return notice of the time within which payment of the claim stated in a stop payment notice must be enforced must pay the public entity ten dollars ($10) at the time of giving the stop payment notice. See Section 44170.

See also Sections 41100 (“person” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined), 41150 (“stop payment notice” defined).

§ 44140. Time for giving notice

44140. A stop payment notice is not effective unless given within 30 days after recordation of a notice of completion or, if a notice of completion is not recorded, within 90 days after completion.

Comment. Section 44140 restates former Civil Code Section 3184. The former statutory references to “notice of cessation” and “notice of acceptance” are not continued; they are subsumed within the notice of completion. See Sections 42210 (completion (including acceptance and cessation)) and 42220 (notice of completion).

See also Section 41150 (“stop payment notice” defined).

§ 44150. Duty to withhold funds

44150. (a) The public entity shall, on receipt of a stop payment notice, withhold from the direct contractor sufficient funds due or to become due to the direct
contractor to pay the claim stated in the stop payment notice and to provide for the
public entity’s reasonable cost of any litigation pursuant to the stop payment
notice.
(b) The public entity may satisfy its duty under this section by refusing to
release funds held in escrow under Section 10263 or 22300.
Comment. Section 44150 restates former Civil Code Section 3186. See also Section 42090
(agency).
See also Sections 41040 (“direct contractor” defined), 41060 (“funds” defined), 41120 (“public
entity” defined), 41150 (“stop payment notice” defined).

§ 44160. Payment notwithstanding stop payment notice
44160. (a) This chapter does not prohibit payment of funds to a direct contractor
if a stop payment notice is not received before the disbursing officer actually
surrenders possession of the funds.
(b) This chapter does not prohibit payment of any amount due to a direct
contractor in excess of the amount necessary to pay the total amount of all claims
stated in stop payment notices received by the public entity at the time of payment
plus any interest and court costs that might reasonably be anticipated in connection
with the claims.
Comment. Section 44160 restates former Civil Code Section 3187. Authority in this section
for payment of a direct contractor includes payment of the direct contractor’s assignee. See
Section 41040 (“direct contractor” defined).
See also Sections 41060 (“funds” defined), 41150 (“stop payment notice” defined).

§ 44170. Notice to claimant
44170. (a) Not later than 10 days after completion of a public works contract,
the public entity shall give notice to each claimant that has given a stop payment
notice of the time within which payment of the claim stated in a stop payment
notice must be enforced.
(b) Notice under this section shall be by personal delivery or by mail addressed
to the claimant at the address shown on the stop payment notice.
(c) A public entity need not give notice under this section unless the claimant
has paid the public entity ten dollars ($10) at the time of giving the stop payment
notice.
Comment. Section 44170 restates former Civil Code Section 3185. See also Sections 42080
(mailed notice), 44420 (time for enforcement of payment of claim stated in stop payment notice).
The $2 fee is increased to $10 in recognition of the change in the value of the dollar since the
fee’s enactment.
See also Sections 41020 (“claimant” defined), 41120 (“public entity” defined), 41130 (“public
works contract” defined), 41150 (“stop payment notice” defined).

§ 44180. Release bond
44180. (a) If the direct contractor or a subcontractor disputes the correctness,
validity, or enforceability of the claim stated a stop payment notice, the public
entity may, in its discretion, permit the direct contractor to give the public entity a
release bond. The bond shall be executed by an admitted surety insurer, in an amount equal to 125 percent of the claim stated in the stop payment notice, conditioned for the payment of any amount the claimant recovers in an action on the claim, together with court costs if the claimant prevails.

(b) On receipt of a release bond, the public entity shall not withhold funds from the direct contractor pursuant to the stop payment notice.

(c) The surety on a release bond is jointly and severally liable to the claimant with the sureties on any payment bond given under Chapter 5 (commencing with Section 45010).

Comment. Section 44180 restates former Civil Code Section 3196. See also Sections 41020 ("claimant" defined), 41040 ("direct contractor" defined), 41060 ("funds" defined), 41090 ("payment bond" defined), 41120 ("public entity" defined), 41150 ("stop payment notice" defined).

Article 2. Summary Proceeding for Release of Funds

§ 44210. Grounds for summary proceeding

44210. A direct contractor may obtain release of funds withheld pursuant to a stop payment notice under the summary proceeding provided in this article on any of the following grounds:

(a) The claim on which the notice is based is not a type for which a stop payment notice is authorized under this chapter.

(b) The claimant is not a person authorized under Section 42030 to give a stop payment notice.

(c) The amount of the claim stated in the stop payment notice is excessive.

(d) There is no basis for the claim stated in the stop payment notice.

Comment. Section 44210 restates former Civil Code Section 3197. See also Sections 41020 ("claimant" defined), 41040 ("direct contractor" defined, 41060 ("funds" defined), 41100 ("person" defined), 41150 ("stop payment notice" defined).

§ 44220. Contractor’s affidavit and demand for release

44220. The direct contractor shall serve on the public entity an affidavit, together with a copy of the affidavit, that includes all of the following information:

(a) An allegation of the grounds for release of the funds and a statement of the facts supporting the allegation.

(b) A demand for the release of all or the portion of the funds that are alleged to be withheld improperly or in an excessive amount.

(c) A statement of the address of the contractor within the state for the purpose of permitting service by mail on the contractor of any notice or document.

Comment. Section 44220 restates former Civil Code Section 3198. The grounds for release are provided in Section 44210. See also Sections 41040 ("direct contractor" defined), 41060 ("funds" defined), 41120 ("public entity" defined).
§ 44230. Notice to claimant

44230. (a) The public entity shall serve on the claimant a copy of the direct contractor’s affidavit, together with a notice stating that the public entity will release the funds withheld, or the portion of the funds demanded, unless the claimant serves on the public entity a counteraffidavit on or before the time stated in the notice. The time stated in the notice shall be not less than 10 nor more than 20 days after service on the claimant of the copy of the affidavit.

(b) Service under this section shall be made either personally or by registered or certified mail, addressed to the last known address of the claimant. Proof of service shall be made by affidavit.

Comment. Section 44230 restates former Civil Code Section 3199. See also Section 42060 (written notice).

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060 (“funds” defined), 41120 (“public entity” defined).

§ 44240. Claimant’s counteraffidavit

44240. (a) A claimant that contests the direct contractor’s affidavit shall serve on the public entity a counteraffidavit alleging the details of the claim and describing the specific basis on which the claimant contests or rebuts the allegations of the contractor’s affidavit. The counteraffidavit shall be served within the time stated in the public entity’s notice, together with proof of service of a copy of the counteraffidavit on the direct contractor.

(b) If no counteraffidavit with proof of service is served on the public entity within the time stated in the public entity’s notice, the public entity shall immediately release the funds, or the portion of the funds demanded by the affidavit, without further notice to the claimant, and the public entity is not liable in any manner for their release.

(c) The public entity is not responsible for the validity of an affidavit or counteraffidavit under this article.

Comment. Section 44240 restates former Civil Code Section 3200.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060 (“funds” defined), 41120 (“public entity” defined).

§ 44250. Commencement of action

44250. (a) If a counteraffidavit, together with proof of service, is served under Section 44240, either the direct contractor or the claimant may commence an action for a declaration of the rights of the parties.

(b) After commencement of the action, either the direct contractor or the claimant may move the court for a determination of rights under the affidavit and counteraffidavit. The party making the motion shall give not less than five days’ notice of the hearing to the public entity and to the other party.

(c) The court shall hear the motion within 15 days after the date of the motion, unless the court continues the hearing for good cause.
Comment. Section 44250 restates former Civil Code Section 3201. See also Sections 42040 (jurisdiction and venue), 42060 (written notice).

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41120 (“public entity” defined).

§ 44260. Pleadings and burden of proof

44260. (a) The affidavit and counteraffidavit shall be filed with the court by the public entity and shall constitute the pleadings, subject to the power of the court to permit an amendment in the interest of justice. The affidavit of the direct contractor shall be deemed controverted by the counteraffidavit of the claimant, and both shall be received in evidence.

(b) At the hearing, the direct contractor has the burden of proof.

Comment. Section 44260 restates former Civil Code Section 3202.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41120 (“public entity” defined).

§ 44270. Court determination

44270. (a) No findings are required in a summary proceeding under this article.

(b) If the hearing is before the court sitting without a jury and no evidence other than the affidavit and counteraffidavit is offered, the court may, if satisfied that sufficient facts are shown, make a determination on the basis of the affidavit and counteraffidavit. If the court is not satisfied that sufficient facts are shown, the court shall order the hearing continued for production of other evidence, oral or documentary, or the filing of other affidavits and counteraffidavits.

(c) At the conclusion of the hearing, the court shall make an order determining whether the demand for release is allowed. The court’s order is determinative of the right of the claimant to have funds further withheld by the public entity.

(d) The direct contractor shall serve a copy of the court’s order on the public entity.

Comment. Section 44270 restates former Civil Code Section 3203. Former Civil Code Section 3204 relating to jury trial is not continued; proceedings under this article are tried to the judge, not to a jury.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060 (“funds” defined), 41120 (“public entity” defined).

§ 44280. Summary determination not res judicata

44280. A determination in a summary proceeding under this article is not res judicata with respect to a right of action by the claimant against either the principal or surety on a payment bond or with respect to a right of action against a party personally liable to the claimant.

Comment. Section 44280 restates former Civil Code Section 3205. The former reference to a “labor or material bond” is replaced by a reference to a payment bond.

See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined).
Article 3. Distribution of Funds Withheld

§ 44310. Distribution of funds withheld pursuant to stop payment notice

44310. If funds withheld pursuant to a stop payment notice are insufficient to pay in full the claims of all persons that have given a stop payment notice, the funds shall be distributed among the claimants in the ratio that the claim of each bears to the aggregate of all claims for which a stop payment notice is given, without regard to the order in which the notices were given or enforcement actions were commenced.

Comment. Section 44310 restates former Civil Code Section 3190. Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. Cf. Idaho Lumber Co. v. Northwestern S. & L. Ass’n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968). The amount of the claim for which payment is required is determined under Article 4 (commencing with Section 40410) (enforcement of payment of claim stated in stop payment notice).

See also Sections 41020 (“claimant” defined), 41060 (“funds” defined), 41100 (“person” defined), 41150 (“stop payment notice” defined).

§ 44320. Stop payment notice remedy not exclusive

44320. Nothing in this chapter impairs the right of a claimant to recover from the direct contractor or the contractor’s sureties in an action on a payment bond under Chapter 5 (commencing with Section 45010) any deficit that remains unpaid after the distribution under Section 44310.

Comment. Section 44320 restates former Civil Code Section 3191.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41090 (“payment bond” defined).

§ 44330. Forfeiture for false notice

44330. A person that willfully gives a false stop payment notice to the public entity or that willfully includes in the notice labor, service, equipment, or material not provided for the public works contract for which the stop payment notice is given, forfeits all right to participate in the distribution under Section 44310.

Comment. Section 44330 restates former Civil Code Section 3192.

See also Sections 41070 (“labor, service, equipment, or material” defined), 41100 (“person” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined), 41150 (“stop payment notice” defined).

§ 44340. Effect of assignment or garnishment

44340. (a) A stop payment notice takes priority over an assignment by a direct contractor of any amount due or to become due pursuant to a public works contract, including contract changes, whether made before or after the giving of a stop payment notice, and the assignment has no effect on the rights of the claimant.

(b) Any garnishment of an amount due or to become due pursuant to a public works contract by a creditor of a direct contractor under Article 8 (commencing with Section 708.710) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code
of Civil Procedure and any statutory lien on that amount is subordinate to the
rights of a claimant.

Comment. Section 44340 restates former Civil Code Section 3193.
See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41150
(“stop payment notice” defined).

Article 4. Enforcement of Payment of Claim Stated in Stop Payment
Notice

§ 44410. Prerequisites for enforcement of notice

44410. (a) A claimant may not enforce payment of the claim stated in a stop
payment notice unless the claimant has complied with all of the following
conditions:

1. The claimant has given preliminary notice to the extent required by Chapter
3 (commencing with Section 43010).
2. The claimant has given the stop payment notice within the time provided in
Section 44140.

(b) The claim filing procedures of Part 3 (commencing with Section 900) of
Division 3.6 of Title 1 of the Government Code do not apply to an action under
this article.

Comment. Subdivision (a) of Section 44410 restates former Civil Code Section 3183.
Subdivision (b) restates former Civil Code Section 3265.
See also Sections 41020 (“claimant” defined), 41110 (“preliminary notice” defined), 41150
(“stop payment notice” defined).

§ 44420. Time for enforcement of payment of claim stated in stop payment notice

44420. (a) The claimant shall commence an action against the public entity and
the direct contractor to enforce payment of the claim stated in a stop payment
notice not earlier than 10 days after the date the claimant gives the stop payment
notice and not later than 90 days after expiration of the time within which a stop
payment notice must be given.

(b) An action under this section may not be brought to trial or judgment entered
before expiration of the time provided in subdivision (a).

(c) If a claimant does not commence an action to enforce payment of the claim
stated in a stop payment notice within the time provided in subdivision (a), the
notice ceases to be effective and the public entity shall release funds withheld
pursuant to the notice.

Comment. Section 44420 restates former Civil Code Section 3210. See also Section 44140
(time within which stop payment notice must be given).
See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41060
(“funds” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).
§ 44430. Notice of action
44430. Within five days after commencement of an action to enforce payment of the claim stated in a stop payment notice, the claimant shall give notice of commencement of the action to the public entity in the same manner that a stop payment notice is given.

Comment. Section 44430 restates former Civil Code Section 3211. See Section 44130 (giving of stop payment notice).
See also Sections 41020 (“claimant” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

§ 44440. Joinder, consolidation, and interpleader
44440. If more than one claimant has given a stop payment notice:
(a) Any number of claimants may join in the same enforcement action.
(b) If claimants commence separate actions, the court that first acquires jurisdiction may order the actions consolidated.
(c) On request of the public entity the court shall require that all claimants be impleaded in one action and shall adjudicate the rights of all parties in the action.

Comment. Section 44440 restates former Civil Code Section 3214 without substantive change.
See also Section 42040 (jurisdiction and venue).
See also Sections 41020 (“claimant” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

§ 44450. Dismissal of enforcement action for lack of prosecution
44450. The court may in its discretion dismiss an action to enforce payment of the claim stated in a stop payment notice that is not brought to trial within two years after commencement.

Comment. Section 44450 restates former Civil Code Section 3212.
See also Section 41150 (“stop payment notice” defined).

§ 44460. Dismissal of action or judgment against claimant
44460. A stop payment notice ceases to be effective, and the public entity shall release funds withheld, in either of the following circumstances:
(a) The action to enforce payment of the claim stated in the stop payment notice is dismissed, unless expressly stated to be without prejudice.
(b) Judgment in the action is against the claimant.

Comment. Section 44460 restates former Civil Code Section 3213.
See also Sections 41020 (“claimant” defined), 41060 (“funds” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

CHAPTER 5. PAYMENT BOND

§ 45010. Payment bond requirement
45010. (a) Except as provided in subdivision (d) of Section 7103:
(1) A direct contractor that is awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars ($25,000) shall, before
commencement of work, give a payment bond to and approved by the public entity.

(2) A public entity shall state in its call for bids that a payment bond is required for a public works contract involving an expenditure in excess of twenty-five thousand dollars ($25,000).

(b) A payment bond given and approved under this section is sufficient to permit performance of work pursuant to a public works contract that supplements the contract for which the bond is given, if the requirement of a new bond is waived by the public entity.

(c) For the purpose of this section, a design professional is not deemed a direct contractor and is not required to give a payment bond.

Comment. Section 45010 restates former Civil Code Section 3247. The transitional provisions of the former section are omitted due to lapse of time. Section 7103(d) defines “state entity” for purposes of the payment bond requirement under that section.

See also Sections 41030 (“design professional” defined), 41040 (“direct contractor” defined), 41090 (“payment bond” defined), 41120 (“public entity” defined), 41130 (“public works contract” defined).

§ 45020. Consequences of failure to give bond

45020. If a payment bond is not given and approved as required by statute:

(a) The public entity awarding the public works contract shall not audit, allow, or pay a claim of the direct contractor pursuant to the contract.

(b) A claimant shall receive payment of a claim pursuant to a stop payment notice under Chapter 4 (commencing with Section 44110).

Comment. Section 45020 restates former Civil Code Section 3251. The former operative date provision is deleted due to lapse of time.

See also Sections 41020 (“claimant” defined), 41040 (“direct contractor” defined), 41090 (“payment bond” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

☞ Note. This section refers to a payment bond given and approved “as required by statute.” That could include a payment bond under other provisions of the Public Contract Code, including the State Contract Act. Is this provision overbroad?

§ 45030. Bond requirements

45030. (a) A payment bond shall be in an amount not less than one hundred percent of the total amount payable pursuant to the public works contract. The bond shall be in the form of a bond and not a deposit in lieu of bond.

(b) The payment bond shall provide that if the direct contractor or a subcontractor fails to pay any of the following, the surety will pay the obligation and, if an action is brought to enforce the liability on the bond, a reasonable attorney’s fee, to be fixed by the court:

(1) A person authorized under Section 42030 to assert a claim against a payment bond.

(2) Amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the public works contract.
(3) Amounts required to be deducted, withheld, and paid over to the
Employment Development Department from the wages of employees of the
contractor and subcontractors under Section 13020 of the Unemployment
Insurance Code with respect to the work and labor.

(c) The payment bond shall by its terms inure to the benefit of any person
authorized under Section 42030 to assert a claim against a payment bond so as to
give a right of action to that person or that person’s assigns in an action to enforce
the liability on the bond.

(d) The direct contractor may require that a subcontractor give a bond to
indemnify the direct contractor for any loss sustained by the direct contractor
because of any default of the subcontractor under this section.

Comment. Section 45030 restates former Civil Code Section 32
48 and supersedes former
49 Civil Code Section 3096.
50 See also Sections 41040 (“direct contractor” defined), 41090 (“payment bond” defined), 41100
51 (“person” defined).

§ 45040. Construction of bond
45040. (a) A payment bond shall be construed most strongly against the surety
and in favor of the beneficiary.

(b) A surety is not released from liability to the beneficiary by reason of a
breach of the public works contract between the public entity and the direct
contractor or on the part of the beneficiary.

(c) The sole conditions of recovery on the bond are that the beneficiary is a
person authorized under Section 42030 to assert a claim against a payment bond
and has not been paid the full amount of the claim.

Comment. Section 45040 restates former Civil Code Section 3226.
See also Sections 41040 (“direct contractor” defined), 41090 (“payment bond” defined), 41100
(“person” defined), 41120 (“public entity” defined).


§ 45050. Statute of limitations
45050. A claimant may commence an action against a surety to enforce the
liability on a payment bond at any time after the claimant ceases to provide labor,
service, equipment, or material, but not later than six months after the period in
which a stop payment notice may be given under Section 44140.

Comment. Section 45050 restates former Civil Code Section 3249.
See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material”
declared), 41090 (“payment bond” defined), 41150 (“stop payment notice” defined).

§ 45060. Notice required
45060. A claimant may not enforce the liability on a payment bond unless the
claimant has given notice under one of the following provisions:

(a) Preliminary notice under Chapter 3 (commencing with Section 43010).

(b) Notice to the principal and surety under Section 45070.
Comment. Section 45060 supersedes former Civil Code Section 3252(a). The former limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined), 41110 (“preliminary notice” defined).

§ 45070. Notice to principal and surety

45070. (a) Whether or not the claimant has given preliminary notice under Chapter 3 (commencing with Section 43010), a claimant may enforce the liability on a payment bond if the claimant gives the notice provided in this section to the principal and surety within 15 days after recordation of a notice of completion or, if a notice of completion is not recorded, within 75 days after completion.

(b) Notice to the principal and surety shall include all of the following information:

(1) The kind of labor, service, equipment, or material provided or to be provided by the claimant.

(2) The name of the person to or for which the labor, service, equipment, or material was provided.

(3) A statement of the claimant’s demand, after deducting all just credits and offsets, for the labor, service, equipment, or material already provided and for the whole amount agreed to be provided.

(c) Notice shall be given by mail, personal delivery, or service in the manner provided by law for the service of a summons in a civil action.

(d) Notice given by mail shall be at the address provided in the bond for service of notices, papers, and other documents.

Comment. Subdivision (a) of Section 45070 restates former Civil Code Section 3252. See also 42210 (completion (including acceptance and cessation)).

Subdivisions (b)-(d) restate former Civil Code Section 3227, except that mailed notice to the principal or surety on a bond must be given at the address specified in the bond. See Code Civ. Proc. § 995.320. See also Sections 42060 (written notice), 42080 (mailed notice).

See also Sections 41020 (“claimant” defined), 41070 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41100 (“person” defined), 41110 (“preliminary notice” defined), 41130 (“public works contract” defined).


§ 45080. Action on bond

45080. (a) A claimant may maintain an action to enforce the liability of a surety on a payment bond whether or not the claimant has given the public entity a stop payment notice.

(b) A claimant may maintain an action to enforce the liability on the bond separately from and without commencement of an action against the public entity.

(c) In an action to enforce the liability on the bond, the court shall award the prevailing party a reasonable attorney’s fee.

Comment. Section 45080 restates former Civil Code Section 3250. The provision that a reasonable attorney’s fee is “to be taxed as costs” is deleted as surplus. See Code Civ. Proc. § 1033.5(a)(10)(B) (attorney’s fee allowable as costs). See also Section 42050 (rules of practice).
See also Sections 41020 (“claimant” defined), 41090 (“payment bond” defined), 41120 (“public entity” defined), 41150 (“stop payment notice” defined).

§ 45090. Limitation on chapter

45090. (a) A claimant does not have a right to recover on a payment bond unless the claimant provided labor, service, equipment, or material to the direct contractor or one of the direct contractor’s subcontractors pursuant to a public works contract.

(b) Nothing in this section affects the stop payment notice rights of, and relative priorities among, design professionals.

Comment. Section 45090 restates former Civil Code Section 3267. This section omits the reference in former law to holders of secured interests in the land; although the relevance of that provision to a public works contract is limited, this section is not intended to affect priorities among those interests to the extent they may exist.

See also Sections 41020 (“claimant” defined), 41030 (“design professional” defined), 41040 (“direct contractor” defined), 41070 (“labor, service, equipment, or material” defined), 41090 (“payment bond” defined), 41130 (“public works contract” defined), 41150 (“stop payment notice” defined).

Operative Date and Transitional Provision

SEC. ____. (a) This act is operative January 1, 2009.

(b) Except as otherwise provided in this section, this act applies to a contract for a work of improvement executed before, on, or after the operative date.

(c) The effectiveness of a notice given, or other action taken, before the operative date is governed by the applicable law in effect before the operative date and not by this act.

CONFORMING REVISIONS

BUSINESS AND PROFESSIONS CODE

Bus. & Prof. Code § 7034 (amended). Prohibited contract clauses

SEC. ____. Section 7034 of the Business and Professions Code is amended to read:

7034. (a) No contractor who is required to be licensed under this chapter shall insert in any contract, or be a party, with a subcontractor who is licensed under this chapter to any contract which contains, a provision, clause, covenant, or agreement which is void or unenforceable under Section 2782 of the Civil Code.

(b) No contractor who is required to be licensed under this chapter shall require a waiver of lien rights from any subcontractor, employee, or supplier in violation of Section 3262 7160 of the Civil Code or Section 42310 of the Public Contract Code.

Comment. Section 7034 is amended to correct a cross-reference.
Tentative Recommendation • June 2006

**Bus. & Prof. Code § 7071.5 (amended). Contractor’s bond**

SEC. ____. Section 7071.5 of the Business and Professions Code is amended to read:

7071.5. The contractor’s bond required by this article shall be executed by an admitted surety in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the licensee or applicant. The contractor’s bond shall be for the benefit of the following:

(a) Any homeowner contracting for home improvement upon the homeowner’s personal family residence damaged as a result of a violation of this chapter by the licensee.

(b) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(c) Any employee of the licensee damaged by the licensee’s failure to pay wages.

(d) Any person or entity, including an express trust fund described in Section 7014 of the Civil Code or Section 41050 of the Public Contract Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, damaged as the result of the licensee’s failure to pay fringe benefits for its employees, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder (without regard to whether the work was performed on a private or public work). Damage to an express trust fund is limited to actual employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

**Comment.** Section 7071.5 is amended to correct a cross-reference.

**Bus. & Prof. Code § 7071.10 (amended). Qualifying individual’s bond**

SEC. ____. Section 7071.10 of the Business and Professions Code is amended to read:

7071.10. (a) The qualifying individual’s bond required by this article shall be executed by an admitted surety insurer in favor of the State of California, in a form acceptable to the registrar and filed with the registrar by the qualifying individual. The qualifying individual’s bond shall be for the benefit of the following persons:

(1) Any homeowner contracting for home improvement upon the homeowner’s personal family residence damaged as a result of a violation of this chapter by the licensee.

(2) Any person damaged as a result of a willful and deliberate violation of this chapter by the licensee, or by the fraud of the licensee in the execution or performance of a construction contract.

(3) Any employee of the licensee damaged by the licensee’s failure to pay wages.
(4) Any person or entity, including an express trust fund described in Section 7014 of the Civil Code or Section 41050 of the Public Contract Code, to whom a portion of the compensation of an employee of a licensee is paid by agreement with that employee or the collective bargaining agent of that employee, that is damaged as the result of the licensee’s failure to pay fringe benefits for its employees including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder (without regard to whether the work was performed on a public or private work). Damage to an express trust fund is limited to employer payments required to be made on behalf of employees of the licensee, as part of the overall compensation of those employees, which the licensee fails to pay.

(b) The qualifying individual’s bond shall not be required in addition to the contractor’s bond when the qualifying individual is himself or herself the proprietor under subdivision (a) or a general partner under subdivision (b) of Section 7068.

Comment. Section 7071.10 is amended to correct a cross-reference.

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

SEC. ____. Section 7159 of the Business and Professions Code is amended to read:

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

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

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

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

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

(1) The writing shall be legible.

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

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

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

(i) The date the buyer signed the contract.

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

(4) A statement that, upon satisfactory payment being made for any portion of
the work performed, the contractor shall, prior to any further payment being made,
furnish to the person contracting for the home improvement or swimming pool
work a full and unconditional release from any claim or mechanic’s lien pursuant
to Section 3114 of the Civil Code for that portion of the work for which
payment has been made.

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

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

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

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

(d) A home improvement contract and any changes to the contract, shall be in
writing and signed by the parties to the contract prior to the commencement of any
work covered by the contract or applicable change order, and shall include or
comply with all of the following:

(1) The name, business address, and license number of the contractor.
(2) If applicable, the name and registration number of the home improvement salesperson that solicited or negotiated the contract.

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

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


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

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

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

(A) The heading: “Down Payment.”

(B) A space where the actual down payment appears.

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

“THE DOWN PAYMENT MAY NOT EXCEED $1,000 OR 10 PERCENT OF THE CONTRACT PRICE, WHICHEVER IS LESS.”

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

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

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

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

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

(10) The contract shall address the commencement of work to be performed in substantially the following form:
(A) A statement that describes what constitutes substantial commencement of work under the contract.
(B) The heading: “Approximate Start Date.”
(C) The approximate date on which work will be commenced.

(11) The estimated completion date of the work shall be referenced in the contract in substantially the following form:
(A) The heading: “Approximate Completion Date.”
(B) The approximate date of completion.

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

(13) The heading: “Note about Extra Work and Change Orders,” followed by the following statement:
“Extra Work and Change Orders become part of the contract once the order is prepared in writing and signed by the parties prior to the commencement of any work covered by the new change order. The order must describe the scope of the extra work or change, the cost to be added or subtracted from the contract, and the effect the order will have on the schedule of progress payments.”

(e) All of the following notices shall be provided to the owner as part of the contract form as specified or, if otherwise authorized under this subdivision, may be provided as an attachment to the contract:
(1) A notice concerning commercial general liability insurance. This notice may be provided as an attachment to the contract if the contract includes the following statement: “A notice concerning commercial general liability insurance is attached to this contract.” The notice shall include the heading “Commercial General Liability Insurance (CGL),” followed by whichever of the following statements is both relevant and correct:
(A) “(The name on the license or ‘This contractor’) does not carry commercial general liability insurance.”
(B) “(The name on the license or ‘This contractor’) carries commercial general liability insurance written by (the insurance company). You may call the (insurance company) at __________ to check the contractor’s insurance coverage.”
(C) “(The name on the license or ‘This contractor’) is self-insured.”
(2) A notice concerning workers’ compensation insurance. This notice may be provided as an attachment to the contract if the contract includes the statement: “A notice concerning workers’ compensation insurance is attached to this contract.” The notice shall include the heading “Workers’ Compensation Insurance” followed by whichever of the following statements is correct:
(A) “(The name on the license or ‘This contractor’) has no employees and is exempt from workers’ compensation requirements.”

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

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

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

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

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

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

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

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

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

“MECHANICS LIEN WARNING:

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

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

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

BE CAREFUL. The Preliminary Notice can be sent up to 20 days after the subcontractor starts work or the supplier provides material. This can be a big problem if you pay your contractor before you have received the Preliminary Notices.
You will not get Preliminary Notices from your prime contractor or other persons you contract with directly or from laborers who work on your project. The law assumes that you already know they are improving your property.

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

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

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

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

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

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

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

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

For more information:

Visit CSLB’s Web site at www.cslb.ca.gov
Call CSLB at 800-321-CSLB (2752)
Write CSLB at P.O. Box 26000, Sacramento, CA 95826.”

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

(i) Negotiated at the contractor’s place of business.
(ii) Subject to the “Seven-Day Right to Cancel,” as set forth in paragraph (8).
(iii) Subject to licensure under the Alarm Company Act (Chapter 11.6 (commencing with Section 7590)), provided the alarm company licensee complies with Sections 1689.5, 1689.6, and 1689.7 of the Civil Code, as applicable.

(B) “Three-Day Right to Cancel
“You, the buyer, have the right to cancel this contract within three business days. You may cancel by e-mailing, mailing, faxing, or delivering a written notice to the contractor at the contractor’s place of business by midnight of the third business day after you received a signed and dated copy of the contract that includes this notice. Include your name, your address, and the date you received the signed copy of the contract and this notice.

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

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

“Notice of Cancellation”
/enter date of transaction/

(Date)

“You may cancel this transaction, without any penalty or obligation, within three business days from the above date.
If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

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

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

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

/name of seller/

at ________________________________

/address of seller’s place of business/

not later than midnight of ________.

(Date)

I hereby cancel this transaction. 

(Date)

(Buyer’s signature)

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

“Seven-Day Right to Cancel

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

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

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

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

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

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

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

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

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

“Notice of Cancellation”

/enter date of transaction/

(Date)

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

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

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

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

To cancel this transaction, mail or deliver a signed and dated copy of this
cancellation notice, or any other written notice, or send a telegram to
________________________________,  
/name of seller/
at ___________________________,  
/address of seller’s place of business/
not later than midnight of ________.  
(Date)
I hereby cancel this transaction.  
(Date)
_____________________
(Buyer’s signature)

Comment. Paragraph (4) of subdivision (c) of Section 7159 is amended to correct a cross-
reference. Paragraph (9) of subdivision (d) is amended to make a grammatical correction.
Paragraph (4) of subdivision (e) is amended to correct terminology and to add a non-

Bus. & Prof. Code § 7159.1 (amended). Notice to buyer

SEC. ____. Section 7159.1 of the Business and Professions Code is amended to read:

7159.1. (a) In any contract for the sale of home improvement goods or services
offered by door-to-door sale that contains or is secured by a lien on real property,
the contract shall be accompanied by the following notice in 18-point boldfaced
type:

“WARNING TO BUYER: IF YOU SIGN THE CONTRACT WHICH
ACCOMPANIES THIS NOTICE, YOU WILL BE PUTTING UP YOUR HOME
AS SECURITY. THIS MEANS THAT YOUR HOME COULD BE SOLD
WITHOUT YOUR PERMISSION AND WITHOUT ANY COURT ACTION IF
YOU MISS ANY PAYMENT REQUIRED BY THIS CONTRACT.”

This notice shall be written in the same language as the rest of the contract. It
shall be on a separate piece of paper from the rest of the contract and shall be
signed and dated by the buyer. The home improvement contractor or home
improvement salesperson shall deliver to the buyer at the time of the buyer’s
signing and dating of the notice a legible copy of the signed and dated notice. A
security interest created in any contract described in this section that does not
provide the notice as required by this section shall be void and unenforceable.

This section shall not apply to any of the following:

(a) Any contract that is subject to Chapter 1 (commencing with Section 1801) of
Title 2 of Part 4 of Division 3 of the Civil Code.
(b) A mechanic’s lien established pursuant to Section 3109 of Title 15 of Part 4 of Division 3 of the Civil Code.

(c) Any contract that is subject to subdivision (a) of Section 7159.2.

Comment. Section 7159.1 is amended to correct a cross-reference.

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

SEC. ____. Section 7159.5 of the Business and Professions Code is amended to read:

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

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

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

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

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

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

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

(6) Upon any payment by the person contracting for home improvement, and prior to any further payment being made, the contractor shall, if requested, obtain and furnish to the person a full and unconditional release from any potential lien claimant claim or mechanic’s lien pursuant to Section 3114 of the Civil Code for any portion of the work for which payment has been made. The person contracting for home improvement may withhold all further payments until these releases are furnished.

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

(8) A contractor furnishing a performance and payment bond, lien and completion bond, or a bond equivalent or joint control approved by the registrar
covering full performance and payment is exempt from paragraphs (3), (4), and (5), and need not include, as part of the contract, the Mechanics’ Lien Warning which is a requirement specified in Section 7159. A contractor furnishing these bonds, bond equivalents, or a joint control approved by the registrar may accept payment prior to completion. If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

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

(1) An indictment or information against a person who is not licensed but who is required to be licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within four years from the date the buyer signs the contract.

(2) An indictment or information against a person who is licensed under this chapter shall be brought, or a criminal complaint filed, for a violation of this section within two years from the date the buyer signs the contract.

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

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

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


SEC. ____. Section 7159.14 of the Business and Professions Code is amended to read:

7159.14. (a) This section applies to a service and repair contract as defined in Section 7159.10. A violation of this section by a licensee or a person subject to be
licensed under this chapter, or by his or her agent or salesperson, is cause for
discipline.
   (1) The contract may not exceed seven hundred fifty dollars ($750).
   (2) The contract shall state the agreed contract amount, which may be stated as
      either a fixed contract amount in dollars and cents or, if a time and materials
      formula is used, as an estimated contract amount in dollars and cents.
   (3) The contract amount shall include the entire cost of the contract including
      profit, labor and materials but excluding finance charges.
   (4) The actual contract amount of a time and materials contract may not exceed
      the estimated contract amount without written authorization from the buyer.
   (5) The prospective buyer must have initiated contact with the contractor to
      request work.
   (6) The contractor may not sell the buyer goods or services beyond those
      reasonably necessary to take care of the particular problem that caused the buyer
      to contact the contractor.
   (7) No payment may be due before the project is completed.
   (8) A service and repair contractor may charge only one service charge. For
      purposes of this chapter, a service charge includes such charges as a service or trip
      charge, or an inspection fee.
   (9) A service and repair contractor charging a service charge must disclose in all
      advertisements that there is a service charge and, when the customer initiates the
      call for service, must disclose the amount of the service charge.
   (10) The service and repair contractor must offer to the customer any parts that
      were replaced.
   (11) Upon any payment by the buyer, the contractor shall, if requested, obtain
      and furnish to the buyer a full and unconditional release from any potential lien
      claimant claim or mechanics’ lien pursuant to Section 3114 7172 of the Civil Code
      for any portion of the work for which payment has been made.
         (b) A violation of paragraph (1), (2), (3), (4), (5), (6), or (8) of subdivision (a) by
      a licensee or a person subject to be licensed under this chapter, or by his or her
      agent or salesperson, is a misdemeanor punishable by a fine of not less than one
      hundred dollars ($100) nor more than five thousand dollars ($5,000) or by
      imprisonment in a county jail not exceeding one year, or by both fine and
      imprisonment.
         (1) An indictment or information against a person who is not licensed but who is
      required to be licensed under this chapter shall be brought, or a criminal complaint
      filed, for a violation of this section within four years from the date the buyer signs
      the contract.
         (2) An indictment or information against a person who is licensed under this
      chapter shall be brought, or a criminal complaint filed, for a violation of this
      section within two years from the date the buyer signs the contract.
         (3) The limitations on actions in this subdivision shall not apply to any
      administrative action filed against a licensed contractor.
(c) Any person who violates this section as part of a plan or scheme to defraud an owner or tenant of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person’s ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant’s ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the Governor pursuant to Section 8625 of the Government Code, or for which an emergency or major disaster is declared by the President of the United States.

(d) This section shall become operative on January 1, 2006.

Comment. Section 7159.14 is amended to correct a cross-reference.

Bus. & Prof. Code § 7164 (amended). Contract for construction of single-family dwelling

SEC. ____. Section 7164 of the Business and Professions Code is amended to read:

7164. (a) Notwithstanding Section 7044, every contract and any changes in a contract, between an owner and a contractor, for the construction of a single-family dwelling to be retained by the owner for at least one year shall be evidenced in writing signed by both parties.

(b) The writing shall contain the following:

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

(2) The approximate dates when the work will begin and be substantially completed.

(3) A legal description of the location where the work will be done.

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

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

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

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

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

You will not get Preliminary Notices from your prime contractor or other persons you contract with directly or from laborers who work on your project. The law assumes that you already know they are improving your property.

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

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

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

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

(5) (A) A statement prepared by the board through regulation that emphasizes the value of commercial general liability insurance and encourages the owner to verify the contractor’s insurance coverage and status.

(B) A check box indicating whether or not the contractor carries commercial general liability insurance, and if that is the case, the name and the telephone number of the insurer.

(c) The writing may also contain other matters agreed to by the parties to the contract. The writing shall be legible and shall clearly describe any other document which is to be incorporated into the contract. Prior to commencement of any work, the owner shall be furnished a copy of the written agreement, signed by the contractor. The provisions of this section are not exclusive and do not relieve the contractor from compliance with all other applicable provisions of law.

(d) Every contract subject to the provisions of this section shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point bold type or in all capital letters, stating that the owner has the right to require the contractor to have a performance and payment bond and that the expense of the bond may be borne by the owner.
(e) The requirements in paragraph (5) of subdivision (b) shall become operative three months after the board adopts the regulations referenced in subparagraph (A) of paragraph (5) of subdivision (b).

(f) This section shall become operative on January 1, 2006.

Comment. Paragraph (4) of subdivision (a) of Section 7164 is amended to correct terminology and to add a non-substantive clarification. See Civ. Code § 7034 (“preliminary notice” defined).

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

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

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

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

(c) Each company registered under this chapter that acts as a subcontractor for another company registered under this chapter shall, within 20 days of commencement of any work for which a company registration is required, give the preliminary 20-day notice (private work) in accordance with the provisions of Section 3097 notice in accordance with Chapter 2 (commencing with Section 7200) of Part 6 of Division 4 of the Civil Code, to the owner, his or her agent, or the payer.

(d) Each company registered under this chapter that acts as a prime contractor for work for which a company registration is required shall, prior to accepting payment for the work, furnish to the owner, his or her agent, or the payer a full and unconditional release from any claim of mechanics’ lien by any subcontractor entitled to enforce a mechanics’ lien pursuant to Section 3444 7172 of the Civil Code.

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

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

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

Comment. Section 8513 is amended to correct cross-references and terminology.
Bus. & Prof. Code § 17577.5 (amended). Contract for home water treatment device

SEC. ____. Section 17577.5 of the Business and Professions Code is amended to read:

17577.5. (a) No contract or offer for the sale, lease, or rental of a home water treatment device and no purchase money loan, as defined in subdivision (b), shall provide for a lien on real property. Any lien taken in violation of this section is void and unenforceable.

(b) For the purpose of this section, “purchase money loan” means a loan or an advance under an open-end credit account if both of the following occur:

1. The primary purpose of the loan or the primary purpose of establishing the open-end credit account is to finance all or a portion of the purchase price or any of the lease or rental payments for a water treatment device.

2. The creditor knows the primary purpose of the loan or the primary purpose of establishing the open-end credit account when the loan is initially made or the open-end credit account is established.

(c) The creditor shall be deemed to know that the primary purpose of the loan or the primary purpose of establishing the open-end credit account is the primary purpose described in paragraph (1) of subdivision (b) if any of the following occur:

1. The consumer’s application for credit or any other document in the creditor’s possession before the loan is made or the open-end account is established indicates the primary purpose of the loan or the open-end credit account.

2. The seller, lessor, or renter arranges or guarantees the loan or open-end account, or participates in the preparation of the consumer’s application for credit or other loan documents, or receives from the creditor a loan commission, brokerage, or referral fee.

(d) For the purpose of this section, “open-end credit” has the same meaning as used in Section 226.2 of Title 12 of the Code of Federal Regulations.

(e) This section does not apply to mechanics’ liens established pursuant to Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 Chapter 4 (commencing with Section 7400) of Part 6 of Division 4 of the Civil Code.

Comment. Section 17577.5 is amended to correct a cross-reference.

CIVIL CODE

Civ. Code §§ 1749.70-1749.76 (added). Automatic checkout system

SEC. ____. Title 1.4C (commencing with Section 1749.70) is added to Part 4 of Division 3 of the Civil Code, to read:
Title 1.4C. Automatic Checkout System

**Civ. Code § 1749.70. Clearly readable price on commodities**

1749.70. (a) Every retail grocery store or grocery department within a general retail merchandise store which uses an automatic checkout system shall cause to have a clearly readable price indicated on 85 percent of the total number of packaged consumer commodities offered for sale which are not exempt pursuant to subdivision (b).

The management of any such retail grocery store or grocery department shall determine the number of consumer commodities normally offered for sale on a daily basis, shall determine the consumer commodities to be exempted pursuant to this subdivision, and shall maintain a list of those consumer commodities exempt pursuant to this subdivision. The list shall be made available to a designated representative of the appropriate local union, the members of which are responsible for item pricing, in those stores or departments that have collective bargaining agreements, seven days prior to an item or items being exempted pursuant to this subdivision. In addition, the list shall be available and posted in a prominent place in the store seven days prior to an item or items being exempted pursuant to this subdivision.

(b) The provisions of this section shall not apply to any of the following:

1. Any consumer commodity which was not generally item-priced on January 1, 1977, as determined by the Department of Food and Agriculture pursuant to subdivision (c) of Section 12604.5 of the Business and Professions Code, as in effect July 8, 1977.
2. Any unpackaged fresh food produce, or to consumer commodities which are under three cubic inches in size, weigh less than three ounces, and are priced under forty cents ($0.40).
3. Any consumer commodity offered as a sale item or as a special.
4. Any business which has as its only regular employees the owner thereof, or the parent, spouse, or child of such owner, or, in addition thereto, not more than two other regular employees.
5. Identical items within a multi-item package.
6. Items sold through a vending machine.

(c) For the purposes of this section:

1. “Automatic checkout system” means a computer capable of interpreting the universal product code or any other code which is on an item offered for sale to determine the price of items being purchased, regardless of whether the code entry is accomplished manually by a human or automatically by a machine.
2. “Consumer commodity” includes:
   A. Food, including all material whether solid, liquid, or mixed, and whether simple or compound, which is used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or
ingredients added to any such material for any purpose. This definition shall not
apply to individual packages of cigarettes or individual cigars.

(B) Napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper
toweling, and disposable plates and cups.

(C) Detergents, soaps, and other cleaning agents.

(D) Pharmaceuticals, including nonprescription drugs, bandages, female hygiene
products, and toiletries.

(3) “Grocery department” means an area within a general retail merchandise
store which is engaged primarily in the retail sale of packaged food, rather than
food prepared for immediate consumption on or off the premises.

(4) “Grocery store” means a store engaged primarily in the retail sale of
packaged food, rather than food prepared for consumption on the premises.

(5) “Sale item” or “special” means any consumer commodity offered in good
faith for a period of 14 days or less, on sale at a price below the normal price that
item is usually sold for in that store. The Department of Food and Agriculture
shall determine the normal length of a sale held for consumer commodities
generally item priced on January 1, 1977, in stores regulated pursuant to this title,
and that period shall be used for the purposes of this subdivision. The
department’s determination as to the normal length of a sale shall be binding for
the purposes of this section, but each such determination shall not exceed seven
days.

Comment. Section 1749.70 continues former Section 7100 without substantive change. The
former provision was ambiguous in its reference to “this chapter”; the new provision corrects the
reference to “this title”.

Civ. Code § 1749.71. Violations and penalty

1749.71. (a) The intentional violation of Section 1749.70 is punishable by a civil
penalty of not less than twenty-five dollars ($25) nor more than five hundred
dollars ($500).

(b) Failure to have a clearly readable price indicated on 12 units of the same
item required to be item-priced of the same commodity shall constitute a
presumption of intent to violate Section 1749.70.

(c) Every additional 12 units of the same item required to be item-priced that fail
to have a price indicated on them shall constitute a presumption of intent to violate
Section 1749.70.

(d) Each day that a violation continues shall also constitute a separate violation
after notification thereof to the manager or assistant manager of the retail grocery
store or the grocery department of the general retail merchandise store and shall
constitute a presumption of intent to violate Section 1749.70.

(e) Notwithstanding any other provision of law, any person may bring an action
to enjoin a violation of Section 1749.70.

Comment. Section 1749.71 continues former Section 7101 without substantive change.
Civ. Code § 1749.72. Cause of action

1749.72. Any person, firm, corporation, or association who violates Sections 1749.70 and 1749.71 shall be liable to any person injured for any losses and expenses thereby incurred, and for the sum of fifty dollars ($50) in addition thereto. The remedy set forth herein is applicable only to actions brought in the name of, and on behalf of, a single plaintiff and shall not be applicable in multiple plaintiff or class actions.

Comment. Section 1749.72 continues former Section 7102 without substantive change.

Civ. Code § 1749.73. Unintentional error

1749.73. Improper pricing on the shelf or on the item due to unintentional error shall not constitute a violation of this title.

Comment. Section 1749.73 continues former Section 7103 without substantive change. The former provision was ambiguous in its reference to “this division”; the new provision corrects the reference to “this title”.

Civ. Code § 1749.74. Exclusive remedies

1749.74. The remedies set forth in Sections 1749.71 and 1749.72 are the exclusive remedies available to any person, state or local agency or law enforcement official.

Comment. Section 1749.74 continues former Section 7104 without substantive change.

Civ. Code § 1749.75. Name of title

1749.75. This title shall be known and may be cited as the Rosenthal-Roberti Item Pricing Act.

Comment. Section 1749.75 continues former Section 7105 without substantive change.

Civ. Code § 1749.76. Preemption

1749.76. It is the intention of the Legislature that this title shall occupy the field with regard to item pricing and shall preempt all local ordinances, rules, or regulations concerning item pricing.

Comment. Section 1749.76 continues former Section 7106 without substantive change.


SEC. ____. Section 1917.166 of the Civil Code is amended to read:

1917.166. The lien of a shared appreciation loan, including the principal amount and all interest, whether accrued or to be accrued, and all amounts of contingent deferred interest, shall attach from the time of the recordation of the deed of trust securing the loan, and the lien, including the lien of the interest accrued or to be accrued and of the contingent deferred interest, shall have priority over any other lien or encumbrance affecting the property secured by the shared appreciation instrument, recorded after the time of recordation of the shared appreciation instrument. However, nothing in this section or Section 1917.165 shall preclude a
junior lien or encumbrance subordinate to the obligation of the shared appreciation
loan. In no case may a junior lien achieve priority over the lien securing the
obligation of the shared appreciation loan, provided that nothing in this section
shall be construed to supersede Section 3134 of the Civil Code 7450.

Comment. Section 1917.166 is amended to correct a cross-reference.


SEC. ____. Section 1917.615 of the Civil Code is amended to read:

1917.615. The lien of a shared appreciation loan for seniors, including the total
loan obligation, shall attach from the time of the recordation of the deed of trust
securing the loan, and the lien, including the lien of the total loan obligation
accrued or to be accrued, shall have priority over any other lien or encumbrance
affecting the property secured by the shared appreciation instrument and recorded
after the time of recordation of the shared appreciation instrument. However,
nothing in this section or Section 1917.614 shall preclude a junior lien or
encumbrance subordinate to the total loan obligation of the shared appreciation
loan for seniors. In no case may a junior lien achieve priority over the lien
securing the total loan obligation of the shared appreciation loan, provided that
nothing in this section shall be construed to supersede Section 3134 7450.

Comment. Section 1917.615 is amended to correct a cross-reference.


SEC. ____. Section 3059 of the Civil Code is amended to read:

3059. The liens of mechanics, for materials and services upon real property, are
regulated by Chapter 2 (commencing with Section 3109) of Title 15 of this part
Chapter 4 (commencing with Section 7400) of Part 6 of Division 4.

Comment. Section 3059 is amended to correct a cross-reference.

Civ. Code § 3060 (amended). Lien on mine

SEC. ____. Section 3060 of the Civil Code is amended to read:

3060. (a) As used in this section, “mine” means a mining claim or real property
worked as a mine.

(b) Any person who performs labor in any mining claim or claims, or in or upon
any real property worked as a mine, either in the development thereof or
development or in working thereon by the subtractive process, or furnishes
materials to be used or consumed therein in it, has a lien upon the same
mine and the works owned and used by the owners for milling or reducing the ores from the
same mine, for the value of the work or labor done or materials furnished by each
respectively, whether done or furnished at the instance of the owner of such
mining claim or claims or real property worked as a mine, or his
agent, and every contractor, subcontractor, superintendent, or other person having
charge of any mining or work or labor performed in and about such mining claim
or claims or real property worked as a mine, either as lessee or under a
working bond or contract thereon shall be held to be the agent of the owner for the purposes of this section. The liens provided for by this section shall be enforced in the same manner as those provided for by Title 15 (commencing with Section 3082), Part 4, Division 3 Part 6 (commencing with Section 7000) of Division 4.

Comment. Section 3060 is amended to correct a cross-reference. The other changes are technical.

Civ. Code § 3319 (amended). Design professional private work contract

SEC. ____. Section 3319 of the Civil Code is amended to read:

3319. (a) In each written contract for private works of improvement entered into on or after January 1, 1996, the contracting party and the design professional may agree to contractual provisions that include a late payment penalty, in lieu of any interest otherwise due. The terms of the late payment penalty shall be specifically set forth in the written contract.

(b) The penalty authorized pursuant to subdivision (a) shall be separate from, and in addition to, the design professionals’ liens provided by Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 Chapter 3 (commencing with Section 7300) of mechanics’ liens provided by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 Chapter 4 (commencing with Section 7400) of, and stop notices for private works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3 payment notices provided by Chapter 5 (commencing with Section 7500) of, Part 6.

(c) None of the rights or obligations created or permitted by this section between design professionals and contracting parties shall apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(d) For purposes of this section, the following definitions apply:

(1) “Contracting party” means any person or entity entering into a written contract with a design professional for professional design services for a private work of improvement.

(2) “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

Comment. Section 3319 is amended to correct cross-references.

Civ. Code § 3320 (amended). Payment to design professional on public work contract

SEC. ____. Section 3320 of the Civil Code is amended to read:

3320. (a) In each contract for public works of improvement, entered into on or after January 1, 1996, the public agency shall pay to the prime design professional any progress payment within 30 days of receipt of a written demand for payment
in accordance with the contract, and the final retention payment within 45 days of receipt of a written demand for payment in accordance with the contract. If the public agency disputes in good faith any portion of the amount due, it may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld is not subject to any penalty authorized by this section.

(b) If any amount is wrongfully withheld or is not timely paid in violation of this section, the prime design professional shall be entitled to a penalty of 11/2 percent for the improperly withheld amount, in lieu of any interest otherwise due, per month for every month that payment is not made. In any action for the collection of amounts withheld in violation of this section, the prevailing party is entitled to his or her reasonable attorney’s fees and costs.

(c) The penalty described in subdivision (b) is separate from, and in addition to, the design professionals’ liens provided by Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics’ liens provided by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop notices for public works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3 remedies for a public works contract provided in Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code.

(d) This section does not apply to state agency contracts subject to Section 927.6 of the Government Code.

(e) None of the rights or obligations created by this section between prime design professionals and public agencies apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(f) For purposes of this section:

(1) “Public agency” means the state, any county, any city, any city and county, any district, any public authority, any public agency, any municipal corporation or other political subdivision or political corporation of the state.

(2) “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

(3) “Prime design professional” means a design professional with a written contract directly with the public agency.

Comment. Section 3320 is amended to correct a cross-reference. The references to liens are not continued; the lien remedy is unavailable on a public works contract.

Civ. Code § 3321 (amended). Payment by design professional on public work contract

SEC. _____. Section 3321 of the Civil Code is amended to read:
3321. (a) In each contract for public works of improvement, a prime design professional shall pay to each subconsultant design professional the amount due him or her from the payment received, not later than 15 days after receipt of each progress payment or final retention payment. If the prime design professional disputes in good faith any portion of the amount due, he or she may withhold from the payment an amount not to exceed 150 percent of the disputed amount. The disputed amount withheld shall not be subject to any penalty authorized by this section.

(b) If any amount is wrongfully withheld or is not timely paid in violation of this section, the subconsultant design professional shall be entitled to a penalty of 1 1/2 percent of the improperly withheld amount, in lieu of any interest otherwise due, per month, for each month that payment is not made. In any action for the collection of amounts withheld in violation of this section, the prevailing party shall be entitled to his or her reasonable attorney’s fees and costs.

(c) The penalty described in subdivision (b) shall be separate from, and in addition to, the design professionals’ liens provided by Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3, mechanics’ liens provided by Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3, and stop notices for public works provided in Chapter 3 (commencing with Section 3156) of Title 15 of Part 4 of Division 3 remedies for a public works contract provided in Part 6 (commencing with Section 41010) of Division 2 of the Public Contract Code.

(d) None of the rights or obligations created by this section between prime design professionals and subconsultant design professionals shall apply to construction loan funds held by a lender pursuant to a construction loan agreement.

(e) For purposes of this section:

(1) “Public agency” means the state, any county, any city, any city and county, any district, any public authority, any public agency, any municipal corporation or other political subdivision or political corporation of the state.

(2) “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

(3) “Prime design professional” means a design professional having a written contract directly with the public agency.

(4) “Subconsultant design professional” means a design professional having a written contract with a prime design professional.

Comment. Section 3321 is amended to correct a cross-reference. The references to liens are not continued; the lien remedy is unavailable on a public works contract.
CODE OF CIVIL PROCEDURE

Code Civ. Proc. § 86 (amended). Classification of limited civil cases

SEC. ____. Section 86 of the Code of Civil Procedure is amended to read:

86. (a) The following civil cases and proceedings are limited civil cases:

(1) Cases A case at law in which the demand, exclusive of interest, or the value of the property in controversy amounts to twenty-five thousand dollars ($25,000) or less. This paragraph does not apply to cases a case that involve the legality of any tax, impost, assessment, toll, or municipal fine, except actions an action to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) Actions An action for dissolution of partnership where the total assets of the partnership do not exceed twenty-five thousand dollars ($25,000); actions an action of interpleader where the amount of money or the value of the property involved does not exceed twenty-five thousand dollars ($25,000).

(3) Actions An action to cancel or rescind a contract when the relief is sought in connection with an action to recover money not exceeding twenty-five thousand dollars ($25,000) or property of a value not exceeding twenty-five thousand dollars ($25,000), paid or delivered under, or in consideration of, the contract; actions an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) Proceedings A proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars ($25,000) or less.

(5) Actions An action to enforce and foreclose liens a lien on personal property where the amount of the liens lien is twenty-five thousand dollars ($25,000) or less.

(6) Actions An action to enforce and foreclose, or petitions a petition to release, liens of mechanics, materialmen, artisans, laborers, and of all other persons to whom liens are given a lien arising under the provisions of Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 Chapter 4 (commencing with Section 7400) of Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 1351 of the Civil Code, where the amount of the liens is twenty-five thousand dollars ($25,000) or less. However, where an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or where the total amount of the liens sought to be foreclosed against the same property aggregates an amount in excess of twenty-five thousand dollars ($25,000), the action is not a limited civil case.

(7) Actions An action for declaratory relief when brought pursuant to either of the following:
(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the amount in controversy is twenty-five thousand dollars ($25,000) or less.

(8) Actions An action to issue a temporary restraining orders and preliminary injunctions, and order or preliminary injunction; to take accounts an account, where necessary to preserve the property or rights of any party to a limited civil case; to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil case; to determine title to personal property seized in a limited civil case.

(9) Actions An action under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding twenty-five thousand dollars ($25,000) or the debt denied does not exceed twenty-five thousand dollars ($25,000).

(10) Arbitration-related petitions An arbitration-related petition filed pursuant to either of the following:
(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).
(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, where the arbitration award is twenty-five thousand dollars ($25,000) or less.

(b) The following cases in equity are limited civil cases:
(1) Cases A case to try title to personal property when the amount involved is not more than twenty-five thousand dollars ($25,000).
(2) Cases A case when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.
(3) Cases A case to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.
Comment. Paragraph (6) of subdivision (a) of Section 86 is amended to correct a cross-reference and eliminate obsolete terminology.

The section is also amended to make stylistic revisions.

Code Civ. Proc. § 410.42 (amended). Dispute resolution provisions in construction contract

SEC. ____. Section 410.42 of the Code of Civil Procedure is amended to read:

410.42. (a) The following provisions of a contract between the contractor and a subcontractor with principal offices in this state, for the construction of a public or private work of improvement in this state, shall be void and unenforceable:

(a) (1) A provision which purports to require any dispute between the parties to be litigated, arbitrated, or otherwise determined outside this state.

(b) (2) A provision which purports to preclude a party from commencing such a proceeding or obtaining a judgment or other resolution in this state or the courts of this state.

(b) For purposes of this section, “construction” means any work or services performed on, or materials provided for, a work of improvement, as defined in Section 3406 7046 of the Civil Code, and for which a lien may be claimed pursuant to Section 3440 7400 of the Civil Code (whether or not a lien is in fact claimed) or for which such a lien could be claimed but for Section 3409 7050 of the Civil Code.

Comment. Section 410.42 is amended to correct cross-references. The other changes to the section are technical.


SEC. ____. Section 708.760 of the Code of Civil Procedure is amended to read:

708.760. (a) If the judgment debtor named in the abstract or certified copy of the judgment filed pursuant to this article is a contractor upon a public work, the cost of which is to be paid out of public moneys voted, appropriated, or otherwise set apart for such purpose, only so much of the contract price shall be deemed owing and unpaid within the meaning of Section 708.740 or 708.750 as may remain payable under the terms of the contractor’s contract, upon the completion thereof, after deducting sums due and to become due to persons described in Section 3181 of the Civil Code Section 42030 of the Public Contract Code. In ascertaining the sums due or to become due to such persons, only claims which are filed against the moneys due or to become due to the judgment debtor in accordance with the provisions of Chapter 4 (commencing with Section 3179) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 4 (commencing with Section 44110) of Part 6 of Division 2 of the Public Contract Code shall be considered.

(b) The Controller, auditor, or other public disbursing officer whose duty it is to make payments under the provisions of the contract may not deposit an amount with the court pursuant to this article until the contract is completed, but may deposit an amount with the court to satisfy the claim of the judgment debtor before the payments specified in subdivision (a) are made so long as a sufficient amount
is retained for the satisfaction of the claims of persons described in Section 42030 of the Public Contract Code.

Comment. Section 708.760 is amended to correct cross-references.

Code Civ. Proc. § 1203.61 (amended). Oil and gas lien

SEC. ___. Section 1203.61 of the Code of Civil Procedure is amended to read:

1203.61. (a) Any lien provided for by this chapter shall be enforced in the same manner as provided in Title 15 (commencing with Section 3082), Part 4, Division 3, Part 6 (commencing with Section 7000) of Division 4 of the Civil Code. Such lien is provided for herein. If a credit be is given and notice of the fact and terms of such credit be the credit are filed in the office of the county recorder subsequent to the filing of such the lien and prior to the expiration of said the 180-day period, then such the lien continues in force until 180 days after the expiration of such the credit, but no lien continues in force by reason of any agreement to give credit for a longer time than one year from the time the work is completed. If the proceedings to enforce the lien be are not prosecuted to trial within two years after the commencement thereof, the court may in its discretion dismiss the same action for want of prosecution, and in all cases the dismissal of such the action (unless it be is expressly stated that the same it is without prejudice) or a judgment rendered therein in the action that no lien exists shall be is equivalent to the cancellation and removal from the record of such the lien.

(b) As against any purchaser or encumbrancer for value and in good faith whose rights are acquired subsequent to the expiration of the 180-day period following the filing of such the lien, no giving of credit or extension of the lien or time to enforce the same lien shall be effective unless evidenced by a notice or agreement filed for record in the office of the county recorder prior to the acquisition of the rights of such the purchaser or encumbrancer.

Comment. Section 1203.61 is amended to correct a cross-reference. The other changes are technical.


SEC. ___. Section 1281.5 of the Code of Civil Procedure is amended to read:

1281.5. (a) Any person who proceeds to record and enforce a claim of lien by commencement of an action pursuant to Title 15 (commencing with Section 3082) of Part 4 of Division 3 Part 6 (commencing with Section 7000) of Division 4 of the Civil Code, does not thereby waive any right of arbitration the person may have pursuant to a written agreement to arbitrate, if, in filing an action to enforce the claim of lien, the claimant does either of the following:

(1) Includes an allegation in the complaint that the claimant does not intend to waive any right of arbitration, and intends to move the court, within 30 days after service of the summons and complaint, for an order to stay further proceedings in the action.
(2) At the same time that the complaint is filed, the claimant files an application that the action be stayed pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien.

(b) Within 30 days after service of the summons and complaint, the claimant shall file and serve a motion and notice of motion pursuant to Section 1281.4 to stay the action pending the arbitration of any issue, question, or dispute that is claimed to be arbitrable under the agreement and that is relevant to the action to enforce the claim of lien. The failure of a claimant to comply with this subdivision is a waiver of the claimant’s right to compel arbitration.

(c) The failure of a defendant to file a petition pursuant to Section 1281.2 at or before the time the defendant answers the complaint filed pursuant to subdivision (a) is a waiver of the defendant’s right to compel arbitration.

Comment. Section 1281.5 is amended to correct a cross-reference.


SEC. ____. Section 1800 of the Code of Civil Procedure is amended to read:

1800. (a) In this section:

(1) The term “insolvent” means:

(A) With reference to a person other than a partnership, a financial condition such that the sum of the person’s debts is greater than all of the person’s property, at a fair valuation, exclusive of both of the following:

(i) Property transferred, concealed, or removed with intent to hinder, delay, or defraud the person’s creditors.

(ii) Property that is exempt from property of the estate pursuant to the election of the person made pursuant to Section 1801.

(B) With reference to a partnership, financial condition such that the sum of the partnership’s debts are greater than the aggregate of, at a fair valuation, both of the following:

(i) All of the partnership’s property, exclusive of property of the kind specified in clause (i) subparagraph (A).

(ii) The sum of the excess of the value of each general partner’s separate property, exclusive of property of the kind specified in clause (ii) of subparagraph (A), over the partner’s separate debts.

(2) The term “inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease.

(3) The term “insider” means:

(A) If the assignor is an individual, any of the following:

(i) A relative of the assignor or of a general partner of the assignor.

(ii) A partnership in which the assignor is a general partner.

(iii) A general partner of the assignor.
(iv) A corporation of which the assignor is a director, officer, or person in control.

(B) If the assignor is a corporation, any of the following:
  (i) A director of the assignor.
  (ii) An officer of the assignor.
  (iii) A person in control of the assignor.
  (iv) A partnership in which the assignor is a general partner.
  (v) A general partner of the assignor.
  (vi) A relative of a general partner, director, officer, or person in control of the assignor.

(C) If the assignor is a partnership, any of the following:
  (i) A general partner in the assignor.
  (ii) A relative of a general partner in, general partner of, or person in control of the assignor.
  (iii) A partnership in which the assignor is a general partner.
  (iv) A general partner of the assignor.
  (v) A person in control of the assignor.

(D) An affiliate of the assignor or an insider of an affiliate as if the affiliate were the assignor.

(E) A managing agent of the assignor.

As used in this paragraph, “relative” means an individual related by affinity or consanguinity with the third degree as determined by the common law, or an individual in a step or adoptive relationship within the third degree; and an “affiliate” means a person that directly or indirectly owns, controls or holds with power to vote 20 percent or more of the outstanding voting securities of the assignor or 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the assignor (excluding securities held in a fiduciary or agency capacity without sole discretionary power to vote, or held solely to secure a debt if the holder has not in fact exercised the power to vote), or a person who operates the business of the assignor under a lease or operating agreement or whose business is operated by the assignor under a lease or operating agreement.

(4) The term “judicial lien” means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(5) The term “new value” means money or money’s worth in goods, services, or new credit, or release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the assignor or the assignee under any applicable law, but does not include an obligation substituted for an existing obligation.

(6) The term “receivable” means a right to payment, whether or not the right has been earned by performance.

(7) The term “security agreement” means an agreement that creates or provides for a security interest.
The term “security interest” means a lien created by an agreement.

The term “statutory lien” means a lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not the interest or lien is provided by or is dependent on a statute and whether or not the interest or lien is made fully effective by statute.

The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(b) Except as provided in subdivision (c), the assignee of any general assignment for the benefit of creditors (as defined in Section 493.010) may recover any transfer of property of the assignor:

(1) To or for the benefit of a creditor;

(2) For or on account of an antecedent debt owed by the assignor before the transfer was made;

(3) Made while the assignor was insolvent;

(4) Made on or within 90 days before the date of the making of the assignment or made between 90 days and one year before the date of making the assignment if the creditor, at the time of the transfer, was an insider and had reasonable cause to believe the debtor was insolvent at the time of the transfer; and

(5) That enables the creditor to receive more than another creditor of the same class.

(c) The assignee may not recover under this section a transfer:

(1) To the extent that the transfer was:

(A) Intended by the assignor and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the assignor; and

(B) In fact a substantially contemporaneous exchange;

(2) To the extent that the transfer was:

(A) In payment of a debt incurred in the ordinary course of business or financial affairs of the assignor and the transferee;

(B) Made in the ordinary course of business or financial affairs of the assignor and the transferee; and

(C) Made according to ordinary business terms;

(3) Of a security interest in property acquired by the assignor:

(A) To the extent the security interest secures new value that was:

(i) Given at or after the signing of a security agreement that contains a description of the property as collateral;

(ii) Given by or on behalf of the secured party under the agreement;

(iii) Given to enable the assignor to acquire the property; and

(iv) In fact used by the assignor to acquire the property; and

(B) That is perfected within 20 days after the security interest attaches;
(4) To or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the assignor:
   (A) Not secured by an otherwise unavoidable security interest; and
   (B) On account of which new value the assignor did not make an otherwise unavoidable transfer to or for the benefit of the creditor;
(5) Of a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all the transfers to the transferee caused a reduction, as of the date of the making of the assignment and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by the security interest exceeded the value of all security interest for the debt on the later of:
   (A) Ninety days before the date of the making of the assignment.
   (B) The date on which new value was first given under the security agreement creating the security interest; or
(6) That is the fixing of a statutory lien.
(7) That is payment to a claimant, as defined in Section 3085 7002 of the Civil Code or Section 41020 of the Public Contract Code, in exchange for the claimant’s waiver or release of any potential or asserted claim of lien, stop payment notice, or right to recover on a payment bond, or any combination thereof.
(8) To the extent that the transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of, the spouse or child, in connection with a separation agreement, divorce decree, or other order of a court of record, or a determination made in accordance with state or territorial law by a governmental unit, or property settlement agreement; but not to the extent that either of the following occurs:
   (A) The debt is assigned to another entity voluntarily, by operation of law or otherwise, in which case, the assignee may not recover that portion of the transfer that is assigned to the state or any political subdivision of the state pursuant to Part D of Title IV of the Social Security Act (42 U.S.C. Sec. 601, et. seq.) and passed on to the spouse, former spouse, or child of the debtor.
   (B) The debt includes a liability designated as alimony, maintenance, or support, unless the liability is actually in the nature of alimony, maintenance, or support.
(d) An assignee of any general assignment for the benefit of creditors (as defined in Section 493.010), may avoid a transfer of property of the assignor transferred to secure reimbursement of a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the assignee under subdivision (b) of this section. The liability of the surety under the bond or obligation shall be discharged to the extent of the value of the property recovered by the assignee or the amount paid to the assignee.
(e) (1) For the purposes of this section:
   (A) A transfer of real property other than fixtures, but including the interest of a seller or purchaser under a contract for the sale of real property, is perfected when a bona fide purchaser of the property from the debtor against whom applicable law
permits the transfer to be perfected cannot acquire an interest that is superior to the
interest of the transferee.

(B) A transfer of a fixture or property other than real property is perfected when
a creditor on a simple contract cannot acquire a judicial lien that is superior to the
interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3), a
transfer is made at any of the following times:

(A) At the time the transfer takes effect between the transferor and the
transferee, if the transfer is perfected at, or within 10 days after, the time, except as
provided in subparagraph (B) of paragraph (3) of subdivision (c).

(B) At the time the transfer is perfected, if the transfer is perfected after the 10
days.

(C) Immediately before the date of the making of the assignment if the transfer
is not perfected at the later of:

(i) The making of the assignment.

(ii) Ten days after the transfer takes effect between the transferor and the
transferee.

(3) For the purposes of this section, a transfer is not made until the assignor has
acquired rights in the property transferred.

(f) For the purposes of this section, the assignor is presumed to have been
insolvent on and during the 90 days immediately preceding the date of the making
of the assignment.

(g) An action by an assignee under this section must be commenced within one
year after the making of the assignment.

Comment. Section 1800 is amended to correct a cross-reference and terminology.

EDUCATION CODE

Educ. Code § 17307.5 (amended). Stop work order on public school construction

SEC. ____. Section 17307.5 of the Education Code is amended to read:

17307.5. (a) Notwithstanding any provision of law to the contrary, including,
but not limited to, Title 15 (commencing with Section 3082) of Part 4 of the Civil
Code Part 6 (commencing with Section 41010) of Division 2 of the Public
Contract Code, the Department of General Services may issue a stop work order
when construction work on a public school is not being performed in accordance
with existing law and would compromise the structural integrity of the building,
thereby endangering the public safety. The Department of General Services shall
allow construction of incidental and minor nonstructural additions or nonstructural
alterations without invoking its stop work authority.

(b) A school district, county superintendent of schools, county board of
education, or other public board, body, or officer whose construction work on a
public school is subject to a stop work order issued pursuant to subdivision (a)
shall not be held liable in any action filed against the public board, body, or officer
for stopping work as required by the stop work order, or for any delays caused by
compliance with the stop work order, except to the extent that an error or omission
by the public board, body, or officer is the basis for the issuance of the stop work
order.

Comment. Section 17307.5 is amended to correct a cross-reference.

Educ. Code § 81133.5 (amended). Stop work order on community college construction
SEC. ____. Section 81133.5 of the Education Code is amended to read:
81133.5. (a) Notwithstanding any provision of law to the contrary, including,
but not limited to, Title 15 (commencing with Section 3082) of Part 4 of the Civil
Code Part 6 (commencing with Section 41010) of Division 2 of the Public
Contract Code, the Department of General Services may issue a stop work order
when construction work on a community college is not being performed in
accordance with existing law and would compromise the structural integrity of the
building, thereby endangering the public safety. The Department of General
Services shall allow construction of incidental and minor nonstructural additions
or nonstructural alterations without invoking its stop work authority.
(b) A community college district or other public board, body, or officer whose
construction work on a community college is subject to a stop work order issued
pursuant to subdivision (a) shall not be held liable in any action filed against the
public board, body, or officer for stopping work as required by the stop work
order, or for any delays caused by compliance with the stop work order, except to
the extent that an error or omission by the public board, body, or officer is that
basis for the issuance of the stop work order.

Comment. Section 81133.5 is amended to correct a cross-reference.

GOVERNMENT CODE

Gov’t Code § 7480 (amended). Disclosure of financial records
SEC. ____. Section 7480 of the Government Code is amended to read:
7480. Nothing in this chapter prohibits any of the following:
(a) The dissemination of any financial information that is not identified with, or
identifiable as being derived from, the financial records of a particular customer.
(b) When any police or sheriff’s department or district attorney in this state
certifies to a bank, credit union, or savings association in writing that a crime
report has been filed that involves the alleged fraudulent use of drafts, checks, or
other orders drawn upon any bank, credit union, or savings association in this
state, the police or sheriff’s department or district attorney may request a bank,
credit union, or savings association to furnish, and a bank, credit union, or savings
association shall furnish, a statement setting forth the following information with
respect to a customer account specified by the police or sheriff’s department or
district attorney for a period 30 days prior to, and up to 30 days following, the date
of occurrence of the alleged illegal act involving the account:
(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer’s signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) When any police or sheriff’s department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff’s department or district attorney may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff’s department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer’s signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:
(1) Authorization of the disclosure for the period specified in subdivision (c).
(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.
(3) A description of the financial records that are authorized to be disclosed.

(e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff’s department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.
(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder’s written consent or a judicial writ, search warrant, subpoena, or other judicial order.
(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency’s supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:
(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.
(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.
(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.
(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax
information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(h) The disclosure to the State Board of Equalization of any of the following:
   (1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.
   (2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.
   (3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.
   (i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.
   (j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.
   (k) The disclosure by a construction lender, as defined in Section 3087.7 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.
   (l) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:
      (1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.
      (2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.
      (3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch’s computerized search, the name and address of any other person listed as an owner.
(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

   (i) Form 599.
   (ii) Form 1099.
   (iii) A bank statement.
   (iv) A check.
   (v) A bank passbook.
   (vi) A deposit slip.
   (vii) A copy of a federal or state income tax return.
   (viii) A debit or credit advice.
   (ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.
   (x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.
   (xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved
by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.
(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(p) When the governing board of the Public Employees’ Retirement System or the State Teachers’ Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient’s account at the financial institution from the retirement system occurred after the benefit recipient’s date of death, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient’s
death, or if the account has been closed, the name and address of the person who
closed the account.

(q) When the retirement board of a retirement system established under the
County Employees Retirement Law of 1937 certifies in writing to a financial
institute that a retired member or the beneficiary of a retired member has died
and that transfers to the account of the retired member or beneficiary of a retired
member at the financial institute from the retirement system occurred after the
date of death of the retired member or beneficiary of a retired member, the
financial institution shall furnish the retirement system the name and address of
any coowner, cosigner, or any other person who had access to the funds in the
account following the date of death of the retired member or beneficiary of a
retired member, or if the account has been closed, the name and address of the
person who closed the account.

Comment. Section 7480 is amended to correct a cross-reference.

**Gov’t Code § 14975 (amended). Payment bond**

SEC. ____. Section 14975 of the Government Code is amended to read:

14975. Notwithstanding the provisions of Section 3247 of the Civil Code of the Public Contract Code, the contractor under any contract made under this chapter need not provide a payment bond before the commencement of the work but must provide a payment bond as otherwise required by law prior to payment under the contract.

Comment. Section 14975 is amended to correct a cross-reference.

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

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

27287. Unless it belongs to the class provided for in either Sections 27282 to 27286, inclusive, or Sections 1202 or 1203, of the Civil Code, or is a fictitious mortgage or deed of trust as provided in Sections 2952, or 2963, of the Civil Code, or is a fictitious oil and gas lease as provided in Section 1219 of the Civil Code, or is a claim of lien, as provided in Section 3084 of the Civil Code, or a notice of completion, as provided in Section 3093 of the Civil Code, or an instrument provided for in Section 7056 of the Civil Code or a notice of completion as provided in Section 42230 of the Public Contract Code, before an instrument can be recorded its execution shall be acknowledged by the person executing it, or if executed by a corporation, by its president or secretary or other person executing it on behalf of the corporation, or, except for any quitclaim deed or grant deed other than a trustee’s deed or a deed of reconveyance, mortgage, deed of trust, or security agreement, proved by subscribing witness or as provided in Sections 1198 and 1199 of the Civil Code, and the acknowledgment or proof certified as prescribed by law.
Comment. Section 27287 is amended for conformity with the principles governing remedies for a private work of improvement or a public works contract. See Civ. Code § 7056(b) (private work); Pub. Cont. Code § 42230(a) (public work noticed of completion).

Gov’t Code § 27361.9 (repealed). Filing fee for preliminary notice
SEC. ____. Section 27361.9 of the Government Code is repealed.
27361.9 The board of supervisors of any county may provide for an additional fee for filing every preliminary 20-day notice pursuant to paragraph (1) of subdivision (o) of Section 3097 of the Civil Code for the exclusive purpose of defraying the cost of implementing and maintaining a system to facilitate compliance with paragraph (2) of subdivision (o) of Section 3097 of the Civil Code.

Comment. Section 27361.9 is not continued. Preliminary notice may no longer be filed with the county recorder. See Civ. Code § 7218.

Gov’t Code § 66499.2 (amended). Form of surety bond
SEC. ____. Section 66499.2 of the Government Code is amended to read:
66499.2. A bond or bonds by one or more duly authorized corporate sureties for the security of laborers and materialmen material suppliers shall be in substantially the following form:
Whereas, The Board of Supervisors of the County of ____ (or City Council of the City of ____), State of California, and ____ (hereinafter designated as “the principal”) have entered into an agreement whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated ____, 20__, and identified as project ____, is hereby referred to and made a part hereof; and
Whereas, Under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the County of ____ (or the City of ____ ) to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code or Title 6 (commencing with Section 41010 of Division 2 of the Public Contract Code of the State of California.
Now, therefore, the principal and the undersigned as corporate surety, are held firmly bound unto the County of ____ (or the City of ____ ) and all contractors, subcontractors, laborers, materialmen, material suppliers and other persons employed in the performance of the agreement and referred to in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code or Title 6 (commencing with Section 41010 of Division 2 of the Public Contract Code in the sum of ____ dollars ($____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinafore set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney’s fees, incurred by county (or city) in
successfully enforcing this obligation, to be awarded and fixed by the court, and to
be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the
benefit of any and all persons, companies, and corporations entitled to file claims
under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the
Civil Part 6 (commencing with Section 41010 of Division 2 of the Public Contract
Code, so as to give a right of action to them or their assigns in any suit brought
upon this bond.

Should the condition of this bond be fully performed, then this obligation shall
become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time,
alteration, or addition to the terms of the agreement or the specifications
accompanying the same shall in any manner affect its obligations on this bond,
and it does hereby waive notice of any such change, extension, alteration, or
addition.

In witness whereof, this instrument has been duly executed by the principal and
surety above named, on ____, 20__.

Comment. Section 66499.2 is amended to correct cross-references and obsolete terminology.

Gov’t Code § 66499.7 (amended). Release of improvement security

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

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

(a) Security given for faithful performance of any act or agreement shall be
released upon the performance of the act or final completion and acceptance of the
required work. The legislative body may provide for the partial release of the
security upon the partial performance of the act or the acceptance of the work as it
progresses, consistent with the provisions of this section. The security may be a
surety bond, a cash deposit, a letter of credit, escrow account, or other form of
performance guarantee required as security by the legislative body that meets the
requirements as acceptable security pursuant to law. If the security furnished by
the subdivider is a documentary evidence of security such as a surety bond or a
letter of credit, the legislative body shall release the documentary evidence and
return the original to the issuer upon performance of the act or final completion
and acceptance of the required work. In the event that the legislative body is
unable to return the original documentary evidence to the issuer, the security shall
be released by written notice sent by certified mail to the subdivider and issuer of
the documentary evidence within 30 days of the acceptance of the work. The
written notice shall contain a statement that the work for which the security was
furnished has been performed or completed and accepted by the legislative body, a
description of the project subject to the documentary evidence and the notarized
signature of the authorized representative of the legislative body.
(b) At such time that the subdivider believes that the obligation to perform the work for which security was required is complete, the subdivider may notify the public entity in writing of the completed work, including a list of work completed. Upon receipt of the written notice, the public entity shall have 45 days to review and comment or approve the completion of the required work. If the public entity does not agree that all work has been completed in accordance with the plans and specifications for the improvements, it shall supply a list of all remaining work to be completed.

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

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

(e) The subdivider shall complete the works of improvement until all remaining items are accepted by the public entity.

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

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

(h) Security securing the payment to the contractor, his or her subcontractors
and to persons furnishing labor, materials or equipment shall, after passage of the
time within which claims of lien are required to be recorded pursuant to Article 3
(commencing with Section 3114) of Chapter 2 of Title 15 of Part 4 of Division 3
Article 2 (commencing with Section 7410) of Chapter 4 of Part 6 of Division 4 of
the Civil Code and after acceptance of the work, be reduced to an amount equal to
the total claimed by all claimants for whom claims of lien have been recorded and
notice thereof given in writing to the legislative body, and if no claims have been
recorded, the security shall be released in full.

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

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

(k) This section shall remain in effect only until January 1, 2011, and as of that
date is repealed, unless a later enacted statute, that is enacted before January 1,
2011, deletes or extends that date.

Comment. Section 66499.7 is amended to correct a cross-reference.

HEALTH AND SAFETY CODE

Health & Safety Code § 5463 (amended). Sewer system construction
SEC. ____. Section 5463 of the Health and Safety Code is amended to read:
5463. Any health officer or governing board of any city, county, sanitary
district, or other district having the power to operate and maintain a sewerage
system, having served written notice upon the owner or reputed owner of land
upon which there is a dwelling house, and such owner or reputed owner, after 30
days, having refused, neglected, or failed to connect such dwelling house, together
with all toilets, sinks, and other plumbing therein, properly vented, and in a
sanitary manner, with the adjoining street sewer, may construct the same at a
reasonable cost, and the person doing said work at the request of such health
officer or governing board has a lien upon said real estate for his work done and
materials furnished, and such work done and materials furnished shall be held to
have been done and furnished at the instance of such owner or reputed owner, or
person claiming or having any interest therein. Such governing board may pay all
or any part of the cost or price of such connection to the person or persons who
furnished labor, materials, or equipment for the same, and, to the extent such
governing board pays the cost or price of said connection, it shall succeed to and have all the rights, including the lien provided for above, of such person or persons against the real estate and against the owner or reputed owner thereof.

As an alternative power to the enforcement of the lien provided for in this section, the governing body of the public agency performing the work of connection to the public sewer may, by order entered upon its minutes, declare that the amount of the costs of such work and the administrative expenses incurred by the governing body incident to the proceedings, together with other charges uniformly applicable within the jurisdiction of the governing body for the connection of the premises to the public sewer, shall be transmitted to the assessor and tax collector of the public agency, whereupon it shall be the duty of those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land.

The liens provided for by this section shall be enforced in the same manner as those provided for by Title 15 (commencing with Section 3082), Part 4, Division 3, Part 6 (commencing with Section 7000) of Division 4 of the Civil Code.

The governing board may also use the procedures in Section 5474 for levying the costs incurred for the construction of the improvements for the connection of the premises to the public sewer.

Comment. Section 5463 is amended to correct a cross-reference.

Health & Safety Code § 16017.5 (amended). Stop work order

SEC. ____. Section 16017.5 of the Health and Safety Code is amended to read:

16017.5. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Title 15 (commencing with Section 3082) of Part 4 Part 6 (commencing with Section 7000) of Division 4 of the Civil Code, the Department of General Services may issue a stop work order when construction work on an essential services facility is not being performed in accordance with existing law and would compromise the structural integrity of the building, thereby endangering the public safety. The Department of General Services shall allow construction of incidental and minor nonstructural additions or nonstructural alterations without invoking its stop work authority.

(b) A public board, body, or officer whose construction work on an essential services facility is subject to a stop work order issued pursuant to subdivision (a) shall not be held liable in any action filed against the public board, body, or officer for stopping work as required by the stop work order, or for any delays caused by compliance with the stop work order, except to the extent that an error or omission by the public board, body, or officer is the basis for the issuance of the stop work order.

Comment. Section 16017.5 is amended to correct a cross-reference.

Health & Safety Code § 19825 (amended). Building permit

SEC. ____. Section 19825 of the Health and Safety Code is amended to read:
Every city or county that requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall, in addition to any other requirements, require the following declarations in substantially the following form upon the issuance of any building permit:

**BUILDING PROJECT IDENTIFICATION**

Applicant’s Mailing Address

Address of Building

Owner’s Name if Known

Telephone No.

Contractor’s Name

Contractor’s Mailing Address

Lic. No. _______________

Architect or Engineer

Architect’s or Engineer’s Address

Lic. No. _______________

In addition the city or county may require that there be included, in the building project identification portion of a building permit, the following:

Assessor’s Parcel Number*

Permit Date

Permit Number

Description of Work

Building Permit Valuation

*To be entered by issuing agency.
LICENSED CONTRACTOR’SDECLARATION

I hereby affirm under penalty of perjury that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Class ___________________ Lic. No. ____________________

Date ____________________________ Contractor ____________________

OWNER-BUILDER DECLARATION

I hereby affirm under penalty of perjury that I am exempt from the Contractors’ State License Law for the following reason (Sec. 7031.5, Business and Professions Code: Any city or county that requires a permit to construct, alter, improve, demolish, or repair any structure, prior to its issuance, also requires the applicant for the permit to file a signed statement that he or she is licensed pursuant to the provisions of the Contractors’ State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code) or that he or she is exempt therefrom and the basis for the alleged exemption. Any violation of Section 7031.5 by any applicant for a permit subjects the applicant to a civil penalty of not more than five hundred dollars ($500).):

(_) I, as owner of the property, or my employees with wages as their sole compensation, will do the work, and the structure is not intended or offered for sale (Sec. 7044, Business and Professions Code: The Contractors’ State License Law does not apply to an owner of property who builds or improves thereon, and who does the work himself or herself or through his or her own employees, provided that the improvements are not intended or offered for sale. If, however, the building or improvement is sold within one year of completion, the owner-builder will have the burden of proving that he or she did not build or improve for the purpose of sale.).

(_) I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Sec. 7044, Business and Professions Code: The Contractors’ State License Law does not apply to an owner of property who builds or improves thereon, and who contracts for the projects with a contractor(s) licensed pursuant to the Contractors’ State License Law.).

(_) I am exempt under Sec. ____, B.& P.C. for this reason

________________________________________________________

Date ____________ Owner _____________________________

WORKERS’ COMPENSATION DECLARATION

I hereby affirm under penalty of perjury one of the following declarations: ___I have and will maintain a certificate of consent to self-insure for workers’ compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. ___ I have and will maintain workers’ compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work for which this permit is issued. My workers’ compensation insurance carrier and policy number are:

Carrier ________________________________________________
Policy Number ___________________________________________________

I certify that, in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers’ compensation laws of California, and agree that, if I should become subject to the workers’ compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date:__________ Applicant:_________________________________________

WARNING: FAILURE TO SECURE WORKERS’ COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY’S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097 7132, Civ. C.).

Lender’s Name _________________________________________________

Branch Designation ___________________________

Lender’s Address ________________________________________________

I certify that I have read this application and state that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

_____________________________________ __________________________
Signature of Applicant or Agent Date

Comment. Section 19825 is amended to correct a cross-reference and conform the provision to Civil Code Section 7132 (designation of construction lender on building permit).

Health & Safety Code § 34218 (amended). Comprehensive improvement assistance program housing projects

SEC. ____. Section 34218 of the Health and Safety Code is amended to read:

34218. Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 of the Public Contract Code applies to any housing project constructed under this chapter. Notwithstanding the provisions of this section, a housing authority may require a 20 percent cash escrow or a 25 percent irrevocable letter of credit or the payment bond required by this section if the contract is for work undertaken pursuant to the Comprehensive Improvement Assistance Program established by Section 14 of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l), or the Public Housing Modernization Act established by Section 5(c)(3)(C) of the United States Housing Act of 1937, as amended (42 U.S.C.A. Secs. 1437d and 1437l).
Comment. Section 34218 is amended to correct a cross-reference.

IN Insurance Code

Ins. Code § 11751.82 (amended). Wrap-up insurance policy

SEC. ____. Section 11751.82 of the Insurance Code is amended to read:

11751.82. (a) An insurer under a wrap-up insurance policy shall report workers’ compensation losses and payroll information for each contractor and subcontractor to its rating organization on a timely basis and in accordance with the uniform statistical plan. Within 10 days, upon request, the insurer shall provide to each contractor and subcontractor copies of the report covering workers’ compensation losses and payroll information for that contractor or subcontractor.

(b) For the purposes of this section, a “wrap-up insurance policy” is an insurance policy, or series of policies, written to cover risks associated with a work of improvement, as defined in Section 3406 7046 of the Civil Code, and covering two or more of the contractors or subcontractors that work on that work of improvement.

Comment. Section 11751.82 is amended to correct a cross-reference.

LAB Labor Code

Lab. Code § 218.5 (amended). Nonpayment action

SEC. ____. Section 218.5 of the Labor Code is amended to read:

218.5. In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney’s fees and costs to the prevailing party if any party to the action requests attorney’s fees and costs upon the initiation of the action. This section shall not apply to an action brought by the Labor Commissioner. This section shall not apply to a surety issuing a bond pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code or to an action to enforce a mechanics lien brought under Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 Chapter 4 (commencing with Section 7400) of Part 6 of Division 4 of the Civil Code.

This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.

Comment. Section 218.5 is amended to correct a cross-reference.

PUBLIC Public Contract Code


SEC. ____. Section 4107.7 of the Public Contract Code is amended to read:

4107.7 If a contractor who enters into a contract with a public entity for investigation, removal or remedial action, or disposal relative to the release or
presence of a hazardous material or hazardous waste fails to pay a subcontractor
registered as a hazardous waste hauler pursuant to Section 25163 of the Health and
Safety Code within 10 days after the investigation, removal or remedial action, or
disposal is completed, the subcontractor may serve a stop payment notice upon the
public entity in accordance with Chapter 4 (commencing with Section 3179) of
Title 15 of Part 4 of Division 3 of the Civil Code Chapter 4 (commencing with
Section 44110) of Part 6 of Division 2 of this code.
Comment. Section 4107.7 is amended to correct a cross-reference and terminology.

SEC. ____. Section 7103 of the Public Contract Code is amended to read:
7103. (a) Every original contractor to who that is awarded a contract by a state
entity, as defined in subdivision (d), involving an expenditure in excess of five
thousand dollars ($5,000) for any public work shall, before entering up the
performance of the work, file a payment bond with and approved by the officer or
state entity by who that awarded the contract was awarded. The bond shall be in a
sum not less than one hundred percent of the total amount payable by the terms of
the contract.
The state entity shall state in its call for bids for any contract that a payment
bond is required in the case of such an expenditure.
(b) A payment bond filed and approved in accordance with this section shall be
sufficient to enter upon the performance of work under a duly authorized contract
which supplements the contract for which the payment bond was filed if the
requirement of a new bond is waived by the state entity.
(c) For purposes of this section, providers of architectural, engineering and land
surveying services pursuant to a contract with a state entity for a public work shall
not be deemed an original contractor and shall not be required to post or file the
payment bond required in subdivisions (a) and (b).
(d) For purposes of this section, “state entity” means every state office
department, division, bureau, board, or commission, but does not include the
Legislature, the courts, any agency in the judicial branch of government, or the
University of California. All other public entities shall be governed by the
provisions of Section 3247 of the Civil Code Section 45010.
(e) For purposes of this section, “public work” includes the erection,
construction, alteration, repair or improvement of any state structure, building,
road, or other state improvement of any kind.
Comment. Section 7103 is amended to correct a cross-reference and grammatical errors.

SEC. ____. Section 10222 of the Public Contract Code is amended to read:
10222. (a) Each bond shall equal at least one-half of the contract price, except as
otherwise provided in Section 3248 of the Civil Code Section 45030, in the
California Toll Bridge Authority Act (Chapter 1 (commencing with Section 30000) of Division 7 of the Streets and Highways Code), or in subdivision (b).

(b) Notwithstanding subdivision (a), for projects with a contract price greater than two hundred fifty million dollars ($250,000,000), the Department of Transportation shall have the discretion to specify that the payment bond shall equal not less than one-half of the contract price or five hundred million dollars ($500,000,000), whichever is less.

Comment. Section 10222 is amended to correct a cross-reference.

SEC. ____. Section 10822 of the Public Contract Code is amended to read:

10822. Each bond shall be in a sum equal to at least one-half of the contract price, except as otherwise provided in Section 3248 of the Civil Code Section 45030.

Comment. Section 10822 is amended to correct a cross-reference.

SEC. ____. Section 20104 of the Public Contract Code is amended to read:

20104. (a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) “Public work” has the same meaning as in Sections 3100 and 3106 of the Civil Code, except that “public work” means “public works contract” as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) “Claim” means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

Comment. Section 20104 is amended to correct cross-references.

SEC. ____. Section 20134 of the Public Contract Code is amended to read:
20134. (a) In cases of emergency, when repair or replacements are necessary to
permit the continued conduct of county operations or services, the board of
supervisors, by majority consent, may proceed at once to replace or repair any and
all structures without adopting the plans, specifications, strain sheets, or working
details or, subject to Chapter 2.5 (commencing with Section 22050), giving notice
for bids to let contracts. If notice for bids to let contracts will not be given, the
board shall comply with Chapter 2.5 (commencing with Section 22050). The work
may be done by day labor under the direction of the board, by contract, or by a
combination of the two. If the work is done wholly or in part by contract, the
contractor shall be paid the actual cost of the use of machinery and tools and of
material, and labor and of workers’ compensation insurance expended by him or
her in doing the work, plus not more than 15 percent to cover all profits and
administration. No more than the lowest current market prices shall be paid for
materials whenever possible.

(b) In a county of the first, second, third, or fourth class, which is under court
order to relieve jail overcrowding or in which the sheriff certifies that the inmate
capacity of the county jail system is exceeded by more than 20 percent and that the
overpopulation is likely to continue and poses a threat to public safety, health, and
welfare, the board of supervisors may contract for the construction or expansion of
jail facilities without the formality of obtaining bids, adopting plans and
specifications, or complying with other requirements of this article, except as
required by this subdivision. The person to whom the contract is awarded shall
execute a bond for faithful performance in accordance with Section 20129. Any
plans and specifications adopted by the board may only be altered or changed in
accordance with Section 20135 and all contracts awarded pursuant to this
subdivision may only be altered or changed in accordance with Sections 20136,
20137, and 20138. The award of the contract shall be made after a public hearing
on the basis of a request for proposals advertised in accordance with Section 6062
or 6062a of the Government Code. The contract may be awarded only to a
contractor who has responded to the request for proposals and who is licensed to
do the work in accordance with Chapter 9 (commencing with Section 7000) of
Division 3 of the Business and Professions Code. The contract shall be upon terms
which the board determines are necessary for the expeditious completion of the
work. A contract shall not be entered into unless at least three proposals to do the
work have been evaluated by a competitive process established by the board. If the
board does not select the lowest bid, it shall make a finding stating the reasons that
the lowest bid was not selected.

(c) In any county that has agreed to permit the transfer of prisoners or parole
violators under Section 2910 or 2910.5 of the Penal Code or of wards under
Section 1753.3 of the Welfare and Institutions Code, the board of supervisors may
contract for the construction or expansion of the facilities to be used for that
purpose without the formality of obtaining bids, adopting plans and specifications,
or complying with other requirements of this article, except as required by this
subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the work. A contract shall not be entered into unless at least three proposals to do the work have been evaluated by a competitive process established by the board and the lowest bid is selected.

(d) Proposed construction or expansion of jail or return-to-custody facilities as authorized under subdivision (b) or (c) shall not commence in a county of the third class without the affirmative vote of a majority of the city council of the incorporated city within which the construction or expansion is proposed.

(e) The board of supervisors may waive the requirements of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) for work performed pursuant to subdivision (b) or (c).

(f) If any county that is under court order to relieve overcrowding in a county juvenile facility, as defined by subdivision (c) of Section 4481 of the Penal Code or in which the chief probation officer certifies that the juvenile detention capacity of the county juvenile facilities is exceeded by more than 20 percent and that the overpopulation is likely to continue and poses a threat to public safety, health, and welfare, the board of supervisors may contract for the construction or expansion of county juvenile facilities without the formality of obtaining bids, adopting plans and specifications, or complying with other requirements of this article, except as required by this subdivision. The person to whom the contract is awarded shall execute a bond for faithful performance in accordance with Section 20129. Any plans and specifications adopted by the board may only be altered or changed in accordance with Section 20135 and all contracts awarded pursuant to this subdivision may only be altered or changed in accordance with Sections 20136, 20137, and 20138. The award of the contract shall be made after a public hearing on the basis of a request for proposals advertised in accordance with Section 6062 or 6062a of the Government Code. The contract may be awarded only to a contractor who has responded to the request for proposals and who is licensed to do the work in accordance with Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. The contract shall be upon terms which the board determines are necessary for the expeditious completion of the
work. A contract shall not be entered into unless at least three proposals to do the
work have been evaluated by a competitive process established by the board. If the
board does not select the lowest bidder, it shall make a finding stating the reasons
that the lowest bidder was not selected.

(g) In a county of the third class in which there are no available courtrooms to
accommodate all authorized judicial positions or in which the board of supervisors
certifies that there is a significant need to expeditiously construct new court and
court support facilities, the board of supervisors may contract for the construction
or expansion of court and court support facilities without the formality of
obtaining bids, adopting plans and specifications, or complying with other
requirements of this article, except as required by this subdivision. The person to
whom the contract is awarded shall execute a bond for faithful performance in
accordance with Section 20129. Any plans and specifications adopted by the board
may only be altered or changed in accordance with Section 20135 and all contracts
awarded pursuant to this subdivision may only be altered or changed in
accordance with Sections 20136, 20137, and 20138. The award of the contract
shall be made after a public hearing on the basis of a request for proposals
advertised in accordance with Section 6062 or 6062a of the Government Code.
The contract may be awarded only to a contractor who has responded to the
request for proposals and who is licensed to do the work in accordance with
Chapter 9 (commencing with Section 7000) of Division 3 of the Business and
Professions Code. The contract shall be upon terms which the board determines
are necessary for the expeditious completion of the work. A contract shall not be
entered into unless at least three proposals to do the work have been evaluated by
a competitive process established by the board and the lowest bid is selected. This
subdivision shall remain in effect until December 31, 1994.

Comment. Section 20134 is amended to correct a cross-reference.

☞ Note. The last sentence of Section 20134(g) states that “[t]his subdivision shall remain in
effect until December 31, 1994.” Should subdivision (g) be deleted as obsolete?


SEC. ____. Section 20461 of the Public Contract Code is amended to read:

20461. No assignment by the contractor of the whole or any part of the money,
assessment, partial assessment, any reassessment and any bonds which may be
issued to represent any assessment or reassessment, due him or to be due him
under the contract, or for “extras” in connection therewith, whether made before or
after a verified claim is filed pursuant to this chapter, shall take priority over such
the claims, and such the assignment shall have no binding force insofar as the
rights of the claimants, or their assigns, are concerned. None of the provisions of
Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code,
Part 6 (commencing with Section 41010) shall be applicable to any assessment,
partial assessment, reassessment, bonds, moneys or funds payable to the contractor
or his assignee under this division or to any matter contained in this chapter.
Comment. Section 20461 is amended to correct a cross-reference. The other changes are technical.

SEC. ____. Section 20496 of the Public Contract Code is amended to read:

20496. The provisions of Title 15 (commencing with Section 3082), Part 4, Division 3, of the Civil Code Part 6 (commencing with Section 41010) are hereby expressly made applicable to the construction of works and improvements under this article.

Comment. Section 20496 is amended to correct a cross-reference.

SEC. ____. Section 20682.5 of the Public Contract Code is amended to read:

20682.5. (a) A district may construct or complete any building, structure, or improvement with its own forces or by contract without bidding when the cost does not exceed twenty-five thousand dollars ($25,000).

(b) All contracts for the construction or completion of any building, structure, or improvement, when the cost exceeds twenty-five thousand dollars ($25,000), shall be contracted for and let to the lowest responsible bidder after notice. If two or more bids are the same and the lowest, the district board may accept the one it chooses.

(c) The district shall publish a notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least 10 days before the time specified for receiving bids. The notice inviting bids shall set a date for opening the bids and distinctly state the work to be done.

(d) If the general manager recommends and the board of directors determines that the publication of advertisements of the notice in trade journals and papers in lieu of publication pursuant to subdivision (c) will increase the number of business enterprises receiving that notice, the board of directors may by resolution declare that those notices shall be published in trade journals and papers at least 10 days prior to the time specified for receiving bids.

(e) If plans and specifications are prepared describing the work, all bidders shall be afforded an opportunity to examine the plans and specifications, and the plans and specifications shall be attached to and become part of the contract, if one is awarded.

(f) At its discretion, the board of directors may reject any bids presented and readvertise.

(g) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(h) The board of directors may, subject to Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing...
with Section 45010) of Part 6 of Division 2, require the posting of those bonds it
deems desirable as a condition to the filing of a bid or the letting of a contract.

(i) The district shall keep cost records of the work in the manner provided in
Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the
Government Code.

(j) As an alternate to the procedures required by this section, a district may rely
on the Uniform Public Construction Cost Accounting Act, Chapter 2
(commencing with Section 22000) of Part 3 of Division 2.

Comment. Section 20682.5 is amended to correct a cross-reference.


SEC. ____. Section 20688.4 of the Public Contract Code is amended to read:

20688.4 An agency shall require each successful bidder to file with it good and
sufficient bonds, to be approved by it. The bonds shall be conditioned upon the
faithful performance of the contract and upon the payment of all claims for labor
and material in connection with the contract. The bonds shall contain the terms
and conditions set forth in Chapter 7 (commencing with Section 3247) of Title 15
of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section
45010) of Part 6 and are subject to the provisions of that chapter.

Comment. Section 20688.4 is amended to correct a cross-reference.


SEC. ____. Section 20813 of the Public Contract Code is amended to read:

20813. (a) All contracts for the construction or completion of any building,
structure, or improvement, when the expenditure required for the work exceeds ten
thousand dollars ($10,000), shall be contracted for and let to the lowest
responsible bidder after notice. If two or more bids are the same
and the lowest,
the district board may accept the one it chooses.

(b) The notice inviting bids shall set a date for the opening of bids. The first
publication or posting of the notice shall be at least 10 days before the date of
opening the bids. Notice shall be published at least twice, not less than five days
apart, in a newspaper of general circulation in the district, or if there is none, it
shall be posted in at least three public places in the district. The notice shall
distinctly state the work to be done.

(c) In its discretion, the district board may reject any bids presented and
readvertise.

(d) In the case of an emergency, the district board may act pursuant to Chapter
2.5 (commencing with Section 22050).

(e) The district board may, subject to the provisions of Chapter 7 (commencing
with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5
(commencing with Section 45010) of Part 6, require the posting of those bonds it
deems desirable as a condition to the filing of a bid or the letting of a contract.
(f) Cost records of the work shall be kept in the manner provided in Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

Comment. Section 20813 is amended to correct a cross-reference.

Pub. Cont. Code § 20815.3 (amended). Recreation and park districts

SEC. ____. Section 20815.3 of the Public Contract Code is amended to read:

20815.3. (a) A district shall publish notice inviting bids for any contract for which competitive bidding is required at least one time in a newspaper of general circulation in the district at least one week before the time specified for receiving bids. The notice shall distinctly state the work to be done.

(b) In its discretion, the board of directors may do any of the following:

(1) Reject all bids and readvertise.

(2) By a four-fifths vote, elect to purchase the materials or supplies in the open market.

(3) By a four-fifths vote, elect to construct the building, structure, or improvement by force account.

(c) In the case of an emergency, the board of directors may act pursuant to Chapter 2.5 (commencing with Section 22050).

(d) The board of directors may, subject to the provisions of Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6, require the posting of those bonds it deems as a condition to the filing of a bid or the letting of a contract.

(e) The district shall keep cost records of the work pursuant to Chapter 1 (commencing with Section 4000) of Division 5 of Title 1 of the Government Code.

Comment. Section 20815.3 is amended to correct a cross-reference.


SEC. ____. Section 20991 of the Public Contract Code is amended to read:

20991. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of twenty-five thousand dollars ($25,000), shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by five or more insertions in a daily newspaper of general circulation, or by two or more insertions in a weekly newspaper of general circulation, printed and published in the district, inviting sealed proposals for the construction of the improvement or work. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds, to be approved by the board, conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material. The bonds shall contain the terms and conditions set forth in Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5
(commencing with Section 45010) of Part 6 and shall be subject to the provisions
of that chapter. The board shall have the right to reject any bid not suitable to the
best interests of the district. In the event all proposals are rejected or no proposals
are received pursuant to advertisement, or the estimated cost of the work does not
exceed ten thousand dollars ($10,000), or the work consists of channel protection,
dam protection, temporary work, maintenance work, or emergency work, the
board of supervisors may, without advertising for bids, have the work done by
force account. Emergency work may also be done by negotiated contract without
advertising for bids. In case of an emergency, if notice for bids to let contracts will
not be given, the board shall comply with Chapter 2.5 (commencing with Section
22050).

Comment. Section 20991 is amended to correct a cross-reference.

SEC. ____. Section 21061 of the Public Contract Code is amended to read:
21061. (a) All contracts for any improvement or unit of work, except as
provided in this article, estimated to cost in excess of twenty-five thousand dollars
($25,000), shall be let to the lowest responsible bidder in the manner provided in
this article.

(b) The board of supervisors of the district shall advertise by five or more
insertions in a daily newspaper of general circulation, or by two or more insertions
in a weekly newspaper of general circulation, printed and published in the district,
inviting sealed proposals for the construction of the improvement or work. The
board shall require the successful bidder or bidders to file with the board good and
sufficient bonds, to be approved by the board, conditioned upon the faithful
performance of the contract and upon the payment of all claims for labor and
material, the bonds to contain the terms and conditions set forth in Chapter 7
(commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil
Code Chapter 5 (commencing with Section 45010) of Part 6 and to be subject to
that chapter.

(c) The board may also reject any bid not suitable to the best interests of the
district. If all proposals are rejected or no proposals are received pursuant to
advertisement therefor, or the work consists of channel protection, dam protection,
temporary work, maintenance work, or of emergency work, the board of
supervisors may, without advertising for bids, have the work done by force
account. Emergency work may also be done by negotiated contract without
advertising for bids or requiring bonds. In case of an emergency, if notice for bids
to let contracts will not be given, the board shall comply with Chapter 2.5
(commencing with Section 22050).

(d) The board of supervisors, acting as the board of the district, may, by
ordinance, resolution, or board order, authorize the flood control engineer or other
county officer to order changes or additions in work being performed under a
construction contract. When so authorized, any change or addition in the work

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shall be ordered in writing by the flood control engineer, or other designated
officer, and the extra cost for any change or addition to the work so ordered shall
not exceed five thousand dollars ($5,000) when the total amount of the original
contract does not exceed fifty thousand dollars ($50,000), nor 10 percent of the
amount of any original contract that exceeds fifty thousand dollars ($50,000), but
does not exceed two hundred fifty thousand dollars ($250,000). For contracts
whose original cost exceeds two hundred fifty thousand dollars ($250,000), the
extra cost for any change or addition to the work so ordered shall not exceed
twenty-five thousand dollars ($25,000), plus 5 percent of the amount of the
original contract costs in excess of two hundred fifty thousand dollars ($250,000).
In no event shall any such change or alteration exceed one hundred fifty thousand
dollars ($150,000).

Comment. Section 21061 is amended to correct a cross-reference.

SEC. ____. Section 21081 of the Public Contract Code is amended to read:
21081. All contracts for any improvement or unit of work, when the cost,
according to the estimate of the engineer, will exceed five thousand dollars
($5,000), shall be let to the lowest responsible bidder or bidders in the manner
provided in this article. The board shall first determine whether the contract shall
be let as a single unit for the whole of the work, or shall be divided into severable
parts, or both, according to the best interests of the district. The board shall call for
bids and advertise the call by three insertions in a daily newspaper of general
circulation or by two insertions in a weekly newspaper of general circulation
printed and published in the district inviting sealed proposals for the construction
or performance of the improvement or work before any contract is made. The call
for bids shall state whether the work is to be performed as a unit or divided into
severable specific parts, or both, as stated in the call. The board may let the work
by single contract for the whole or it may divide such work into severable parts by
separate contracts, as stated in such call, according to the best interests of the
district. The board shall require the successful bidder or bidders to file with the
board good and sufficient bonds to be approved by the board conditioned upon the
faithful performance of the contract and upon the payment of their claims for labor
and material, the bonds to contain the terms and conditions set forth in Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6
(commencing with Section 41010) and to be subject to the provisions of that title.
The board shall also have the right to reject any bid. In the event all proposals are
rejected or no proposals are received pursuant to advertisement, or the estimated
cost of such work does not exceed five thousand dollars ($5,000), or the work
consists of channel protection, maintenance work, or emergency work, the board
of supervisors may, without advertising for bids, have the work done by force
account. The district may purchase in the open market, without advertising for
bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21081 is amended to correct a cross-reference.


SEC. ____. Section 21091 of the Public Contract Code is amended to read:

21091. All contracts for any improvement or unit of work, except as otherwise provided in this act, estimated to cost in excess of fifteen thousand dollars ($15,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract is made, and may let by contract separately any part of the work or improvement. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall contain the terms and conditions set forth in Sections 10223 and 10224 of the Public Contract Code and Section 3248 of the Civil Code, 10223, 10224, and 45030 and be subject to those sections. The board shall also have the right to reject any bid. If all proposals are rejected or no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed fifteen thousand dollars ($15,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any improvement or unit of work either under contract or by force account.

Comment. Section 21091 is amended to correct a cross-reference.


SEC. ____. Section 21101 of the Public Contract Code is amended to read:

21101. All contracts for any improvement or unit of work, when the cost, according to the estimate of the engineer, will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or
two insertions in a weekly newspaper of general circulation printed and published
in the district inviting sealed proposals for the construction or performance of the
improvement or work before any contract shall be made. The call for bids shall
state whether the work is to be performed as a unit or is to be divided into
severable specific parts, or both, as stated in the call. The board may let the work
by single contract for the whole as a unit or it may divide the work into severable
parts by separate contracts, as stated in the call, according to the best interests of
the district. The board shall require the successful bidder or bidders to file with the
board good and sufficient bonds to be approved by the board conditioned upon the
faithful performance of the contract and upon the payment of their claims for labor
and material, the bonds to contain the terms and conditions set forth in Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6
(commencing with Section 41010) and to be subject to the provisions of that title
part. The board shall also have the right to reject any bid. In the event all proposals
are rejected or no proposals are received pursuant to advertisement, or the
estimated cost of the work does not exceed five thousand dollars ($5,000), or the
work consists of channel protection, maintenance work, or emergency work, the
board of supervisors may, without advertising for bids, have the work done by
force account. In case of an emergency, if notice for bids to let contracts will not
be given, the board shall comply with Chapter 2.5 (commencing with Section
22050). The district shall have the power to purchase in the open market without
advertising for bids, materials and supplies for use in any work either under
contract or by force account.

Comment. Section 21101 is amended to correct a cross-reference.


SEC. ____. Section 21111 of the Public Contract Code is amended to read:
21111. (a) All contracts for the construction of any unit of work, except as
provided in this article, estimated to cost in excess of ten thousand dollars
($10,000) shall be let to the lowest responsible bidder in the manner provided in
this article. The board of directors of the agency shall advertise by three insertions
in a daily newspaper of general circulation or two insertions in a weekly
newspaper of general circulation published in the agency’s jurisdiction inviting
sealed proposals for the construction of the work before any contract shall be
made, and may let by contract separately any part of the work. The board shall
require the successful bidder to file with the board good and sufficient bonds to be
approved by the board conditioned upon the faithful performance of the contract
and upon the payment of the claims for labor and material. The faithful
performance bond shall contain terms and conditions as the board may specify,
and the payment bond shall be subject to the provisions of, and shall contain the
terms and conditions set forth in Title 15 (commencing with Section 3082) of Part
4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010), as
applicable. The board shall also have the right to reject any bid, in which case the
board may advertise for new bids. In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of emergency work, the board of directors by unanimous vote of all members present may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, and may authorize the Purchasing Agent of the County of Santa Barbara to purchase, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) If the work to be performed by or on behalf of the agency does not involve an expenditure of ten thousand dollars ($10,000) or more, or if the work consists of emergency work, the agency may require a faithful performance bond. The agency may require a payment bond on work performed on behalf of the agency which does not involve an expenditure of more than ten thousand dollars ($10,000).

Comment. Section 21111 is amended to correct a cross-reference.


SEC. ____. Section 21121 of the Public Contract Code is amended to read:

21121. (a) All contracts for any improvement or unit of work, if the cost according to the estimate of the engineer, exceeds five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders.

(b) The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the agency.

(c) The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the territory of the agency inviting sealed proposals for the construction or performance of the improvement or work before any contract is entered into. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the agency.

(d) The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material in connection with the contract. The bonds shall contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and are subject to the provisions of that title part.
(e) The board may reject any bid. The board of supervisors may, without advertising for bids, have the work done by force account if any of the following requirements are met:

1. All the projects are rejected.
2. No proposals are received in response to the advertisement.
3. The estimated cost of the work does not exceed five thousand dollars ($5,000).
4. The work consists of channel protection, maintenance work, or emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(f) The agency may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(g) The Monterey County Board of Supervisors may grant to the board of directors, appointed pursuant to Section 49 of the Monterey County Water Resources Agency Act (Chapter 1159 of the Statutes of 1990), any of the powers or duties granted to the Monterey County Board of Supervisors by this section.

Comment. Section 21121 is amended to correct a cross-reference.


SEC. ____. Section 21131 of the Public Contract Code is amended to read:

21131. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars ($2,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three placements in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material in connection therewith, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board may reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor, or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).
(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work authorized and required under circumstances referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) This section does not apply to a contract entered into with the United States or the State of California or other governmental agency under the authority of Section 3 of Chapter 2126 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

(e) The district may rent or otherwise contract for equipment with or without an operator and use it on works of the district, if the contract is approved by the board.

Comment. Section 21131 is amended to correct a cross-reference.


SEC. ____. Section 21141 of the Public Contract Code is amended to read:

21141. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed the sum of two thousand dollars ($2,000), or where the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work authorized and required under circumstances referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) This section does not apply to a contract entered into with the United States or the State of California or other governmental agency under the authority of Section 3 of Chapter 2126 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

(e) The district may rent or otherwise contract for equipment with or without an operator and use it on works of the district, if the contract is approved by the board.

Comment. Section 21131 is amended to correct a cross-reference.
account; provided, however, that materials and supplies for use in any new
construction work or improvement, except work referred to in subdivision (b),
may not be purchased if the cost exceeds two thousand five hundred dollars
($2,500), without advertising for bids and awarding the contract therefor to the
lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into
with the United States under the authority of Section 3, or to a contract authorized
by a vote of the electorate of the district.

Comment. Section 21141 is amended to correct a cross-reference.

Conservation District

SEC. ____. Section 21151 of the Public Contract Code is amended to read:

21151. All contracts for any improvement or unit of work when the cost
according to the estimate of the engineer will exceed twenty-five thousand dollars
($25,000), with or without the furnishing of materials or supplies, shall be let to
the lowest responsible bidder or bidders in the manner provided in this article.

Construction of improvements or works shall not be staged to avoid the bidding
process. The board shall first determine whether the contract shall be let as a
single unit for the whole of the work, or shall be divided into severable parts, or
both, according to the best interests of the district. The board shall call for bids and
advertise the call by inviting sealed proposals for the construction or performance
of the improvement or work before any contract is made. The board shall invite
the bids by publishing a notice of the call for bids pursuant to Section 6062 or
The call for bids shall state whether the work is to be performed as a unit or shall
be divided into severable specific parts, or both, as stated in the call. The board
may let the work by single contract or it may divide the work into severable parts
by separate contracts, as stated in the call, according to the best interests of the
district. The board shall require the successful bidder or bidders to file with the
board good and sufficient bonds to be approved by the board conditioned upon the
faithful performance of the contract and upon the payment of their claims for labor
and material, the bonds to contain the terms and conditions set forth in Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6
(commencing with Section 41010) and to be subject to the provisions of that title
part. The board shall also have the right to reject any bid. In the event the
engineer’s estimate is twenty-five thousand dollars ($25,000) or less, or in the
event no proposals are received pursuant to advertisement therefor, or in the event
the work consists of channel protection or maintenance work, or emergency work,
the board of supervisors may, without advertising for bids, have the work done by
day labor under the direction of the board, by contract, or by a combination of the
two. In case of an emergency, if notice for bids to let contracts will not be given,
the board shall comply with Chapter 2.5 (commencing with Section 22050). The
district may acquire in the open market without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose.

Comment. Section 21151 is amended to correct a cross-reference.


SEC. ____. Section 21161 of the Public Contract Code is amended to read:

21161. (a) Any improvement or unit of work not performed by district personnel and estimated by the engineer to cost in excess of twenty-five thousand dollars ($25,000) shall be done by contract. All contracts shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section requiring competitive bidding and the award of contracts to the lowest responsible bidder are inapplicable to the extent the improvement or unit of work is to be performed on its own facilities by a public utility subject to the jurisdiction of the California Public Utilities Commission.

Comment. Section 21161 is amended to correct a cross-reference.

SEC. ____. Section 21171 of the Public Contract Code is amended to read:

21171. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars ($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the whole of the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit for the whole thereof or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid.

(b) In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvements, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21171 is amended to correct a cross-reference.

SEC. ____. Section 21181 of the Public Contract Code is amended to read:

21181. All contracts for any improvement or unit of work when the cost according to the estimate of the engineer, will exceed four thousand dollars ($4,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call in the district pursuant to Section 6066 of the Government Code inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement or the estimated cost of the work does not exceed four thousand dollars ($4,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by the combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21811 is amended to correct a cross-reference.


SEC. ____. Section 21196 of the Public Contract Code is amended to read:

21196. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand five hundred dollars ($2,500) shall be let to the lowest responsible bidder in the manner provided in this article. The board of directors of the district shall call for bids and
advertise the call by three insertions in a daily newspaper of general circulation or
two insertions in a weekly newspaper of general circulation published in the
district inviting sealed proposals for the construction of the work before any
contract is made, and may let by contract separately any part of the work. The
board shall require the successful bidder to file with the board good and sufficient
bonds to be approved by the board conditioned upon the faithful performance of
the contract and upon the payment of the claims for labor and material, the bonds
to contain the terms and conditions set forth in Title 15 (commencing with Section
3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section
41010) and to be subject to the provisions of this title that part. The board shall
also have the right to reject any bid, in which case the board may advertise for new
bids.

(b) In the event no proposals are received pursuant to advertisement, or where
the estimated cost of the work does not exceed two thousand five hundred dollars
($2,500), or the work consists of emergency work, the board of directors by
unanimous vote of all members present, may, without advertising for bids, have
the work done by force account. In case of an emergency, if notice for bids to let
contracts will not be given, the board shall comply with Chapter 2.5 (commencing
with Section 22050). The district may purchase in the open market, without
advertisement for bids, materials and supplies for use in any work either under
contract or by force account.

(c) The provisions of this section have no application to a contract entered into
with the United States under the authority of the Solano County Flood Control and
Water Conservation District Act, or to a contract authorized by a vote of the
electorate of the district.

Comment. Section 21196 is amended to correct a cross-reference.


SEC. ____. Section 21212 of the Public Contract Code is amended to read:

21212. (a) All contracts for the construction of any unit of work, except as
provided in this article, estimated to cost in excess of three thousand dollars
($3,000), shall be let to the lowest responsible bidder in the manner provided in
this article. The board of directors of the agency shall advertise pursuant to Section
6066 of the Government Code in a newspaper of general circulation published in
the agency’s jurisdiction inviting sealed proposals for the construction of the work
before any contract is made, and may let by contract separately any part of the
work. The board shall require the successful bidder to file with the board good and
sufficient bonds to be approved by the board conditioned upon the faithful
performance of the contract and upon the payment of any claims for labor and
material and containing the terms and conditions set forth in Title 15 (commencing
with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing
with Section 41010) and to be subject to the provisions of that title part. The board
shall also have the right to reject any bid, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, or where the estimated cost of the work does not exceed three thousand dollars ($3,000), or the work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 6 of Chapter 10 of the Statutes of the 1952 First Extraordinary Session, or to a contract authorized by a vote of the electorate of the agency.

Comment. Section 21212 is amended to correct a cross-reference.


SEC. ___. Section 21231 of the Public Contract Code is amended to read:

21231. Any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed five thousand dollars ($5,000), shall be done by contract let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract will be let as a single unit, or will be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district, inviting sealed proposals for the construction or performance of the improvement or before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into separate specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid. In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without
advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may acquire in the open market without advertising for bids, materials, equipment and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in the preceding sentence, may not be purchased if the cost exceeds five thousand dollars ($5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21231 is amended to correct a cross-reference.


SEC. ____. Section 21241 of the Public Contract Code is amended to read:

21241. All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars ($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the zone. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid. In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in
the preceding sentence, may not be purchased if the cost exceeds two thousand
five hundred dollars ($2,500), without advertising for bids and awarding the
contract to the lowest responsible bidder.

Comment. Section 21241 is amended to correct a cross-reference.

Control District
SEC. ____. Section 21251 of the Public Contract Code is amended to read:

21251. (a) (1) All contracts for any improvement or unit of work, if the cost
according to the estimate of the engineer will exceed thirty thousand dollars
($30,000), shall be let to the lowest responsible bidder or bidders as provided in
this article. The board shall first determine whether the contract shall be let as a
single unit or divided into severable parts, or both.

(2) All contracts for any improvement or unit of work, if the cost according to
the estimate of the engineer is thirty thousand dollars ($30,000) or less, may be let
without advertising for bids in accordance with procedures adopted by the board.

(b) The board shall call for bids and advertise the call pursuant to Section 6063
of the Government Code in the district, inviting sealed proposals for the
construction or performance of the improvement or work before any contract is
made. The call for bids shall state whether the work is to be performed as one unit
or divided into severable specific parts.

(c) The work may be let under a single contract or several contracts, or both, as
stated in the call. The board shall require the successful bidder or bidders to file
with the board good and sufficient bonds to be approved by the board conditioned
upon the faithful performance of the contract and upon the payment of their claims
for labor and material. The bonds shall comply with Title 15 (commencing with
Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with
Section 41010). The board may reject any bid.

(d) If all proposals are rejected or no proposals are received, or the estimated
cost of the work does not exceed five thousand dollars ($5,000), or the work
consists of channel protection, maintenance work, or emergency work, the board
may have the work done by force account without advertising for bids. In case of
an emergency, if notice for bids to let contracts will not be given, the board shall
comply with Chapter 2.5 (commencing with Section 22050).

(e) The district may purchase in the open market, without advertising for bids,
materials and supplies for use in any work either under contract or by force
account.

Comment. Section 21251 is amended to correct a cross-reference.

SEC. ____. Section 21261 of the Public Contract Code is amended to read:

21261. All contracts for any improvement or unit of work when the cost,
according to the estimate of the engineer, will exceed two thousand dollars
($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit for the work, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid. In the event all proposals are rejected or no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market, without advertising for bids, materials and supplies for use in any work either under contract or by force account.

Comment. Section 21261 is amended to correct a cross-reference.


SEC. ____. Section 21271 of the Public Contract Code is amended to read:

21271. All improvement and units of work to be performed by or for the district shall be performed in accordance with the following procedures and requirements:

(a) If the work consists of the protection or maintenance of channels, storm drains, dams or other flood control works, or emergency work, the board of directors may, without advertising for bids therefor, have the work done by day labor under the direction of the board, by contract, or by a combination of the two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(b) If the work consists of the construction of new flood control channels, storm drains, dams, or other unit or units of work, and if the cost of the work, according to the estimate of the engineer, will exceed ten thousand dollars ($10,000), and if the work is not the type of work referred to in subdivision (a) or (c) of this section,
the new construction shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(c) If the work consists of the maintenance or alteration of existing facilities, including electrical, painting, and roofing work, and if the cost of labor and materials for the work according to the engineer’s estimate, will exceed three thousand five hundred dollars ($3,500), and if the work is not the type of work referred to in subdivision (a) or (b) of this section, the maintenance and alteration work shall be performed under a contract or contracts which shall be let to the lowest responsible bidder or bidders in the manner provided in subdivision (d) of this section.

(d) The board shall first determine whether the work shall be let as a single unit or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call pursuant to Section 6066 of the Government Code in the district inviting sealed proposals for the construction or performance of the work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable, specific parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bond to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material. The faithful performance bond shall contain the terms and conditions as the board may specify, and the payment bond shall contain the terms and conditions set forth in, and shall be subject to, the provisions of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). If the work to be performed on behalf of the district does not involve an expenditure of fifteen thousand dollars ($15,000) or more, the district may require a faithful performance bond or a payment bond. The board shall also have the right to reject any bid.

(e) If no proposals are received pursuant to advertisement, or if the estimated cost of work of the type referred to in subdivision (b) of this section does not exceed ten thousand dollars ($10,000), or if the estimated cost of work of the type referred to in subdivision (c) of this section does not exceed three thousand five hundred dollars ($3,500), the board of directors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by combination of the two. If any change or alteration in a contract awarded under the provisions of this section for work of the type referred to in subdivision (b) or (c) is deemed necessary and the cost does not exceed 10 percent of the original contract price, the board may authorize the contractor to proceed with the change or alteration without the formality of obtaining bids.
(f) Notwithstanding the foregoing provisions, the district shall have the power to acquire in the open market, and may authorize the Purchasing Agents of the County of Santa Barbara to acquire in the open market, without advertising for bids, materials, equipment and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (a) of this section, may not be purchased without advertising for bids and awarding the contract to the lowest responsible bidder if the cost exceeds two thousand five hundred dollars ($2,500), unless the purchase is made by the county purchasing agent at the request of the district, in which case the cost shall not exceed six thousand five hundred dollars ($6,500).

Comment. Section 21271 is amended to correct a cross-reference.


SEC. ____. Section 21311 of the Public Contract Code is amended to read:

21311. (a) All contracts for any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed two thousand dollars ($2,000), shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable specific parts, or both, as stated in the call. The board may let the work by single contract for the whole as a unit or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid.

(b) In the event no proposals are received pursuant to advertisement, or the estimated cost of the work does not exceed two thousand dollars ($2,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by day labor, under the direction of the board, by contract, or by a combination of the
two. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), shall not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21311 is amended to correct a cross-reference.


SEC. ____. Section 21321 of the Public Contract Code is amended to read:

21321. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed thirty thousand dollars ($30,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency’s jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010).

(b) The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In the event that no proposals are received, or if only one responsive proposal is received, the board may negotiate a contract for construction or performance of the work or improvement or substantially similar work or improvement. However, if only one responsive proposal is received, the contract must be negotiated with the bidder.

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.
(d) Sections 4300 to 4305, inclusive, of the Government Code do not apply to
the agency’s Middle Fork American River Project.
(e) This section applies to all proposals or contracts whether or not received or
entered into prior to the effective date of the amendment of this provision made at
the 1963 Regular Session of the Legislature.

Comment. Section 21321 is amended to correct a cross-reference.

Pub. Cont. Code § 21331 (amended). Tehama County Flood Control and Water
Conservation District
SEC. ____. Section 21331 of the Public Contract Code is amended to read:
21331. (a) All contracts for the construction of any unit of work, except as
provided in this article, estimated to cost in excess of three thousand five hundred
dollars ($3,500) shall be let to the lowest responsible bidder in the manner
provided in this article. The board shall advertise by three insertions in a daily
newspaper of general circulation or two insertions in a weekly newspaper of
general circulation published in the district inviting sealed proposals for the
construction of the work before any contract shall be made, and may let by
contract separately any part of the work. The board shall require the successful
bidder to file with the board good and sufficient bonds to be approved by the
board conditioned upon the faithful performance of the contract and upon the
payment of all claims for labor and material, the bonds to contain the terms and
conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of
Division 3 of the Civil Code, Part 6 (commencing with Section 41010) and to be
subject to the provisions of that title part. The board shall also have the right to
reject any bid, in which case the board may advertise for new bids.
(b) In the event no proposals are received pursuant to advertisement, where the
estimated cost of the work does not exceed five thousand dollars ($5,000), or
where the work consists of emergency work, the board of directors, by unanimous
vote of all members present, may, without advertising for bids, have the work
done by force account. In case of an emergency, if notice for bids to let contracts
will not be given, the board shall comply with Chapter 2.5 (commencing with
Section 22050).
(c) The district may purchase in the open market, without advertisement for
bids, materials and supplies for use in any work either under contract or by force
account; provided, however, that materials and supplies for use in any new
construction work or improvement, except work referred to in subdivision (b),
may not be purchased if the cost exceeds five thousand dollars ($5,000), without
advertising for bids and awarding the contract to the lowest responsible bidder.
(d) The provisions of this section have no application to a contract entered into
with the United States under the authority of Section 3 of Chapter 1280 of the
Statutes of 1957, or to a contract authorized by a vote of the electorate of the
district.

Comment. Section 21331 is amended to correct a cross-reference.

SEC. ____. Section 21341 of the Public Contract Code is amended to read:

21341. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars ($5,000) shall be let to the lowest responsible bidder. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published by the agency inviting sealed proposals for the construction of the work before any contract is made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of the claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bid, in which case the board may advertise for new bids. In the event no proposals are received pursuant to advertisement or where the estimated cost of the work does not exceed five thousand dollars ($5,000), or where the work consists of emergency work, the board, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market, without advertisement for bids, materials and supplies for use in any work either under contract or by force account.

(b) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 59 of Chapter 1512 of the Statutes of 1957, or to a contract authorized by a vote of the electorate of the agency.

Comment. Section 21341 is amended to correct a cross-reference.


SEC. ____. Section 21351 of the Public Contract Code is amended to read:

21351. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published by the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file
with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids.

In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The board may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. In awarding any contract or authorizing any work, the board shall comply with the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code.

Comment. Section 21351 is amended to correct a cross-reference.


SEC. ____. Section 21361 of the Public Contract Code is amended to read:

21361. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency’s jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The
district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21361 is amended to correct a cross-reference.


SEC. ____. Section 21371 of the Public Contract Code is amended to read:
21371. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency’s jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21371 is amended to correct a cross-reference.


SEC. ____. Section 21381 of the Public Contract Code is amended to read:
21381. All contracts for any improvement or unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars ($5,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board of supervisors of the district shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation printed and published in the district inviting sealed proposals for the construction of the improvement or work before any contract shall be made, and may let by contract separately any part of said work or improvement. The board shall require the successful bidder to file with the board good and
sufficient bonds to be approved by the board conditioned upon the faithful
performance of the contract and upon the payment of their claims for labor and
material, the bonds to contain the terms and conditions set forth in Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6
(commencing with Section 41010) and to be subject to the provisions of that title
part. The board shall also have the right to reject any bid. In the event all proposals
are rejected or no proposals are received pursuant to advertisement, or where the
estimated cost of the work does not exceed five thousand dollars ($5,000), or the
work consists of channel protection, maintenance work, or emergency work, the
board of supervisors may, without advertising for bids, have the work done by
force account. In case of an emergency, if notice for bids to let contracts will not
be given, the board shall comply with Chapter 2.5 (commencing with Section
22050). The district may purchase in the open market without advertising for bids,
materials and supplies for use in any work either under contract or by force
account.

Comment. Section 21381 is amended to correct a cross-reference.

Conservation District

SEC. ____. Section 21391 of the Public Contract Code is amended to read:
21391. (a) All contracts for the construction of any unit of work, except as
provided in this article, estimated to cost in excess of two thousand dollars
($2,000) shall be let to the lowest responsible bidder in the manner provided in
this article. The board shall advertise by three insertions in a daily newspaper of
general circulation or two insertions in a weekly newspaper of general circulation
published in the district, inviting sealed proposals for the construction of the work
before any contract shall be made, and may let by contract separately any part of
the work. The board shall require the successful bidder to file with the board good
and sufficient bonds to be approved by the board conditioned upon the faithful
performance of the contract and upon the payment of all claims for labor and
material, the bonds to contain the terms and conditions set forth in Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6
(commencing with Section 41010) and to be subject to the provisions of that title
part. The board shall also have the right to reject any and all bids, in which case
the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement therefor,
where the estimated cost of the work does not exceed two thousand dollars
($2,000), or where the work consists of emergency work necessary in order to
protect life and property, the board of directors, by unanimous vote of all members
present, may, without advertising for bids, have the work done by force account.
In case of an emergency, if notice for bids to let contracts will not be given, the
board shall comply with Chapter 2.5 (commencing with Section 22050).
(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars ($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2114 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21391 is amended to correct a cross-reference.


SEC. ____. Section 21401 of the Public Contract Code is amended to read:

21401. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000) shall be let to the lowest responsible bidder in the manner provided in this article. The board shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the district inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of all claims for labor and material, the bonds to contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board shall also have the right to reject any bids, in which case the board may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the estimated cost of the work does not exceed two thousand dollars ($2,000), or where work consists of emergency work, the board of directors, by unanimous vote of all members present, may, without advertising for bids, have the work done by force account. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may purchase in the open market without advertisement for bids, materials and supplies for use in any work either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds two thousand five hundred dollars
($2,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) The provisions of this section have no application to a contract entered into with the United States under the authority of Section 3 of Chapter 2121 of the Statutes of 1959, or to a contract authorized by a vote of the electorate of the district.

Comment. Section 21401 is amended to correct a cross-reference.


SEC. ____. Section 21411 of the Public Contract Code is amended to read:

21411. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency’s jurisdiction, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In that event a majority vote of all board members shall be required. The board may purchase in the open market, without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21411 is amended to correct a cross-reference.


SEC. ____. Section 21421 of the Public Contract Code is amended to read:

21421. (a) All contracts for the construction of any unit of work, except as provided in this article, estimated to cost in excess of two thousand dollars ($2,000), shall be let to the lowest responsible bidder in the manner provided in
this article. The board shall advertise by three insertions in a daily newspaper of
general circulation or two insertions in a weekly newspaper of general circulation
published in the district inviting sealed proposals for the construction of the work
before any contract shall be made, and may let by contract separately any part of
the work. The board shall require the successful bidder to file with the board good
and sufficient bonds to be approved by the board conditioned upon the faithful
performance of the contract and upon the payment of all claims for labor and
material, the bonds to contain the terms and conditions set forth in Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6
(commencing with Section 4101) and to be subject to the provisions of that title
part. The board shall also have the right to reject any bid, in which case the board
may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the
estimated cost of the work does not exceed two thousand dollars ($2,000), or
where the work consists of emergency work, the board of directors, by unanimous
vote of all members present, may, without advertising for bids, have the work
done by force account. In case of an emergency, if notice for bids to let contracts
will not be given, the board shall comply with Chapter 2.5 (commencing with
Section 22050).

(c) The district may purchase in the open market without advertisement for bids,
materials and supplies for use in any work either under contract or by force
account; provided, however, that materials and supplies for use in any new
construction work or improvement, except work referred to in subdivision (b),
may not be purchased if the cost exceeds two thousand five hundred dollars
($2,500), without advertising for bids and awarding the contract to the lowest
responsible bidder.

(d) The provisions of this section have no application to a contract entered into
with the United States under the authority of Section 3 of Chapter 2123 of the
Statutes of 1959, or to a contract authorized by a vote of the electorate of the
district.

Comment. Section 21421 is amended to correct a cross-reference.
and sufficient bonds to be approved by the board conditioned upon the faithful
performance of the contract and upon the payment of all claims for labor and
material, the bonds to contain the terms and conditions set forth in Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, Part 6
(commencing with Section 41010) and to be subject to the provisions of that title
part. The board shall also have the right to reject any bid, in which case the board
may advertise for new bids.

(b) In the event no proposals are received pursuant to advertisement, where the
estimated cost of the work does not exceed two thousand dollars ($2,000), the
board of directors, by unanimous vote of all members present, may without
advertising for bids, have the work done by force account. In case of an
emergency, if notice for bids to let contracts will not be given, the board shall
comply with Chapter 2.5 (commencing with Section 22050).

c) The district may purchase in the open market without advertisement for bids,
materials and supplies for use in any work either under contract or by force
account; provided, however, that materials and supplies for use in any new
construction work or improvement, except work referred to in subdivision (b),
may not be purchased if the cost exceeds two thousand five hundred dollars
($2,500), without advertising for bids and awarding the contract to the lowest
responsible bidder.

d) The provisions of this section have no application to a contract entered into
with the United States under the authority of Section 3 of Chapter 2127 of the
Statutes of 1959, or to a contract authorized by a vote of the electorate of the
district.

Comment. Section 21431 is amended to correct a cross-reference.

SEC. ____. Section 21441 of the Public Contract Code is amended to read:
21441. (a) All contracts for any improvement or unit of work, when the cost
according to the estimate of the engineer will exceed five thousand dollars
($5,000) shall be let to the lowest responsible bidder or bidders as provided in this
article. The board shall first determine whether the contract shall be let as a single
unit, or divided into severable parts. The board shall advertise for bids by three
insertions in a daily newspaper of general circulation or by two insertions in a
weekly newspaper of general circulation printed and published in the authority,
inviting sealed proposals for the construction or performance of the improvement
work. The call for bids shall state whether the work shall be performed in one unit
or divided into parts. The work may be let under a single contract or several
contracts, as stated in the call. The board shall require the successful bidders to file
with the board good and sufficient bonds to be approved by the board conditioned
upon the faithful performance of the contract and upon the payment of their claims
for labor and material. The bonds shall comply with Title 15 (commencing with
Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with
The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids.

(b) In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The authority may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21441 is amended to correct a cross-reference. The other changes are technical.

SEC. ____. Section 21451 of the Public Contract Code is amended to read:

Section 21451. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed twelve thousand five hundred dollars ($12,500), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The payment bonds shall comply with Chapter 7 (commencing with Section 3247) of Division 3 of Title 15 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6. The board may reject any bid. If all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed twelve thousand five hundred dollars ($12,500), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21451 is amended to correct a cross-reference.

SEC. ____. Section 21461 of the Public Contract Code is amended to read:
21461. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. The board may reject any and all bids. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). The district may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21461 is amended to correct a cross-reference.


SEC. ____. Section 21491 of the Public Contract Code is amended to read:

21491. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed ten thousand dollars ($10,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15
(commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds ten thousand dollars ($10,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21491 is amended to correct a cross-reference.


SEC. ____. Section 21501 of the Public Contract Code is amended to read:

21501. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed fifteen thousand dollars ($15,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in such call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Chapter 7 (commencing with Section 3247) of Title 15 of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6. The board may reject any and all bids.

(b) The board may have work done by force account without advertising for bids or by informal bidding procedures in any of the following situations:

(1) All proposals are rejected.

(2) No proposals are received.

(3) The estimated cost of the work does not exceed fifteen thousand dollars ($15,000) until January 1, 1989. After January 1, 1989, the estimated cost of the work shall not exceed ten thousand dollars ($10,000).

(4) The work consists of channel protection.
(5) The work consists of maintenance work, except that informal bidding procedures may be used only where the estimated cost does not exceed twenty-five thousand dollars ($25,000).

(6) The work consists of emergency work. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account, except that, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased, if the cost exceeds fifteen thousand dollars ($15,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

(d) As used in this section, “informal bidding procedures” means that the board shall, at a minimum, award a contract to the lowest responsible bidder after publishing a notice which generally describes the work to be performed and invites written bids in a newspaper of general circulation in the agency once a week for two successive weeks. The board shall obtain a minimum of three written bids.

Comment. Section 21501 is amended to correct a cross-reference.


SEC. _____. Section 21511 of the Public Contract Code is amended to read:

21511. (a) All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed fifty thousand dollars ($50,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any and all bids.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed ten thousand dollars ($10,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In
case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased, if the cost exceeds fifty thousand dollars ($50,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21511 is amended to correct a cross-reference.

SEC. ____. Section 21521 of the Public Contract Code is amended to read:
21521. All contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000) shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit, or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid. In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids.

In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050). In that event a majority vote of all board members shall be required. The board may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account.

Comment. Section 21521 is amended to correct a cross-reference.

SEC. ____. Section 21531 of the Public Contract Code is amended to read:
21531. (a) The Castaic Lake Water Agency shall have power to prescribe methods for the construction of works and for the letting of contracts for the
construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property; provided, that all contracts for any improvement or unit of work, when the cost according to the estimate of the engineer will exceed five thousand dollars ($5,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation published in the agency or by two insertions in a nondaily newspaper of general circulation published in the agency or, if no newspaper is published in the agency, in any newspaper of general circulation distributed in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call. The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given. The board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account; provided, however, that materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds five thousand dollars ($5,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21531 is amended to correct a cross-reference.

SEC. ____. Section 21541 of the Public Contract Code is amended to read:

21541. (a) The Crestline-Lake Arrowhead Water Agency shall have power to prescribe methods for the construction of works and for the letting of contracts for the construction of works, structures, or equipment, or the performance or furnishing of labor, materials, or supplies, necessary or convenient for carrying out any of the purposes of this act or for the acquisition or disposal of any real or personal property. However, all contracts for the construction of any improvement
or unit of work, when the cost, according to the estimate of the engineer, will exceed twenty-five thousand dollars ($25,000), shall be let to the lowest responsible bidder or bidders as provided in this article. The board shall first determine whether the contract shall be let as a single unit or divided into severable parts. The board shall advertise for bids by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed and published in the agency, inviting sealed proposals for the construction or performance of the improvement or work. The call for bids shall state whether the work shall be performed in one unit or divided into parts. The work may be let under a single contract or several contracts, as stated in the call.

The board shall require the successful bidders to file with the board good and sufficient bonds to be approved by the board conditioned upon the faithful performance of the contract and upon the payment of their claims for labor and material. The bonds shall comply with Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010). The board may reject any bid.

(b) In the event all proposals are rejected or no proposals are received, or the estimated cost of the work does not exceed five thousand dollars ($5,000), or the work consists of channel protection, maintenance work, or emergency work, the board may have the work done by force account without advertising for bids. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The agency may purchase in the open market without advertising for bids, materials and supplies for use in any work, either under contract or by force account. However, materials and supplies for use in any new construction work or improvement, except work referred to in subdivision (b), may not be purchased if the cost exceeds twenty-five thousand dollars ($25,000), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21541 is amended to correct a cross-reference.


SEC. ____. Section 21572 of the Public Contract Code is amended to read:

21572. Any improvement or unit of work, except as provided in this article, estimated to cost in excess of five thousand dollars ($5,000), shall be done by contract and let to the lowest responsible bidder in the manner provided in this article. The board of directors of the agency shall advertise by three insertions in a daily newspaper of general circulation or two insertions in a weekly newspaper of general circulation published in the agency, inviting sealed proposals for the construction of the work before any contract shall be made, and may let by contract separately any part of the work. The board shall require the successful bidder to file with the board good and sufficient bonds to be approved by the
board, conditioned upon the faithful performance of the contract, and upon the
payment of the claims for labor and material, the bonds to contain the terms and
conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of
Division 3 of the Civil Code, Part 6 (commencing with Section 41010) and to be
subject to the provisions of that title part. The board shall also have the right to
reject any and all bids, and readvertise for new bids, or by a two-thirds vote may
elect to undertake the work by force account. In the event no proposals are
received pursuant to advertisement, or where the estimated cost of such work does
not exceed five thousand dollars ($5,000), the board of directors by unanimous
vote of all members present may without advertising for bids have the work done
by force account. In case of an emergency, if notice for bids to let contracts will
not be given, the board shall comply with Chapter 2.5 (commencing with Section
22050). The agency may purchase in the open market without advertisement for
bids, materials and supplies for use in any work either under contract or by force
account.

Comment. Section 21572 is amended to correct a cross-reference.

SEC. ____. Section 21581 of the Public Contract Code is amended to read:
21581. (a) Any improvement or unit of work when the cost according to the
estimate of the engineer will exceed five thousand dollars ($5,000), shall be done
by contract and shall be let to the lowest responsible bidder or bidders in the
manner provided in this article. The board shall first determine whether the
contract shall be let as a single unit or shall be divided into severable parts, or
both, according to the best interests of the district. The board shall call for bids and
advertise the call by three insertions in a daily newspaper of general circulation or
by two insertions in a weekly newspaper of general circulation printed in the
district inviting sealed proposals for the construction or performance of the
improvement or work before any contract is made. The call for bids shall state
whether the work is to be performed as a unit or shall be divided into severable
specific parts, or both, as stated in the call. The board may let the work by single
contract for the whole or it may divide the work into severable parts by separate
contracts, as stated in the call, according to the best interests of the district. The
board shall require the successful bidder or bidders to file with the board a good
and sufficient bond to be approved by the board conditioned upon the payment of
their claims for labor and material, the bond to contain the terms and conditions
set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the
Civil Code, Part 6 (commencing with Section 41010) and to be subject to the
provisions of that title part. The board shall also have the right to reject any and all
bids and readvertise for new bids, or by a two-thirds vote may elect to undertake
the work by force account.

(b) In the event no proposals are received pursuant to advertisement, or the
estimated cost of the work does not exceed five thousand dollars ($5,000), or the
work consists of channel protection, maintenance work, or emergency work, the
board of supervisors may, without advertising for bids, have the work done by
employees of the district, by day labor, under the direction of the board, by
contract, or by any combination of those methods. In case of an emergency, if
notice for bids to let contracts will not be given, the board shall comply with
Chapter 2.5 (commencing with Section 22050).
(c) The district may acquire in the open market without advertising for bids,
materials, equipment, and supplies for use in any work or for any other purpose;
provided, however, that materials and supplies for use in any new construction
work or improvement, except work referred to in subdivision (b), may not be
purchased if the cost exceeds five thousand dollars ($5,000), without advertising
for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21581 is amended to correct a cross-reference.

SEC. ____. Section 21591 of the Public Contract Code is amended to read:
21591. (a) Any improvement or unit of work, when the cost, according to the
estimate of the engineer, will exceed twenty-five thousand dollars ($25,000), shall
be done by contract and shall be let to the lowest responsible bidder or bidders as
provided in this article. The board shall first determine whether the contract shall
be let as a single unit or divided into severable parts. The board shall advertise for
bids by three insertions in a daily newspaper of general circulation or by two
insertions in a weekly newspaper of general circulation printed and published in
the agency, if there is a newspaper printed and published in the agency, inviting
sealed proposals for the construction or performance of the improvement or work.
The call for bids shall state whether the work shall be performed in one unit or
divided into parts. The work may be let under a single contract or several
contracts, as stated in the call. The board shall require the successful bidders to file
with the board good and sufficient bonds to be approved by the board conditioned
upon the faithful performance of the contract and upon the payment of their claims
for labor and material. The bonds shall comply with Title 15 (commencing with
Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with
Section 41010). The board may reject any and all bids and readvertise, or by a
two-thirds vote may elect to undertake work by force account.
(b) If no proposals are received, or the estimated cost of the work does not
exceed twenty-five thousand dollars ($25,000), or the work consists of channel
protection, maintenance work, or emergency work, the board may have the work
done by force account without advertising for bids. In case of an emergency, if
notice for bids to let contracts will not be given, the board shall comply with
Chapter 2.5 (commencing with Section 22050).
(c) The agency may purchase in the open market without advertising for bids,
materials and supplies for use in any work, either under contract or by force
account; provided, however, that materials and supplies for use in any new
construction work or improvement, except work referred to in subdivision (b),
may not be purchased if the cost exceeds twenty-five thousand dollars ($25,000),
without advertising for bids and awarding the contract to the lowest responsible
bidder.

Comment. Section 21591 is amended to correct a cross-reference.

SEC. ____. Section 21601 of the Public Contract Code is amended to read:
21601. Any improvement or unit of work, when the cost, according to the
estimate of the engineer, will exceed five thousand dollars ($5,000), shall be done
by contract and let to the lowest responsible bidder or bidders as provided in this
article. The board shall first determine whether the contract shall be let as a single
unit, or divided into severable parts. The board shall advertise for bids by three
insertions in a daily newspaper of general circulation or by two insertions in a
weekly newspaper of general circulation printed and published in the agency,
inviting sealed proposals for the construction or performance of the improvement
or work. The call for bids shall state whether the work shall be performed in one
unit or divided into parts. The work may be let under a single contract or several
contracts, as stated in the call. The board shall require the successful bidders to file
with the board good and sufficient bonds to be approved by the board conditioned
upon the faithful performance of the contract and upon payment of their claims for
labor and material. The bonds shall comply with Title 15 (commencing with
Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with
Section 41010). The board may reject any and all bids and readvertise, or, by a
two-thirds vote, may elect to undertake the work by force account. In the event no
proposals are received, or the estimated cost of the work does not exceed five
thousand dollars ($5,000), or the work consists of channel protection, maintenance
work, or emergency work, the board of supervisors may have the work done by
force account without advertising for bids. In case an emergency, if notice for bids
to let contracts will not be given, the board shall comply with Chapter 2.5
(commencing with Section 22050). The district may purchase in the open market
without advertising for bids, materials, and supplies for use in any work, either
under contract or by force account.

Comment. Section 21601 is amended to correct a cross-reference.

SEC. ____. Section 21622 of the Public Contract Code is amended to read:
21622. The board shall require the successful bidder or bidders to file with the
board, good and sufficient bonds, to be approved by the board conditioned upon
the faithful performance of the contract and upon the payment of their claims for
labor and material in connection therewith. Such contracts shall be subject to the
provisions of Title 15 (commencing with Section 3082) of Part 4 of Division 3 of
the Civil Code Part 6 (commencing with Section 41010).
Comment. Section 21622 is amended to correct a cross-reference.


SEC. ____. Section 21631 of the Public Contract Code is amended to read:

21631. (a) Any improvement or unit of work when the cost, according to the estimate of the engineer, will exceed six thousand five hundred dollars ($6,500), shall be done by contract and shall be let to the lowest responsible bidder or bidders in the manner provided in this article. The board shall first determine whether the contract shall be let as a single unit, or shall be divided into severable parts, or both, according to the best interests of the district. The board shall call for bids and advertise the call by three insertions in a daily newspaper of general circulation or by two insertions in a weekly newspaper of general circulation printed in the district inviting sealed proposals for the construction or performance of the improvement or work before any contract is made. The call for bids shall state whether the work is to be performed as a unit or shall be divided into severable parts, or both, as stated in the call. The board may let the work by single contract or it may divide the work into severable parts by separate contracts, as stated in the call, according to the best interests of the district. The board shall require the successful bidder or bidders to file with the board a good and sufficient bond, to be approved by the board, conditioned upon the payment of their claims for labor and material. The bond shall contain the terms and conditions set forth in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code Part 6 (commencing with Section 41010) and to be subject to the provisions of that title part. The board may reject any and all bids and readvertise for new bids, or by a two-thirds vote may elect to undertake the work by force account.

(b) If no proposals are received pursuant to advertisement or the estimated cost of the work does not exceed six thousand five hundred dollars ($6,500), or the work consists of channel protection, maintenance work, or emergency work, the board of supervisors may, without advertising for bids, have the work done by employees of the district, by day labor, under the direction of the board, by contract, or by a combination of those methods. In case of an emergency, if notice for bids to let contracts will not be given, the board shall comply with Chapter 2.5 (commencing with Section 22050).

(c) The district may acquire in the open market, without advertising for bids, materials, equipment, and supplies for use in any work or for any other purpose; provided, however, that materials and supplies for use in any new construction work or improvement, except that work referred to in subdivision (b), may not be purchased if the cost exceeds six thousand five hundred dollars ($6,500), without advertising for bids and awarding the contract to the lowest responsible bidder.

Comment. Section 21631 is amended to correct a cross-reference and make a technical change.
STREETS AND HIGHWAYS CODE


SEC. ____. Section 136.5 of the Streets and Highways Code is amended to read:

136.5. (a) The contracts referred to in Sections 135, 136, and 136.1 are not subject to the State Contract Act (Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code). Except for emergency work of the type described in subdivision (b), whenever the estimated amount of a contract exceeds two thousand five hundred dollars ($2,500), it shall be awarded to the lowest responsible bidder, after competitive bidding on any reasonable notice that the department may prescribe. Posting of notice for five days in a public place in the district office within which the work is to be done, or the equipment used, is sufficient. Those contracts shall be subject to the applicable payment bond provisions of Chapter 7 (commencing with Section 3247) of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 of the Public Contract Code. The department may require faithful performance bonds when considered necessary. The advertisement for each contract shall state whether or not a bond shall be required.

(b) In cases of emergency work necessitated by the imminence or occurrence of a landslide, flood, storm damage, accident, or other casualty, tools or equipment may be rented for a period of not to exceed 60 days without competitive bidding, and the department may waive the requirements of Chapter 7 (commencing with Section 3247) of Part 4 of Division 3 of the Civil Code Chapter 5 (commencing with Section 45010) of Part 6 of Division 2 of the Public Contract Code to the extent that a contractor may commence performance of the work under the contract for the rental of tools or equipment prior to filing a payment bond with the department. In that case, no payment shall be made to the contractor until a payment bond covering all work of the contract is filed with the department.

Comment. Section 136.5 is amended to correct cross-references.