

Memorandum 2004-4

Mechanics Lien Law: General Revision (Reactivation of Study)

At its September 2003 review of new topics and priorities, the Commission decided to reactivate its study of a general revision of the mechanics lien law. The decision was prompted by ongoing legislative concern about the need for such a revision. The Commission directed the staff to give this matter a priority.

This memorandum reviews the history of the Commission’s study, analyzes possible approaches to the revision, and concludes with the staff’s recommendation for a manner of proceeding to complete the study successfully.

Attached to this memorandum are the following materials:

	<i>Exhibit p.</i>
1. Staff Draft Mechanics Lien Statute Revision (2001) (without Comments or Staff Notes)	1
2. Acret Draft Mechanics Lien Statute Revision (2003)	27

We provide these materials not with the intention to engage in a detailed comparison and analysis of the proposals, but to illuminate two of the basic approaches to mechanics lien law reform considered in this memorandum — moderate revision of the existing statute (staff draft) and radical revision of the existing statute (Acret draft). In the interest of economy, we have not attached a copy of the Uniform Construction Lien Act (1987), which is discussed in this memorandum as a possible replacement for the existing statute.

BACKGROUND

Assembly Judiciary Committee Request

The Commission has long been authorized to work in the areas of real property law and creditors’ remedies. Over the years we have proposed and obtained enactment of a number of recommendations modernizing the law governing enforcement of various real property remedies and lien rights.

In June 1999 the Chair and Vice Chair of the Assembly Judiciary Committee authored a joint letter to the Commission urging it to study mechanics lien law. The letter noted:

As has been the case in the past, the Judiciary Committee has heard a number of bills this year relating to the state's Mechanics Lien laws (see, e.g., AB 171 (Margett) and AB 742 (Honda)). Many previous bills have been enacted into law and, as a result, the Mechanics Lien laws have been amended 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 Committee noted the existing general authority of the Commission in this area, and suggested that the Commission prioritize the matter.

The Commission responded affirmatively, and activated the present study.

Commission Procedure

The Commission began the project by retaining an expert consultant — Gordon Hunt — to prepare a report on possible revisions to the California statute. Mr. Hunt delivered his report promptly in fall of 1999. The report identified a number of technical and minor substantive problems with the existing statute, and also focused on more fundamental concerns involved with the “double payment” issue under the California statute. The double payment issue was hot at the time, having just been under review by the Legislature.

The double payment problem can arise under the California statute because the law gives subcontractors and materials suppliers a direct lien on property they have improved. If the property owner pays the prime contractor for the work but the prime contractor fails to pay subcontractors and materials suppliers, those who are unpaid may exercise their lien rights against the owner's property and force payment.

The Commission circulated Mr. Hunt's report for review among stakeholders. Almost all respondents focused on the double payment issue, rather than the more general question of improvement of the mechanics lien law. Because of the contentious nature of the subject, and in order to provide more balance in its deliberations, the Commission engaged two additional consultants with differing perspectives on the issue — James Acret (a construction law expert) and Keith Honda (a former legislative staffer who had done extensive work on the matter).

The Commission spent the next two years struggling with the double payment issue before making its recommendation to the Legislature in February 2002. (The recommendation, which is still before the Legislature, would give the property owner in a small home improvement contract a defense against lien enforcement if the property owner paid the general contractor in good faith.)

During that period the staff also did a substantial amount of work on, and the Commission from time to time considered, issues relating to the more general overhaul of the mechanics lien statute. The Commission decided to wrap up work on the general overhaul by directing the staff to prepare a draft that suggested improvements in organization, terminology, procedures, etc., “scaled to the time available” for completion, which the Commission targeted as January 2002.

The staff presented the Commission with a complete redraft of a portion of the mechanics lien law, which the Commission took up in November 2001. The Commission debated two of the 90 sections in the draft at length and concluded there was a need for further detailed technical review and rewriting. The Commission directed the staff to convene a working group to conduct the necessary section by section review of the draft and report back to the Commission with a proposed redraft of the mechanics lien statute. That was never done.

Commission Report

The Commission reported on its progress to the Legislature and Governor in February 2002. See *Mechanic’s Lien Law Reform*, 31 Cal. L. Revision Comm’n Reports 343 (2001). The report concluded that a thorough review and revision of the mechanics lien law and related provisions should be undertaken in order to modernize, simplify, and clarify the law, making it more user friendly, efficient, and effective for all stakeholders.

The report noted that preliminary work on this aspect of the project had been done, and that the work was continuing “as Commission resources permit.” 31 Cal. L. Revision Comm’n Reports at 351, 387. The report noted other major projects occupying the Commission and pointed to recent and pending budget cuts that would limit the productivity of the Commission.

Thereafter, the Commission decided (until now) to give the matter a rest. That would allow us to complete other priority projects, and would give the Legislature a chance to act on the double payment recommendation. Its action on

the double payment recommendation would be instructive as to the prospects for any significant revision of the existing law.

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 number fluctuate greatly with general economic conditions.

Players involved in a typical project may include the owner of the property being improved (as well as coowners, 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, and multiple materials suppliers, among others. Their relationships and obligations to each other may be spelled out in detailed contractual arrangements that are subsequently ignored or altered on the fly with change orders and the like. The practice in the industry is to extend credit readily and rely on prompt payment. Many of the players may be on the fringe of solvency, 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 whole deal. But with so many parties, and so many adverse interests involved, it is no wonder that the mechanics lien law is the focus of an ongoing tug of war as each interest tries, legitimately, to protect itself.

Mechanics Lien Laws

Every state has a mechanics lien law. The laws all operate similarly. The law gives the provider of labor and materials an enforceable lien on property to the extent of the value of the labor and materials contributed. As a practical matter, a mechanics 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), 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. The major issues identified by the Uniform Act drafters are:

- Who is entitled to the lien?
- Is an owner who makes good faith payment to the prime contractor protected from liability to subcontractors and material providers?
- What is the priority of a mechanics lien where there are claims against the property by third party buyers, secured lenders, and general creditors?

HISTORY OF CALIFORNIA STATUTE

Constitution

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

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 from Article XX, Section 15, to its current location in 1976.

Statute

The statutory history of the California mechanics lien law predates the constitutional provision. California’s first Legislature enacted a rudimentary mechanics liens statute in 1850. See Compiled Laws ch. 155. 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 from there to the Civil Code. The last major recodifications of the mechanics lien law occurred in 1951 and in 1969. The mechanics lien law has been amended 70 times in the 35 years since the 1969 revision. Neither the 1951 revision nor the 1969 revision was intended as a substantive reform — those efforts continued much of the preexisting language. “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.” *Mechanic’s Lien Law Reform*, 31 Cal. L. Revision Comm’n Reports at 352 (2001).

SUMMARY OF CALIFORNIA STATUTE

The California mechanics lien law and its operation are summarized below. The summary is based on Acret, *A Brief Summary of Mechanics’ Liens and Stop Notices*, in *Handling A Mechanics’ Lien* (Cal. Cont. Ed. Bar 1993); some of this material is dated, but the staff believes it provides a helpful orientation to the California mechanics lien law scheme. The summary includes a discussion of general considerations, the mechanics lien, procedures for enforcement of the lien claim, devices available to the owner and construction lender to protect against the lien, and the stop notice right.

General 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 broadly interpreted to ensure maximum protection for lien claimants.

Prevention of Unjust Enrichment

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 by the sheriff 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.

Owner May Have To Pay Twice

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 progress payments to the general contractor for electrical work, but the general contractor may have used the money for other purposes. Even though the owner has already paid for the electrical work, the electrical subcontractor can assert a mechanics lien on the owner's property to recover the sums not paid by the general contractor.

Procedural Safeguards

Much of the development of the mechanics lien law is an attempt to ensure protection for 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.

Prompt Payment Statutes

In recent years the Legislature has enacted prompt payment statutes. The statutes impose a statutory penalty on an owner or prime contractor who is dilatory in paying amounts due. The incentive to prompt payment may mitigate but does not eliminate the need for the mechanics 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 who 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 materials. A claimant cannot assert a mechanics 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 mechanics 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 mechanics lien includes contractors, subcontractors, suppliers, lessors of equipment, architects, engineers, land surveyors, builders, truckers, laborers, and any other person who furnishes labor or material used in a work of improvement. To be eligible to record a mechanics lien the claimant must: (1) contribute work or material to a work of improvement; (2) with the intention to improve specific property; (3) at the request of the owner, the owner's agent, or the owner's statutory agent. The prime contractor is in theory the owner's agent.

While the list of lien claimants is expansive, not every person who 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 lien rights, 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. A landscape contractor who furnishes and installs plants has a lien right, but one who simply maintains existing landscaping or buildings does not.

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

An architect, engineer, or surveyor who contributes to a work of improvement has a lien right. A right to assert a mechanics lien does not generally exist until there is a tangible work of improvement. California has a separate lien statute that allows an architect or engineer to recover for design services where no work of improvement has commenced.

Amount of Lien

The mechanics lien is for the reasonable value of the labor, services, or equipment or material furnished or for the price agreed upon, whichever is less. If the prime contractor has breached a subcontract and caused the subcontractor damages beyond the balance due, recovery of breach of contract damages may be included in the mechanics lien. Breach of contract damages include failure to pay for written change orders and extras. Whether impact type damages caused by acceleration, disruption, and delay are lienable is questionable.

Interest on the balance due under a contract can be secured by the lien. Attorneys fees, however, cannot be included in the amount of the lien.

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 mechanics lien attaches not only to the leasehold interest but also to the owner’s fee interest, unless the owner 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. The notice must be posted on the job site and recorded in the county recorder’s office within ten days after the date on which the owner first obtained knowledge of the commencement of a work of improvement. If the notice is

proper and properly posted, the owner's interest is not subject to the mechanics lien claim. The lien would attach only to the leasehold interest of the tenant who ordered the improvement. However, if the lease itself requires the tenant to install the improvement, the owner's interest is subject to the mechanics 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 physical, on-site time the work of improvement first commenced. 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.

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

Procedures for Enforcing Lien Claim

There are three steps to perfect a claim of lien:

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

Preliminary 20-Day Notice

The preliminary 20-day notice is required of all claimants except for an original contractor or a person performing actual labor for wages. The notice protects owners and lenders against a "secret lien." An owner or lender is given the identity of a potential lien claimant, so that the owner or lender may take the necessary measures to insure that a potential lien claimant is paid.

The 20-day preliminary notice must contain:

- A description of the work or material furnished and an estimate of the total cost.

- The claimant's name and address.
- The name of the person who ordered the work or materials (i.e., the claimant's customer).
- A description of the job site.
- A warning in statutory language that the property might be subject to a mechanics lien.
- The identity of any fringe benefit trust to which the claimant is obligated to make a contribution.

The preliminary notice protects the mechanics lien right beginning 20 days before the notice was mailed by certified mail. On a private work, failure to file 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. This is not the case in a public work — failure to file a 20-day preliminary notice within 20 days after first commencing work bars entirely a claimant's stop notice right.

An architect, engineer, or surveyor who performs work before commencement of construction must give the preliminary notice not later than 20 days after the work of improvement (rather than the person's own work) has commenced. Such a professional who performs work before the commencement of construction must keep a close enough watch on the job to know when construction actually commences, and then give the 20-day preliminary notice, to avoid losing the lien right.

The 20-day notice must be served on the owner, the construction lender (if any), and the prime 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 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. The recording procedure is seldom used for several reasons. First, failure of the county recorder to give notice does not excuse prompt recording of a mechanics lien. Second, recording fees may be high. Third, 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.

The name and address of the owner and construction lender are available from several sources. The prime contractor is required to make the name and

address of the owner available to any person seeking to serve a preliminary notice. A written prime contract must include space for the owner to enter the name and address of the construction lender. The building department must keep a record of the name and address of the construction lender when a building permit is issued. A trust deed recorded with the county recorder's office is required to bear the designation "Construction Trust Deed".

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

Notice and Claim of Lien

The mechanics lien is recorded in the county recorder's office in the county in which the property is located. The mechanics lien must contain the following information:

- A description of the work or material supplied.
- A description of the property sufficient for identification.
- The name of the person who hired the claimant.
- The name of the owner or reputed owner of the property.
- A statement of the balance due (willful overstatement of the amount due invalidates the lien).

The claim of lien must be signed and verified.

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 prime 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 by the owner plus a 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 on completion of work of each individual trade. The occasion for recording separate notices of completion arises, for example, when a subdivider or developer "subs everything out" to subcontractors, who then are considered original contractors since they are contracting directly with the owner of the project.

If the work of improvement consists of two or more separate residential units, each unit is a separate work of improvement, and the time for filing lien claims against each unit runs from the completion of each unit. "Separate residential unit" means one residential structure. A townhouse-type condominium is a separate residential structure. On the other hand, an apartment building type condominium project is considered a residential structure in itself, and the separate units are not separate residential structures. Therefore the mechanics lien period starts to run at the end of the construction of the multiple unit structure, and not at the end of construction of any particular unit in the structure. The owner may record a notice of completion on the completion of an individual building comprised of several condominium or apartment units, even if remaining buildings in the project are not complete.

The time to record a mechanics lien cannot be extended. A written agreement to extend the time to record a lien, even if recorded in the county recorder's office, is not enforceable.

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.

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

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 before expiration of the 90-day period. If a lien claimant files bankruptcy, the time to file suit to foreclose the lien is extended.

Venue

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 mechanics lien action to trial within two years gives the court discretion to dismiss the action.

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 mechanics lien right. Suit must be timely filed in the proper court. On the other hand, a claimant who files a mechanics lien foreclosure lawsuit could unintentionally waive its arbitration right. A claimant desiring to protect both its right to arbitration and its mechanics 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.

Lis Pendens

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.

Motion to Release Lien

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

Protection of Owner and Construction Lender

Lien Release

The law gives the owner and lender several ways to protect against a mechanics lien or stop notice. First, 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. The statute specifies four forms:

- Conditional Waiver and Release on Progress Payment
- Unconditional Waiver and Release on Progress Payment
- Conditional Waiver and Release on Final Payment
- Unconditional Waiver and Release on Final Payment

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

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 mechanics lien claim has been recorded before issuing final retention to the prime 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 an original contractor dealing directly with the owner, 60 days after notice of completion).

Private Work Payment Bond

An owner or developer can limit exposure to a mechanics lien claim by recording the original contract and a private work 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. The payment bond inures to the benefit of all potential mechanics lien claimants.

A private work 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 mechanics lien claim or gives the surety written notice of its claim on the bond within the time for recording a mechanics 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 mechanics lien claim from the title by recording a mechanics 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 the 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 mechanics 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 mechanics lien.

Stop Notice Right

A claimant who 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 prime 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.

Content and Procedural Requirements

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

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

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.

Time Limit

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

Stop Notice Bond

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.

Service and Enforcement

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 mechanics lien.

Distribution of Funds

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.

Release of Stop Notice

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.

Amount in Loan Account

The stop notice applies to amounts in the construction loan account at the time the stop notice is served. However, in computing the amount in the construction loan account, the court must disallow any withdrawal that was made from the account for payment of construction loan interest, title insurance fees, appraisal fees, and the like.

Context of Mechanics Lien Law

The mechanics lien law implements the policy to protect an artisan against unjust enrichment of a property owner who 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 who 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. See generally *California Mechanics' Liens and Related Statutory Remedies* §§ 1.19-1.29 (Cal. Cont. Ed. Bar, 3d ed. 2003).

But the mechanics lien is undoubtedly the most effectual of the remedies. It is quick, and the claimant need take no further action because as a practical matter the owner will settle rather than having the property encumbered by the lien. 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 remedy continues unabated.

General Approach

The Commission has recommended to the Legislature that a thorough review and revision of the mechanics lien law and related provisions, including parts of the Contractors' State License Law, should be undertaken in order to modernize, simplify, and clarify the law, making it more user friendly, efficient, and effective for all stakeholders. How can this be most effectively accomplished?

Commentators predictably have different views on the soundness of the existing statute and the scope and desirability of statutory reform. At the Commission's first meeting on mechanics lien issues, several speakers 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 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. We should not expect that any recompilation proposed by the Commission will be free of that process in the future.

Previous Commission Decision

This is not the first time the Commission has considered the general approach issue; we did it earlier in the project. At that time the Commission proposed an incremental approach to lien law reform:

Drafting Approach

The Commission has started the process of redrafting the mechanic's lien law. Depending on the breadth and depth of the revision process, this is likely to be an extended project. There is a strong argument that the mechanic's lien law is in such a poor condition that it would be better to start with a clean slate. However, the Commission has tentatively concluded that it would be better to start with the existing statute and revise it in place. The Commission is concerned that it would not be productive to become mired in a lengthy comprehensive revision of the mechanic's lien law that ultimately could not be enacted. A consensus on the need for reform is easier to build by a detailed review of the existing statute, than by throwing it out and starting with a blank slate or a model statute.

The Commission's past experience in revising major statutes demonstrates that stakeholders and other interested persons can profitably work together on an overall revision by taking the existing law apart on a section-by-section basis and putting it back together, omitting obsolete provisions, reconciling contradictory provisions, adding new clarifications, and making other useful reforms.

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.

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

Now that we have decided to reactivate this topic after a two year hiatus and with new Commission members, we should revisit this decision before launching into the project. The staff believes there are three realistic options available to the Commission — (1) recommend moderate improvements to the existing California statute, (2) recommend radical improvements to the existing California statute, (3) or recommend replacement of the existing California statute with the Uniform Act. The pros and cons of each approach are discussed below.

Moderate Revision of Existing Statute

Most Commission projects of this type start with an existing statute and seek to improve the law by simplifying and streamlining within the existing statutory framework. This approach offers a number of benefits. It makes revisions within a known structure, so that stakeholders are able 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.

The staff previously made a start on overhauling the existing statute using this approach. We presented to the Commission at the November 2001 meeting an extensive redraft of a major portion of the existing statute; the staff draft included a revision of the mechanics lien law other than stop notice and payment bond provisions. A copy of the draft, omitting Comments and staff notes, is attached as Exhibit pp. 1-25.

The draft is a moderate approach to revising the California statute, being "scaled" to the time available to wrap up the project during 2001. Even so, the Commission spent so much time considering just two of the 90 draft sections at the November 2001 meeting that the Commission felt the draft needed to be processed through a working group to see if a consensus could be achieved on many of the issues.

We could resurrect the existing staff draft, update it for changes in the law that have occurred over the past two years, and assemble a working group of stakeholders to review it. That would enable us to make most efficient use of staff resources previously devoted to the matter. On the other hand, the scope of that reform effort was consciously limited to the amount that could be accomplished within a limited timeframe. Now that the Commission has decided to reopen the

matter, the Commission could well conclude that as long as we must devote additional resources to this, a more ambitious reform effort might be in order.

Radical Revision of Existing Statute

A more radical simplification of the existing statute than that presented in the November 2001 staff draft is possible.

Jim Acret has offered us a rewrite of the California mechanics lien, stop notice, and payment bond statute, pared down to basic elements. A copy of his draft is attached as Exhibit pp. 27-33.

In support of this approach, Mr. Acret points out that the California statutes have evolved for more than 100 years and are unduly lengthy, ambiguous, technical, and hard to understand. He offers the following indictment of the existing statute that a radical revision would cure:

- 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 materialman.
- Design professionals liens are 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 periods dealing with the enforcement of stop notices are different from those governing the enforcement of mechanics liens.
- Stop notice claims include attorneys fees but mechanics lien claims do 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.
- Developers under certain circumstances have the right to record early notices of completion and thus take potential claimants by surprise.
- An extraordinarily complex and ambiguous statute imposes on certain project owners the obligation to furnish payment bonds.
- 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 preliminary 20-day notices to be recorded.
- A complex set of time limits and procedures governs recording of notices of nonresponsibility.
- The statutory release forms imposed by the legislature are complex and misleading.
- An unnecessary separate preliminary notice requirement applies to payment bond claims.
- 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.

An earlier version of the simplified draft provided by Mr. Acret was critiqued at length by Gordon Hunt and Sam Abdulaziz. Their comments suggest that some of the existing complexity in the law is the result of legislative policy decisions to protect various interests, and that simplification could cause the loss of those protections. On a more technical level, simplification could cause loss of existing interpretive language, resulting in litigation to resolve ambiguities that are well settled in existing law. Mr. Hunt's conclusion is that the simplified draft is "too limited and too short and doesn't cover all the issues."

Mr. Acret has responded that he agrees with some of their comments and believes that others would be easily resolved. He notes that no argument is needed to show that the California mechanics lien statute is long, complicated, and hard to understand. "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!"

Mr. Acret acknowledges that a simplified statute would be difficult to enact if stakeholders fight to preserve existing complexities and ambiguities that they consider to advance their interests. But if special interests are willing to engage in a balancing process, it would be politically possible to obtain a greatly simplified California mechanics lien law.

Uniform Construction Lien Act (1987)

Rather than working with the existing California statute and proposing either moderate or radical reforms, we could entertain the possibility of a clean sweep

and replacement of the California statute with a model act. The logical choice for this 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). With respect to the major issues resolved in the act:

(1) Who may secure a lien — the act allows a lien to a supplier of material if the supplier in some way indicates that it sells with the belief materials are to be used on the particular project.

(2) Priority over third parties — the act provides for recording notice of commencement to establish lien priority; if not recorded, priority dates from visible commencement of the improvement; there is no priority over a prior mortgage.

(3) Double payment issue — the act offers two alternatives. One alternative would protect an owner who makes payment to the prime contractor without notice of a lien claim. The other alternative would follow the California pattern of allowing recovery by a lien claimant who gives the owner a 20-day notice.

The Uniform Act also includes provisions that create a trust in certain funds of owners and contractors, of which a mechanics lien claimant is a beneficiary.

The experience in Nebraska with this statute 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.” Prefatory Note, Uniform Construction Lien Act (1987). 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.

Staff Analysis

The staff sees no real benefit from adoption of a model act such as the Uniform Act to govern this area. 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 would be no real impetus to uniformity among the states by adoption of the act.

A superior approach, in the staff's opinion, is to work with the existing California statute. Our goals can be either more ambitious, as in the Acret proposal, or less ambitious, as in the staff draft.

Is the public better served by a simple and understandable statute that requires litigation to resolve details, or by a complex statute that requires advice of a lawyer to interpret? The staff would like to think that there is a golden mean to be found.

A practical consideration is the politics at work in this area. Given the many contesting interests, more ambitious reform might not be enactable. True, the Judiciary Committee has asked us for "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." This seems to imply that the committee would appreciate a bigger picture approach.

But our experience in the past is that the Commission is most helpful to the Legislature if it recommends practical reforms of the law that are enactable. A Commission recommendation that is not enactable, no matter how theoretically sound, is not much use to anyone. A more moderate simplification and logical restructuring of the statute could lay the groundwork for rational future development of the law as perhaps envisioned by the Judiciary Committee.

Realistically, a statute that does not continue existing protections for a group that has gotten those protections incorporated into the law — whether it is the building industry, the lending industry, labor, materials suppliers, or the like — is not likely to fare well in the Legislature. As Mr. Acret suggests, to achieve a radical simplification it would be necessary to satisfy stakeholders that on balance their interests are adequately protected under the new regime.

The staff is also somewhat skeptical about how long a radical simplification of the law would endure. The past history of the mechanics lien law suggests that interest groups will continue to push for changes that benefit them in the competition for scarce funds when a job goes bad.

To the staff, all signs point toward the more moderate approach to simplification of the existing statute. This does not mean we have to be overly cautious and limit ourselves to a cosmetic overhaul. We could strive to achieve the simplicity of the Acret draft. But it may be better to approach that objective through more moderate revision of the existing statute, and bring the interest groups along with us on the journey.

The staff would pick up where we left off two years ago. We would take the staff draft previously prepared. We would update it for changes in the law over the past few years. We would complete incomplete areas in the draft (stop notice and payment bond). We would take a closer look at matters identified as in greater need of reform. We would assemble a working group representing affected interests, and try to find areas of consensus in simplification of the law. When we have completed this process, we would present the Commission a revised draft highlighting policy issues for Commission resolution. From that point on we would treat this project as any other Commission project, developing the draft into a tentative recommendation that is circulated for comment before revision and final submission to the Legislature.

The staff hesitates to predict how long this process would take. The key factor is staff resources available for the work. Right now resources are limited. However, the Commission has decided to give this project a priority, so we would give it a preference to the best of our ability.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

MECHANICS LIEN STATUTE REVISION

STAFF DRAFT (NOVEMBER 7, 2001)

TITLE 15. WORKS OF IMPROVEMENT

CHAPTER 1. DEFINITIONS AND GENERAL PROVISIONS

Article 1. Definitions

§ 3082. Application of definitions

3082. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this title.

§ 3083. Claim of lien

3083. "Claim of lien" means a claim satisfying the requirements of Section 3149.

§ 3084. Claimant

3084. "Claimant" means a person authorized to use the mechanic's lien, stop notice, and payment bond remedies provided in this title.

§ 3084.5. Completion

3084.5. (a) In the case of a private work of improvement, "completion" means any of the following:

- (1) Actual completion of the work of improvement.
- (2) Occupation or use of a work of improvement by the owner or the owner's agent, accompanied by cessation of labor on the work of improvement.
- (3) Acceptance of the work of improvement by the owner or the owner's agent,
- (4) Cessation of labor on a work of improvement for a continuous period of 60 days, or for a continuous period of 30 days or more if the owner files for record a notice of cessation.

(b) If the work of improvement is [subject to acceptance by a public entity], the completion of the work of improvement shall be deemed to be the date of acceptance; provided, however, that, except as to contracts awarded under the State Contract Act, Chapter 3 (commencing with Section 14250) of Part 5 of

Division 3 of, Title 2 of the Government Code, a cessation of labor on any public work for a continuous period of 30 days is a completion of the public work.

§ 3085. Construction lender

3085. “Construction lender” means any of the following:

(a) A mortgagee or beneficiary under a deed of trust lending funds [with which the cost of the work of improvement is wholly or partially to be defrayed] [to pay construction costs].

(b) An assignee or successor in interest of a mortgagee or beneficiary described in subdivision (a).

(c) An escrow holder or other person holding funds furnished or to be furnished [by the owner or construction lender, or any other person], as a fund from which to pay [construction costs].

§ 3086. Contract

3086. “Contract” means an agreement between an owner and a prime contractor that provides for all or part of a work of improvement.

§ 3087. Laborer

3087. (a) “Laborer” means any person who, acting as an employee, performs labor on or bestows skill or other necessary services on any work of improvement.

(b) “Laborer” also includes any person [or entity], including an express trust fund described in Section 3142, to whom a portion of the compensation of a laborer as defined in subdivision (a) is paid by agreement with the laborer or the laborer’s collective bargaining agent. To the extent that a person [or entity] described in this subdivision 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, the person [or entity] has standing to enforce rights under this title to the same extent as the laborer. This subdivision is intended to give effect to the long-standing public policy of this state to protect the entire compensation of laborers on works of improvement, regardless of the form in which the compensation is to be paid.

§ 3088. Material supplier

3088. “Material supplier” means a person who furnishes materials or supplies to be used or consumed in a work of improvement.

§ 3089. Mechanic’s lien

3089. “Mechanic’s lien” means the lien provided by this title.

§ 3090. Notice of cessation

3090. “Notice of cessation” means a notice satisfying the requirements of Section ____.

§ 3091. Notice of completion

3091. “Notice of completion” means a notice satisfying the requirements of Section ____.

§ 3092. Owner

3092. “Owner” means the person who owns the real property that is the subject of a work of improvement.

§ 3093. Payment bond

3093. “Payment bond” means a bond for the payment of claimants under Chapter 5 (commencing with Section 3231).

§ 3094. Preliminary 20-day notice

3094. (a) “Preliminary 20-day notice” means a written notice from a claimant that is given prior to recording a mechanic’s lien, prior to [filing] a stop notice, or prior to asserting a claim against a payment bond.

(b) If a preliminary 20-day notice relates to a private work of improvement, it may be denominated as a “preliminary 20-day notice (private work).” If a preliminary 20-day notice relates to a public work, it may be denominated as a “preliminary 20-day notice (public work).”

§ 3095. Prime contractor

3095. “Prime contractor” means a contractor who has a direct contractual relationship with the owner, regardless of whether there are any subcontractors on the work of improvement.

§ 3096. Private work

3096. “Private work” means a work of improvement that is not a public work.

§ 3097. Public entity

3097. “Public entity” means the state, Regents of the University of California, county, city, district, public authority, public agency, or other political subdivision or public corporation in this state.

§ 3098. Public work

3098. “Public work” means a work of improvement contracted for by a public entity.

§ 3099. Site

3099. “Site” means the real property on which the work of improvement is being constructed or performed.

§ 3100. Site improvement

3100. “Site improvement” means the following activities relating to a site:

- (a) Demolition or removal of improvements, trees, or other vegetation.
- (b) Drilling test holes.
- (c) Grading, filling, or otherwise improving the site or a street, highway, or sidewalk in front of or adjoining the site.
- (d) Construction or installation of sewers or other public utilities.
- (e) Construction of areas, vaults, cellars, or rooms under sidewalks.
- (f) Making any other improvements.

See also Sections 3099 (“site” defined), 3103 (“work of improvement” defined).

§ 3101. Stop notice

3101. “Stop notice” means a written notice that satisfies the requirements of Chapter 3 (commencing with Section 3181) or Chapter 4 (commencing with Section 3201). Except as otherwise provided, references to stop notices include both bonded and unbonded stop notices.

§ 3102. Subcontractor

3102. “Subcontractor” means a contractor who does not have a direct contractual relationship with the owner.

§ 3103. Work of improvement

3103. (a) “Work of improvement” includes, but is not limited to, the following:

- (1) Construction, alteration, or repair, 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 a lot or tract of land for landscaping purposes.
- (3) Filling, leveling, or grading of a lot or tract of land.
- (4) Demolition and removal of buildings.

(b) Except as otherwise provided in this title, “work of improvement” means the entire structure or scheme of improvement as a whole.

Article 2. Relation to Other Law

§ 3104. Rules of practice

3104. (a) Except as otherwise provided in this title, the provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure constitute the rules of practice in proceedings under this title.

(b) The provisions of Part 2 (commencing with Section 307) of the Code of Civil Procedure relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this title or with rules adopted by the Judicial Council, apply to proceedings under this title.

§ 3105. Oil and Gas Lien Act

3105. This title does not apply to transactions 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.

§ 3106. Bonds for street work under Public Contract Code

3106. This title does not apply transactions governed by Sections 20457 to 20464, inclusive, of the Public Contract Code.

Article 3. Form of Contracts and Other Papers

§ 3107. Contract forms

3107. (a) A written contract entered into between an owner and a prime contractor shall provide a space for the owner to enter his or her name and residence address, and place of business if any.

(b) A written contract entered into between an owner and a prime contractor, except 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, shall provide a space for the owner to enter the name and address of the construction lender.

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

§ 3108. Construction trust deeds

3108. (a) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for the purpose of a work of improvement on real property, 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 real property described in the instrument.

(3) A legal description of the real property securing 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 anyone of a duty to serve a preliminary 20-day notice.

§ 3109. Building permits

3109. (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 construction lender’s name, branch, designation if any, and address, and

shall keep the information on file and open for public inspection during the regular business hours of the public entity.

(b) If there is no known construction lender, that fact shall be noted in the designated space.

(c) A failure to indicate the name and address of the construction lender on a building permit application does not relieve any person from the obligation to give to the construction lender the notice required by Article 4 (commencing with Section 3111).

Article 4. Preliminary Notices for Private Works

§ 3111. Preliminary notice prerequisite for private works

3111. (a) As a [necessary] prerequisite to the validity of a claim of lien, stop notice, or payment bond claim, a claimant furnishing labor, services, equipment, or materials for a private work of improvement shall serve a preliminary 20-day notice (private work) on the owner [or reputed owner] and the prime contractor [or reputed contractor], and on the construction lender [or reputed construction lender] if any, as provided in this article.

(b) Subdivision (a) does not apply to the following:

(1) Persons under direct contract with the owner.

(2) Laborers.

(3) Persons [or entities] to whom a portion of laborers' compensation is to be paid as described in subdivision (b) of Section 3087.

§ 3112. Contents of preliminary 20-day notice (private work)

3112. (a) The preliminary 20-day notice (private work) shall contain the following information:

(1) A general description of the labor, services, equipment, or materials furnished, or to be furnished, and an estimate of their total price.

(2) The name and address of the person furnishing the labor, services, equipment, or materials.

(3) The name of the person who contracted for the labor, services, equipment, or materials.

(4) [A description of the [jobsite] sufficient for identification.] [street address?]

(b) The preliminary 20-day notice (private work) shall also contain the following statement in boldface type:

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanic's lien may be placed on your property where the construction project is taking place. Foreclosure of the mechanic's lien may lead to the 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

consequence by (1) requiring your contractor to furnish a signed release by the person giving you this notice before you pay your contractor, or (2) any other method that is appropriate under the circumstances.

(c) If the preliminary 20-day notice (private work) is given by a subcontractor who has failed to pay all compensation due to his or her laborers on the [job], the notice shall also contain the identity and address of any laborer [and any express trust fund] to whom [employer] payments are due.

(d) If an invoice for materials [or certified payroll] contains the information required by this section, a copy of the invoice, [transmitted] in the manner prescribed by this section is sufficient notice.

§ 3113. Time and scope of preliminary 20-day notice (private work)

3113. (a) The preliminary 20-day notice (private work) shall be served not later than 20 days after the claimant has first furnished labor, services, equipment, or materials to the [jobsite].

(b) Notwithstanding subdivision (a), if labor, services, equipment, or materials have been furnished to a [jobsite] by a claimant who did not give a preliminary 20-day notice (private work), the claimant may give a preliminary notice at a later time, but the claimant may not enforce claims for labor, services, equipment, or material furnished earlier than 20 days before service of the preliminary notice.

(c) A certificated architect, registered engineer, or licensed land surveyor who has furnished services for the design of the work of improvement and who gives a preliminary 20-day notice (private work) not later than 20 days after the work of improvement has commenced [shall be deemed to have complied] with subdivision (a) with respect to architectural, engineering, or surveying services furnished or to be furnished.

§ 3114. Service of preliminary 20-day notice (private work)

3114. (a) The preliminary 20-day notice (private work) shall be served as follows:

(1) If the person to be served resides in this state, by delivering the notice personally, or by leaving it at his or her residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business or at the address shown by the building permit on file with the authority issuing a building permit for the work of improvement, or at an address recorded pursuant to Section 3108.

(2) If the person to be served does not reside in this state, by any method described in paragraph (1). If the person cannot be served by any of these methods, then notice may be served by first-class certified or registered mail, addressed to the construction lender or to the prime contractor.

(3) If service is made by first-class certified or registered mail, service is complete at the time of the deposit of the registered or certified mail.

(b) Proof that the preliminary notice was served in accordance with subdivision (a) shall be made as follows:

(1) If served by mail, by the proof of service affidavit described in paragraph (3) of this subdivision accompanied either by the return receipt of certified or registered mail, or by a photocopy of the record of delivery and receipt maintained by the post office, showing the date of delivery and to whom delivered, or, in the event of nondelivery, by the returned envelope itself.

(2) If served by personally delivering the notice to the person to be served, or by leaving it at his or her residence or place of business with some person in charge, by the proof of service affidavit described in paragraph (3).

(3) A “proof of service affidavit” is an affidavit of the person making the service, showing the time, place, and manner of service, and facts showing that service was made in accordance with this article. The affidavit shall show the name and address of the person on whom a copy of the preliminary notice was served, and, if appropriate, the title or capacity in which the person was served.

§ 3115. Coverage of preliminary 20-day notice (private work)

3115. (a) Except as provided in subdivision (b), a preliminary 20-day notice (private work) served under this article covers all claims for labor, services, equipment, or materials furnished or to be furnished that the claimant may make against the person served with respect to the work of improvement described in the notice.

(b) If labor, services, equipment, or materials are furnished under contracts with more than one subcontractor, a preliminary notice shall be served as provided in this article with respect to labor, services, equipment, or materials furnished to each subcontractor.

(c) If a preliminary notice contains a general description of the labor, services, equipment, or materials furnished before the date of notice, the preliminary notice is not defective because, after that date, the person giving notice furnishes labor, services, equipment, or materials not within the scope of the general description.

§ 3116. Prime contractor’s duty to provide information

3116. The prime contractor shall make available to any person seeking to serve a preliminary 20-day notice (private work) the following information as shown on the contract with the owner:

(a) The name and residence address of the owner.

(b) The name and address of the construction lender [or lenders].

§ 3117. Owner's duty to provide information

3117 If a construction loan is obtained after commencement of construction, the owner shall provide the name and address of the construction lender or lenders to each person who has given the owner the notice specified in subdivision (c).

§ 3118. Disciplinary action

3118. (a) If a subcontractor is licensed under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and the contract price to be paid to the subcontractor on a work of improvement exceeds [four hundred dollars (\$400)], the subcontractor's failure to give a preliminary 20-day notice (private work) under this article constitutes grounds for disciplinary action under the Contractors' State License Law.

(b) If a preliminary 20-day notice (private work) is required to contain the information described in subdivision (c) of Section 3112, the failure to give a preliminary notice including this information that results in the filing of a mechanic's lien, service of a stop notice, or claim on a payment bond by the [express trust fund] to which payments are due constitutes grounds for disciplinary action under the Contractors' State License Law against the subcontractor if the amount due the [express trust fund] is not paid.

§ 3119. Filing preliminary 20-day notice (private work) with county recorder

3119. (a) A person who has served a preliminary 20-day notice (private work) under this article may file the preliminary notice with the county recorder in the county in which any part of the property is located.

(b) A preliminary 20-day notice filed pursuant to this section shall contain the information required by paragraphs (2) to (4), inclusive, of subdivision (a) of Section 3112.

(c) Upon acceptance for recording of a notice of completion or notice of cessation, the county recorder shall mail to persons who have filed a preliminary 20-day notice under this section, notification that a notice of completion or notice of cessation has been recorded on the property, and shall affix the date that the notice of completion or notice of cessation was recorded.

(d) The failure of the county recorder to mail the notification to a person who filed a preliminary 20-day notice under this section, or the failure of a person to receive the notification or to receive complete notification, does not affect the period within which a claim of lien is required to be recorded. However, the county recorder shall make a good faith effort to mail notification to those persons who have filed the preliminary 20-day notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation.

(e) The county recorder may cause to be destroyed all documents filed pursuant to this section, two years after the date of filing.

(f) The preliminary notice filed under this section is for the limited purpose of facilitating the mailing of notice by the county recorder of recorded notices of completion and notices of cessation. The filed preliminary notice is not a recordable document and shall not be entered into the official records of the county which by law impart constructive notice. [Notwithstanding any other provision of law], the index maintained by the recorder of filed preliminary notices shall be separate and distinct from indexes maintained by the county recorder of official records of the county which by law impart constructive notice. The filing of a preliminary notice with the county recorder does not give rise to (1) actual or constructive notice with respect to any party of the existence or contents of the preliminary notice or (2) a duty of inquiry on the part of a party as to the existence or contents of the filed preliminary notice.

§ 3120. Waiver void

3120. An agreement [made or entered into] by an owner to waive the rights or privileges conferred on the owner by this article is void [and of no effect].

§ 3120.5. Transitional provisions

3120.5. (a) The change made to the statement described in Section 3112 by the amendment of former Section 3097 by Chapter 974 of the Statutes of 1994 has no effect on the validity of a notice that otherwise meets the requirements of this article. The failure to provide, pursuant to the amendment of former Section 3097 by Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted does not affect the validity of a preliminary notice provided pursuant to this article.

(b) The inclusion of the language added to paragraph (5) of subdivision (c) of former Section 3097 by Chapter 795 of the Statutes of 1999 does not affect the validity of a preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments of former Section 3097 enacted at the 2000 portion of the 1999-2000 Regular Session, that otherwise meets the requirements of Section 3112.

(c) A preliminary notice given on or after January 1, 2000, and prior to the operative date of the amendments to former Section 3097 enacted at the 2000 portion of the 1999-2000 Regular Session, is not invalid because of the failure to include the language added to paragraph (5) of subdivision (c) of former Section 3097 by Chapter 795 of the Statutes of 1999, if the notice otherwise complies with Section 3112.

(d) The failure to provide an affidavit form or notice of rights, or both, pursuant to the requirements of Chapter 795 of the Statutes of 1999, does not affect the validity of a preliminary notice pursuant to this article.

Article 5. Preliminary Notices for Public Works

§ 3121. Preliminary notice prerequisite for public works

3121. (a) As a [necessary] prerequisite to the validity of a stop notice or payment bond claim, a claimant furnishing labor, services, equipment, or materials for a public work shall serve a preliminary 20-day notice (public work) on the public entity and the prime contractor as provided in this article.

(b) Subdivision (a) does not apply to any of the following :

(1) Persons under direct contract with the public entity.

(2) Laborers.

(3) Persons [or entities] to whom a portion of laborers' compensation is to be paid as described in subdivision (b) of Section 3087.

§ 3122. Contents of preliminary 20-day notice (public work)

3122. The preliminary 20-day notice (public work) shall contain the information required in a preliminary 20-day notice (private work) by subdivision (a) of Section 3112.

§ 3123. Time and scope of preliminary 20-day notice (public work)

3123. (a) The preliminary 20-day notice (public work) shall be served not later than 20 days after the claimant has first furnished labor, services, equipment, or materials to the [jobsite].

(b) Notwithstanding subdivision (a), if labor, services, equipment, or materials have been furnished to a jobsite by a claimant who did not give a preliminary 20-day notice (public work), the claimant may give a preliminary notice at a later time, but the claimant may not enforce claims for labor, services, equipment, or material furnished earlier than 20 days before service of the preliminary notice.

§ 3124. Service of preliminary 20-day notice (public work)

3124. (a) The preliminary 20-day notice (public work) shall be served and proof of service shall be made as provided in Section 3114.

(b) In case of public works constructed by the Department of Public Works or the Department of General Services of the state, the preliminary 20-day notice (public work) shall be addressed to the office of the disbursing officer of the department constructing the public work, or by personal service on the officer.

§ 3125. Disciplinary action

3125. If a subcontractor is licensed under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and the contract price to be paid to the subcontractor on a work of improvement exceeds [four hundred dollars (\$400)], the subcontractor's failure to give a preliminary 20-day notice (public work) under this article constitutes grounds for disciplinary action under the Contractors' State License Law.

§ 3126. Transitional provision

3126. The failure to provide, pursuant to the amendment of former Section 3098 by Chapter 974 of the Statutes of 1994, a written preliminary notice to a subcontractor with whom the claimant has contracted does not affect the validity of a preliminary notice provided pursuant to this article.

Article 6. Other Notices

§ 3127. Notice of cessation [not yet revised]

3127. “Notice of cessation” means a written notice, signed and verified by the owner or his agent, containing all of the following:

- (a) The date on or about when the cessation of labor commenced.
- (b) A statement that such cessation has continued until the recording of the notice of cessation.
- (c) The name and address of the owner.
- (d) The nature of the interest or estate of the owner.
- (e) A description of the site sufficient for identification, containing the street address of the site, if any. If a sufficient legal description of the site is given, the validity of the notice shall not, however, be affected by the fact that the street address is erroneous or is omitted.
- (f) The name of the original contractor, if any, for the work of improvement as a whole.
- (g) For the purpose of this section, “owner” means the owner who causes a building, improvement, or structure, to be constructed, altered, or repaired (or his successor in interest at the date of a notice of cessation from labor is filed for record) whether the interest or estate of such owner be in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee. Where such interest or estate is held by two or more persons as joint tenants or tenants in common, any one or more of the cotenants may be deemed to be the “owner” within the meaning of this section. Any notice of cessation signed by less than all of such cotenants shall recite the names and addresses of all such cotenants.

The notice of cessation shall be recorded in the office of the county recorder of the county in which the site is located and shall be effective only if there has been a continuous cessation of labor for at least 30 days prior to such recording.

§ 3128. Notice of completion [not yet revised]

3128. “Notice of completion” means a written notice, signed and verified by the owner or his agent, containing all of the following:

- (a) The date of completion (other than a cessation of labor). The recital of an erroneous date of completion shall not, however, affect the validity of the notice if the true date of completion is within 10 days preceding the date of recording of such notice.
- (b) The name and address of the owner.

(c) The nature of the interest or estate of the owner.

(d) A description of the site sufficient for identification, containing the street address of the site, if any. If a sufficient legal description of the site is given, the validity of the notice shall not, however, be affected by the fact that the street address recited is erroneous or that such street address is omitted.

(e) The name of the original contractor, if any, or if the notice is given only of completion of a contract for a particular portion of such work of improvement, as provided in Section [3117], then the name of the original contractor under such contract, and a general statement of the kind of work done or materials furnished pursuant to such contract.

The notice of completion shall be recorded in the office of the county recorder of the county in which the site is located, within 10 days after such completion. A notice of completion in otherwise proper form, verified and containing the information required by this section shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment.

If there is more than one owner, any notice of completion signed by less than all of such co-owners shall recite the names and addresses of all of such co-owners; and provided further, that any notice of completion signed by a successor in interest shall recite the names and addresses of his transferor or transferors.

For the purpose of this section, owner is defined as set forth in subdivision (g) of Section [3092].

Article 7. General Rights and Duties of Parties

§ 3131. Exclusive right of laborers and suppliers to funds

3131. The right of a claimant furnishing labor, services, equipment, or materials for a work of improvement with respect to a fund for payment of [construction costs], are governed exclusively by Chapters 3 (commencing with Section ____) and 4 (commencing with Section ____). A person may not assert a legal or equitable right with respect to a fund for payment of [construction costs], other than a right created by direct written contract between the person and the person holding the fund, except as provided in those chapters.

§ 3132. Acts of owner in good faith

3132. An act done by an owner in good faith and in compliance with this title may not be held to be a prevention of the performance by a prime contractor of the contract between the owner and prime contractor, or to exonerate the sureties on a payment bond or performance bond.

§ 3133. Owner's duty to give notice of changes

3133. The owner shall notify the prime contractor and construction lenders of any changes in the contract if the change has the effect of increasing the price stated in the contract by 5 percent or more.

§ 3134. County recorder duties and fees

3134 (a) The county recorder shall number, index, and preserve all contracts, plans, bonds, and other papers presented for filing pursuant to this title, and shall number, index, and transcribe into the official records in the same manner as a conveyance of land, all notices, claims of lien, payment bonds, and other papers recorded pursuant to this title.

(b) The county recorder of the county in which a construction deed of trust under Section ____ is recorded shall indicate in the general index of the official records of the county that the instrument secures a construction loan.

(c) A claim of lien in otherwise proper form, verified and containing the information required by Section 3154, shall be accepted by the recorder for recording and shall be deemed duly recorded without acknowledgment.

(d) The county recorder is entitled to 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.

Article 8. Prompt Payment

§ 3137. Notice of delinquent payment

3137. (a) A prime contractor or subcontractor employing laborers, as defined in subdivision (a) of Section 3087, who has failed to pay them their full compensation when it became due, including any employer payments described in Section 1773.1 of the Labor Code and regulations adopted thereunder, shall, without regard to whether the work was performed on a public or private work, cause to be given to those laborers, their bargaining representatives, if any, and to the construction lender, if any, [or to the reputed construction lender, if any,] not later than the date the compensation became delinquent, a written notice containing all of the following:

- (1) The name of the owner and the contractor.
- (2) A description of the [jobsite] sufficient for identification.
- (3) The identity and address of any express trust fund described in Section 3142 to which employer payments are due.
- (4) The total number of straight time and overtime hours on each job.
- (5) The amount then past due and owing.

(b) Failure to give the notice under 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.

§ 3138. Prime contractors contracting with public utilities

3138. (a) A prime contractor that has contracted to do business with a public utility shall pay subcontractors within 15 working days of receipt of each progress payment from the public utility, [unless otherwise agreed in writing by the

parties,] the respective amounts allowed the prime contractor on account of the work performed by the subcontractors, [to the extent of each of the subcontractors' interest in the work]. If there is a good faith dispute over all or part of the amount due on a progress payment from a prime contractor to a subcontractor, the prime contractor may withhold no more than 150 percent of the disputed amount.

(b) A prime contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the disputed amount due per month for every month that payment is not made. In an action for the collection of amounts wrongfully withheld, the prevailing party is entitled to costs and attorney's fees.

(c) This section does not limit or impair any contractual, administrative, or judicial remedies otherwise available to a prime contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor or involving deficient performance or nonperformance by the subcontractor.

CHAPTER 2. MECHANIC'S LIENS

Article 1. Right to Mechanic's Lien

§ 3141. Persons entitled to mechanic's lien

3141. The following persons who furnish labor, services, equipment, or materials pursuant to a contract for a private work of improvement have mechanic's lien rights under this chapter:

- (a) Prime contractors.
- (b) Subcontractors.
- (c) Material suppliers.
- (d) Equipment lessors.
- (e) Laborers.
- (f) Architects.
- (g) Registered engineers
- (h) Licensed land surveyors.

§ 3142. Lien rights of laborers' trust fund

3142. An express trust fund to which a portion of a laborer's total compensation is to be paid pursuant to a 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 regulations thereunder, may assert the same rights and claims as laborers, to the extent of the compensation agreed to be paid to that express trust fund for labor on that improvement only.

§ 3143. Site improvement lien [not yet revised]

3143. A claimant who, at the [instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise) of any lot or tract of land], has made a site improvement has a lien on the lot or tract of land for work done or materials furnished.

§ 3144. Persons deemed owner's agents

3144 For the purposes of this chapter, a prime contractor, subcontractor, architect, [or other person] having charge of all or part of a work of improvement shall be deemed to be an agent of the owner.

Article 2. Amount of Mechanic's Lien

§ 3145. Amount of mechanic's lien

3145. (a) The amount of a mechanic's lien is one of the following, whichever is the lesser amount:

(1) The reasonable value of the labor, services, equipment, or materials furnished by the claimant.

(2) The price agreed on by the claimant and the person with whom the claimant contracted.

(b) Except as provided in Article ____ (commencing with Section ____) [50% *payment bond*] of Chapter ____, the amount of a mechanic's lien is not limited by the price stated in the contract between the owner and the prime contractor.

(c) This section does not preclude a claim for labor, services, equipment, or materials furnished based on a written modification of the contract or as a result of the rescission, abandonment, or breach of the contract. However, in the event of rescission, abandonment, or breach of the contract, the amount of the lien may not exceed the reasonable value of the labor, services, equipment, and materials furnished by the claimant.

§ 3146. Limits on lien where claimant has notice of contract

3146. (a) If the claimant was employed by a prime contractor or subcontractor, the mechanic's lien does not extend to labor, services, equipment, or materials that were not included in the contract between the owner and the prime contractor or a modification of the contract, if the claimant had actual knowledge or constructive notice of the contract or modification before furnishing labor, service, equipment, or materials.

(b) The filing of a contract for a work of improvement or of a modification of the contract with the county recorder of the county where the property is situated, before the commencement of work, is equivalent to giving actual notice of its provisions to persons furnishing labor, services, equipment, or materials.

Article 3. Property Subject to Mechanic's Lien

§ 3147. Property reached by mechanic's lien

3147. (a) A mechanic's lien attaches to both of the following:

(1) The work of improvement.

(2) The land on which the work of improvement is situated, together with a convenient space about the land or as much space as is required for the convenient use and occupation of the land.

(b) Except as provided in Section 3148, if the person who contracted for the work of improvement owned less than a fee simple estate in the land when labor, services, equipment, or materials were first furnished, only the person's interest in the land is subject to the lien.

§ 3148. Notice of nonresponsibility

3148. Unless a notice of nonresponsibility is posted and recorded pursuant to this section, if labor, services, equipment, or materials are furnished with the knowledge of the owner, or other person having or claiming an estate in the real property, the owner or other person is deemed to have been constructed, performed, or furnished at the instance of the owner or other person and the interest shall be subject to a lien recorded under this chapter.

(b) The owner, or other person having or claiming an estate in the real property that is the subject of the work of improvement who has not [caused] the work of improvement [to be performed], may execute a written notice of nonresponsibility containing all of the following:

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

(2) The name and nature of the title or interest of the person giving the notice.

(3) The name of the purchaser under contract, if any, or lessee, if known.

(4) A statement that the person giving the notice is not responsible for claims arising from the work of improvement.

(c) The notice of nonresponsibility shall be signed and verified by the owner, or other person owning or claiming an interest in the [site], or the owner or other person's agent.

(d) Within 10 days after obtaining knowledge of the work of improvement, the notice of nonresponsibility shall be posted in a conspicuous place on the site and recorded in the office of the county recorder of the county in which all or part of the site is located.

§ 3149. One claim against multiple improvements [needs revision]

3149. (a) Where one claim of lien is filed against two or more buildings or other works of improvement owned or reputed to be owned by the same person or on which the claimant has been employed by the same person to do his work or furnish his materials, whether such works of improvement are owned by one or more owners, the person filing such claim must at the same time designate the

amount due to him on each of such works of improvement; otherwise the lien of such claim is postponed to other liens. If such claimant has been employed to furnish labor or materials under a contract providing for a lump sum to be paid to him for his work or materials on such works of improvement as a whole, and such contract does not segregate the amount due for the work done and materials furnished on such works of improvement separately, then such claimant, for the purposes of this section, may estimate an equitable distribution of the sum due him over all of such works of improvement based upon the proportionate amount of work done or materials furnished upon such respective works of improvement. The lien of such claimant does not extend beyond the amount designated as against other creditors having liens, by judgment, mortgage, or otherwise, upon either such works of improvement or upon the land upon which the same are situated.

(b) For all purposes of this section, if there is a single structure on more than one parcel of land owned by one or more different owners, it shall not be the duty of the claimant to segregate the proportion of material or labor entering into the structure on any one of such parcels; but upon the trial thereof the court may, when it deems it equitable so to do, distribute the lien equitably as between the several parcels involved.

§ 3150. Claims against separate residential units

3150. (a) If a work of improvement consists of the construction of two or more separate residential units, each unit is considered to be a separate work of improvement, and the time for filing a claims of lien against each unit commences to run at the completion of each unit. A separate residential unit means one residential structure, including a residential structure containing multiple condominium units, together with any common area, or any garage or other improvements appurtenant thereto. The [provisions of this qualification] do not impair rights conferred under the provisions of Section 3143 and 3149.

(b) Materials delivered [to or upon any portion of the entire work of improvement] or furnished to be used in the entire work of improvement and ultimately used or consumed in one of the separate residential units shall, for all purposes of this title, be deemed to have been furnished to be used or consumed in the separate residential unit in which they are actually used or consumed, but if the claimant is unable to segregate the amounts used or consumed in the separate units, the claimant is entitled to all the benefits of Section 3149.

(c) For purposes of this section and notwithstanding any other provision of this chapter, the completion of a residential structure containing multiple condominium units, together with any common area, or a garage or other improvements appurtenant thereto, and only such residential structure, shall not operate in any manner to impair the rights of a claimant entitled to a mechanic's lien, if the claim of lien is recorded in the manner prescribed by this chapter within 120 days after the completion of the residential structure.

Article 4. Conditions to Enforcing Mechanic's Lien

§ 3151. Preliminary notice required

3151. A claimant may enforce a mechanic's lien only if a preliminary 20-day notice (private work), if required, has been served under Article 4 (commencing with Section 3111) of Chapter 1, and proof of service has been made under Section 3114.

§ 3152. Recordation of claim of lien by prime contractor

3152. In order to enforce a mechanic's lien, a prime contractor shall record a claim of lien after completion of the contract and before the expiration of either of the following periods:

(a) Where a notice of completion or notice of cessation is recorded, 60 days after recordation.

(b) Where a notice of completion or notice of cessation is not recorded, 90 days after completion of the work of improvement.

§ 3153. Recordation of claim by claimants other than prime contractor

3153. In order to enforce a mechanic's lien, a claimant other than a prime contractor shall record a claim of lien after ceasing to furnish labor, services, equipment, or materials, and before the expiration of either of the following periods:

(a) Where a notice of completion or notice of cessation is recorded, 30 days after recordation.

(b) Where a notice of completion or notice of cessation is not recorded, 90 days after completion of the work of improvement

§ 3154. Claim of lien

3154. A claim of lien shall be in writing, signed and verified by the claimant or by the claimant's agent, and shall contain the following information:

(a) The name of the owner [or reputed owner], if known.

(b) The name of the person who employed the claimant or to whom the claimant furnished the labor, services, equipment, or materials.

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

(d) A general statement of the kind of labor, services, equipment, or materials furnished by the claimant.

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

§ 3155. Forfeiture of lien for improper claim

3155. A claimant who willfully includes a claim for labor, services, equipment, or materials not furnished for the property described in the claim of lien forfeits the right to a mechanic's lien.

§ 3156. Recordation of notice of completion

3156. (a) Where a work of improvement is not made pursuant to one [original] contract, but is made in whole or in part pursuant to two or more [original] contracts, each covering a portion of the work of improvement, the owner may, within 10 days after completion of a contract for a portion of the work of improvement, record a notice of completion.

(b) Notwithstanding the Sections 3152 and 3153, where a notice of completion is recorded under subdivision (a), the prime contractor under the contract covered by the notice shall, within 60 days after the notice is recorded, and any claimant under the contract other than the prime contractor shall, within 30 days after the recording of the notice of completion, record a claim of lien.

(c) If a notice is not recorded under subdivision (a), the period for recording claims of lien is governed by Sections 3152 and 3153.

Article 5. Proceedings to Enforce Mechanic's Liens

§ 3157. Time for commencement of action to foreclose mechanic's lien

3157. (a) Except as provided in subdivision (b), an action to foreclose a mechanic's lien shall be commenced within 90 days after the claim of lien is recorded. If the action is not commenced within this time, the lien expires and is unenforceable.

(b) If the claimant gives credit and notice of the fact and terms of the credit is recorded in the office of the county recorder after the claim of lien was recorded and before expiration of the 90-day period, the lien continues in force until the earlier of the following times:

- (1) 90 days after the expiration of the credit.
- (2) One year after the date of completion of the work of improvement.

§ 3158. Amount of recovery

3158. A prime contractor or subcontractor may recover on a recorded claim of lien only the amount due according to the terms of contract after deducting all claims of other claimants for labor, services, equipment, or materials furnished and embraced within the contract.

§ 3159 Lis pendens

3159. After filing a complaint [in the proper court], the plaintiff may record in the office of the county recorder of the county, or of the several counties in which the property is situated, a notice of the pendency of action under Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure. From the time of recording, a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and in that event only if its pendency against parties designated by their real names.

§ 3160. Dismissal for lack of prosecution

3160. If an action to foreclose a mechanic's lien is not brought to trial within two years after commencement, the court may in its discretion dismiss the action for delay in prosecution.

§ 3161. Effect of dismissal or judgment

3161. Dismissal of an action to foreclose a mechanic's lien, unless dismissal is expressly stated to be without prejudice, or a entry of a judgment that no lien exists is equivalent to the cancellation and removal from the record of the lien.

§ 3162. Consolidation of actions

3162. Persons claiming mechanic's liens on the same property may join in the same action to foreclose their liens. If separate actions are commenced, the court may consolidate them.

§ 3163. Costs

3163. In addition to any other costs allowed by law, the court in an action to foreclose a mechanic's lien shall also allow as costs the money paid for verifying and recording the lien to each claimant whose lien is established, whether the claimant is a plaintiff or defendant.

§ 3164 Deficiency

3164. If there is a deficiency of proceeds from the sale of the property on a judgment to foreclose a mechanic's 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 for the foreclosure of a mortgage.

§ 3165. Personal liability

3165. This title does not affect the following:

(a) The right of a claimant to maintain a personal action to recover a debt against the person liable, either in a separate action or in the action to foreclose the mechanic's lien.

(b) The right of the claimant to the issuance of a writ of attachment In an application for a writ of attachment, the claimant shall refer to this section. A mechanic's lien held by the claimant does not affect the right to procure a writ of attachment.

(c) The claimant's right to enforce a money judgment. A judgment obtained by the claimant in a personal action, or personal judgment obtained in a mechanic's lien action, does not impair or merge a mechanic's lien held by the claimant, but any money collected on the judgment shall be credited on the amount of the lien.

§ 3166. Defense at expense of contractor [needs more revision]

3166. (a) In an action to foreclose a mechanic's lien for labor, services, equipment, or materials furnished to a prime contractor, the prime contractor shall defend the action at its own expense. During the pendency of the action, the owner may withhold from the prime contractor the amount of money [for which the claim of lien is recorded].

(b) If a judgment foreclosing the mechanic's lien is entered against the owner or the owner's property, the owner may deduct from any amount due or to become due to the prime contractor the amount of the judgment and costs. If the amount of the judgment and costs exceeds the amount due from the owner to the prime contractor, or if the owner has settled with the prime contractor in full, the owner may recover from the prime contractor, or the sureties on any bond given by the prime contractor for the faithful performance of the contract, the amount of the judgment and costs that exceed the contract price and for which the prime contractor was originally the party liable.

Article 6. Priorities

§ 3167. Priority of mechanic's lien

3167. Except as provided in Sections 3170 and 3171, a mechanic's lien is superior to any lien, mortgage, deed of trust, or other encumbrance on the work of improvement and the site, that (1) attaches after commencement of the work of improvement or (2) was unrecorded when the work of improvement commenced and of which the claimant had no notice.

§ 3168. Time of commencement of works under separate contracts

3168. If a site improvement is provided for in a separate contract from a contract with respect to [the erection of residential units or other structures], the site improvement is considered as a separate work of improvement and its commencement does not constitute commencement of the work of improvement.

§ 3169. Priority of advances by lender

3169. (a) A mortgage or deed of trust that would be superior to mechanic's liens to the extent of obligatory advances made in accordance with the commitment of the lender is also superior to mechanic's liens as to any other advances, secured by the mortgage or deed of trust, that are used to pay claims of lien [recorded at the date or dates of the other advances and thereafter in payment of costs of the work of improvement].

(b) The priority under subdivision (a) does not exceed the original obligatory commitment of the lender as shown in the mortgage or deed of trust.

§ 3170. Priority of site improvements

3170. Except as provided by Section 3172, a site improvement lien under Section 3143 is superior to the all of the following:

(a) A mortgage, deed of trust, or other encumbrance that attaches after commencement of the site improvement.

(b) A mortgage, deed of trust, or other encumbrance that was unrecorded at the time of the commencement of the site improvement and of which the claimant had no notice.

(c) A mortgage, deed of trust, or other encumbrance recorded before commencement of the site improvement that was given for the sole or primary purpose of financing the site improvement, unless the loan proceeds are, in good faith, placed in the control of the lender under a binding agreement with the borrower to the effect that (1) the proceeds are to be applied to the payment of claimants and (2) 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 claims of liens has expired and no claims have been recorded.

§ 3171. Payment bond furnished by holder of mortgage or deed of trust [not yet revised]

3171. If the holder of any mortgage or deed of trust which is subordinate pursuant to Section 3167 to any lien, shall procure a payment bond as defined in Section 3096 in an amount not less than 75 percent of the principal amount of such mortgage or deed of trust, which bond refers to such mortgage or deed of trust, and shall record such payment bond in the office of the county recorder in the county where the site is located, then such mortgage or deed of trust shall be preferred to all liens for labor, services, equipment, or materials furnished after such recording.

§ 3172. Payment bond by owner or holder of mortgage or deed of trust on site improvement [not yet revised]

3172. If the owner of the land or holder of any mortgage or deed of trust, which is subordinate pursuant to Section 3137 to any lien, shall procure a payment bond in an amount not less than 50 percent of the principal amount of such mortgage or deed of trust and shall record such payment bond in the office of the county recorder in the county where the site is located before completion of the work of improvement, then such mortgage or deed of trust shall be preferred to all such liens provided in Section 3112.

§ 3173. Bona fide purchasers and encumbrancers [not yet revised]

3173. As against any purchaser or encumbrancer for value and in good faith whose rights are acquired subsequent to the expiration of the 90-day period following the recording of the claim of lien, no giving of credit or extension of the lien or of the time to enforce the same shall be effective unless evidenced by a notice or agreement recorded in the office of the county recorder prior to the acquisition of the rights of such purchaser or encumbrancer.

Article 7. Release of Mechanic's Lien

§ 3175. Release bond [not yet revised]

3175. If the owner of property, or the owner of any interest therein, sought to be charged with a claim of lien, or any original contractor or subcontractor disputes the correctness or validity of any claim of lien, he may record in the office of the county recorder in which such claim of lien was recorded, either before or after the commencement of an action to enforce such claim of lien, a bond executed by a corporation authorized to issue surety bonds in the State of California, in a penal sum equal to 1-1/2 times the amount of the claim or 1-1/2 times the amount allocated in the claim of lien to the parcel or parcels of real property sought to be released, which bond shall be conditioned for the payment of any sum which the claimant may recover on the claim together with his cost of suit in the action, if he recovers therein. Upon the recording of such bond the real property described in such bond is released from the lien and from any action brought to foreclose such lien. The principal upon such bond may be either the owner of the property or the owner of any interest therein, or any original contractor, subcontractor, or sub-subcontractor affected by such claim of lien.

§ 3176. Notice of recording of release bond [not yet revised]

3176. Any person who obtains a lien release bond which is recorded pursuant to Section 3175 shall give notice of the recording to the lienholder by mailing a copy of the bond to the lienholder at the address appearing on the lien. Service of the notice shall be by certified or registered mail, return receipt requested. Failure to give the notice provided by this section shall not affect the validity of the lien release bond, but the statute of limitations on any action on the bond shall be tolled until the notice is given. Any action on the lien release bond shall be commenced by the claimant within six months of the recording of the lien release bond.

§ 3177. Petition for release of lien [not yet revised]

3177. (a) At any time after the expiration of the time period specified by Section 3157 with regard to the period during which property is bound by a lien after recordation of a claim of lien, where no action has been brought to enforce such lien, the owner of the property or the owner of any interest therein may petition the proper court for a decree to release the property from the lien.

(b) The petition shall be verified and shall allege all of the following:

- (1) The date of recordation of the claim of lien.
- (2) The legal description of the property affected by such claim of lien.
- (3) That no action has been filed to foreclose the lien, or that no extension of credit has been recorded, and that the time period during which suit can be brought to foreclose the lien has expired.
- (4) That the lien claimant is unable or unwilling to execute a release of the lien or cannot with reasonable diligence be found.

(5) That the owner of the property or interest in the property has not filed for relief under any law governing bankrupts, and that there exists no other restraint to prevent the lien claimant from filing to foreclose his or her lien. A certified copy of the claim of lien shall be attached to the petition. The petition shall be deemed controverted by the lien claimant.

(c) Upon the filing of the petition, and before any further proceedings are had, the clerk, or if there is no clerk, the judge shall set a date for the hearing not more than 30 days following the filing of the petition. The court may continue the hearing beyond the 30-day period, but good cause shall be shown for any continuance.

(d) A copy of the petition and the notice setting the date for the hearing shall be served upon the lien claimant at least 10 days prior to the date set for hearing, in the manner in which a summons is required to be served, or by certified or registered mail, postage prepaid, return receipt requested, addressed to the lien claimant at the claimant's address as shown: (1) on the preliminary 20-day notice served by the claimant pursuant to Section 3097, (2) in the records of the registrar of contractors, (3) on the contract on which the lien is based, or (4) on the claim of lien itself. When service is made by mail as provided in this section, service is complete on the fifth day following the day of the deposit of such mail. No decree shall issue in favor of the petitioner unless the petitioner proves that service of the petition and the order fixing the date for hearing was made in compliance with this subdivision. The issue of compliance with this subdivision shall be deemed controverted by the lien claimant.

(e) In the event judgment is rendered in favor of the petitioner, the decree shall indicate all of the following:

(1) The date the lien was recorded.

(2) The county and city, if any, in which the lien was recorded.

(3) The book and page of the place in the official records where the lien is recorded.

(4) The legal description of the property affected. Upon the recordation of a certified copy of the decree, the property described in the decree shall be released from the lien.

(f) The prevailing party shall be entitled to attorneys' fees not to exceed one thousand dollars (\$1,000).

(g) Nothing in this section shall be construed to bar any other cause of action or claim for relief by the owner of the property or an interest in the property, nor shall a decree canceling a claimant's lien bar the lien claimant from bringing any other cause of action or claim for relief, other than an action foreclosing such lien. However, no other action or claim shall be joined with the claim for relief established by this section.

(h) Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure does not apply to actions commenced pursuant to this section.

MECHANIC’S LIEN STATUTE REVISION

ACRET DRAFT (NOVEMBER 17, 2003)

TITLE 15. MECHANICS LIENS, STOP NOTICES AND PAYMENT BONDS

CHAPTER 1. DEFINITIONS

§1. “Record”

“Record” means to file for record in the office of the county recorder of the county where the land, or some of it, is located.

§2. “Construction Fund”

A construction fund is money held by the owner of a work of improvement, a construction lender, an escrow, a joint control, or any other person for the purpose of paying the costs of performing a work of improvement.

§3. “Charge”

“Charge” means mechanics lien claim and stop notice claim, singly or in combination, as required by the context.

§4. “Assert”

“Assert” means to record a mechanics lien claim or to serve a stop notice claim.

§5. “Assets”

“Assets” are work, labor, materials, supplies, equipment, appliances, transportation, power, surveying, construction plans, and construction management furnished to a work of improvement.

§6. “Claimant”

“Claimant” is a person who has furnished assets that have not been paid for.

§7. “Person”

“Person” includes all recognized legal entities.

CHAPTER 2. GENERAL PROVISIONS

§8. Service and Proof of Service

Service shall be by certified mail with return receipt requested. Service shall be deemed complete when the document, properly addressed, is deposited in the mail

with postage prepaid. Proof of service shall be by declaration showing when and where the declarant deposited a copy of the notice in the United States mail and the name and address of the person to which the notice was directed, accompanied by the return receipt and, in the event of non-delivery, the returned envelope.

§9. Agency

Any action to be taken or document to be verified or signed under this statute may be taken, verified or signed by an authorized agent.

§10. Release

A release of, or agreement not to enforce, mechanics lien, stop notice, or payment bond rights that is contained in the text of a construction contract or sales agreement is void. A release of mechanics lien, stop notice, or payment bond rights for assets that have not yet been furnished is void except to the extent that the assets have actually been paid for, except that such a release is enforceable by a party who has reasonably relied upon such a release to its detriment without knowledge of nonpayment.

§11. Willful Overstatement

No charge shall be valid if it is willfully overstated by the claimant.

§12. Other Remedies

Nothing in this title affects the right of a claimant to pursue other remedies.

§13. Effect of Bonds

A private statute of limitations and any other limitation on or condition to recovery included in a release bond or a payment bond shall be void. All claimants have the right to pursue a direct cause of action against the principal and surety on such bonds. The sureties on such bonds shall not be exonerated or released by any change to or rescission of any construction or sales contract, and the claim against the surety shall not be released or exonerated by a modification to or a release of the obligation of the principal.

§14. Recording

The county recorder shall record mechanics lien charges, notices of completion, notices of cessation, and payment bonds that facially comply with the requirements of this title without acknowledgment or other formality.

§15. Claims Against Construction Funds

Claims against construction funds must be pursued under this title. No claimant may assert any other legal or equitable rights against such funds except under direct written contract with the holder of the fund.

§16. Claim Requirements

The claim-filing procedures contained in Part 3 (commencing with §900) of Division 3.6 of Title 1 of the Government Code do not apply to claims under this title.

§17. Priorities

Charges, regardless of when they are asserted, have the same priority and shall be satisfied pro rata.

§18. Public Works

The stop notice and bond provisions of this title apply both to public and private works. The mechanics lien provisions apply only to private works.

CHAPTER 3. CLAIMS

§19. Stop Notice, Payment Bond, and Mechanics Lien Rights

Persons who furnish assets intended for and used in the permanent physical improvement of specific real property shall have a mechanics lien on the structures and land that they have improved, and surrounding land for reasonable access thereto. The same persons also have stop notice and payment bond rights.

§20. Contents of Charge

A stop notice or mechanics lien charge must be verified by the claimant and must include the name and address of the claimant, a general description of the assets furnished, a description of the land sufficient for identification, the name of the person who contracted for or purchased the assets from the claimant, the name of the owner or reputed owner of the land and a statement of the amount of the charge. A charge against lots or units in a subdivision, a condominium, or a planned unit development shall be equitably allocated by the claimant among the lots or units.

§21. Payment Bond

A land owner, construction lender, contractor, or other interested person, which person shall be the principal on the bond, may protect a work of improvement against charges by recording a payment bond. The protection of the payment bond shall not extend to charges that were asserted before the payment bond was recorded. The bond shall be issued by a surety admitted to do surety business in California, and shall name the owner of the work of improvement and include a description of the land. The amount of the bond shall be the amount of the prime contract price as modified by changes or, if there is no prime contract price, the amount of the cost of the construction of work of improvement as reasonably estimated by the principal. The bond shall provide that all persons who have mechanics lien or stop notice rights may recover from the principal and surety on

the bond the amount that they could have obtained in a judgment enforcing the charges, and all such claimants shall have a direct right of action against the principal and surety. The right of a claimant to assert a claim on the bond shall be subject to the preliminary notice requirement. Upon proof that a good and sufficient payment bond covering all charges asserted in the action has been timely recorded, the court shall implead the principal and surety and dismiss mechanics lien and stop notice causes of action.

§22. Preliminary Notice

The lien, stop notice, and payment bond rights of a claimant who does not have a direct contractual or sales relationship with the owner of a work of improvement shall be subject to the preliminary notice requirement. The preliminary notice shall be served on the owner. In a case of joint ownership, service on any owner shall be sufficient. The preliminary notice shall contain a general description of the assets supplied and to be supplied by the claimant and the name of the person that purchased or contracted for assets from the claimant. Service shall be sufficient if addressed to the owner named on the building permit at the owner's address shown on the building permit. Actual notice is not a substitute for the notice required by this section. Neither mechanics lien, stop notice, nor payment bond rights may be enforced for any assets supplied more than 20 days before the service date of the preliminary notice.

The preliminary notice shall contain the following inscription:

This notice is required by law in order to give you, the owner, notice of the identities of persons and firms that are supplying work, equipment, and materials to your project who have the right, if they are not paid, to assert mechanics lien claims against your property, stop notice claims against construction funds, and payment bond claims. An owner can protect against claims by insuring all potential claimants are paid for their work, materials, or equipment. One method to insure such payment is to prepare a roster of all persons who have given preliminary notices and to require your contractor to supply releases signed by those persons before making payments to your contractor. A more complete explanation of measures that may be taken by owners to protect themselves may be obtained from the Contractors State License Board at www.cslb.org or by calling (800) 321-CSLB.

§23. Service of Stop Notice

When a stop notice is served on a financial institution it shall be served at the branch administering the construction fund. Upon the service of a stop notice, the holder of a construction fund shall withdraw from the fund and set aside a sufficient amount to satisfy the charge, including interest at the legal rate and reasonable attorneys fees of the claimant.

§24. Amount of Claim

Mechanics lien, stop notice, and payment bond claims are for the reasonable value of the assets furnished or the contract price thereof, after deducting all just credits and offsets, whichever is less. The amount of the claim shall include interest at the legal rate and exclude consequential damages. Stop notice and payment bond claims include reasonable attorneys fees to the prevailing party.

§25. Responsibility of General Contractors, Trade Contractors, and Employers

Every general contractor, trade contractor, and employer shall, at the request of the land owner or fund holder, protect the land owner or fund holder against charges of persons of whatever tier acting under their authority and shall indemnify the land owner or fund holder against such claims.

§26. Asserting a Charge

A claimant shall not assert a charge until it has finished providing assets to the work of improvement. The time for asserting a charge shall expire 90 days from the completion of a work of improvement as a whole, and shall be shortened when the owner timely records a notice of completion. A total cessation of labor for a period of 30 days shall be deemed to be the equivalent of completion. A general contractor or trade contractor who has a direct contract with the owner shall assert its charges no later than 60 days after the timely recording of a notice of completion or a notice of cessation and all other claimants shall assert their charges no later than 30 days after the timely recording of a notice of completion or a notice of cessation. Charges against lots in a subdivision may be asserted in a single document. Each lot in a subdivision shall be considered a separate work of improvement.

§27. Notice of Completion

A notice of completion shall be verified by the owner and shall include a description of the land sufficient for identification, the name or names of the owner or owners of the work of improvement, and a statement of the date when the work of improvement was completed. It shall be recorded within 10 days after the completion of the project.

§28. Notice of Cessation

A notice of cessation shall be verified by the owner and shall include a description of the land sufficient for identification, the name or names of the owner or owners of the work of improvement, and a statement of the date when the cessation of labor occurred. It may be recorded any time after there has been a 30-day cessation of labor and has the same effect on the time for asserting charges as the timely recording of a notice of completion.

§29. Foreclosure, Enforcement, Arbitration

A charge expires unless the claimant files enforcement suit in a proper court within 90 days after the date when the charge was asserted. After filing suit, a claimant shall prosecute the action with due diligence. The filing of suit shall not waive the right of a claimant to pursue arbitration provided that the claimant, within 20 days after filing suit, files and serves an application to stay proceedings pending arbitration. The failure to timely file and serve such an application shall constitute a waiver of the right to pursue arbitration.

§30. Priority of Mechanics Liens

All mechanics lien claims take their priority from the date of the physical visible commencement of the work of improvement. Survey work and soils testing shall not be the commencement of a work of improvement.

§31. Site Improvement

“Site improvement” is the preparation of a site for installation upon it of buildings or other structures, and includes the demolition or removal of improvements, landscaping, clearing, brushing, soil testing, excavation, grading, filling and construction of streets, sidewalks, sewers, and utilities. If site improvement is performed under a contract that is separate from the contract for the installation of buildings and other structures, then the commencement of site improvement shall not constitute the commencement of buildings and other structures, which shall be deemed to be separate works of improvement.

§32. Site Improvement Lien Claims

Mechanics lien claimants who provide assets for the performance of site improvement shall have a lien on the land and structures served by the site improvement. Such charges take their priority from the commencement of site improvement. When site improvement serves more than one lot or tract of land, then the amount of the site improvement charge shall be equitably divided among the lots or tracts, and the claimant shall specify an equitable division in the charge.

§33. Improvements Procured by Tenant

The leasehold interest of a tenant is subject to mechanics lien charges for assets supplied to a work of improvement procured by the tenant. The interest of a land owner is not subject to mechanics lien charges for assets supplied to a work of improvement procured by a tenant unless the work of improvement was required, paid for or otherwise procured by the owner and except to the extent that enforcement of the charge will prevent the unjust enrichment of the owner.

§34. Release Bond

A land owner, contractor, construction lender, or other interested person may remove the effect of a charge by furnishing, as principal, a release bond executed

by a surety company authorized to do surety business in California. The bond shall be for 100 times the principal amount of the charge. To be effective, the bond shall be recorded and shall state the name of the land owner and shall include or be accompanied by a declaration that the bond has been served upon the claimant at the address given for the claimant on the charge. Upon proper recording and service, the charge is transferred from the land or construction fund to the release bond. The claimant shall recover from the principal and surety the amount for which it could have obtained a judgment to enforce the charge. If an enforcement action has been filed, the court shall, upon the application of any interested party, implead the principal and surety as parties to the action and order the land or construction fund released from the charge.

CHAPTER 4. PROMPT PAYMENT

§35. Prompt Payment

Persons who fail to make prompt payment to claimants shall pay, in addition to interest, a penalty of one percent per month commencing twenty days after payment is due until payment is made. In the event of a good faith dispute as to claimant's entitlement to payment, one hundred fifty percent of the amount in dispute may be withheld without penalty pending resolution of the dispute.