

Memorandum 2010-23

Legislative Program: Status of SB 189 (Lowenthal)

This memorandum reports on the status of Senate Bill 189 (Lowenthal), which would implement the Commission's recommendation on *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

The memorandum also seeks the Commission's assent to a number of amendments that the author has recently made to the bill, and approval of revisions and additions to Commission Comments on sections of the proposed law.

STATUS OF BILL

The bill has passed the Senate, and is scheduled to be heard by the Assembly Committee on Judiciary on June 15, 2010. This is the same date as the Commission's next meeting. We are attempting to schedule the bill hearing to take place before the Commission meeting begins.

STAKEHOLDER WORKING GROUP MEETINGS

SB 189 is mostly a nonsubstantive reorganization of the existing mechanics lien statute, designed primarily to clean up and simplify the presentation of that law. The goal is to make it easier to understand and use the statute. This should reduce mistakes and time spent researching and litigating confusing provisions of the law.

Because the statute is very large and revision would affect a wide range of groups within the construction industry, it was decided that SB 189 would be a two-year bill, with the extra year being used to work closely with stakeholder groups to identify and address any concerns they might have about the bill.

Over that time, the staff solicited comments from the interested groups and analyzed them. Stakeholder meetings were then held to address concerns in a

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

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

group setting. This was important, as it allowed for discussion of possible changes to the bill in an open forum, where all affected groups could share their thoughts about each point.

The third (and presumably final) stakeholder meeting was held on April 8, 2010. At that meeting, a large number of issues, most of them technical rather than substantive, were discussed. As a result of that discussion, Senator Lowenthal agreed to make numerous amendments to the bill. The bill was amended to do so on June 2, 2010.

This memorandum describes those amendments. The Commission now needs to decide whether to accept those amendments as compatible with the overall purpose of the Commission recommendation.

(The Commission has been asked to ratify other amendments made to SB 189 through the stakeholder working group process, on two prior occasions. See Memorandum 2009-45 and Memorandum 2009-48. In both instances, the Commission found the amendments compatible with the overall purpose of the Commission's recommendation.)

If the Commission accepts these latest amendments, it must then decide whether to approve, with or without changes, a large number of proposed revisions and additions to Commission Comments, in order to properly reflect the amendments. Those proposed Comment revisions and additions are also described in this memorandum.

Once Commission Comments to the proposed legislation have been finalized, revised Comments will be submitted to the Legislature and legal publishers in the form of a supplemental report relating to the Commission's final recommendation in this matter. Once approved, that report will also be published as an appendix to the Commission's next Annual Report.

A proposed draft of that supplemental report, incorporating all Comment revisions and additions proposed in this memorandum as well as revisions and additions previously approved by the Commission, is the first of two attachments to this memorandum, entitled "Report of The California Law Revision Commission on Chapter ___ of The Statutes of 2010 (Senate Bill 189)."

The report also includes a revised disposition table that would supersede the disposition table in the Commission recommendation.

ASSENT TO AMENDMENTS

As on previous occasions, the Commission is being asked whether the Commission finds amendments to the legislation compatible with the overall purpose of the Commission's recommendation.

As a general matter, the staff would recommend that the Commission find an amendment acceptable if the Commission concludes that the amendment would not significantly undermine the Commission's final recommendation in this study.

In making these decisions, it may be helpful for the Commission to again consider the Commission's primary focus in making that recommendation, which was to achieve nonsubstantive reorganization and cleanup of the existing statute, while avoiding any controversial substantive change.

Although numerous, the recent amendments to the bill appear to be consistent with that focus. The amendments fall into five groups:

- (1) Structural reorganization of the proposed law, into a form that major stakeholders would find to be more helpful.
- (2) Reversal of nonsubstantive changes in phrasing proposed by the Commission, in order to avoid confusion or an unintended change in meaning.
- (3) Reversal of substantive changes proposed by the Commission, as a result of stakeholder objections.
- (4) Minor uncontroversial improvement to existing law suggested by stakeholders.
- (5) Technical matters.

None of the amendments were opposed by the various stakeholder groups that participated in the working group meeting.

Nonsubstantive Reorganization

The existing mechanics lien statute (Civ. Code §§ 3082-3267) governs both private and public works of improvement. Some of the provisions in the existing statute apply only to private work, and some only to public work. Other individual provisions apply equally to both types of projects.

In its final recommendation, the Commission proposed the creation of two separate bodies of law to govern the two different types of works of improvement. The Commission recommended that these bodies of law be established in two different codes – private work provisions in a new statutory

part in the Civil Code, and public work provisions in a new part in the Public Contract Code. Subsequent amendments to the proposed legislation moved the public work provisions back to the Civil Code, in a new title immediately following a title containing the private work provisions. Although all of the provisions were again in the Civil Code, the complete separation of the two bodies of law was retained.

This separation required that any provision of the existing statute presently applicable to *both* private and public work would need to be continued in the proposed legislation in duplicate provisions, one in each of the separate bodies of law.

At the most recent working group meeting, a number of stakeholders expressed concern that this duplication could prove both confusing and problematic. Stakeholders argued that judicial decisions interpreting one of a pair of duplicate provisions might result in a published annotation to only one of the two provisions, that researchers analyzing one these provisions would either find their work doubled or fail to find relevant precedent, and that over time divergent judicial interpretations would lead to differences in provisions that were intended by the Legislature to have identical meaning.

To address this concern, the author agreed to reorganize the bill to add a new Title 1 at the beginning of the part, which would contain most of the provisions that are common to both private and public works. The private work provisions would then be renumbered as Title 2, and the public works provisions would be Title 3. The general provisions in Title 1 would be made expressly applicable to both Title 2 and Title 3.

In the staff's view, this organizational change would be entirely compatible with the Commission's general purpose of cleaning up the structure of the mechanics lien statute. It simply represents a different top-level organizational model. Both the Commission's originally proposed organization and the newly proposed organization have merit. Reasonable minds can differ as to which would be easier to use. **The staff sees no principled reason to object to the stakeholders' preferred organization.**

The reorganization required a significant number of technical amendments. Many provisions of the bill needed to be deleted from their current locations in the bill and added to the new title, many section numbers had to be changed, a significant number of cross-references had to be corrected, and some minor

nonsubstantive changes to text were required in order to make the provisions of the new title applicable to both private and public work.

A partial mock up of the bill incorporating these amendments, and showing the new organization of the bill, is the second of two attachments to this memorandum. The mock up sets out the text of the provisions that would be a part of the newly created title applicable to both private and public work, and summarizes the other organizational changes to the legislation. (Due to their number and purely technical nature, the numerous amendments required to implement the reorganization are not set out individually.)

The first decision for the Commission is whether it finds the new organizational structure acceptable.

Reversal of Nonsubstantive Language Changes

Stakeholders at the recent working group meeting also requested that numerous provisions in the proposed legislation be revised to restore language from the existing mechanics lien statute that had been deleted or rephrased by the Commission to improve readability or understanding. However, stakeholders expressed concern that these changes could cause misunderstanding or an inadvertent change in meaning.

The staff assessed the risk of an inadvertent change in meaning as fairly low. The Commission's report, its Comments, and an uncodified section that has now been added to the bill all express which provisions of the bill contain substantive changes, and which merely continue existing law without substantive change. All of those materials provide guidance to the courts in the event of litigation over the meaning of a provision that was reworded on the Commission's recommendation.

However, some misunderstandings and disputes might cause problems without ever rising to the level of litigation. For that reason, the staff believes it makes sense to be deferential to the affected stakeholder groups. If stakeholders that deal with the statute on an everyday basis assert that a change in wording might cause misunderstanding, it would appear prudent to reverse the change. A large number of nonsubstantive amendments of this type were proposed and accepted by Senator Lowenthal. The amendments simply reverse language changes made by the Commission, reverting as closely as possible to wording used in the existing statute, in order to avoid any chance of new confusion or mistake.

In restoring existing language, the amendments represent some missed opportunities for linguistic improvement, but they should not create any new problems. Again, the question for the Commission in deciding whether to accept the amendments is whether any appear sufficiently inconsistent with the Commission's recommendation so as to undermine the overall value of the Commission recommendation.

Because these amendments differ in their details, they have been set out below using underscore and strikeout to show the language added or deleted from the bill.

As a general matter, the staff recommends that the Commission accept these amendments.

On a related note, a few of the amendments that follow, if found acceptable by the Commission, will require the Commission to approve a revision to a corresponding Commission Comment. As to those amendments, the staff has proposed a Comment revision directly below the amended statutory language.

In conjunction with deciding whether to accept the amendments below, the Commission should also decide whether to approve any accompanying proposed Comment revision, with or without changes.

§ 8004. "Claimant"

8004. "Claimant" means a person that has a right under this part to record a claim of lien, give a stop payment notice, or assert a claim against a payment bond, or do any of the foregoing.

Comment. Section 8004 restates former Section 3085 without substantive change, ~~omitting reference to the combination of remedies as unnecessary.~~

....

§ 8006. "Construction lender"

8006. "Construction lender" means either of the following:

(a) A mortgagee or beneficiary under a deed of trust lending funds ~~for payment of construction costs for~~ with which the cost of all or part of a work of improvement is to be paid, or the assignee or successor in interest of the mortgagee or beneficiary.

(b) An escrow holder or other person holding funds provided by an owner, lender, or another person ~~as a fund for~~ with which the cost of all or part of a work of improvement is to be paid.

§ 8132. Conditional waiver and release on progress payment

8132. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

...

§ 8134. Unconditional waiver and release on progress payment

8134. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

....

§ 8136. Conditional waiver and release on final payment

8136. If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

....

§ 8138. Unconditional waiver and release on final payment

8138. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

....

§ 8152. No release of surety from liability

8152. None of the following releases a surety from liability on a bond given under this part:

(a) A change, alteration, or modification to a contract, plan, specification, or agreement for a work of improvement or for work provided for a work of improvement.

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

....

§ 8154. Construction of bond

8154. (a) A bond given under this part shall be construed most strongly against the surety and in favor of ~~the beneficiary~~ all persons for whose benefit the bond is given.

(b) A surety is not released from liability to ~~the beneficiary~~ those for whose benefit the bond is given by reason of a breach of the direct contract or on the part of any obligee named in the bond.

....

§ 8180. Completion

8180. (a) For the purpose of this part, completion of a work of improvement occurs ~~at the earliest of the following times~~ upon the occurrence of any of the following events:

....

§ 8210. Owner's duty to give notice of construction loan

8210. ~~If a construction loan is~~ one or more construction loans are obtained after commencement of a work of improvement, the owner shall give notice of the name and address of the construction lender or lenders to each person that has given the owner preliminary notice.

§ 8302. Lien

8302. (a) A design professional has, from the date of recordation of a claim of lien under this chapter, a lien on the site notwithstanding the absence of commencement of the planned work of improvement, if the ~~owner~~ landowner that contracted for the design professional's services is also the owner of the site at the time of recordation of the claim of lien.

....

§ 8304. Prerequisites for lien

8304. A design professional is not entitled to a lien under this chapter unless all of the following conditions are satisfied:

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

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

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

....

§ 8306. Creation, expiration, and release of lien

8306.

(c) If the ~~owner~~ landowner partially or fully satisfies the lien, the design professional shall execute and record a document that evidences a partial or full satisfaction and release of the lien, as applicable.

§ 8442. Interest subject to lien

8442. The following interests in real property to which a lien attaches are subject to the lien:

(a) The interest of a person that contracted for the work of improvement.

(b) The interest of a person that did not contract for the work of improvement, if work for which the lien is claimed was provided with the knowledge of ~~the person~~. ~~This subdivision does not apply to the interest of a person that~~ that person, unless that person gives notice of nonresponsibility under Section 8444.

§ 8462. Dismissal for lack of prosecution

8462. Notwithstanding Section 583.420 of the Code of Civil Procedure, ~~the court may dismiss if~~ an action to enforce a lien ~~that~~ is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

§ 8480. Petition for release order

8480. (a) The owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460.

(b) This article does not bar any other cause of action or claim for relief by the owner of the property, ~~including, but not limited to, the filing of a complaint with the Contractors' State License Board.~~ A release order does not bar any other cause of action or claim for relief by the claimant, other than an action to enforce the claim of lien that is the subject of the release order.

....

§ 8550. Time for enforcement of claim stated in stop payment notice

8550. (a) A claimant shall commence an action to enforce payment of the claim stated in a stop payment notice ~~not earlier than 10 days after~~ at any time after 10 days from the date the claimant gives the stop payment notice and.

(b) A claimant shall commence an action to enforce payment of the claim stated in a stop payment notice not later than 90 days after expiration of the time within which a stop payment notice must be given. The action

(c) An action under this section may not be brought to trial or judgment entered before expiration of the time prescribed in this subdivision provided in subdivision (b).

....

§ 8554. Dismissal of enforcement action for lack of prosecution

8554. Notwithstanding Section 583.420 of the Code of Civil Procedure, ~~the court may dismiss if~~ an action to enforce payment of the claim stated in a stop payment notice ~~that~~ is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

§ 8716. Rights not affected

8716. This chapter does not affect any statute providing a subcontractor ~~the right to record a claim of lien, give a stop payment notice, assert a claim against a payment bond, or receive prompt payment for mechanics liens, stop payment notices, bond remedies, or prompt payment rights of a subcontractor,~~ including the direct contractor's payment responsibilities under Section 7108.5 of the Business and Professions Code.

§ 8814. Payment of retention by direct contractor

8814. (a) If a direct contractor has withheld a retention from a ~~subcontractor~~ one or more subcontractors, the direct contractor shall, within 10 days after receiving all or part of a retention payment, pay ~~the~~ to each subcontractor its from whom retention has been withheld that subcontractor's share of the payment.

....

§ 8838. Immunity from liability

8838. (a) The direct contractor or the direct contractor's surety, or a subcontractor or a subcontractor's surety, is not liable for delay or damage that the owner or a contractor of a subcontractor may suffer as a result of the direct contractor giving a stop work notice and subsequently stopping work for nonpayment, if the notice and posting requirements of this article are satisfied.

(b) A direct contractor's or original subcontractor's liability to a subcontractor or material supplier after the direct contractor stops work under this article is limited to the amount the subcontractor or material supplier could otherwise recover under this part for work provided up to the date the subcontractor or material supplier ceases work, subject to the following exceptions:

(1) The direct contractor's or original subcontractor's liability continues for work provided up to and including the 10 day notice period and not beyond.

(2) This subdivision does not limit liability for custom work, including materials that have been fabricated, manufactured, or ordered to specifications that are unique to the job.

§ 9356. Time for giving notice

9356. A stop payment notice is not effective unless given before the ~~earlier of the following times~~ expiration of whichever of the following time periods is applicable:

~~(a) Ninety days after cessation or completion.~~

~~(b) Thirty days after recordation of a notice of cessation or completion.~~

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

(b) If a notice of completion, acceptance, or cessation is not recorded, 90 days after cessation or completion.

§ 9360. Payment notwithstanding stop payment notice

9360. (a) This chapter does not prohibit payment of funds to a direct contractor or a direct contractor's assignee if a stop payment notice is not received before the disbursing officer actually surrenders possession of the funds.

(b) This chapter does not prohibit payment of any amount due to a direct contractor or a direct contractor's assignee in excess of the amount necessary to pay the total amount of all claims stated in stop payment notices received by the public entity at the time of payment plus any interest and court costs that might reasonably be anticipated in connection with the claims.

§ 9502. Time for enforcement of payment of claim stated in stop payment notice

9502. (a) The claimant shall commence an action against the public entity and the direct contractor to enforce payment of the claim stated in a stop payment notice ~~not earlier than 10 days after~~ at any time after 10 days from the date the claimant gives the stop payment notice.

....

§ 9508. Dismissal of enforcement action for lack of prosecution

9508. Notwithstanding Section 583.420 of the Code of Civil Procedure, ~~the court may dismiss if~~ an action to enforce payment of the claim stated in a stop payment notice that is not brought to trial within two years after commencement of the action, the court may in its discretion dismiss the action for want of prosecution.

§ 9550. Payment bond requirement

9550. (a) A direct contractor that is awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before commencement of work, give a payment bond to and approved by the public entity officer or public entity by whom the contract was awarded.

....

§ 9552. Consequences of failure to give bond

9552. If a payment bond is not given and approved as required by Section 9550:

(a) ~~The~~ Neither the public entity awarding the public works contract shall not nor any officer of the public entity shall audit, allow, or pay a claim of the direct contractor pursuant to the contract.

....

§ 9564. Action on bond

9564. (a) A claimant may maintain an action to enforce the liability of a surety on a payment bond whether or not the claimant has given the public entity a stop payment notice.

(b) A claimant may maintain an action to enforce the liability on the bond separately from and without commencement of an action against the public entity by whom the contract was awarded or against any officer of the public entity.

(c) In an action to enforce the liability on the bond, the court shall award the prevailing party a reasonable attorney’s fee.

Restoration of Reference to “Real” Property

One series of amendments in this category can be described collectively.

In its recommendation, the Commission had revised all references to “real property” in existing law to instead refer to “property,” believing that the nature of the property would be understood in context. Based on stakeholders’ desire to avoid any risk of confusion, several amendments restored the word “real” to the references:

§ 8050. “Work of improvement”

8050. (a) “Work of improvement” includes, but is not limited to:

....

(2) Seeding, sodding, or planting of real property for landscaping purposes.

(3) Filling, leveling, or grading of real property.

....

Comment. Section 8050 restates former Section 3106. The term “real property” replaces “lot or tract of land.”

....

§ 8174. Construction trust deed

8174. (a) A mortgage, deed of trust, or other instrument securing a loan, any of the proceeds of which may be used for a work of improvement, shall bear the designation “Construction Trust Deed” prominently on its face and shall state all of the following:

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

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

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

....

§ 8316. Priorities

8316. (a) No lien created under this chapter affects or takes priority over the interest of record of a purchaser, lessee, or encumbrancer, if the interest of the purchaser, lessee, or encumbrancer in the real property was duly recorded before recordation of the claim of lien.

....

§ 8424. Release bond

8424. (a) An owner of real property or an owner of any interest in real property subject to a recorded claim of lien, or a direct contractor or subcontractor affected by the claim of lien, that disputes the correctness or validity of the claim may obtain release of the real property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property, the direct contractor, or the subcontractor.

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

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

....

§ 8440. Property subject to lien

8440. Subject to Section 8442, a lien attaches to the work of improvement and to the real property on which the work of improvement is situated, including as much space about the work of improvement as is required for the convenient use and occupation of the work of improvement.

Comment. Section 8440 restates the parts of former Sections 3128 and 3112 that described property subject to the lien, without substantive change. References to “property” are A reference to “real property” is substituted for references to “land.”

See also Sections 8026 (“lien”), 8050 (“work of improvement”).

§ 8442. Interest subject to lien

8442. The following interests in real property to which a lien attaches are subject to the lien:

(a) The interest of a person that contracted for the work of improvement.

(b) The interest of a person that did not contract for the work of improvement, if work for which the lien is claimed was provided with the knowledge of that person, unless that person gives notice of nonresponsibility under Section 8444.

§ 8444. Notice of nonresponsibility

8444. (a) An owner of real property or a person claiming an interest in real property on which a work of improvement is situated that did not contract for the work of improvement may give notice of nonresponsibility.

....

§ 8446. Multiple works of improvement

8446. A claimant may record one claim of lien on two or more works of improvement, subject to the following conditions:

....

(c) If there is a single structure on real property of different owners, the claimant need not segregate the proportion of work provided for the portion of the structure situated on real property of each owner. In the lien enforcement action the court may, if it determines it equitable to do so, designate an equitable distribution of the lien among the real property of the owners.

(d) The lien does not extend beyond the amount designated as against other creditors having liens, by judgment, mortgage, or otherwise, on either the works of improvement or the real property on which the works of improvement are situated.

§ 8450. Priority of lien

8450. (a) A lien under this chapter, other than a lien provided for in Section 8402, has priority over a lien, mortgage, deed of trust,

or other encumbrance on the work of improvement or the real property on which the work of improvement is situated, that (1) attaches after commencement of the work of improvement, or (2) was unrecorded at the commencement of the work of improvement and of which the claimant had no notice.

....

§ 8608. Limitation on part

8608. (a) This part does not give a claimant a right to recover on a direct contractor's payment bond given under this chapter unless the claimant provided work to the direct contractor either directly or through one or more subcontractors, pursuant to a direct contract.

(b) Nothing in this section affects the stop payment notice right of, and relative priorities among, design professionals and holders of secured interests in the real property.

§ 8700. Application of chapter

....

(b) For the purpose of this section:

(1) The owner of the fee interest in property is not deemed to be the owner of a less than fee interest by reason of a mortgage, deed of trust, ground lease, or other lien or encumbrance or right of occupancy that encumbers the fee interest.

(2) A lessee of real property is deemed to be the owner of a fee interest in the real property if all of the following conditions are satisfied:

....

Reversal of Proposed Substantive Improvements

At the most recent working group meeting, stakeholders also objected to some new provisions that the Commission had either added as minor substantive improvements, or generalized from provisions with limited application under existing law. In each instance, stakeholders expressed reasonable objections to the proposed change, typically that the new provision might cause confusion or be otherwise problematic, and that these risks outweighed any benefit of the new provision.

The Commission's past practice in this study has been to accede to such objections, removing the proposed reform in order to preserve the uncontroversial character of the cleanup proposal as a whole. **The staff would recommend the same course here.**

The amendments in this category are shown below. Most of the amendments, if accepted by the Commission, will require approval of a corresponding

Comment revision. Again, to facilitate this task, the staff has proposed Comment revisions directly below the amended statutory language.

In conjunction with deciding whether to accept the amendments below, the Commission should again decide whether to approve all proposed Comment revisions, with or without changes.

“Contract” and “Contract Price”

The first group of amendments in this category reverse the Commission’s proposed generalization of the terms “contract” and “contract price.” The Commission had proposed to generalize language from a few different provisions of the existing mechanics lien statute, in order to create two generally applicable provisions defining these terms.

However, stakeholders expressed concern that the generalizations could have a broader impact than intended. The amendments that follow delete the generalizations, and restore the existing language from which the generalized provisions were drawn.

§ 8008. “Contract”

8008. “Contract” means an agreement that provides for all or part of a work of improvement. ~~The term includes a contract change.~~

Comment. Section 8008 broadens the definition of “contract” in former Section 3088 to include all contracts on a work of improvement, and adds a reference to a contract change. The term “contract change” replaces “written modification of the contract” as used in former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990).

....

§ 8010. “Contract price”

8010. “Contract price” means the price agreed to in a direct contract for a work of improvement, ~~including a contract change. If the parties have not agreed to a price for the work of improvement, the contract price is the reasonable value of the work provided for the work of improvement.~~

Comment. Section 8010 ~~generalizes provisions found in former Section 3123 and throughout the mechanics lien law~~ is new. It is included for drafting convenience.

See also Sections 8016 (“direct contract”), 8050 (“work of improvement”).

§ 8016. “Direct contract”

8016. “Direct contract” means a contract between an owner and a direct contractor that provides for all or part of a work of improvement. ~~The term includes a contract change.~~

Comment. Section 8016 ~~continues the substance of~~ restates former Section 3088, ~~but adds a reference to a contract change.~~ The term “contract change” replaces “written modification of the contract” as used in former Section 3123. This codifies the effect of *Basic Modular Facilities, Inc. v. Ehsanipour*, 70 Cal. App. 4th 1480, 83 Cal. Rptr. 2d 462 (1990) without substantive change.

....

§ 8132. Conditional waiver and release on progress payment

8132. If a claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

...

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below.

....

§ 8134. Unconditional waiver and release on progress payment

8134. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the “Notice to Claimant” in at least as large a type as the largest type otherwise in the form:

....

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service

provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below.

....

§ 8136. Conditional waiver and release on final payment

8136. If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

....

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below.

....

§ 8138. Unconditional waiver and release on final payment

8138. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver it has, in fact, been paid the final payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

....

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date

that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below.

....

§ 8430. Amount of lien

8430. (a) The lien is a direct lien for the lesser of the following amounts:

(1) The reasonable value of the work provided by the claimant.

(2) The price agreed to by the claimant and the person that contracted for the work.

(b) The lien is not limited in amount by the contract price for the work of improvement except as provided in Section 8600.

(c) This section does not preclude the claimant from including in a claim of lien work performed based on a written modification of the contract, or as a result of rescission, abandonment, or breach of the contract. If there is a rescission, abandonment, or breach of the contract, the amount of the lien may not exceed the reasonable value of the work provided by the claimant.

Comment. Section 8430 restates former Section 3123(a)-(b) and a part of former Section 3110.

....

~~The term "contract price" in subdivision (b) includes contract changes. See Section 8010.~~

....

Generalization of Definition of "Owner"

A second group of amendments in this category were based on stakeholder objection to a new definition of the term "owner," which had been generalized from language in several different provisions of existing law. Again, the concern was the possibility of unintended consequences. The amendments delete the new definition, and restore the language upon which it was based to its source provisions:

§ 8028. "Owner"

8028. "Owner" means:

~~(a) With respect to a work of improvement, a person that contracts for the work of improvement.~~

~~(b) With respect to property on which a work of improvement is situated or planned, a person that owns the fee or a lesser interest in the property, including, but not limited to, an interest as lessee or as vendee under a contract of purchase.~~

~~(c) A successor in interest of a person described in subdivision (a) or (b).~~

§ 8182. Notice of completion

8182.

(e) For the purpose of this section, "owner" means the owner who causes a building, improvement, or structure to be constructed, altered, or repaired, or that person's successor in interest at the date a notice of completion is recorded, whether the interest or estate of the owner be in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee. Where the 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.

Comment. Section 8182 restates former Section 3093 without substantive change,

~~As used in this section, the owner is the person that causes a building, improvement, or structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of a notice of cessation is recorded) whether the interest or estate of the owner is in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a cotenant. See Section 8028 ("owner").~~

....

§ 8188. Notice of cessation

8188....

(d) For the purpose of this section, "owner" means the owner who causes a building, improvement, or structure to be constructed, altered, or repaired, or that person's successor in interest at the date a notice of cessation is recorded, whether the interest or estate of the owner be in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee. Where the 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.

Comment. Section 8188 restates former Section 3092 without substantive change.

~~As used in this section, the owner is the person that causes a building, improvement, or structure, to be constructed, altered, or repaired (or the owner's successor in interest at the date of a notice of cessation is recorded) whether the interest or estate of the owner is in fee, as vendee under a contract of purchase, as lessee, or other interest or estate less than the fee, and includes a cotenant. See Section 8028 ("owner").~~

....

§ 8190. Notice of recordation by owner

8190....

(d) This For the purpose of this section, "owner" means a person who has an interest in real property, or the person's successor in interest on the date a notice of completion or notice of cessation is recorded, who causes a building, improvement, or structure, to be constructed, altered, or repaired on the property. If the property is owned 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. However, this section does not apply to any of the following owners:

....

Comment. Section 8190 restates former Section 3259.5,

~~As used in this section, "owner" includes a person that has an interest in property (or the person's successor in interest on the date a notice of completion or cessation is recorded) that causes a building, improvement, or structure, to be constructed, altered, or repaired on the property, and includes a cotenant. See Section 8028 ("owner").~~

....

§ 8444. Notice of nonresponsibility

8444. (a) An owner of real property or a person claiming an interest in real property on which a work of improvement is situated that did not contract for the work of improvement may give notice of nonresponsibility.

....

§ 8480. Petition for release order

8480. (a) The owner of property or the owner of any interest in property subject to a claim of lien may petition the court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within the time provided in Section 8460.

....

§ 8484. Contents of petition

8484. A petition for a release order shall be verified and shall allege all of the following:

....

(h) Whether the owner of the property or interest in the property has filed for relief in bankruptcy or there is another restraint that prevents the claimant from commencing an action to enforce the lien.

§ 8700. Application of chapter

8700. (a) This chapter applies if any of the following conditions is satisfied:

(1) The owner of the fee interest in property contracts for a work of improvement on the property with a contract price greater than five million dollars (\$5,000,000).

(2) The owner of a less than fee interest in property, including a leasehold interest, contracts for a work of improvement on the property with a contract price greater than one million dollars (\$1,000,000).

....

Comment. Subdivision (a) of Section 8700 restates former Section 3110.5(a)(2) without substantive change.

~~This section standardizes terminology consistent with the remainder of the mechanics lien law. A less than fee interest includes a leasehold interest in the property. See Section 8028 ("owner").~~

....

§ 8424. Release bond

8424. (a) An owner of real property or an owner of any interest in real property subject to a recorded claim of lien, or a direct contractor or subcontractor affected by the claim of lien, that disputes the correctness or validity of the claim may obtain release of the real property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property, the direct contractor, or the subcontractor.

....

Generalization of "Lending Institution"

Stakeholders also objected to the Commission’s generalization of the term “lending institution,” which presently applies to only a single provision of existing law.

Amendments delete the generalized definition, and restore the limited definition in existing law:

~~§ 8022. "Lending institution"~~

~~8022. "Lending institution" includes a commercial bank, savings and loan institution, credit union, or other organization or person engaged in the business of financing loans.~~

§ 8604. Bond required by lending institution

8604. (a) If a lending institution requires that a payment bond be given as a condition of lending money to finance a work of improvement, and accepts in writing as sufficient a bond given in

fulfillment of the requirement, the lending institution may not thereafter object to the borrower as to the validity of the bond or refuse to make the loan based on an objection to the bond if the bond is given by an admitted surety insurer.

(b) For purposes of this section, a “lending institution” includes a commercial bank, savings and loan institution, credit union, or other organization or person engaged in the business of financing loans.

Addition to Conditional Waiver and Release Form

The existing mechanics lien statute contains four different waiver and release forms that may be required on a work of improvement. The proposed legislation included a minor substantive change to one of those forms — the form used when seeking a conditional waiver and release from a claimant in exchange for a promised final payment.

The form proposed by the Commission for use in this situation would have allowed a claimant to exempt a prior unpaid progress payment from the waiver. The Commission’s thinking was that allowing a claimant to execute this waiver with such an exemption would at least confirm for all parties that the claimant had received full payment due the claimant for work on the job, other than the specifically exempted payment.

However, stakeholders asserted that allowing such an exemption would be too confusing. They felt that exempting a prior payment from the scope of this waiver would mean that the form would not really be for receipt of a “final” payment (since some money was still owed).

To address this concern, an amendment deletes form language that would have allowed for this exemption:

§ 8136. Conditional waiver and release on final payment

8136. If the claimant is required to execute a waiver and release in exchange for, or in order to induce the payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

...

Exceptions

This document does not affect any of the following:

~~(1) Disputed claims for extras in the amount of \$ _____
(2) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:~~

~~— Date(s) of waiver and release: _____
— Amount(s) of unpaid progress payment(s): \$ _____~~

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

Comment. Section 8136 restates former Section 3262(d)(3) without substantive change, except to add ~~language relating to progress payments covered by previous releases that have not been paid,~~ and a line for identification of the waivant's customer. The statutory form is recast for clarity.

....

Filing of Preliminary Notice with County Recorder

A provision of existing law allows a claimant to file a preliminary notice with the county recorder's office. The county recorder is then required to send notice to those claimants when a notice of completion or cessation has been recorded on the identified property. This administrative procedure is intended to provide claimants notice of events that trigger a time period within which the claimant must record a lien claim.

However, the Commission was informed that the procedure is rarely used by claimants and that some county recorders do not send the notices as required. (The statute specifies no consequence for noncompliance.) The Commission concluded, in light of these circumstances, that the provisions were likely to create a trap for claimants who rely on notices that are never sent. The Commission therefore decided not to continue the procedure in the proposed law.

At the working group meeting, stakeholders objected to the deletion of the statutory notice procedure. They asserted that in many counties the specified notice *is* sent out, to the benefit of claimants. They argued that if problems arise from recorder noncompliance, the remedy is for the recorders to follow the law, not to delete an otherwise helpful procedure.

An amendment restores the existing procedure:

§ 8214. Notices filed with county recorder

~~8214. The county recorder may cause to be destroyed all documents filed under subdivision (o) of former Section 3097. (a) Each person who has served a preliminary notice may file the preliminary notice with the county recorder. A preliminary notice filed pursuant to this section shall comply with the requirements of Section 8102.~~

~~(b) Upon the acceptance for recording of a notice of completion or notice of cessation the county recorder shall mail to those persons who have filed a preliminary notice, 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 with the county recorder. The notification given by the county recorder under this section is not governed by the requirements of Chapter 2 (commencing with Section 8100) of Title 1.~~

~~(c) The failure of the county recorder to mail the notification to the person who filed a preliminary notice, or the failure of those persons to receive the notification or to receive complete notification, shall 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 notice under this section and to do so within five days after the recording of a notice of completion or notice of cessation.~~

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

~~(e) The preliminary notice that a person may file pursuant to 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 notice that is filed is not a recordable document and shall not be entered into those 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 those indexes maintained by the county recorder of those 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 any actual or constructive notice with respect to any party of the existence or contents of a filed preliminary notice nor to any duty of inquiry on the part of any party as to the existence or contents of that notice.~~

Comment. Section 8214 ~~supersedes~~ continues former Section 3097(o) ~~relating to filing preliminary notice with the county recorder without substantive change. This part no longer provides for filing a preliminary notice with the county recorder or for the county recorder to give notice to persons that filed preliminary~~

~~notice of the recordation of a notice of completion or notice of cessation.~~

....

New Definition of "Contractor"

Based on an earlier stakeholder request, the proposed legislation was amended to add a provision indicating that the term "contractor" includes a direct contractor, a subcontractor, or both. See Memorandum 2008-11, p. 21.

At the most recent working group meeting, different stakeholders complained that this provision was confusing, as the definitions of the terms "direct contractor" and "subcontractor" both make use of the term "contractor." See proposed Civ. Code §§ 8018, 8046. Because "contractor" as used in either of those definitions could include either a direct contractor or subcontractor, this could lead to a confusing circularity.

In response to this concern, the author agreed to make the definition of "contractor" inapplicable to the definitions of "direct contractor" and "subcontractor":

§ 8012. "Contractor"

8012. "Contractor" includes a direct contractor, subcontractor, or both. This section does not apply to Sections 8018 and 8046.

New Provisions

Finally, stakeholders at the most recent working group meeting objected to a few entirely new provisions that the Commission had proposed to add to existing law, as either minor substantive improvements or clarifications of presently undefined terms. Stakeholders again expressed concern about possible unintended or unforeseen consequences.

In response, amendments delete the following provisions from the proposed law:

~~§ 8016. "Know or knowledge"~~

~~8016. A person "knows" or "has knowledge" of information if the person knows or should have known that information.~~

~~§ 8038. "Reputed owner, direct contractor, or construction lender"~~

~~8038. (a) "Reputed owner" means a person that a claimant reasonably and in good faith believes is an owner.~~

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

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

§ 8112. Notice by electronic communication

~~8112. (a) As used in this section, "electronic record" has the meaning provided in Section 1633.2.~~

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

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

§ 8116. When notice complete

8116. Notice under this part is complete and deemed to have been given at the following times:

....
~~(f) If given in the form of an electronic record, when the electronic record is transmitted.~~

Improvements Suggested by Stakeholders

Although the Commission has generally been reluctant, so late in the process, to entertain *new* proposals for improvement of existing mechanics lien law, there have been a few improvements suggested by stakeholders that appear to be straightforward and uncontroversial. The recent amendments included two such proposals, as described below.

Because each amendment adds a new statutory section to the proposed legislation, the Commission needs to decide whether to approve Commission Comments for the provisions. A proposed Comment is presented below following each new statutory section.

In conjunction with deciding whether to accept the amendments below, the Commission should decide whether to approve the accompanying proposed Comments, with or without changes.

“Admitted Surety Insurer”

Stakeholders at the working group meeting requested that the proposed legislation add a provision incorporating the definition of “admitted surety insurer,” a term that is used in the proposed legislation without definition. The new provision would incorporate a general definition provided in Code of Civil Procedure Section 995.120 (providing that an admitted surety insurer is a surety licensed to issue bonds in the state of California.) An amendment adds the requested definition:

§ 8002 (added). “Admitted surety insurer”

8002. “Admitted surety insurer” has the meaning provided in Code of Civil Procedure Section 995.120.

Comment. Section 8002 is a new definition, included for drafting convenience. “Admitted surety insurer” replaces references in former law to a corporate surety authorized to write or issue surety bonds in the State of California.

....

Mechanics Lien Release Bond

Based on general consensus at the working group meeting, the author also agreed to an amendment to change the amount of a bond that may be posted to release a recorded lien claim.

Civil Code Section 3143, which the Commission had continued in the proposed legislation without substantive change, requires the amount of such a bond to be 150% of the amount of the recorded lien claim. At the most recent working group meeting, however, stakeholders argued that a reduction of the required amount to 125% of the lien claim would still sufficiently protect lien claimants, while at the same time making the bond more affordable to a greater number of owners needing this bond to clear an encumbered title.

From a claimant’s perspective, a lien release bond serves as a substitute for encumbered property as a source of recovery, and may even be a preferred alternative (as the claimant no longer need be concerned whether there is sufficient available equity in the lien property to pay the claimant’s claim). The requirement in existing law that the amount of the bond exceed the amount of the lien claim by 50% is apparently intended to allow a successful claimant to recover litigation costs, in the event it becomes necessary to litigate the claim. However, it is not clear why the overage needs to be as large as it is. In a similar

context, existing law requires a stop notice release bond to be only 125% of the amount of the stop notice claim.

A surety group that participated in the Commission study also informally indicated to the staff that a reduction in the required amount of a lien release bond from 150% of the amount of the recorded lien claim to 125% would likely not be objectionable to sureties doing business in California. While the change would result in a lower premium realized for each bond, the greater affordability of the bonds would likely result in an increase in the number of bonds issued.

Based on all of the above considerations, the author agreed to make the change, which is implemented by the following amendment:

§ 8424. Release bond

8424. (a) An owner of real property or an owner of any interest in real property subject to a recorded claim of lien, or a direct contractor or subcontractor affected by the claim of lien, that disputes the correctness or validity of the claim may obtain release of the real property from the claim of lien by recording a lien release bond. The principal on the bond may be the owner of the property, the direct contractor, or the subcontractor.

(b) The bond shall be conditioned on payment of any judgment and costs the claimant recovers on the lien. The bond shall be in an amount equal to ~~150~~ 125 percent of the amount of the claim of lien or ~~150~~ 125 percent of the amount allocated in the claim of lien to the real property to be released. The bond shall be executed by an admitted surety insurer.

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

(d) A person that obtains and records a lien release bond shall give notice to the claimant. The notice shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1 and shall include a copy of the bond. Failure to give the notice required by this section does not affect the validity of the bond, but the statute of limitations for an action on the bond is tolled until notice is given. The claimant shall commence an action on the bond within six months after notice is given.

Comment. Subdivisions (a)-(c) of Section 8424 restate former Section 3143 ~~without substantive change~~, reducing the required amount of the lien release bond to 125% of the amount of the recorded claim of lien applicable to the lien property. This reduction harmonizes the required amount of a lien release bond with the required amount of a stop payment notice release bond. See Section 8510. The language of the section is harmonized with

the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure.

....

Technical Concerns

Stakeholders also requested amendments to address a few technical concerns with language in the bill.

Again, if the Commission finds the amendments acceptable, the Commission should consider whether to approve the corresponding Comment revisions proposed below, with or without changes.

Ambiguous Reference to "Owner"

A chapter in the proposed legislation requires an owner of a large project to provide special security to the direct contractor on the project. See proposed Civ. Code §§ 8700-8730. At the working group meeting, stakeholders requested clarification of the term "owner" as used in one of those sections, proposed Section 8710. Although the term "owner" is described in an earlier section in the chapter, stakeholders were concerned that if Section 8710 were read in isolation, the reference to "owner" in that section might prove confusing.

An amendment addresses this concern:

§ 8710. Security for owner's payment obligation

8710. An owner described in subdivision (a) of Section 8700 shall provide the direct contractor all of the following:

....

Comment. Section 8710 restates the first part of former Section 3110.5(b) without substantive change. As used in this section, "owner" includes the owner of the fee simple absolute interest or any lesser interest in the property. See Section 8700 (application of chapter).

....

Penalty for Unpaid Progress Payment

The existing mechanics lien statute provides that an owner that fails to pay a direct contractor a progress payment within 30 days after *receipt* of a demand for that payment is liable to the direct contractor for specified penalties. Civ. Code § 3260.1.

In the proposed legislation, the Commission revised the date when those penalties would be imposed to 30 days after the direct contractor *gives notice* of

the unpaid payment. The Commission felt, particularly in view of the new notice provisions added to the proposed legislation, that the date when notice is *given* would be more easily determined than the date when notice is *received*.

Stakeholders at the working group meeting did not object to this revision, but requested that the language of the revision be rephrased very slightly, to better parallel the provisions governing proof that notice has been given:

§ 8800. Progress payment between owner and direct contractor

8800. (a) Except as otherwise agreed in writing by the owner and direct contractor, the owner shall pay the direct contractor, within 30 days after notice demanding payment pursuant to the contract is given, any progress payment due as to which there is no good faith dispute between them. The notice given shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

....

Operative Date Provision

Proposed Section 8052 states the application of the proposed law. The provision (1) states the operative date of the new law, (2) declares generally that the new law applies to all contracts for works of improvement, whether executed before, on, or after the operative date, but (3) makes clear that actions taken prior to the operative date remain governed by the former law.

Some stakeholders expressed found the provision confusing. The main problem appeared to be the second point discussed above. In particular, the reference to the application of the law to *contracts* for a work of improvement may have led to concerns about the retroactive impairment of contracts.

On reviewing the provision, both the author and the staff concluded that this second prong was not strictly necessary, and that its deletion should not cause any problems. The proposal to delete that language satisfied the stakeholders. The amendment is as follows:

§ 8052. Application of former law

8052. (a) This part is operative on January 1, 2012.

~~(b) Except as otherwise provided in this section, this part applies to a contract for a work of improvement executed before, on, or after the operative date.~~

~~(c) The (b) Notwithstanding subdivision (a), the effectiveness of a notice given or other action taken on a work of improvement~~

before the operative date is governed by the applicable law in effect before the operative date and not by this part.

....

Comment. Section 8052 is new. Although this part applies generally to all ~~contracts for a work~~ works of improvement on or after January 1, 2012, it does not govern notices given or actions taken ~~on a work of improvement~~ prior to January 1, 2012, on a work of improvement. Such notices or actions, ~~which~~ are governed by former law.

....

In addition, for clarity, references to “the operative date” of the statute were replaced with references to the specific date (January 1, 2012).

Content of Lien Release Petition

Stakeholders also noted that language in a provision relating to the content of a lien release petition needed to be revised to conform to an earlier amendment, which narrowed the grounds for relief:

§ 8484. Contents of petition

8484. A petition for a release order shall be verified and shall allege all of the following:

(a) The date of recordation of the claim of lien. A certified copy of the claim of lien shall be attached to the petition.

(b) The county in which the claim of lien is recorded.

(c) The book and page or series number of the place in the official records where the claim of lien is recorded.

(d) The legal description of the property subject to the claim of lien.

(e) ~~The facts on which the petition is based. If the petition is based on expiration of the time to enforce the lien, the petition shall state whether~~ Whether an extension of credit has been granted under Section 8460, if so to what date, and ~~shall allege~~ that the time for commencement of an action to enforce the lien has expired.

....

Cross-Reference to General Notice Provisions

Proposed Section 8614 was added to provide a cross reference to the general notice requirements. This is a nonsubstantive change that would refer a reader to general law governing the notice at issue. Similar cross-references have been provided elsewhere in the proposed law.

The new section reads as follows:

§ 8614 (added). Notice to principal and surety

8614. Notice to the principal and surety under Section 8612 shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

Comment. Section 8614 restates former Section 3227. *Cf.* Code Civ. Proc. §§ 995.170 (“principal”), 995.185 (“surety”).

Content of Preliminary Notice in Public Work of Improvement

As discussed earlier, most provisions in existing law that are common to both private and public works of improvement have now been moved to a new common Title 1 of the proposed law.

That approach was not possible for provisions governing the content of private work and public work preliminary notice, because certain content relevant only to a private work must be included in a private work preliminary notice, and not in a public work preliminary notice.

To preserve those differences while otherwise reconciling the content requirements of preliminary notice to the extent possible, an amendment added a public work provision to mirror that portion of the corresponding private work provision (proposed Section 8202) that is appropriate for a public work:

§ 9303 (added). Content of preliminary notice

9303. The preliminary notice shall comply with the requirements of Section 8102, and shall also include:

- (a) A general description of the work to be provided.
- (b) An estimate of the total price of the work provided and to be provided.

Comment. Section 9303 restates a part of former Section 3098(a). See also Section 8048 (“work”).

Interpretive Guidance

Throughout the working group process, stakeholders have expressed concern that the numerous linguistic changes in the proposed legislation might be interpreted as having some unintended substantive effect, notwithstanding Commission Comments to the contrary. Stakeholders also expressed concern about whether court decisions construing old language would remain applicable to restated language continuing the substance of the former provision.

To address these concerns, the author agreed to add an uncodified section to SB 189, to expressly state which provisions of the bill are substantively new or different from former law, and which continue former law without change. The

uncodified section would also state expressly that court decisions construing former language would remain applicable to the sections that restate and continue that language (but not necessarily to the provisions that are specifically listed as having been substantively changed).

Because the bulk of the proposed legislation is intended to be a nonsubstantive reorganization, the uncodified section is worded to provide that the entire act is nonsubstantive in effect, except as specifically indicated. For completeness, the section also lists existing mechanics lien statute provisions that would not be continued by the proposed legislation.

The uncodified section reads as follows:

SEC. 108. (a) Except as provided in subdivisions (b) and (c):

(1) This act is intended to be nonsubstantive in effect.

(2) Nothing in this act is intended to affect a court decision construing or relating to a provision of former Chapter 8 (commencing with Section 3081.1) of Title 14 of Part 4 of Division 3 of the Civil Code, or former Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code. A court decision construing or relating to a provision of one of those former laws also applies to a provision of this act that restates and continues the former provision. However, in enacting this act, the Legislature has not evaluated the correctness of those court decisions. This act is not intended to, and does not, reflect any legislative assessment of those court decisions.

(b) The following provisions of the Civil Code, which are enacted by this act, are either substantively new or are substantively different from former law:

(1) Section 8014.

(2) Section 8064.

(3) Chapter 2 (commencing with Section 8100) of Title 1 of Part 6 of Division 4.

(4) Section 8122.

(5) Section 8128.

(6) Section 8132.

(7) Section 8182.

(8) Section 8186.

(9) Section 8190.

(10) Section 8200.

(11) Section 8424.

(12) Section 8460.

(13) Section 8482.

(14) Section 8486.

(15) Section 8488.

(16) Section 8510.

(17) Section 8604.

- (18) Section 8606.
- (19) Section 8610.
- (20) Section 8800.
- (21) Section 8834.
- (22) Section 8844.
- (23) Section 9200.
- (24) Section 9204.
- (25) Section 9362.
- (26) Section 9408.
- (27) Section 9550.
- (28) Section 9558.

(c) The following provisions of former Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code are not continued by this act:

- (1) Subdivision (b) of Section 3086.
- (2) Section 3105.
- (3) Subdivision (c) of Section 3123.
- (4) The second paragraph of Section 3131.
- (5) Section 3149.
- (6) Section 3204.
- (7) Paragraph (1) of subdivision (c) of Section 3260.
- (8) Paragraph (2) of subdivision (c) of Section 3260.

Because this section is uncodified, it might be missed by some researchers. For that reason, it would be helpful to include a cross-reference in the Comment to Section 8052, which also addresses the character of provisions of the bill that merely continue former law:

§ 8052. Application of former law

8052. (a) This part is operative on January 1, 2012.

(b) Notwithstanding subdivision (a), the effectiveness of a notice given or other action taken on a work of improvement before January 1, 2012, is governed by the applicable law in effect before January 1, 2012, and not by this part.

(c) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

Comment. Section 8052 is new.

....

Subdivision (c) states the relationship between a provision of this part and a provision of former law that the provision of this part continues or restates. See also 2010 Cal. Stat. ch. _____, § (interpretation of provisions continued in this part).

....

Renumbering of Automatic Checkout System Provisions

Finally, a technical amendment renumbered the heading of an existing statutory part in the Civil Code, unrelated to mechanics lien law, to correct a numbering error:

Civ. Code §§ 7100-7106 (amended). Automatic checkout system

SEC. 19.5. The heading of Part 8 (commencing with Section 7100) of Division 4 of the Civil Code is amended to read:

Part 8 5.5. Automatic Checkout System

APPROVAL OF NEW AND REVISED COMMENTS

An important component of the Commission process is the preparation and approval of explanatory Comments corresponding to each section of proposed legislation. The Comments provide an important source of guidance as to the derivation and meaning of the proposed law. If the recommendation is enacted into law, the Comments are recognized as evidence of legislative intent. See *2008-2009 Annual Report*, 38 Cal. L. Revision Comm'n Reports 16-22 (2008). Commission Comments are routinely published by legal publishers in both print and electronic versions of their annotated codes.

SB 189 has been amended more than once since the Commission's recommendation was approved and published. Consequently, many of the originally approved Comments are no longer consistent with the proposed law.

Our practice in this situation is to prepare new and revised Comments to reflect amendments made by the Legislature. If approved by the Commission, those Comments are published in a supplemental report that is provided to the Legislature, the Governor, and to legal publishers. As indicated, a draft of a proposed supplemental report for this study is the first attachment to this memorandum.

Comment additions and revisions that have been included in the draft supplemental report are discussed below, categorized by type.

Revisions Necessitated by Reorganization of Proposed Legislation

The reorganization of the proposed legislation in this study has required hundreds of technical Comment revisions.

Every Commission Comment begins with an identification of the section number to which the Comment corresponds (e.g., "Section 9560 restates former

Section....”). Therefore, any time a section in proposed legislation is renumbered, the Comment must be revised to correctly state the new section number.

Moreover, it is very common for Comments to include helpful cross-references to related provisions of the proposed law (e.g., applicable definitions). Therefore, renumbering or deletion of a section can also require an adjustment to any Comments that cross-refer to the renumbered or deleted section.

Similarly, if a section is added to the proposed law, it may be appropriate to revise some Comments to add cross-references to the new section.

Finally, the relocation of a section may require a Comment revision to reflect the new location of the relocated section. For example, a Comment that refers to “this title” may need to be revised if reorganization places the section in a new title.

The reorganization of the proposed law requires a large number of technical Comment revisions of the types described above. Because they are so numerous and technical in nature, they have not been set out in this memorandum. Instead, **the necessary revisions have been made in the text of the revised Comments set out in the draft supplemental report that is the first attachment to this memorandum.**

Revisions Necessitated by Recent Amendments

The amendments made on June 2, 2010, necessitate a number of more substantial Comment revisions or additions. Most of those proposed revisions and additions have already been set out for the Commission’s approval in the first part of this memorandum, in proximity with an explanation of the amendment itself.

Two additional Comment revisions based on these amendments are discussed below.

Definition of “Design Professional”

In order to include proposed Section 8014 (“design professional”) in new Title 1, where it would be applicable to both private and public works of improvement, it was necessary to delete statutory text in that section that applies only to a private work (relating to design professional liens). The text was relocated to a new provision, proposed Section 8300. These amendments are shown below.

Based on these changes, the staff recommends that **the Commission approve a revision of the Comment to Section 8014, and the addition of a Comment to Section 8300, as follows:**

§ 8014. “Design professional”

8014. “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code ~~that provides services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement.~~

Comment. Section 8014 ~~restates~~ generalizes the first paragraph of former Section 3081.1, and adds a licensed landscape architect to the persons included within the definition of “design professional.” ~~The introductory clause and the second paragraph of former Section 3081.1 are not continued because they are surplus. See Section 8000 (application of definitions).~~

....

§ 8300 (added). Design professional lien claimant

8300. For purposes of this chapter, a “design professional” is a person described in Section 8014 who provides services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement.

Comment. Section 8300 restates former Section 3081.1, adding a licensed landscape architect to the design professionals who may claim a lien under this chapter. See Section 8014 (“design professional”).

The introductory clause and the second paragraph of former Section 3081.1 are not continued because they are surplus. See Section 8000 (application of definitions).

Revisions Necessitated by Prior Amendments

At prior meetings, the Commission has on occasion accepted amendments to SB 189 without approving any conforming revisions to the applicable Comments. **Those Comment revisions are now presented below for the Commission’s approval.**

Amendments to Implement AB 457 (Monning)

The proposed legislation has been amended to implement the provisions of AB 457 (Monning), a recently enacted mechanics lien bill. See Memorandum 2009-45, pp. 14, 15. Amendments to accomplish that purpose were previously approved by the Commission in principle. Minutes (Oct. 2009), p. 5.

The text of these amendments is set out below for reference, along with proposed Comment revisions to reflect the amendments:

§ 8416. Contents of claim of lien

8416. ~~(a)~~ (a) A claim of mechanics lien shall be ~~in writing~~ a written statement, signed and verified by the claimant, containing all of the following ~~information~~:

~~(a)~~ (1) ~~An itemization~~ A statement of the claimant's demand after deducting all just credits and offsets.

~~(b)~~ (2) The name of the owner or reputed owner, if known.

~~(c)~~ (3) A general statement of the kind of work ~~provided~~ furnished by the claimant.

~~(d)~~ (4) The name of the person ~~that contracted with~~ by whom the claimant ~~for the~~ was employed or to whom the claimant furnished work.

~~(e)~~ (5) A description of the site sufficient for identification.

~~(f)~~ (6) The claimant's address.

(7) A proof of service affidavit completed and signed by the person serving a copy of the claim of mechanics lien pursuant to subdivision (c). The affidavit shall show the date, place, and manner of service, and facts showing that the service was made in accordance with this section. The affidavit shall show the name and address of the person or persons upon whom the copy of the claim of mechanics lien was served, and, if appropriate, the title or capacity in which he or she was served.

(8) The following statement, printed in at least 10-point boldface type. The letters of the last sentence shall be printed in uppercase type, excepting the Internet Web site address of the Contractors' State License Board, which shall be printed in lowercase type:

"NOTICE OF MECHANICS LIEN

ATTENTION!

Upon the recording of the enclosed MECHANICS LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanics lien is recorded.

The party identified in the enclosed mechanics lien may have provided labor or materials for improvements to your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanics lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanics lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANICS LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov."

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

(c) A copy of the claim of mechanics lien, which includes the Notice of Mechanics Lien required by paragraph (8) of subdivision (a), shall be served on the owner or reputed owner. Service shall be made as follows:

(1) For an owner or reputed owner to be notified who resides in or outside this state, by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the owner or reputed owner at the owner's or reputed owner's residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or as otherwise provided in Section 8134.

(2) If the owner or reputed owner cannot be served by this method, then the copy of the claim of mechanics lien may be given by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, addressed to the construction lender or to the original contractor.

(d) Service of the copy of the claim of mechanics lien by registered mail, certified mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, is complete at the time of the deposit of that first-class, certified, or registered mail.

(e) Failure to serve the copy of the claim of mechanics lien as prescribed by this section, including the Notice of Mechanics Lien required by paragraph (8) of subdivision (a), shall cause the claim of mechanics lien to be unenforceable as a matter of law.

Comment. Subdivisions (a)-(e) Paragraphs (1)-(5) of subdivision (a) of Section 8416 restate former Section 3084 3084(a) without substantive change. Paragraphs (7)-(8) of subdivision (a) and subdivisions (c) through (e) are new. They implement provisions of 2009 Cal.Stat. ch. 109 (AB 457 (Monning)).

Subdivision (d) requires the name of the person that “contracted for” the work, rather than the person that “employed” the claimant. See Section 8404 (who may authorize work).

Subdivision (b) restates former Section 3084(b).

Subdivision (f) (a)(6) is new. It implements other provisions that invoke a claimant’s address. Cf. Sections 8424 (release bond), 8486 (time of hearing).

The claim of lien may be executed by the claimant’s authorized agent. See Section 8066 (agency).

See also Sections 1170 (recordation), 8058 (filing and recordation of papers).

See also Sections 8004 (“claimant”), 8032 (“person”), 8040 (“site”), 8048 (“work”).

§ 8460. Time for commencement of enforcement action

8460. (a) The claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien ~~and record a notice of the pendency of the action under Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure within 110 days after recordation of the claim of lien.~~ If the claimant does not commence an action to enforce the lien ~~and record notice of the pendency of the action~~ within the that time ~~provided in this subdivision,~~ the claim of lien expires and is unenforceable.

(b) Subdivision (a) does not apply if the claimant and owner agree to extend credit, and notice of the fact and terms of the extension of credit is recorded (1) within 90 days after recordation of the claim of lien or (2) more than 90 days after recordation of the claim of lien but before a purchaser or encumbrancer for value and in good faith acquires rights in the property. In that event the claimant shall commence an action to enforce the lien and record a notice of the pendency of the action within 90 days after the expiration of the credit, but in no case later than one year after completion of the work of improvement. If the claimant does not commence an action to enforce the lien ~~and record notice of the pendency of the action~~ within the that time ~~provided in this subdivision,~~ the claim of lien expires and is unenforceable.

Comment. Section 8460 restates former Sections 3144, and 3145, ~~and the first sentence of former Section 3146,~~ adding the requirement that a claim of lien is unenforceable if a lis pendens is not recorded within the statutory periods. The reference to the lis pendens statute in former Section 3146 is corrected to reflect the repeal of Code of Civil Procedure Section 409. See 1992 Cal. Stat. ch. 883, § 1. See also Sections 8054 (rules of practice).

~~The second sentence of former Section 3146 is not continued. It is superseded by general provisions governing the effect of a lis pendens. See Code Civ. Proc. § 405.24 (constructive notice).~~

Subdivision (b) makes clear that the owner must be a party to the extension of credit, and allows for late recording of the

extension of credit. This codifies the rule in *Richards v. Hillside Development Co.*, 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960), and overrules *Dorer v. McKinsey*, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8180 (completion).

See also Sections 8004 (“claimant”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8461 (added). Recordation of lis pendens

8461. After commencement of an action to enforce a lien, the plaintiff shall 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 the action, as provided in Title 4.5 (commencing with Section 405) of Part 2 of the Code of Civil Procedure, on or before 20 days after the commencement of the action.

Only from the time of recording that notice shall 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 of its pendency against parties designated by their real names.

Comment. Section 8461 restates former Section 3146, but makes it mandatory that a notice of pendency of action be recorded on or before 20 days after commencement of the lien enforcement action. The reference to the lis pendens statute in former Section 3146 has been corrected to reflect the repeal of Code of Civil Procedure Section 409. See 1992 Cal. Stat. ch. 883, § 1. See also Sections 8054 (rules of practice).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers).

See also Section 8026 (“lien”).

Landscape Architects

The Commission has also previously approved amendments to include licensed landscape architects in a number of provisions governing “design professionals.” See Memorandum 2009-48, pp. 4-5; Minutes (Dec. 2009), p. 3.

For reference, the amendments are shown below, followed by proposed Comment revisions:

§ 8014. “Design professional”

8014. “Design professional” means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code,

registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code

Comment. Section 8014 restates the first paragraph of former Section 3081.1, and adds a licensed landscape architect to the persons included within the definition of "design professional."

....

§ 8204. Effect of preliminary notice

8204. (a) A preliminary notice shall be given not later than 20 days after the claimant has first furnished work on the work of improvement. If work has been provided by a claimant who did not give a preliminary notice, that claimant shall not be precluded from giving a preliminary notice at any time thereafter. The claimant shall, however, be entitled to record a lien, give a stop payment notice, and assert a claim against a payment bond only for work performed within 20 days prior to the service of the preliminary notice, and at any time thereafter.

(b) A licensed architect, licensed landscape architect, registered engineer, or licensed land surveyor who has furnished services for the design of the work of improvement and who gives a preliminary notice not later than 20 days after the work of improvement has commenced shall be deemed to have complied with Section 8200 with respect to architectural, engineering, or surveying services furnished, or to be furnished.

Comment. Subdivision (a) of Section 8204 continues former Section 3097(d) without substantive change.

Subdivision (b) continues the unnumbered paragraph preceding former Section 3097(d) without substantive change, except to add a licensed landscape architect to the group of design professionals to which the provision is applicable.

....

§ 8608. Limitation on part

8608. (a) This part does not give a claimant a right to recover on a direct contractor's payment bond given under this chapter unless the claimant provided work to the direct contractor either directly or through one or more subcontractors, pursuant to a direct contract.

(b) Nothing in this section affects the stop payment notice right of, and relative priorities among, design professionals and holders of secured interests in the property.

Comment. Section 8608 restates former Section 3267 without substantive change,

Note that “design professional” includes a licensed landscape architect. See Section 8014.

....

§ 9550. Payment bond requirement

9550. (a) A direct contractor that is awarded a public works contract involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall, before commencement of work, give a payment bond to and approved by the officer or public entity by whom the contract was awarded.

....

(d) For the purpose of this section, a design professional is not deemed a direct contractor and is not required to give a payment bond.

....

Comment. Section 9550 restates former Section 3247.

....

Note that “design professional” includes a licensed landscape architect. See Section 8014.

....

§ 9566. Limitation on chapter

9566. (a) A claimant does not have a right to recover on a payment bond unless the claimant provided work to the direct contractor either directly or through one or more subcontractors pursuant to a public works contract.

(b) Nothing in this section affects the stop payment notice rights of, and relative priorities among, design professionals.

Comment. Section 9566 restates former Section 3267,

Note that “design professional” includes a licensed landscape architect. See Section 8014.

....

Proposed Revision to Clarify Statutory Language

At times, the best way to address a possible misunderstanding of statutory language is through revision of Comment language, rather than amendment of the statutory language itself. Comments are less formal in their structure and provide more latitude for explanatory content.

During the working group process, a stakeholder group thought that the statute governing proof of notice by certified mail could perhaps be misunderstood. The staff didn’t see any ambiguity in the statutory language and proposed adding explanatory language in the Comment to proposed Section

8118. The staff recommends that **the Commission approve the proposed Comment revision set out below, which satisfied the stakeholder group:**

§ 8118. Proof of notice

8118. (a) Proof that notice was given to a person in the manner required by this part shall be made by a proof of notice declaration that states all of the following:

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

(b) If the notice is given by mail, the declaration shall be accompanied by one of the following:

(1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail.

(2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service.

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

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

....

Comment. Section 8118 is new. It generalizes and standardizes provisions found throughout former law, and expands the methods of proof to include documentation of the mailing provided by the United States Postal Service or an express service carrier. See, e.g., former Sections 3097 (preliminary notice), 3260.2 (stop work notice).

Subdivision (b) specifies the documentation that must be attached to a proof of notice declaration when notice is given by mail. Documentation establishing proof of delivery or attempted delivery of the notice as specified in subdivision (b)(3)-(4) is sufficient, but not necessary, to satisfy the requirement of the subdivision. Proof that payment was made to the United States Postal Service or an express service carrier for an approved method of delivery is also sufficient. See subdivision (b)(1)-(2).

....

Technical Comment Revisions

Finally, the draft supplemental report attached to this memorandum corrects some purely technical editing errors that are not set out in this memorandum. The staff will be prepared to discuss these revisions if requested to do so.

Approval of Supplemental Report

As indicated, the supplemental report that is the first attachment to this memorandum incorporates each of the proposed Comment revisions and additions discussed in this memorandum.

After implementing any necessary changes that might be made after consideration of this memorandum, the staff recommends that the Commission approve the supplemental report.

Respectfully submitted,

Steve Cohen
Staff Counsel

REPORT OF THE
CALIFORNIA LAW REVISION COMMISSION
ON CHAPTER ___ OF THE STATUTES OF 2010
(SENATE BILL 189)

Mechanics Lien Law

Chapter ___ of the Statutes of 2010 was introduced as Senate Bill 189 by Senator Alan Lowenthal, on recommendation of the California Law Revision Commission. The measure implements the Commission's recommendation on *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007). The new and revised Comments set out below supersede the comparable Comments in the recommendation and reflect amendments made to Senate Bill 189 in the legislative process. A revised disposition table is set out at the end of this report. It supersedes the disposition table in the recommendation.

Civ. Code §§ 3081.1-3081.10 (repealed). Design professionals lien

Comment. Former Chapter 8 (former Sections 3081.1-3081.10) is replaced by Chapter 3 (Sections 8300-8318) of Title 2 of Part 6 of Division 4. For the disposition of a section in former Chapter 8, see *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007).

Civ. Code §§ 3082-3267 (repealed). Works of improvement

Comment. Former Title 15 (former Sections 3082-3267) is replaced by new Part 6 (Sections 8000-9566) of Division 4 of the Civil Code. For the disposition of a section in former Title 15, see *Mechanics Lien Law*, 37 Cal. L. Revision Comm'n Reports 527 (2007); Report of the California Law Revision Commission on Chapter ___ of the Statutes of 2010 (Senate Bill 189), 39 Cal. L. Revision Comm'n Reports ___ (201_).

Civ. Code §§ 7100-7106 (amended). Automatic checkout system

Comment. The heading of Part 8 (Sections 7100-7106) is amended to renumber the part as Part 5.5. The section numbers and text of the part remain unchanged.

§ 8002. "Admitted surety insurer"

Comment. Section 8002 is new. It is included for drafting convenience. "Admitted surety insurer" replaces references in former law to a corporate surety authorized to write or issue surety bonds in the State of California.

See Sections 8424 (lien claim release bond), 8510 (stop payment notice release bond), 8534 (construction lender objection to bonded

stop payment notice), 8604 (lending institution objection to surety on payment bond), 8606 (payment bond).

§ 8004. “Claimant”

Comment. Section 8004 restates former Section 3085 without substantive change.

See also Sections 8026 (“lien”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8006. “Construction lender”

Comment. Section 8006 restates former Section 3087 without substantive change.

See also Section 14 (present includes future).

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8008. “Contract”

Comment. Section 8008 broadens the definition of “contract” in former Section 3088.

There are instances in this part where the term is not used in its defined sense. See, e.g., Section 8444(d)(2). See also Section 8000 (application of definitions).

An agreement between an owner and a direct contractor that provides for all or part of a work of improvement is a “direct contract.” See Section 8016.

See also Section 8050 (“work of improvement”).

§ 8010. “Contract price”

Comment. Section 8010 is new. It is included for drafting convenience.

See also Sections 8016 (“direct contract”), 8050 (“work of improvement”).

§ 8012. “Contractor”

Comment. Section 8012 is new. It is included for drafting convenience.

See also Sections 8018 (“direct contractor”), 8046 (“subcontractor”).

§ 8014. “Design professional”

Comment. Section 8014 generalizes the first paragraph of former Section 3081.1, and adds a licensed landscape architect to the persons included within the definition of “design professional.”

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8016. “Direct contract”

Comment. Section 8016 restates former Section 3088 without substantive change.

See also Sections 8008 (“contract”), 8018 (“direct contractor”), 8050 (“work of improvement”).

§ 8018. “Direct contractor”

Comment. Section 8018 supersedes former Section 3095 (“original contractor”). A direct contractor within the meaning of this section is one that contracts directly with the owner, as opposed to one that contracts with another contractor (i.e., a subcontractor).

A direct contractor is at times referred to in other code sections as a “prime contractor.” See e.g., Pub. Cont. Code § 4113.

§ 8020. “Funds”

Comment. Section 8020 is new. It is included for drafting convenience. It generalizes provisions of former Sections 3186, 3187, and 3196.

See also Section 8038 (“public works contract”).

§ 8022. “Labor, service, equipment, or material”

Comment. Section 8022 is new. It is included for drafting convenience. The phrase is intended to replace various phrases used throughout the former law, including “labor or material,” “labor, services, equipment, or materials,” “appliances, teams, or power,” and the like, and is not intended to effect any change in the law. The definition applies to variant grammatical forms of the phrase used in this part, such as “labor, service, equipment, *and* material.”

See also Section 8050 (“work of improvement”).

§ 8024. “Laborer”

Comment. Subdivision (a) of Section 8024 continues former Section 3089(a) without substantive change.

Subdivision (b) restates the first sentence of former Section 3089(b) and a part of former Section 3111 without substantive change.

Subdivision (c) restates the second and third sentences of former Section 3089(b) and a part of former Section 3111 without substantive change.

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8026. “Lien”

Comment. Section 8026 is new. It is included for drafting convenience. There are instances in this part where the term is not used in its defined sense. See Section 8000 (application of definitions).

Note that the application of this part to a design professionals lien is limited. See Section 8308 (application of part).

See also Sections 8014 (“design professional”), 8042 (“site improvement”), 8050 (“work of improvement”).

§ 8028. “Material supplier”

Comment. Section 8028 continues former Section 3090 without substantive change. It replaces the term “materialman” with the term “material supplier” to conform to contemporary usage under this part.

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8034. “Preliminary notice”

Comment. Section 8034 supersedes parts of former Sections 3097 and 3098. The substantive requirements for preliminary notice on a private work are relocated to Section 8200 *et seq.* The substantive requirements for preliminary notice on a public work are relocated to Section 9300 *et seq.*

§ 8036. “Public entity”

Comment. Section 8036 continues former Section 3099 without change.

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

§ 8038. “Public works contract”

Comment. Section 8038 supersedes former Section 3100 (“public work”). Under Section 1101, “public works contract” means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

§ 8042. “Site improvement”

Comment. Section 8042 continues former Section 3102 without substantive change, except that subdivision (f) makes clear that the reference in former law to “making any improvements” means preparatory work, and does not include construction of a structure.

See also Sections 8040 (“site”), 8048 (“work”), 8050 (“work of improvement”).

§ 8044. “Stop payment notice”

Comment. Section 8044 supersedes former Section 3103. The term “stop payment notice” replaces the term “stop notice” used in former law.

See also Section 8004 (“claimant”).

§ 8046. “Subcontractor”

Comment. The first sentence of Section 8046 continues former Section 3104 without substantive change. The second sentence is new; it makes clear that the term “subcontractor” includes a subcontractor of a subcontractor.

See also Section 8018 (“direct contractor”).

§ 8048. “Work”

Comment. Section 8048 is new. It is included for drafting convenience.

See also Sections 8022 (“labor, service, equipment, or material”), 8050 (“work of improvement”).

§ 8050. “Work of improvement”

Comment. Section 8050 restates former Section 3106. The section is revised to reorganize and tabulate the different types of work falling within the definition, to expand the coverage of the definition, and to make various technical, nonsubstantive revisions. The term “real property” replaces “lot or tract of land.”

A site improvement is treated under this part in the same manner as a work of improvement, except as specifically provided in this part. See e.g., Sections 8450 (priority of lien), 8458 (priority of site improvement lien).

See also Section 8042 (“site improvement”).

§ 8052. Application of former law

Comment. Section 8052 is new. Although this part applies generally to all works of improvement on or after January 1, 2012, it does not govern notices given or actions taken prior to January 1, 2012, on a work of improvement. Such notices or actions are governed by former law.

Subdivision (c) states the relationship between a provision of this part and a provision of former law that the provision of this part continues or restates. See also Section 108 of Chapter ___ of the Statutes of 2010.

See also Section 8050 (“work of improvement”).

§ 8054. Relation to other statutes

Comment. Subdivision (a) of Section 8054 restates former Section 3266(a).

Subdivision (b) is new. It clarifies the interrelation between this part and the Subdivision Map Act. For relevant provisions of that act, see Government Code Sections 66499-66499.10 (improvement security).

Subdivision (c) restates former Section 3266(b). This provision updates the former cross-reference to Streets and Highways Code Sections 5290-5297, which were repealed in 1982 when the Public Contract Code was created. See 1982 Cal. Stat. ch. 465, § 56. The repealed sections were superseded by Public Contract Code Sections 20457-20464. See 1982 Cal. Stat. ch. 465, § 11. The new sections apply to bonds in “street work” projects under Division 2 (commencing with Section 1600) of the Public Contract Code. See Pub. Cont. Code § 20457.

§ 8056. Rules of practice

Comment. Section 8056 continues the first sentence of former Section 3259 without substantive change. The second sentence of former Section 3259 is not continued; this part does not include special provisions relating to new trials or appeals.

Section 8056 makes former Section 3149, relating to joinder and consolidation of actions, unnecessary. Part 2 of the Code of Civil Procedure enables persons claiming liens on the same property to join in the same action to enforce their liens. See Code Civ. Proc. § 378 (permissive joinder). If separate actions are commenced, the court may consolidate them. See Code Civ. Proc. § 1048 (consolidation of actions).

§ 8058. Calculation of time

Comment. Section 8058 is new. A reference to the term “day” in a statute typically means a calendar day, unless otherwise specifically indicated. *Iverson v. Superior Court*, 167 Cal. App. 3d 544, 548, 213 Cal. Rptr. 399 (1985.)

See also Sections 10 (computing time), 11 (holidays).

§ 8060. Filing and recordation of papers

Comment. Subdivisions (a) and (b) of Section 8060 are new. They generalize a number of provisions of former law. See also Section 1170 (recordation), Gov’t Code §§ 27280, 27287 (recordation of documents).

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

See also Sections 8008 (“contract”), 8024 (“lien”), 8030 (“payment bond”), 8050 (“work of improvement”).

§ 8062. Effect of act by owner

Comment. Section 8062 restates former Section 3263 without substantive change.

See also Section 8152 (no release of surety from liability).

See also Sections 8008 (“contract”), 8018 (“direct contractor”), 8030 (“payment bond”).

§ 8064. Co-owners

Comment. Section 8064 is new. It generalizes provisions found in former Sections 3092 (notice of cessation) and 3093 (notice of completion).

§ 8066. Agency

Comment. Section 8066 is a specific application of Section 2305. This section makes clear that an agent’s authority is limited to the scope of the agency. Thus, to the extent a direct contractor is deemed to be the agent of an owner for the purpose of engaging a subcontractor, the scope of the agency does not include other acts, such as compromise of litigation.

For provisions relating to the agency authority of co-owners, see Section 8064 (co-owners).

See also Section 8032 (“person”).

§ 8100. Written notice

Comment. Section 8100 generalizes various provisions of former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion), 3094 (notice of nonresponsibility), 3097 (preliminary notice (private work)), 3103 (stop notice).

See also Evid. Code § 250 (“writing”).

§ 8102. Contents of notice

Comment. Section 8102 is new. It generalizes and standardizes provisions found throughout former law. See, e.g., former Sections 3092 (notice of cessation), 3093 (notice of completion), 3097 (preliminary notice), 3103 (stop notice).

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8018 (“direct contractor”), 8032 (“person”), 8040 (“site”), 8048 (“work”).

§ 8104. Notice of overdue laborer compensation

Comment. Section 8104 restates former Section 3097(k), with the additional requirement that the information provided be given to the owner or reputed owner, and include the name and address of the unpaid laborer. See also Sections 8100-8118 (notice).

The reference to the Registrar of Contractors in the final sentence of former Section 3097(k) is revised to refer to the Contractors' State License Law. This is a technical, nonsubstantive change.

The information required in this notice is in addition to the information required by Section 8102 (contents of notice).

Compliance with this section does not excuse compliance with Section 8202(b), if applicable. See Section 8202 (contents of preliminary notice).

See also Sections 8006 ("construction lender"), 8018 ("direct contractor"), 8024 ("laborer"), 8032 ("person"), 8046 ("subcontractor"), 8050 ("work of improvement").

§ 8108. Address at which notice is given

Comment. Section 8108 is new. It generalizes and standardizes provisions found throughout former law. For an example of a more particularized notice provision, see Section 8506.

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

See also Sections 8004 ("claimant"), 8006 ("construction lender"), 8008 ("contract"), 8012 ("contractor"), 8016 ("direct contract"), 8018 ("direct contractor"), 8026 ("lien"), 8030 ("payment bond"), 8032 ("person"), 8034 ("preliminary notice"), 8036 ("public entity"), 8044 ("stop payment notice"), 8046 ("subcontractor").

§ 8114. Posting of notice

Comment. Section 8114 is new. It generalizes provisions found in former law. See, e.g., former Sections 3094 (notice of nonresponsibility), 3260.2 (stop work notice).

See also Section 8040 ("site").

§ 8116. When notice complete

Comment. Section 8116 is new. It generalizes and standardizes provisions found in former law. See, e.g., former Section 3097(f)(3) (service of preliminary notice).

Under subdivision (b), when notice is given in the manner provided in Code of Civil Procedure Section 1013, the notice is complete when deposited in the mail or with an express service carrier. The 10 and 20 day delays provided in the Code of Civil Procedure for completion of service under that code are inapplicable. For an exception to this rule, see Section 8486 (notice of hearing on lien release petition).

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

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8110 (mailed notice), 8114 (posting of notice).

§ 8118. Proof of notice

Comment. Section 8118 is new. It generalizes and standardizes provisions found throughout former law, and expands the methods of proof to include documentation of the mailing provided by the United States Postal Service or an express service carrier. See, e.g., former Sections 3097 (preliminary notice), 3260.2 (stop work notice).

Subdivision (b) specifies the documentation that must be attached to a proof of notice declaration when notice is given by mail. Documentation establishing proof of delivery or attempted delivery of the notice as specified in subdivision (b)(3)-(4) is sufficient, but not necessary, to satisfy the requirement of the subdivision. Proof that payment was made to the United States Postal Service or an express service carrier for an approved method of delivery is also sufficient. See subdivision (b)(1)-(2).

See also Section 8110 (mailed notice).

See also Section 8032 (“person”).

§ 8120. Application of chapter

Comment. Section 8120 is new. It provides the scope of applicability of the provisions of Chapter 3 of Title 1.

See also Section 8050 (“work of improvement”).

§ 8122. Terms of contract

Comment. Section 8122 continues the first and second sentences of former Section 3262(a) without substantive change, except to add a reference to a subcontractor.

See also Sections 8004 (“claimant”), 8008 (“contract”), 8018 (“direct contractor”), 8046 (“subcontractor”).

§ 8124. Waiver and release

Comment. Section 8124 continues the third and fourth sentences of former Section 3262(a) without substantive change. The term “financial institution” replaces “bank” in subdivision (b) and in the forms provided in this article.

The waiver and release may be signed by the claimant's agent. See Section 8066 (agency).

See also Sections 8004 ("claimant"), 8006 ("construction lender"), 8026 ("lien"), 8030 ("payment bond").

§ 8126. Statement of claimant

Comment. Section 8126 continues former Section 3262(b)(1) without substantive change.

See also Section 8004 ("claimant"), 8026 ("lien").

§ 8128. Reduction or release of stop payment notice

Comment. Subdivisions (a) and (c) of Section 8128 generalize former Section 3262(b)(2), so as to apply to a stop payment notice given to a construction lender as well as to a stop payment notice given to an owner.

Subdivision (b) is new.

See also Sections 8004 ("claimant"), 8032 ("person"), 8044 ("stop payment notice").

§ 8130. Accord and satisfaction or settlement agreement not affected

Comment. Section 8130 continues former Section 3262(c) without substantive change.

See also Section 8026 ("lien").

§ 8132. Conditional waiver and release on progress payment

Comment. Section 8132 restates former Section 3262(d)(1) without substantive change, except to add language relating to progress payments covered by previous releases that have not been paid. The statutory form is recast for clarity.

See also Sections 8004 ("claimant"), 8008 ("contract"), 8026 ("lien"), 8030 ("payment bond"), 8032 ("person"), 8044 ("stop payment notice"), 8048 ("work").

§ 8134. Unconditional waiver and release on progress payment

Comment. Section 8134 restates former Section 3262(d)(2) without substantive change. The statutory form is recast for clarity.

See also Sections 8004 ("claimant"), 8008 ("contract"), 8026 ("lien"), 8030 ("payment bond"), 8044 ("stop payment notice"), 8048 ("work").

§ 8136. Conditional waiver and release on final payment

Comment. Section 8136 restates former Section 3262(d)(3) without substantive change, except to add a line for identification of the waivant's customer. The statutory form is recast for clarity.

See also Sections 8004 (“claimant”), 8026 (“lien”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8138. Unconditional waiver and release on final payment

Comment. Section 8138 restates former Section 3262(d)(4) without substantive change. The statutory form is recast for clarity.

See also Sections 8004 (“claimant”), 8026 (“lien”), 8030 (“payment bond”), 8044 (“stop payment notice”).

§ 8150. Application of Bond and Undertaking Law

Comment. Section 8150 is new. It is a specific application of Code of Civil Procedure Section 995.020 (application of Bond and Undertaking Law).

Former Section 3227, relating to notice to principal and surety, is not continued. Its substance is superseded by Sections 8100-8118 (notice).

§ 8152. No release of surety from liability

Comment. Section 8152 restates former Section 3225 without substantive change. See also Section 8062 (effect of act by owner).

See also Sections 8004 (“claimant”), 8008 (“contract”), 8032 (“person”), 8048 (“work”), 8050 (“work of improvement”).

§ 8154. Construction of bond

Comment. Section 8154 restates former Section 3226 without substantive change. See also Sections 8400-8404 (who is entitled to lien).

See also Sections 8004 (“claimant”), 8016 (“direct contract”), 8032 (“person”).

§ 8160. Application of title

Comment. Section 8160 is new. It provides the scope of applicability of the provisions of this title. Title 3 (commencing with Section 9000) of this part governs a work of improvement contracted for by a public entity. See Section 9000.

See also Section 8050 (work of improvement).

§ 8170. Contract forms

Comment. Section 8170 restates the parts of former Section 3097(l) and (m) relating to the contents of contracts, deleting the limitation to the owner’s residence address. The reference to “written” contract is added to subdivision (b) for consistency with subdivision (a). The reference to “lender or lenders” in subdivision (a) is shortened to “lender” for consistency with subdivision (b). See Section 14 (singular includes plural, and plural includes

singular). These and other minor wording changes are technical, nonsubstantive revisions.

For the direct contractor's duty to provide information to persons seeking to serve a preliminary notice, see Section 8208.

This section does not require that all contracts between an owner and a direct contractor be in writing.

See also Sections 8006 ("construction lender"), 8008 ("contract"), 8016 ("direct contract"), 8018 ("direct contractor"), 8046 ("subcontractor").

§ 8172. Designation of construction lender on building permit

Comment. Section 8172 continues former Section 3097(i) without substantive change.

See also Sections 8006 ("construction lender"), 8032 ("person"), 8034 ("preliminary notice"), 8036 ("public entity").

§ 8174. Construction trust deed

Comment. Section 8174 continues former Section 3097(j) without substantive change.

See also Section 8060 (filing and recordation of papers).

See also Sections 8006 ("construction lender"), 8032 ("person"), 8034 ("preliminary notice"), 8050 ("work of improvement").

§ 8180. Completion

Comment. Section 8180 restates former Section 3086, to the extent it applied to a private work.

References to occupation or use by an owner may include occupation or use by the owner's agent. See Section 8066 (agency).

"Acceptance by the owner" is not continued as a form of completion.

The provision in subdivision (b) for acceptance by a public entity refers to acceptance pursuant to a legislative enactment of the public entity and not to inspection and approval or issuance of a certificate of occupancy under building regulations.

Subdivision (b) applies only to a private work of improvement. See Section 8160 (application of title).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8188 (notice of cessation).

See also Sections 8036 ("public entity"), 8050 ("work of improvement").

§ 8182. Notice of completion

Comment. Section 8182 restates former Section 3093 without substantive change, except that the 10 day period for recording a notice of completion is extended to 15 days. For the date of completion of a work of improvement, see Section 8180.

A notice of completion may be signed and verified or recorded by an agent of the owner, to the extent the act is within the scope of the agent's authority. See Section 8066 (agency).

For the effect of a recordation of a notice of completion, see Sections 8412 and 8414 (time for claim of lien), 8612 (notice of payment bond claim).

A claim of lien must be filed within 30 or 60 days after recordation of a notice of completion (depending on the nature of the claimant), subject to a maximum of 90 days after actual completion. See Sections 8412 and 8414 (recordation of claim of lien). However, an owner that records a notice of completion that states an incorrect date of completion may be estopped from asserting the running of the filing period. See *Doherty v. Carruthers*, 171 Cal. App. 2d 214, 340 P.2d 58 (1959).

A notice of completion is ineffective to shorten the time for a claim of lien unless notice of recordation is given to the person whose claim of lien is affected. See Section 8190 (notice of recordation by owner).

A notice of completion is recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. See Section 8060(a) (filing and recordation of papers). A notice of completion is recorded when it is filed for record. See Sections 1170 (recordation), 8060(b) (filing and recordation of papers).

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

See also Sections 8058 (calculation of time), 8064 (co-owners).

See also Sections 8008 ("contract"), 8018 ("direct contractor"), 8032 ("person"), 8040 ("site"), 8048 ("work"), 8050 ("work of improvement").

§ 8184. Recordation of notice of completion

Comment. Section 8153 continues a portion of former Section 3093 without substantive change.

See also Sections 1170 (recordation); 8058 (filing and recordation of papers), 8150 (notice of completion), 8154 (notice of completion of contract for portion of work of improvement), 8156 (notice of recordation by owner); Gov't Code §§ 27280, 27287 (recordation of documents).

§ 8186. Notice of completion of contract for portion of work of improvement

Comment. Section 8186 continues the substance of former Section 3117, but eliminates the 10 day period for recordation of a notice of completion of a contract for a portion of a work of improvement.

This section omits the rules found in former law governing the time for recordation of a lien claim after a notice of completion for a portion of a work of improvement. The general rules governing the time for recordation do not distinguish among types of notice of completion, and appear to be satisfactory for purposes of this section, with the clarification set out in subdivision (a). A claim of lien must be recorded within 30 or 60 days after recordation of notice of completion (depending on the nature of the claimant), subject to a maximum of 90 days after actual completion. See Sections 8412 and 8414 (time for recordation of lien claim).

For the effect of a recordation of a notice of completion, see Sections 8412 and 8414 (time for recordation of lien claim), 8612 (notice of payment bond claim).

The recordation of a notice of completion of a contract for a portion of a work of improvement does not affect the rights of a claimant with respect to work provided pursuant to another contract.

See also Sections 8064 (co-owners), 8182 (notice of completion).

See also Sections 8004 (“claimant”), 8008 (“contract”), 8016 (“direct contract”), 8018 (“direct contractor”), 8026 (“lien”), 8048 (“work”), 8050 (“work of improvement”).

§ 8188. Notice of cessation

Comment. Section 8188 restates former Section 3092 without substantive change.

The notice of cessation may be signed, verified, and recorded by an agent of the owner to the extent the act is within the scope of the agent’s authority. See Section 8066 (agency).

For the effect of a recordation of a notice of cessation, see Sections 8412 and 8414 (time for recordation of lien claim).

A notice of cessation is recorded in the office of the county recorder of the county in which the work of improvement or part of it is performed. See Section 8060(a) (filing and recordation of papers). The notice is recorded when it is filed for record. See Sections 1170 (recordation), 8060(b) (filing and recordation of papers).

A notice of cessation is ineffective to shorten the time for a claim of lien unless notice of recordation is given to the person whose claim of lien is affected. See Section 8190 (notice of recordation by owner).

See also Sections 8058 (calculation of time), 8064 (co-owners).

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8190. Notice of recordation by owner

Comment. Section 8190 restates former Section 3259.5, replacing the notice of recordation with a copy of the notice that the owner

files for recordation, and expanding the manner of notice. The notice may no longer be given by regular mail. See Sections 8106 (manner of giving notice), 8110 (mailed notice).

Subdivision (c) is recast in terms of the ineffectiveness of the notice of completion or cessation, in place of the former references to extension of time.

A notice is recorded when it is filed for record. See Sections 1170 (recordation), 8060 (filing and recordation of papers).

See also Sections 8058 (calculation of time), 8064 (co-owners), 8180 (completion), 8182 (notice of completion), 8186 (notice of completion of contract for portion of work of improvement), 8188 (notice of cessation).

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8026 (“lien”), 8032 (“person”), 8034 (“preliminary notice”).

§ 8200. Preliminary notice prerequisite to remedies

Comment. Section 8200 restates the introductory clause and parts of subdivisions (a) and (b) of former Section 3097. Some repetitive detail is omitted in reliance on defined terms and other substantive provisions.

Subdivision (e)(2) makes clear that all direct contractors must give preliminary notice to the construction lender or reputed construction lender, if any. This resolves a possible ambiguity in former Section 3097(b).

For an exception to the requirement that preliminary notice must be given before asserting a claim against a payment bond, see Section 8612.

The substance of former Sections 3097(f) and 3097.1 are continued in the general notice provisions of this part. See Sections 8100-8118 (notice).

The transitional provisions of former Section 3097(p) are obsolete and not continued.

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8018 (“direct contractor”), 8024 (“laborer”), 8026 (“lien”), 8030 (“payment bond”), 8032 (“person”), 8034 (“preliminary notice”), 8044 (“stop payment notice”), 8046 (“subcontractor”), 8048 (“work”).

§ 8202. Contents of preliminary notice

Comment. Section 8202 continues the substance of former Section 3097(c)(1)-(6), the unnumbered paragraph following paragraph (6), and the requirement of former Section 3097(a) that the preliminary notice be written. See also Sections 8100-8118 (notice). The reference to an “express trust fund” is replaced by a reference to a generalized category of persons or entities included within the definition of “laborer.” See Section 8024 (“laborer”).

The continuation of the provision in subdivision (c) is not intended to make any change with respect to otherwise applicable privacy rights.

The information required in this notice is in addition to the information required by Section 8102 (contents of notice).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8182 (notice of completion), 8186 (notice of completion of contract for portion of work of improvement), 8188 (notice of cessation).

See also Sections 8012 (“contractor”), 8022 (“labor, service, equipment, or material”), 8024 (“laborer”), 8026 (“lien”), 8032 (“person”), 8034 (“preliminary notice”), 8046 (“subcontractor”), 8048 (“work”).

§ 8204. Effect of preliminary notice

Comment. Subdivision (a) of Section 8204 continues former Section 3097(d) without substantive change.

Subdivision (b) continues the unnumbered paragraph preceding former Section 3097(d) without substantive change, except to add a licensed landscape architect to the group of design professionals to which the provision is applicable.

See also Section 8058 (calculation of time).

See also Sections 8004 (“claimant”), 8026 (“lien”), 8030 (“payment bond”), 8034 (“preliminary notice”), 8044 (“stop payment notice”), 8048 (“work”), 8050 (“work of improvement”).

§ 8206. Coverage of preliminary notice

Comment. Section 8206 restates former Section 3097(g) without substantive change.

See also Sections 8004 (“claimant”), 8008 (“contract”), 8032 (“person”), 8034 (“preliminary notice”), 8046 (“subcontractor”), 8048 (“work”), 8050 (“work of improvement”).

§ 8208. Direct contractor’s duty to provide information

Comment. Section 8208 restates the parts of former Section 3097(l) and (m) relating to a direct contractor’s duty to provide information, deleting the limitation to the owner’s residence address.

See also Sections 8006 (“construction lender”), 8018 (“direct contractor”), 8032 (“person”), 8034 (“preliminary notice”).

§ 8210. Owner’s duty to give notice of construction loan

Comment. Section 8210 continues former Section 3097(n) without substantive change. The reference to commencement of construction is changed to commencement of a work of improvement for consistency with the remainder of this part.

See also Sections 8006 (“construction lender”), 8032 (“person”), 8034 (“preliminary notice”), 8050 (“work of improvement”).

§ 8212. Waiver void

Comment. Section 8212 continues former Section 3097(e) without substantive change.

§ 8214. Notices filed with county recorder

Comment. Section 8214 continues former Section 3097(o) without substantive change.

The former reference to the date after which the county recorder is authorized to act is deleted as a transitional provision that is now obsolete.

See also Sections 8060(a) (filing with county recorder), 8102 (contents of notice), 8182 (notice of completion), 8186 (notice of completion of contract for portion of work of improvement), 8188 (notice of cessation), 8412 (time for claim of lien by direct contractor), 8414 (time for claim of lien by claimant other than direct contractor).

See also Sections 8026 (“lien”), 8032 (“person”), 8034 (“preliminary notice”).

§ 8216. Subcontractor discipline

Comment. Section 8216 continues the first paragraph of former Section 3097(h) without substantive change. See also Sections 8008 (“contract”), 8046 (“subcontractor”), 8050 (“work of improvement”).

§ 8300. Design professional lien claimant

Comment. Section 8300 restates former Section 3081.1, adding a licensed landscape architect to the design professionals who may claim a lien under this chapter. See Section 8014 (“design professional”).

The introductory clause and the second paragraph of former Section 3081.1 are not continued because they are surplus. See Section 8000 (application of definitions).

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8302. Lien

Comment. Section 8302 restates former Section 3081.2. The amount of the lien is limited to the fee for services provided under the contract rather than the fee for services provided before commencement of the work of improvement, since the lien provided by this section is only available prior to commencement

of the work of improvement. See also Section 8306 (lien terminates on commencement of work).

See also Sections 1170 (recordation), 8060 (filing and recordation of papers), 8300 (design professional lien claimant).

See also Sections 8014 (“design professional”), 8026 (“lien”), 8040 (“site”), 8050 (“work of improvement”).

§ 8304. Prerequisites for lien

Comment. Section 8304 restates former Section 3081.3, with the clarification that a lien under this chapter is unavailable if construction has commenced. See subdivision (a).

A building permit or other governmental approval for the work of improvement obtained in connection with or utilizing the services provided by the design professional is required as a condition of recordation of a lien claim under Section 8302 (lien).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8300 (design professional lien claimant).

See also Sections 8014 (“design professional”), 8026 (“lien”), 8040 (“site”), 8050 (“work of improvement”).

§ 8306. Creation, expiration, and release of lien

Comment. Section 8306 restates former Section 3081.4. On expiration of the lien as a result of commencement of the work of improvement, the design professional may obtain a lien under Section 8400 (mechanics lien). See Section 8310 (mechanics lien right not affected).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8300 (design professional lien claimant).

See also Sections 8014 (“design professional”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8308. Application of part

Comment. Section 8308 continues the substance of former Section 3081.5, and provides for the application of the definitional provisions of this part.

See also Section 8026 (“lien”).

§ 8310. Mechanics lien right not affected

Comment. Section 8310 restates former Section 3081.6.

See Section 8300 (design professional lien claimant).

See also Sections 8014 (“design professional”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8312. Time for claim of lien

Comment. Section 8312 restates former Section 3081.7.

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8300 (design professional lien claimant).

See also Sections 8014 (“design professional”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8314. Right to pursue other remedies

Comment. Section 8314 restates former Section 3081.8.

See also Section 8300 (design professional lien claimant).

See also Sections 8014 (“design professional”), 8026 (“lien”).

§ 8316. Priorities

Comment. Section 8316 restates former Section 3081.9.

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8300 (design professional lien claimant).

See also Sections 8006 (“construction lender”), 8014 (“design professional”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8318. Exemption

Comment. Section 8318 restates former Section 3081.10. The exemption is based on expected construction cost, since the lien is only available if the work of improvement is not constructed. See Section 8306 (creation, expiration, and release of lien).

See also Section 8300 (design professional lien claimant).

See also Sections 8014 (“design professional”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8400. Persons entitled to lien

Comment. Section 8400 restates the part of former Section 3110 providing a lien for contributions to a work of improvement. It implements the directive of Article XIV, Section 3, of the California Constitution that, “Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.”

The reference in the introductory portion of Section 8400 to work “authorized” replaces the references in former Section 3110 to the “instance or request of the owner or any other person acting by his authority or under him, as contractor or otherwise.” See Section 8404 (who may authorize work).

The type of contribution to the work of improvement that qualifies for a lien right is described in the introductory portion of Section 8400 as provision of “work.” Elimination of the former references to “bestowing skill or other necessary services” or “furnishing appliances, teams, or power” or “work done or materials furnished” is not a substantive change. See Section 8048 (“work”).

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

A person or entity described in Section 8024(b) has the same lien right as the laborer in subdivision (e), to the extent of the laborer’s compensation agreed to be paid to the person or entity for labor on the improvement. See Section 8024 (“laborer”).

See also Sections 8014 (“design professional”), 8018 (“direct contractor”), 8026 (“lien”), 8028 (“material supplier”), 8032 (“person”), 8046 (“subcontractor”), 8050 (“work of improvement”).

§ 8402. Site improvement lien

Comment. Section 8402 restates former Section 3112. The reference to work done or material furnished is superseded by the reference to work. See Section 8048 (“work”). The reference to work at the instance or request of the owner or any person acting by or under authority of the owner as contractor or otherwise is replaced by the reference to work authorized. See Section 8404 (who may authorize work).

A site improvement is treated in the same manner as a work of improvement, except as provided in Sections 8448 (claim against separate residential units), 8450 (priority of lien), 8454 (separate contract for site improvement), 8458 (priority of site improvement lien). See Section 8050 (“work of improvement”).

See also Sections 8026 (“lien”), 8032 (“person”), 8042 (“site improvement”).

§ 8404. Who may authorize work

Comment. Section 8404 restates parts of former Sections 3110 and 3112.

The reference in subdivision (a) to work provided at the request of an owner includes work provided at the instance of the owner, or of a person acting by or under the owner’s authority. See Section 8066 (agency).

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

The references in former law to sub-subcontractors and builders are omitted as surplus. A contractor either has a contract with the owner (and is a direct contractor) or does not (and is a subcontractor). This part does not distinguish among levels of subcontractor. The term “builder” was not defined in former law and was used only in former Section 3110.

A work of improvement includes a site improvement. See Section 8050 (“work of improvement”).

See also Sections 8018 (“direct contractor”), 8032 (“person”), 8042 (“site improvement”), 8046 (“subcontractor”), 8048 (“work”).

§ 8410. Preliminary notice required

Comment. Section 8410 restates former Section 3114 without substantive change. A claimant must give preliminary notice to the extent provided in the preliminary notice provisions of this part. See Section 8200 *et seq.*

See also Section 8118 (proof of notice).

See also Sections 8004 (“claimant”), 8026 (“lien”), 8034 (“preliminary notice”).

§ 8412. Time for claim of lien by direct contractor

Comment. Section 8412 restates former Section 3115 without substantive change. A contract is complete within the meaning of this section when the contractor’s obligations under it are substantially performed, excused, or otherwise discharged. See *Howard S. Wright Construction Co. v. BBIC Investors, LLC*, 136 Cal. App. 4th 228, 38 Cal. Rptr. 3d 769 (2006).

For completion of a work of improvement, see Section 8180. For recordation of a notice of completion, see Sections 8182 (notice of completion), 8186 (notice of completion of contract for portion of work of improvement). For recordation of a notice of cessation, see Section 8188 (notice of cessation).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers).

See also Sections 8016 (“direct contract”), 8018 (“direct contractor”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8414. Time for claim of lien by claimant other than direct contractor

Comment. Section 8414 restates former Section 3116 without substantive change.

For completion of a work of improvement, see Section 8180. For recordation of a notice of completion, see Sections 8182 (notice of completion), 8186 (notice of completion of contract for portion of work of improvement). For recordation of a notice of cessation, see Section 8188 (notice of cessation).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers).

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8026 (“lien”), 8048 (“work”), 8050 (“work of improvement”).

§ 8416. Contents of claim of lien

Comment. Paragraphs (1)-(5) of subdivision (a) of Section 8416 restate former Section 3084(a) without substantive change. Paragraphs (7)-(8) of subdivision (a) and subdivisions (c) through (e) are new. They implement provisions of 2009 Cal.Stat. ch. 109 (AB 457 (Monning)).

Subdivision (b) restates former Section 3084(b).

Subdivision (a)(6) is new. It implements other provisions that invoke a claimant’s address. Cf. Sections 8424 (release bond), 8486 (time of hearing).

The claim of lien may be executed by the claimant’s authorized agent. See Section 8066 (agency).

See also Sections 1170 (recordation); 8058 (filing and recordation of papers); Gov’t Code §§ 27280, 27287 (recordation of documents).

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8032 (“person”), 8040 (“site”), 8048 (“work”).

§ 8422. Forfeiture of lien for false claim

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

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

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

§ 8424. Release bond

Comment. Subdivisions (a)-(c) of Section 8424 restate former Section 3143, reducing the required amount of the lien release bond to 125% of the amount of the recorded claim of lien applicable to the lien property. This harmonizes the required amount of a lien release bond with the required amount of a stop payment notice release bond. See Section 8510. The language of the section is harmonized with the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure.

Subdivision (d) restates former Section 3144.5 without substantive change, except to broaden the notice provisions.

The reference to recordation of the bond in the county in which the claim of lien is recorded is omitted as unnecessary. Both the claim of lien and the bond are recorded in the office of the county recorder of the county in which the work of improvement or part of

it is situated. See Sections 1170 (recordation), 8060 (filing and recordation of papers).

If an action to enforce a lien has been timely commenced before a release bond is recorded, the claimant may name the surety as a defendant and seek recovery against the bond in the enforcement action; the claimant is not required to commence a new action on the bond. See *Hutnick v. United States Fidelity & Guaranty Co.*, 47 Cal. 3d 456, 763 P.2d 1326, 253 Cal. Rptr. 236 (1988).

See also Sections 8002 (“admitted surety insurer”), 8004 (“claimant”), 8018 (“direct contractor”), 8026 (“lien”), 8032 (“person”), 8046 (“subcontractor”).

§ 8430. Amount of lien

Comment. Section 8430 restates former Section 3123(a)-(b) and a part of former Section 3110. The provision of former Section 3123(c) that required an owner to give notice of a change of 5 percent or more is not continued.

As used in this section, the reasonable value of work includes the reasonable use value of appliances, equipment, teams, and power.

See also Sections 8416 (contents of claim of lien), 8600 (payment bond).

See also Sections 8004 (“claimant”), 8008 (“contract”), 8010 (“contract price”), 8026 (“lien”), 8032 (“person”), 8048 (“work”), 8050 (“work of improvement”).

§ 8432. Lien limited to work included in contract or modification

Comment. Section 8432 restates former Section 3124 without substantive change.

In subdivision (a), “direct contractor” is substituted for the undefined “contractor.” The concept of “authorized” is substituted for “employed.” See Section 8404 (who may authorize work). The reference to a modification of the contract is omitted in reliance of the definition of “direct contract,” which includes a contract change. See Section 8016 (“direct contract”).

See also Sections 1170 (recordation), 8060 (filing and recordation of papers).

See also Sections 8004 (“claimant”), 8008 (“contract”), 8018 (“direct contractor”), 8026 (“lien”), 8032 (“person”), 8046 (“subcontractor”), 8048 (“work”), 8050 (“work of improvement”).

§ 8434. Amount of recovery

Comment. Section 8434 continues former Section 3140 without substantive change.

See also Sections 8004 (“claimant”), 8008 (“contract”), 8012 (“contractor”), 8018 (“direct contractor”), 8026 (“lien”), 8046 (“subcontractor”), 8048 (“work”).

§ 8440. Property subject to lien

Comment. Section 8440 restates the parts of former Sections 3128 and 3112 that described property subject to the lien, without substantive change. A reference to “real property” is substituted for references to “land.”

See also Sections 8026 (“lien”), 8050 (“work of improvement”).

§ 8442. Interest subject to lien

Comment. Section 8442 restates the last part of former Section 3128, and former Section 3129, without substantive change. A reference to “work” is substituted for the former reference to “commencement of the work or of the furnishing of the materials.” See Section 8048 (“work”).

It should be noted that under this section, the interest of a person that contracts for a work of improvement indirectly, for example through a provision in a lease that requires a tenant to make the work of improvement, may be subject to the lien. Likewise, the interest of a person that did not contract for a work of improvement might in some circumstances be subject to the lien if the person is a “participating owner.” See, e.g., *Los Banos Gravel Co. v. Freeman*, 58 Cal. App. 3d 785, 130 Cal. Rptr. 180 (1976).

See also Sections 8026 (“lien”), 8032 (“person”), 8050 (“work of improvement”).

§ 8444. Notice of nonresponsibility

Comment. Section 8444 restates former Section 3094.

The information required in this notice is in addition to the information required by Section 8102 (contents of notice).

The notice of nonresponsibility may be signed and verified by the owner or person owning or claiming an interest in the property, or by the owner’s or other person’s agent. See Section 8066 (agency).

A notice of nonresponsibility is recorded in the office of the county recorder of the county in which the work of improvement or part of it is situated. See Section 8060 (filing and recordation of papers).

See also Sections 1170 (recordation), 8058 (calculation of time), 8064 (co-owners), 8114 (posting of notice).

See also Sections 8032 (“person”), 8050 (“work of improvement”).

§ 8446. Multiple works of improvement

Comment. Section 8446 restates former Section 3130 without substantive change. The concept of “contracted for” is substituted for “employed” in subdivisions (a) and (b). See Section 8404 (who may authorize work).

Subdivision (c) is intended to apply to a single work of improvement situated on two or more parcels of land that have distinct owners.

See also Sections 1170 (recordation), 8060 (filing and recordation of papers).

See also Sections 8004 (“claimant”), 8008 (“contract”), 8026 (“lien”), 8032 (“person”), 8048 (“work”), 8050 (“work of improvement”).

§ 8448. Claim against separate residential units

Comment. Section 8448 restates the first paragraph of former Section 3131 without substantive change. The reference to “filing” a claim of lien is changed to recording. See Sections 1170 (recordation), 8060 (filing and recordation of papers), 8412 and 8414 (recordation of claim of lien).

The second paragraph of former Section 3131 is not continued.

See also Sections 8180 (completion), 8402 (site improvement lien), 8416 (contents of claim of lien), 8446 (multiple works of improvement).

See also Sections 8004 (“claimant”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8450. Priority of lien

Comment. Section 8450 restates former Section 3134 without substantive change. For the priority of a site improvement lien, see Section 8458 (priority of site improvement lien).

See also Sections 1170 (recordation), 8060 (filing and recordation of papers), 8402 (site improvement lien), 8452 (payment bond obtained by holder of mortgage or deed of trust).

See also Sections 8004 (“claimant”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8452. Payment bond obtained by holder of mortgage or deed of trust

Comment. Section 8452 restates former Section 3138 without substantive change. See also Sections 1170 (recordation), 8060 (filing and recordation of papers).

See also Sections 8026 (“lien”), 8030 (“payment bond”), 8048 (“work”).

§ 8454. Separate contract for site improvement

Comment. Section 8454 restates former Section 3135 without substantive change.

See also Sections 8016 (“direct contract”), 8042 (“site improvement”), 8050 (“work of improvement”).

§ 8456. Priority of advances by lender

Comment. Section 8456 restates former Section 3136.
See also Sections 8006 (“construction lender”), 8026 (“lien”).

§ 8458. Priority of site improvement lien

Comment. Subdivision (a) of Section 8458 restates former Section 3137 without substantive change.

Subdivision (b) restates former Section 3139 without substantive change.

See also Sections 1170 (recordation), 8060 (filing and recordation of papers), 8180 (completion), 8402 (site improvement lien).

See also Sections 8004 (“claimant”), 8026 (“lien”), 8030 (“payment bond”), 8042 (“site improvement”), 8050 (“work of improvement”).

§ 8460. Time for commencement of enforcement action

Comment. Section 8460 restates former Sections 3144 and 3145.

Subdivision (b) makes clear that the owner must be a party to the extension of credit, and allows for late recording of the extension of credit. This codifies the rule in *Richards v. Hillside Development Co.*, 177 Cal. App. 2d 776, 2 Cal. Rptr. 693 (1960), and overrules *Dorer v. McKinsey*, 188 Cal. App. 2d 199, 10 Cal. Rptr. 287 (1961).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers), 8180 (completion).

See also Sections 8004 (“claimant”), 8026 (“lien”), 8050 (“work of improvement”).

§ 8461. Recordation of lis pendens

Comment. Section 8461 restates former Section 3146, but makes the recordation of a lis pendens mandatory on or before 20 days after the commencement of an action to enforce a lien claim.

The reference to the lis pendens statute in former Section 3146 is corrected to reflect the repeal of Code of Civil Procedure Section 409. See 1992 Cal. Stat. ch. 883, § 1.

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers).

See also Section 8026 (“lien”).

§ 8462. Dismissal for lack of prosecution

Comment. Section 8462 restates former Section 3147 without substantive change. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. See also Section 8056 (rules of practice).

See also Section 8026 (“lien”).

§ 8464. Costs

Comment. Section 8464 continues former Section 3150 without substantive change.

See also Sections 8004 (“claimant”), 8026 (“lien”).

§ 8466. Deficiency

Comment. Section 8466 restates former Section 3151 without substantive change.

See also Section 8026 (“lien”).

§ 8468. Other remedies

Comment. Section 8468 restates former Section 3152 without substantive change. The reference in the introductory portion of the section to “this title” is changed to “this chapter” consistent with the scope of the chapter.

For provisions relating to attachment, see Code Civ. Proc. § 481.010 *et seq.* For provisions relating to enforcement of a money judgment, see Code Civ. Proc. § 681.010 *et seq.*

See also Sections 8004 (“claimant”), 8026 (“lien”), 8032 (“person”).

§ 8470. Defense of lien enforcement action by contractor

Comment. Section 8470 restates former Section 3153 without substantive change. This section does not apply to an action to enforce a lien brought by a direct contractor.

See also Sections 8010 (“contract price”), 8012 (“contractor”), 8016 (“direct contract”), 8026 (“lien”), 8018 (“direct contractor”), 8048 (“work”).

§ 8480. Petition for release order

Comment. Subdivision (a) of Section 8480 restates former Section 3154(a) without substantive change.

Subdivision (b) restates the first sentence of former Section 3154(h) without substantive change. In *Solit v. Tokai Bank, Ltd. New York Branch*, 68 Cal. App. 4th 1435, 81 Cal. Rptr. 2d 243 (1999), the court held that an order releasing a lien because it had not been timely enforced may not bar the recordation of a new claim for the same work, if the time for recordation of a new claim of lien had not yet expired.

Subdivision (c) provides a limited exception to the last sentence of former Section 3154(h), allowing the petition to be joined with a pending action to enforce the claim of lien that is the subject of the petition.

Subdivision (d) continues former Section 3154(i) without substantive change.

See also Sections 8004 (“claimant”), 8026 (“lien”).

§ 8482. Demand prerequisite to petition

Comment. Section 8482 is new. If the lien claimant complies with the demand, a release proceeding is unnecessary.

See also Section 8058 (calculation of time).

See also Sections 8004 (“claimant”), 8026 (“lien”).

§ 8484. Contents of petition

Comment. Section 8484 restates former Section 3154(b).

The information included in the petition is intended to facilitate the court’s order under Section 8488 (hearing and order). The reference to series number is added to cover a county in which the recorder uses a sequence number for record location.

See also Sections 1170 (recordation), 8060 (filing and recordation of papers).

See also Sections 8004 (“claimant”), 8026 (“lien”).

§ 8486. Time of hearing

Comment. Section 8486 restates former Section 3154(c)-(d), and the first sentence of Section 3154(e), increasing the time for serving a copy of the petition and notice of hearing to 15 days, and adding a requirement that the court act no later than 60 days after the petition is filed. See also Section 8058 (calculation of time).

The specific notice provisions in subdivisions (b) and (c) supersede the general notice provisions in Sections 8100-8118, to the extent inconsistent.

The reference in former Section 3154 to “if there is no clerk, the judge” is deleted. All courts now have a clerk.

See also Section 8004 (“claimant”).

§ 8488. Hearing and order

Comment. Subdivision (a) of Section 8488 restates the last sentence of former Section 3154(b)(5) and the last two sentences of former Section 3154(e) without substantive change, except that language is added to clarify the burden of production and the burden of proof.

Subdivision (b) restates a part of former Section 3154(f); the remainder of the former provision is continued in Article 8 (commencing with Section 8490) (removal of claim of lien from record).

Subdivision (c) restates former Section 3154(g), deleting the \$2,000 limitation.

See also Section 8056 (rules of practice), Evid. Code §§ 500 (burden of proof), 550 (burden of producing evidence).

See also Sections 8004 (“claimant”), 8026 (“lien”).

§ 8490. Court order

Comment. Subdivision (a) of Section 8490 generalizes a part of former Section 3154(f). The reference to sequence number is added to cover a county in which the recorder uses a series number for record location. The reference to the city where the claim of lien is recorded is omitted as superfluous.

Subdivisions (b) and (d) generalize former Section 3148.

Subdivision (c) generalizes the second sentence of former Section 3154(f)(4).

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers).

See also Section 8026 (“lien”).

§ 8494. Effect of expiration or recordation of court order

Comment. Section 8494 is drawn from Code of Civil Procedure Section 405.60 (*lis pendens*).

See also Sections 8026 (“lien”), 8032 (“person”).

§ 8500. Stop payment notice exclusive remedy to reach construction funds

Comment. Section 8500 continues Section 3264 without substantive change, except that it is limited to a private work. See Section 8160 (application of title). For a comparable provision applicable to a public work, see Section 9350 (stop payment notice exclusive remedy to reach construction funds).

The reference to a “direct” written contract has been revised to avoid confusion with the term “direct contract.” See Section 8016 (“direct contract”). The revision is non-substantive.

This section is not intended to either ratify or abrogate the holding of *Nibbi Brothers, Inc. v. Home Fed. Sav. & Loan Ass’n*, 205 Cal. App. 3d 1415, 253 Cal. Rptr. 289 (1988), that in an appropriate case a person providing labor or materials may recover from a construction lender on a theory of unjust enrichment.

See also Sections 8032 (“person”), 8048 (“work”), 8050 (“work of improvement”).

§ 8502. Contents of stop payment notice

Comment. Section 8502 supersedes subdivisions (a) through (d) of former Section 3103. A stop payment notice may be executed by the claimant’s agent. See Section 8066 (agency).

Subdivision (c) is drawn from the last sentence of former Section 3159(a)(3), and provides a special rule that supplements the requirement of Section 8102(a)(6)(iii) (demand of claimant).

See also Sections 8100-8118 (notice).

See also Sections 8004 (“claimant”), 8044 (“stop payment notice”), 8048 (“work”).

§ 8504. False stop payment notice

Comment. Section 8504 restates former Section 3168 without substantive change.

See also Sections 8004 (“claimant”), 8026 (“lien”), 8044 (“stop payment notice”), 8048 (“work”).

§ 8506. Manner of giving stop payment notice

Comment. Subdivisions (a) and (b) of Section 8506 restate a part of the last two sentences of former Section 3083, and a part of the second paragraph of former Section 3103, without substantive change.

Subdivision (c) supersedes the last paragraph of former Section 3103.

See also Sections 8006 (“construction lender”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8508. Requirements for valid stop payment notice

Comment. Section 8508 restates a part of the first sentence of former Section 3159 and former Section 3160 without substantive change. For the time within which a claim of lien must be recorded, see Sections 8412 and 8414 (time for claim of lien); see also Section 8186 (notice of completion of contract for portion of work of improvement). For the person to which the notice must be given, see Section 8506.

See also Sections 8004 (“claimant”), 8026 (“lien”), 8034 (“preliminary notice”), 8044 (“stop payment notice”).

§ 8510. Release bond

Comment. Section 8510 restates former Section 3171, eliminating the restrictions on the persons and the conditions under which a release bond may be given, and requiring the bond to be given by an admitted surety insurer. See Sections 8002 (“admitted surety insurer”), 8150 (application of Bond and Undertaking Law).

See also Sections 8004 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8520. Stop payment notice to owner

Comment. Section 8520 restates former Section 3158. It makes clear that the owner’s demand under subdivision (b) requires either a bonded or an unbonded stop payment notice.

See also Sections 8018 (“direct contractor”), 8026 (“lien”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8522. Duty of owner

Comment. Section 8522 restates former Section 3161.

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (filing and recordation of papers).

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8530. Stop payment notice to construction lender

Comment. Section 8530 restates a part of the first sentence of former Section 3159 without substantive change. See also Section 8508 (requirements for valid stop payment notice).

For provisions governing the amount withheld where the person giving a stop payment notice is a direct contractor or subcontractor and there is a claim of another subcontractor or material supplier, see Section 8542 (amount withheld).

See also Sections 8006 (“construction lender”), 8026 (“lien”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8532. Bonded stop payment notice

Comment. Section 8532 restates the first sentence of former Section 3083 without substantive change. The former reference to “good and sufficient sureties” on the bond is omitted as unnecessary. See Code Civ. Proc. § 995.310 (sufficient sureties on bond required). The second two sentences of former Section 3083 are continued in Section 8506(b) (manner of giving stop payment notice).

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8018 (“direct contractor”), 8026 (“lien”), 8044 (“stop payment notice”).

§ 8534. Objection to bond

Comment. Section 8534 restates former Section 3163 without substantive change.

See also Section 8058 (calculation of time).

See also Sections 8002 (“admitted surety insurer”), 8004 (“claimant”), 8006 (“construction lender”), 8044 (“stop payment notice”).

§ 8536. Duty of construction lender

Comment. Section 8536 restates former Sections 3159(a)(1)-(2) and 3162(a)(1)-(2). The requirement in former Section 3162(a) that the lender withhold sufficient funds to pay “any claim of lien that may be recorded therefor” is omitted; any amount paid pursuant to a stop payment notice reduces the claim of lien. The reference to recordation of a payment bond “in the office of the county recorder where the site is located” is omitted from subdivision (b)(2) as unnecessary.

If a bonded stop payment notice is given by a direct contractor, the construction lender must withhold funds regardless of whether a payment bond has previously been recorded under Section 8600.

For provisions governing the amount withheld where the person giving a stop payment notice is a direct contractor or subcontractor and there is a claim of another subcontractor or material supplier, see Section 8542 (amount withheld).

See also Sections 1170 (recordation), 8060 (filing and recordation of papers).

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8018 (“direct contractor”), 8030 (“payment bond”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8538. Notice of election

Comment. Section 8538 restates former Sections 3159(a)(3) and 3162(a)(3) without substantive change, except that the last sentence of former Section 3159(a)(3) is continued in Section 8502(c) (contents of stop payment notice).

See also Section 8058 (calculation of time).

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8030 (“payment bond”), 8044 (“stop payment notice”).

§ 8540. Distribution of funds withheld pursuant to stop payment notice

Comment. Section 8540 restates former Section 3167 without substantive change. Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. *Cf. Idaho Lumber Co. v. Northwestern S. & L. Ass’n*, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968).

The amount of the claim of a contractor is governed by Section 8542.

See also Sections 8004 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8542. Amount withheld

Comment. Section 8542 restates former Sections 3159(b)-(c) and 3162(b)-(c), except that the rules governing a bonded notice are generalized to also apply to funds that a construction lender actually withholds pursuant to an unbonded notice.

See also Sections 8006 (“construction lender”), 8018 (“direct contractor”), 8028 (“material supplier”), 8044 (“stop payment notice”), 8046 (“subcontractor”), 8048 (“work”).

§ 8544. Effect of stop payment notice on assignment of funds

Comment. Section 8544 restates former Section 3166 without substantive change.

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8018 (“direct contractor”), 8044 (“stop payment notice”).

§ 8550. Time for enforcement of claim stated in stop payment notice

Comment. Section 8550 restates former Section 3172 without substantive change. A stop payment notice must be given before expiration of the time within which a claim of lien must be recorded under Chapter 4 (commencing with Section 8400). See Section 8508 (requirements for valid stop payment notice).

For the manner in which notice of commencement of an enforcement action is to be given, see Section 8506 (manner of giving stop payment notice).

Funds released for failure to timely commence an enforcement action must be paid or delivered to the person to which they are due.

See also Section 8058 (calculation of time).

See also Sections 8004 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8552. Joinder, consolidation, and interpleader

Comment. Section 8552 restates former Section 3175 without substantive change. Subdivision (a) is a specific application of the general rule stated in Section 8056 (rules of practice).

See also Sections 8004 (“claimant”), 8006 (“construction lender”), 8044 (“stop payment notice”).

§ 8554. Dismissal of enforcement action for lack of prosecution

Comment. Section 8554 restates former Section 3173 without substantive change. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. *Cf.* Section 8056 (rules of practice).

See also Section 8044 (“stop payment notice”).

§ 8556. Dismissal of action or judgment against claimant

Comment. Section 8556 restates former Section 3174 without substantive change. Funds released as a result of dismissal of the action or judgment against the claimant must be paid or delivered to the person to which they are due.

See also Sections 8004 (“claimant”), 8032 (“person”), 8044 (“stop payment notice”).

§ 8558. Attorney's fee in action to enforce payment of claim stated in bonded stop payment notice

Comment. Section 8558 restates former Section 3176 without substantive change.

See also Sections 8004 ("claimant"), 8044 ("stop payment notice").

§ 8560. Interest in action to enforce payment of claim stated in bonded stop payment notice

Comment. Section 8560 continues former Section 3176.5 without substantive change.

See also Sections 8004 ("claimant"), 8044 ("stop payment notice").

§ 8600. Limitation of owner's liability

Comment. Subdivision (a) of Section 8600 restates the first part of former Section 3235 and the first sentence of former Section 3236 without substantive change. It makes clear that the bond, as well as the contract, must be recorded before the commencement of work. See also Sections 1170 (recordation), 8060 (filing and recordation of papers).

Subdivision (b) restates the last part of former Section 3235 without substantive change.

See also Sections 8004 ("claimant"), 8016 ("direct contract"), 8018 ("direct contractor"), 8026 ("lien"), 8030 ("payment bond"), 8048 ("work").

§ 8602. Public policy of payment bond

Comment. Section 8602 restates the second sentence of former Section 3236 without substantive change.

See also Sections 8016 ("direct contract"), 8018 ("direct contractor"), 8030 ("payment bond"), 8048 ("work").

§ 8604. Bond required by lending institution

Comment. Section 8604 supersedes former Section 3237. It makes clear that the lender may not object to the bond if given by an admitted surety insurer.

This section is not intended to either ratify or abrogate the holding of *Azusa Western, Inc. v. City of West Covina*, 45 Cal. App. 3d 259, 119 Cal. Rptr. 434 (1975), requiring a public entity in an appropriate case to ensure that the surety on a stop payment notice release bond is not the surety that issued a payment bond on the project.

See also Sections 8002 ("admitted surety insurer"), 8030 ("payment bond"), 8032 ("person"), 8050 ("work of improvement").

§ 8606. Conditions of payment bond

Comment. Section 8606 restates former Section 3096 without substantive change, except to add a requirement that the bond be given by an admitted surety insurer. See also Section 8150 (application of Bond and Undertaking Law).

See also Sections 8002 (“admitted surety insurer”), 8004 (“claimant”), 8018 (“direct contractor”), 8026 (“lien”), 8030 (“payment bond”), 8046 (“subcontractor”).

§ 8608. Limitation on part

Comment. Section 8608 restates former Section 3267 without substantive change, clarifying that claimants providing work to subcontractors at every level have a right to recover against a direct contractor’s payment bond as provided in this section. See *Union Asphalt, Inc. v. Planet Ins. Co.*, 21 Cal. App. 4th 1762, 27 Cal. Rptr. 2d 371 (1994).

Note that “design professional” includes a licensed landscape architect. See Section 8014.

See also Sections 8004 (“claimant”), 8016 (“direct contract”), 8018 (“direct contractor”), 8030 (“payment bond”), 8044 (“stop payment notice”), 8046 (“subcontractor”), 8048 (“work”).

§ 8609. Bond provision prescribing limitation of action

Comment. Section 8609 continues former Section 3239 without substantive change.

See also Sections 1170 (recordation), 8060 (filing and recordation of papers), 8180 (completion).

See also Sections 8004 (“claimant”), 8030 (“payment bond”), 8050 (“work of improvement”).

§ 8610. Statute of limitations for suit on recorded bond

Comment. Section 8610 restates former Section 3240, broadening it to cover enforcement of any liability on the bond, not limited to the liability of the surety. *Cf.* Code Civ. Proc. § 996.440 (judgment on bond against principal and sureties).

See also Sections 1170 (recordation), 8060 (filing and recordation of papers), 8180 (completion).

See also Sections 8030 (“payment bond”), 8050 (“work of improvement”).

§ 8612. Notice prerequisite to enforcement

Comment. Section 8612 restates former Section 3242 without substantive change. The former limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

See also Sections 1170 (recordation), 8100-8118 (notice), 8058 (calculation of time), 8060 (filing and recordation of papers), 8180

(completion), 8182 (notice of completion), 8184 (notice of completion of contract for portion of work of improvement).

See also Sections 8004 (“claimant”), 8030 (“payment bond”), 8034 (“preliminary notice”), 8050 (“work of improvement”).

§ 8614. Notice to principal and surety

8614. Notice to the principal and surety under Section 8612 shall comply with the requirements of Chapter 2 (commencing with Section 8100) of Title 1.

Comment. Section 8614 restates former Section 3227.

Cf. Code Civ. Proc. §§ 995.170 (“principal”), 995.185 (“surety”).

§ 8700. Application of chapter

Comment. Subdivision (a) of Section 8700 restates former Section 3110.5(a)(2) without substantive change. Subdivision (b) restates former Section 3110.5(a)(1) without substantive change.

Under this section, if the owner that contracts for the work of improvement owns the fee interest in the property, the owner of a less than fee interest that does not contract for the work of improvement is not required to provide security or to comply with any other obligation of an owner under this chapter.

If the owner that contracts for a work of improvement owns a less than fee interest in the property, the owner of the fee interest that does not contract for the work of improvement is not required to provide security or to comply with any other obligation of an owner under this chapter.

See also Sections 8010 (“contract price”), 8050 (“work of improvement”).

§ 8702. Single-family residence and low income housing excluded

Comment. Section 8702 restates former Section 3110.5(e) without substantive change, except to omit reference to a public work. This part does not apply to a public work. See Section 8160 (application of title).

See also Section 8050 (“work of improvement”).

§ 8704. Qualified publicly traded company and qualified private company excluded

Comment. Section 8704 restates former Section 3110.5(f) without substantive change.

See also Sections 8008 (“contract”), 8050 (“work of improvement”).

§ 8710. Security for owner’s payment obligation

Comment. Section 8710 restates the first part of former Section 3110.5(b) without substantive change. As used in this section,

“owner” includes the owner of the fee simple absolute interest or any lesser interest in the property. See Section 8700 (application of chapter).

See also Sections 8060 (filing and recordation of papers), 8100-8118 (notice), 8174 (construction trust deed).

See also Sections 8008 (“contract”), 8018 (“direct contractor”), 8022 (“lending institution”), 8050 (“work of improvement”).

§ 8712. Demand for security

Comment. Section 8712 restates the second sentence of former Section 3110.5(c) without substantive change.

See also Section 8058 (calculation of time).

See also Sections 8018 (“direct contractor”), 8048 (“work”).

§ 8714. Security not waivable

Comment. Section 8714 restates former Section 3110.5(g) without substantive change. This title does not apply to a public work. See Section 8160 (application of title).

§ 8716. Rights not affected

Comment. Section 8716 restates former Section 3110.5(d) without substantive change, except to omit the reference to Public Contract Code Section 10262. This title does not apply to a public work. See Section 8160 (application of title).

See also Sections 8018 (“direct contractor”), 8030 (“payment bond”), 8044 (“stop payment notice”), 8046 (“subcontractor”).

§ 8720. Form of security

Comment. Section 8720 restates a part of former Section 3110.5(b) without substantive change.

§ 8722. Bond

Comment. Section 8722 restates former Section 3110.5(b)(1) without substantive change.

See also Section 8058 (calculation of time).

See also Sections 8002 (“admitted surety insurer”), 8008 (“contract”), 8010 (“contract price”), 8048 (“work”), 8050 (“work of improvement”).

§ 8724. Irrevocable letter of credit

Comment. Section 8724 restates former Section 3110.5(b)(2) without substantive change.

See also Sections 8010 (“contract price”), 8018 (“direct contractor”), 8048 (“work”), 8050 (“work of improvement”).

§ 8726. Escrow account

Comment. Section 8726 restates parts of former Section 3110.5(b)(3) without substantive change.

See also Sections 8006 (“construction lender”), 8018 (“direct contractor”), 8032 (“person”).

§ 8728. Deposits to and disbursements from escrow account

Comment. Section 8728 restates parts of former Section 3110.5(b)(3) without substantive change.

See also Sections 8008 (“contract”), 8010 (“contract price”), 8018 (“direct contractor”), 8048 (“work”), 8050 (“work of improvement”).

§ 8730. Contract price

Comment. Section 8730 restates the first sentence of former Section 3110.5(c) without substantive change.

See also Sections 8008 (“contract”), 8010 (“contract price”), 8018 (“direct contractor”), 8048 (“work”), 8050 (“work of improvement”).

§ 8800. Progress payment between owner and direct contractor

Comment. Section 8800 restates former Section 3260.1, adding a reasonableness limitation on an attorney’s fee.

This title is limited to a private work. See Section 8160 (application of title).

The owner’s duty runs from the time notice is complete, rather than the time of “receipt.” See Section 8116 (when notice is complete).

The operative date provision of former Section 3260.1 is omitted due to lapse of time.

See also Section 8058 (calculation of time).

See also Sections 8008 (“contract”), 8018 (“direct contractor”).

§ 8802. Progress payment between direct contractor and subcontractor on public utility work

Comment. Section 8802 restates former Section 3262.5, adding a reasonableness limitation on an attorney’s fee.

The reference to 15 “working days” is converted to 21 “days,” consistent with the remainder of the mechanics lien law. See Section 8058 (calculation of time).

See also Sections 8008 (“contract”), 8012 (“contractor”), 8018 (“direct contractor”), 8046 (“subcontractor”), 8048 (“work”), 8050 (“work of improvement”).

§ 8810. Application of article

Comment. Section 8810 restates former Section 3260(b) without substantive change. This title is limited to a private work. See Section 8160 (application of title).

The transitional provision found in subdivision (a) of former Section 3260, relating to contracts entered into before 1991, 1993, and 1994, is omitted due to lapse of time.

See also Sections 8018 (“direct contractor”), 8046 (“subcontractor”).

§ 8812. Payment of retention by owner

Comment. Section 8812 restates subdivision (c) of former Section 3260 without substantive change, except that detailed provisions defining the date of completion are eliminated in reliance on the general provisions of this part governing completion. See Section 8180 (completion).

The right of the owner to withhold disputed amounts is made subject to a condition of good faith, consistent with other provisions of this part.

See also Section 8058 (calculation of time).

See also Sections 8018 (“direct contractor”), 8036 (“public entity”), 8050 (“work of improvement”).

§ 8814. Payment of retention by direct contractor

Comment. Section 8814 restates former Section 3260(d)-(e) without substantive change.

See also Section 8058 (calculation of time).

See also Sections 8018 (“direct contractor”), 8046 (“subcontractor”).

§ 8816. Payment for disputed work

Comment. Section 8816 restates former Section 3260(f) without substantive change.

See also Section 8058 (calculation of time).

See also Sections 8008 (“contract”), 8018 (“direct contractor”), 8046 (“subcontractor”), 8048 (“work”).

§ 8818. Wrongful withholding

Comment. Section 8818 restates former Section 3260(g) without substantive change, except to add a reasonableness limitation on an attorney’s fee.

See also Sections 8018 (“direct contractor”), 8032 (“person”).

§ 8830. “Stop work notice” defined

Comment. Section 8830 restates a part of the first sentence of former Section 3260.2(a) without substantive change. The term “stop work notice” replaces the term “10-day stop work order” used in former law.

This article is limited to a private work of improvement. See Section 8160 (application of title).

Former Section 3260.2(g), relating to the mechanics of the notice, is superseded by Sections 8100-8118 (notice).

See also Section 8058 (calculation of time).

See also Sections 8018 (“direct contractor”), 8048 (“work”).

§ 8832. Stop work notice

Comment. Section 8832 restates a part of the first sentence of former Section 3260.2(a) without substantive change.

See also Section 8058 (calculation of time).

See also Sections 8008 (“contract”), 8018 (“direct contractor”), 8830 (“stop work notice”).

§ 8834. Additional notice

Comment. Section 8834 restates the second and third sentences of former Section 3260.2(a), and requires that the contractor give a copy of the stop work notice to the contractor’s subcontractors.

See also Sections 8058 (calculation of time), 8114 (posting of notice).

See also Sections 8018 (“direct contractor”), 8040 (“site”), 8046 (“subcontractor”), 8050 (“work of improvement”), 8830 (“stop work notice”).

§ 8836. Notice to construction lender

Comment. Section 8836 restates the fourth sentence of former Section 3260.2(a).

See also Section 8058 (calculation of time).

See also Sections 8006 (“construction lender”), 8018 (“direct contractor”), 8830 (“stop work notice”).

§ 8838. Immunity from liability

Comment. Section 8838 restates former Section 3260.2(c), correcting two inadvertent drafting errors in former law.

See also Sections 8018 (“direct contractor”), 8028 (“material supplier”), 8046 (“subcontractor”), 8048 (“work”), 8830 (“stop work notice”).

§ 8840. Notice of resolution of dispute or cancellation of stop work notice

Comment. Section 8840 restates the second paragraph of former Section 3260.2(a) without substantive change.

See also Section 8114 (posting of notice).

See also Sections 8018 (“direct contractor”), 8040 (“site”), 8046 (“subcontractor”), 8050 (“work of improvement”), 8830 (“stop work notice”).

§ 8842. Stop work remedy not exclusive

Comment. Section 8842 restates former Section 3260.2(b) without substantive change.

See also Sections 8018 (“direct contractor”), 8048 (“work”).

§ 8844. Judicial proceeding

Comment. Subdivision (a) of Section 8844 restates former Section 3260.2(d) without substantive change, except to additionally allow an owner to seek a judicial determination of liability for the amount due in an expedited proceeding.

Subdivision (b) is comparable to Code of Civil Procedure Sections 1062.3 and 1260.010.

See also Section 8058 (calculation of time).

See also Sections 8018 (“direct contractor”), 8050 (“work of improvement”), 8830 (“stop work notice”).

§ 9000. Application of title

Comment. Section 9000 restates former Sections 3100 and 3179.

See also Sections 8036 (“public entity”), 8050 (“work of improvement”).

§ 9100. Who may use remedies

Comment. Section 9100 restates former Section 3181, and parts of former Sections 3110, 3111, and 3112. The former references to site improvement work and to provisions, provender, or other supplies are included within the meaning of subdivision (a). See Section 8048 (“work”).

The reference to an “express trust fund” in former Section 3111 is replaced by a reference to a generalized category of persons or entities included within the definition of “laborer.” See Section 8024 (“laborer”).

See also Sections 8018 (“direct contractor”), 8024 (“laborer”), 8030 (“payment bond”), 8032 (“person”), 8036 (“public entity”), 8038 (“public works contract”), 8044 (“stop payment notice”), 8046 (“subcontractor”), 8048 (“work”).

§ 9200. Completion

Comment. Section 9200 restates former Section 3086 to the extent it applied to a public work of improvement, but extends the period of continuous cessation of labor necessary to constitute completion from 30 days to 60 days.

See also Section 8058 (calculation of time).

See also Sections 8008 (“contract”), 8036 (“public entity”), 8050 (“work of improvement”).

§ 9202. Notice of cessation

Comment. Section 9202 restates former Section 3092, to the extent it applied to a public works contract. For the effect of recordation of a notice of cessation, see Sections 9356 (time for giving stop payment notice), 9558 (time for enforcing payment bond claim).

A notice of cessation is recorded in the office of the county recorder of the county in which the public works contract or part of it is performed. See Section 8060 (recordation of notice). A notice of cessation is recorded when it is filed for record. See Sections 1170 (recordation), 8060 (recordation of notice).

See also Sections 8058 (calculation of time), 8066 (agency).

See also Section 8036 (“public entity”).

§ 9204. Notice of completion

Comment. Section 9204 restates former Section 3093 to the extent it applied to a public works contract, extending the 10 day period for recordation of a notice of completion under former law to 15 days. For the date of completion of a work of improvement, see Section 9200.

For the effect of recordation of a notice of completion, see Sections 9356 (time for giving stop payment notice), 9558 (time for enforcing payment bond claim), 9560 (notice of payment bond claim).

A notice of completion is recorded in the office of the county recorder of the county in which the public works contract or part of it is performed. See Section 8060 (recordation of notice). A notice of completion is recorded when it is filed for record. See Sections 1170 (recordation), 8060 (recordation of notice).

See also Sections 8058 (calculation of time), 8066 (agency).

See also Sections 8036 (“public entity”), 8050 (“work of improvement”).

§ 9208. Recordation of notice

Comment. Section 9208 continues a portion of former Section 3093 without substantive change. See also Sections 1170 (recordation); 8058 (filing and recordation of papers); Gov’t Code §§ 27280, 27287 (recordation of documents).

See also Section 9204 (notice of completion).

§ 9300. Preliminary notice prerequisite to remedies

Comment. Section 9300 restates part of the introductory clause and subdivisions (a) and (c) of former Section 3098. Repetitive detail is omitted, in reliance on defined terms and other substantive provisions. For a statutory exception to the preliminary notice requirement, see Section 9560 (notice of claim against payment bond).

The transitional provision of former Section 3098(e) is not continued due to lapse of time.

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8024 (“laborer”), 8030 (“payment bond”), 8032 (“person”), 8034 (“preliminary notice”), 8036 (“public entity”), 8044 (“stop payment notice”), 8048 (“work”).

§ 9302. Giving preliminary notice

Comment. Section 9302 restates the second and fourth sentences of former Section 3098(a).

The reference in former Section 3098(a) to the Department of Public Works is obsolete, and is revised pursuant to Government Code Section 14001.

See also Sections 8036 (“public entity”), 8034 (“preliminary notice”), 8038 (“public works contract”), 8048 (“work”).

§ 9303. Content of preliminary notice

Comment. Section 9303 restates a part of former Section 3098(a). See also Sections 8034 (“preliminary notice”), 8048 (“work”).

§ 9304. Effect of preliminary notice

Comment. Section 9304 restates parts of former Sections 3098(a) and 3098(d).

See also Section 8058 (calculation of time).

See also Sections 8004 (“claimant”), 8030 (“payment bond”), 8034 (“preliminary notice”), 8044 (“stop payment notice”), 8048 (“work”).

§ 9306. Subcontractor discipline

Comment. Section 8216 continues the first paragraph of former Section 3098(b) without substantive change.

See also Sections 8008 (“contract”), 8046 (“subcontractor”), 8050 (“work of improvement”).

§ 9350. Stop payment notice exclusive remedy to reach construction funds

Comment. Section 9350 restates former Section 3264, to the extent it applied to a public works contract. For a comparable provision applicable to a private work, see Section 8500.

There may be specific statutory provisions that authorize payment by a public entity from a fund designated for a public work, notwithstanding the provisions of Section 9350. See, e.g., Code Civ. Proc. § 708.760 (satisfaction of judgment against direct contractor on public work), Labor Code § 1727 (public entity to withhold amounts needed to satisfy prevailing wage violations from funds due direct contractor on public work). This section is not intended to change existing law with respect to such provisions.

The term “fund” has a meaning distinct from the term “funds” as defined in Section 8020. Consistent with former Section 3264, “fund” refers to the source for payment of construction costs, not the form of payment itself.

See also Sections 8032 (“person”), 8038 (“public works contract”), 8048 (“work”).

§ 9352. Contents of stop payment notice

Comment. Section 9352 supersedes former Section 3103(a)-(d). A stop payment notice may be executed by the claimant’s agent. See Section 8066 (agency).

Subdivision (c) provides a special rule that supplements the requirement of Section 8102(a)(5)(C) (demand of claimant).

See also Sections 8100-8118 (notice).

See also Sections 8004 (“claimant”), 8044 (“stop payment notice”), 8048 (“work”).

§ 9354. Giving of stop payment notice

Comment. Section 9354 restates the first unnumbered paragraph of former Section 3103.

A claimant wishing to receive return notice of the time within which payment of the claim stated in a stop payment notice must be enforced must pay the public entity ten dollars (\$10) at the time of giving the stop payment notice. See Section 9362.

See also Sections 8032 (“person”), 8036 (“public entity”), 8038 (“public works contract”), 8044 (“stop payment notice”).

§ 9356. Time for giving notice

Comment. Section 9356 restates former Section 3184.

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (recordation of notice), 9200 (completion), 9202 (notice of cessation), 9204 (notice of completion).

See also Section 8044 (“stop payment notice”).

§ 9358. Duty to withhold funds

Comment. Section 9358 restates former Section 3186. See also Section 8066 (agency).

See also Sections 8018 (“direct contractor”), 8020 (“funds”), 8036 (“public entity”), 8044 (“stop payment notice”).

§ 9360. Payment notwithstanding stop payment notice

Comment. Section 9360 restates former Section 3187.

See also Sections 8018 (“direct contractor”), 8020 (“funds”), 8036 (“public entity”), 8044 (“stop payment notice”).

§ 9362. Notice to claimant

Comment. Section 9362 restates former Section 3185. The \$2 fee is increased to \$10 in recognition of the change in the value of the dollar since the fee’s enactment.

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (recordation of notice), 9200 (completion), 9202 (notice of cessation), 9204 (notice of completion), 9502 (time for enforcement of payment of claim stated in stop payment notice).

See also Sections 8004 (“claimant”), 8036 (“public entity”), 8038 (“public works contract”), 8044 (“stop payment notice”).

§ 9364. Release bond

Comment. Section 9364 restates former Section 3196.

See also Sections 8002 (“admitted surety insurer”), 8004 (“claimant”), 8018 (“direct contractor”), 8020 (“funds”), 8030 (“payment bond”), 8036 (“public entity”), 8044 (“stop payment notice”).

§ 9400. Grounds for summary proceeding

Comment. Section 9400 restates former Section 3197.

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8020 (“funds”), 8032 (“person”), 8044 (“stop payment notice”).

§ 9402. Contractor’s affidavit and demand for release

Comment. Section 9402 restates former Section 3198. The grounds for release are provided in Section 9400.

See also Sections 8018 (“direct contractor”), 8020 (“funds”), 8036 (“public entity”).

§ 9404. Notice to claimant

Comment. Section 9404 restates former Section 3199.

See also Section 8058 (calculation of time).
See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8020 (“funds”), 8036 (“public entity”).

§ 9406. Claimant’s counteraffidavit

Comment. Section 9406 restates former Section 3200.
See also Section 8058 (calculation of time).
See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8020 (“funds”), 8036 (“public entity”).

§ 9408. Commencement of action

Comment. Section 9408 restates former Section 3201, and provides that notice of the hearing by mail is complete five days after mailing.

See also Sections 8056 (rules of practice), 8058 (calculation of time).

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8036 (“public entity”).

§ 9410. Pleadings and burden of proof

Comment. Section 9410 restates former Section 3202.
See also Section 8056 (rules of practice).
See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8036 (“public entity”).

§ 9412. Court determination

Comment. Section 9412 restates former Section 3203. Former Section 3204 relating to jury trial is not continued; proceedings under this article are tried to the judge, not to a jury.

See also Section 8056 (rules of practice).

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8020 (“funds”), 8036 (“public entity”).

§ 9414. Summary determination not res judicata

Comment. Section 9414 restates former Section 3205. The former reference to a “labor or material bond” is replaced by a reference to a payment bond.

See also Sections 8004 (“claimant”), 8030 (“payment bond”).

§ 9450. Distribution of funds withheld pursuant to stop payment notice

Comment. Section 9450 restates former Section 3190.

Only valid claims, as determined in an enforcement action, are entitled to participate in the distribution. *Cf. Idaho Lumber Co. v.*

Northwestern S. & L. Ass'n, 265 Cal. App. 2d 490, 71 Cal. Rptr. 422 (1968).

The amount of the claim for which payment is required is determined under Article 4 (commencing with Section 9500) (enforcement of payment of claim stated in stop payment notice).

See also Sections 8004 ("claimant"), 8020 ("funds"), 8032 ("person"), 8044 ("stop payment notice").

§ 9452. Stop payment notice remedy not exclusive

Comment. Section 9452 restates former Section 3191.

See also Sections 8004 ("claimant"), 8018 ("direct contractor"), 8030 ("payment bond").

§ 9454. Forfeiture for false notice

Comment. Section 9454 restates former Section 3192.

See also Sections 8032 ("person"), 8036 ("public entity"), 8038 ("public works contract"), 8044 ("stop payment notice"), 8048 ("work").

§ 9456. Effect of assignment or garnishment

Comment. Section 9456 restates former Section 3193.

See also Sections 8004 ("claimant"), 8018 ("direct contractor"), 8038 ("public works contract"), 8044 ("stop payment notice").

§ 9500. Prerequisites for enforcement of notice

Comment. Subdivision (a) of Section 9500 restates former Section 3183.

Subdivision (b) restates former Section 3265.

See also Sections 8004 ("claimant"), 8034 ("preliminary notice"), 8044 ("stop payment notice").

§ 9502. Time for enforcement of payment of claim stated in stop payment notice

Comment. Section 9502 restates former Section 3210.

See also Sections 8058 (calculation of time), 9356 (time within which stop payment notice must be given).

See also Sections 8004 ("claimant"), 8018 ("direct contractor"), 8020 ("funds"), 8036 ("public entity"), 8044 ("stop payment notice").

§ 9504. Notice of action

Comment. Section 9504 restates former Section 3211. See Sections 8058 (calculation of time), 8100-8118 (notice), 9354 (giving of stop payment notice).

See also Sections 8004 (“claimant”), 8036 (“public entity”), 8044 (“stop payment notice”).

§ 9506. Joinder, consolidation, and interpleader

Comment. Section 9506 restates former Section 3214. See also Section 8056 (rules of practice).

See also Sections 8004 (“claimant”), 8036 (“public entity”), 8044 (“stop payment notice”).

§ 9508. Dismissal of enforcement action for lack of prosecution

Comment. Section 9508 restates former Section 3212. The cross-reference to the Code of Civil Procedure is added to make clear that this section modifies the general three-year period for discretionary dismissal. *Cf.* Section 8056 (rules of practice).

See also Section 8044 (“stop payment notice”).

§ 9510. Dismissal of action or judgment against claimant

Comment. Section 9510 restates former Section 3213.

See also Sections 8004 (“claimant”), 8020 (“funds”), 8036 (“public entity”), 8044 (“stop payment notice”).

§ 9550. Payment bond requirement

Comment. Section 9550 restates former Section 3247. The transitional provisions of the former section are omitted due to lapse of time.

Subdivision (c) is an exception to the rule stated in *Electrical Electronic Control, Inc. v. Los Angeles Unified*, 126 Cal. App. 4th 601, 24 Cal. Rptr. 3d 316 (2005), holding that a payment bond under former Section 3247, unless otherwise stated or agreed upon, provides coverage only for work performed pursuant to the contract for which the bond was given.

Note that “design professional” includes a licensed landscape architect. See Section 8014.

See also Sections 8018 (“direct contractor”), 8036 (“public entity”), 8030 (“payment bond”), 8038 (“public works contract”), 8048 (“work”).

§ 9552. Consequences of failure to give bond

Comment. Section 9552 restates former Section 3251. The former operative date provision is deleted due to lapse of time.

See also Sections 8004 (“claimant”), 8018 (“direct contractor”), 8030 (“payment bond”), 8036 (“public entity”), 8038 (“public works contract”), 8044 (“stop payment notice”).

§ 9554. Bond requirements

Comment. Section 9554 restates former Section 3248, and supersedes former Section 3096.

Subdivision (a) of Section 9554 also restates a part of Code of Civil Procedure Section 995.311(a), which provides that a payment bond required on a public works contract shall be executed by an admitted surety insurer.

See also Sections 8002 (“admitted surety insurer”), 8012 (“contractor”), 8018 (“direct contractor”), 8030 (“payment bond”), 8032 (“person”), 8038 (“public works contract”), 8046 (“subcontractor”), 8048 (“work”).

§ 9558. Statute of limitations

Comment. Section 9558 restates former Section 3249, and broadens it to cover enforcement of any liability on the bond, not limited to the liability of the surety. *Cf.* Code Civ. Proc. § 996.440 (judgment on bond against principal and sureties).

See also Sections 8058 (calculation of time), 8060 (recordation of notice), 9200 (completion), 9202 (notice of cessation), 9204 (notice of completion).

See also Sections 8004 (“claimant”), 8044 (“stop payment notice”), 8048 (“work”).

§ 9560. Notice required

Comment. Section 9560 restates former Section 3252. The former limitation to a contract entered into on or after January 1, 1995, is omitted due to lapse of time.

See also Sections 1170 (recordation), 8058 (calculation of time), 8060 (recordation of notice), 9200 (completion), 9204 (notice of completion).

See also Sections 8004 (“claimant”), 8030 (“payment bond”), 8034 (“preliminary notice”), 8050 (“work of improvement”).

§ 9562. Notice to principal and surety

Comment. Section 9562 restates former Section 3227.

Cf. Code Civ. Proc. §§ 995.170 (“principal”), 995.185 (“surety”).

§ 9564. Action on bond

Comment. Section 9564 restates former Section 3250. The provision that a reasonable attorney’s fee is “to be taxed as costs” is deleted as surplus. See Code Civ. Proc. § 1033.5(a)(10)(B) (attorney’s fee allowable as costs). See also Section 8056 (rules of practice).

See also Sections 8004 (“claimant”), 8008 (“contract”), 8030 (“payment bond”), 8036 (“public entity”), 8044 (“stop payment notice”).

§ 9566. Limitation on chapter

Comment. Section 9566 restates former Section 3267, clarifying that claimants providing work to subcontractors at every level have a right to recover against a direct contractor's payment bond as provided in this section. See *Union Asphalt, Inc. v. Planet Ins. Co.*, 21 Cal. App. 4th 1762, 27 Cal. Rptr. 2d 371 (1994).

Note that "design professional" includes a licensed landscape architect. See Section 8014.

This section omits the reference in former law to holders of secured interests in the land; although the relevance of that provision to a public works contract is limited, this section is not intended to affect priorities among those interests to the extent they may exist.

See also Sections 8004 ("claimant"), 8018 ("direct contractor"), 8030 ("payment bond"), 8038 ("public works contract"), 8044 ("stop payment notice"), 8046 ("subcontractor"), 8048 ("work").

DISPOSITION OF EXISTING LAW

The table below shows the disposition of former sections of existing law that were repealed by Chapter ___ of the Statutes of 2010 (Senate Bill 189 (Lowenthal)). All sections listed in the table are from the Civil Code. For further detail, see the Comment to the new provision in the enacted legislation.

Former Provision	New Provision(s)
3081.1	8014, 8300
3081.2	8302
3081.3	8304
3081.4	8306
3081.5	8308
3081.6	8310
3081.7	8312
3081.8	8314
3081.9	8316
3081.10.....	8318
3082	8000
3083	8506, 8532
3084	8416
3085	8004
3086	8180, 9200
3087	8006
3088	8008, 8016
3089	8024
3090	8028
3092	8188, 9202
3093	8182, 8184, 9204, 9208
3094	8444
3095	8018
3096	8030, 8606, 9554
3097	8034, 8200
3097(a)	8200
3097(b)	8200
3097(c)	8102, 8202
3097(d)	8204
3097(e)	8212
3097(f)	8116
3097(g)	8206
3097(h)	8216
3097(i).....	8172
3097(j).....	8174
3097(k).....	8104

Former Provision	New Provision(s)
3097(l).....	8170, 8208
3097(m).....	8170, 8208
3097(n).....	8210
3097(o).....	8214
3097(p).....	not continued
3097.1	8118
3098	8034, 9300
3098(a)	9300, 9302, 9303, 9304
3098(b).....	9316
3098(c).....	9300
3098(d).....	9304
3098(e).....	not continued
3099	8036
3100	9000
3101	8040
3102	8042
3103	8044, 8502, 8506, 9352, 9354
3104	8046
3105	not continued
3106	8050
3109	not continued
3110	8400, 8404, 8430, 9100
3110.5(a)(1).....	8700
3110.5(a)(2).....	8700
3110.5(b).....	8710, 8720
3110.5(b)(1)	8722
3110.5(b)(2)	8724
3110.5(b)(3)	8726, 8728
3110.5(c).....	8712, 8730
3110.5(d).....	8716
3110.5(e).....	8702
3110.5(f).....	8704
3110.5(g).....	8714
3111	8024, 9100
3112	8402, 8404, 8440, 9100
3114	8410
3115	8412
3116	8414
3117	8186
3118	8422
3123(a)	8430
3123(b).....	8430
3123(c).....	not continued
3124	8432
3128	8440, 8442

Former Provision	New Provision(s)
3129	8442
3130	8446
3131 (first paragraph)	8448
3131 (second paragraph)	not continued
3134	8450
3135	8454
3136	8456
3137	8458
3138	8452
3139	8458
3140	8434
3143	8424
3144	8460
3144.5	8424
3145	8460
3146	8461
3147	8462
3148	8490
3149	8056
3150	8464
3151	8466
3152	8468
3153	8470
3154(a)	8480
3154(b)	8484, 8488
3154(c)	8486
3154(d)	8486
3154(e)	8486, 8488
3154(f)	8488, 8490
3154(g)	8488
3154(h)	8480
3154(i)	8480
3156	8152
3158	8520
3159	8508, 8530
3159(a)	8502, 8536, 8538
3159(b)	8542
3159(c)	8542
3160	8508
3161	8522
3162(a)	8536, 8538
3162(b)	8542
3162(c)	8542
3163	8534
3166	8544

Former Provision	New Provision(s)
3167	8540
3168	8504
3171	8510
3172	8550
3173	8554
3174	8556
3175	8552
3176	8558
3176.5	8560
3179	9000
3181	9100
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3191	9452
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TITLE 1. WORKS OF IMPROVEMENT GENERALLY

CHAPTER 1. GENERAL PROVISIONS

Article 1. Definitions

8000. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this part.

8002. "Admitted surety insurer" has the meaning provided in Section 995.120 of the Code of Civil Procedure.

8004. "Claimant" means a person that has a right under this part to record a claim of lien, give a stop payment notice, or assert a claim against a payment bond, or do any combination of the foregoing.

8006. "Construction lender" means either of the following:

(a) A mortgagee or beneficiary under a deed of trust lending funds with which the cost of all or part of a work of improvement is to be paid, or the assignee or successor in interest of the mortgagee or beneficiary.

(b) An escrow holder or other person holding funds provided by an owner, lender, or another person as a fund with which the cost of all or part of a work of improvement is to be paid.

8008. "Contract" means an agreement that provides for all or part of a work of improvement.

8010. "Contract price" means the price agreed to in a direct contract for a work of improvement.

8012. "Contractor" includes a direct contractor, subcontractor, or both. This section does not apply to Sections 8018 and 8046.

8014. "Design professional" means a person licensed as an architect pursuant to Chapter 3 (commencing with Section 5500) of Division 3 of the Business and Professions Code, licensed as a landscape architect pursuant to Chapter 3.5 (commencing with Section 5615) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with Section 8700) of Division 3 of the Business and Professions Code.

8016. "Direct contract" means a contract between an owner and a direct contractor that provides for all or part of a work of improvement.

8018. "Direct contractor" means a contractor that has a direct contractual relationship with an owner. A reference in another statute to a "prime contractor" in connection with the provisions in this part means a "direct contractor."

8020. For the purposes of Title 3 (commencing with Section 9000) "funds" means warrant, check, money, or bonds (if bonds are to be issued in payment of the public works contract).

8022. "Labor, service, equipment, or material" includes, but is not limited to, labor, skills, services, material, supplies, equipment, appliances, power, and surveying, provided for a work of improvement.

8024. (a) "Laborer" means a person who, acting as an employee, performs labor upon, or bestows skill or other necessary services on, a work of improvement.

(b) "Laborer" includes a person or entity to which a portion of a laborer's compensation for a work of improvement, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and implementing regulations, is paid by agreement with that laborer or the collective bargaining agent of that laborer.

(c) A person or entity described in subdivision (b) that has standing under applicable law to maintain a direct legal action, in its own name or as an assignee, to collect any portion of compensation owed for a laborer for a work of improvement, shall have standing to enforce any rights or claims of the laborer under this part, to the extent of the compensation agreed to be paid to the person or entity for labor on that improvement. This subdivision is intended to give effect to the longstanding public policy of this state to protect the entire compensation of a laborer on a work of improvement, regardless of the form in which that compensation is to be paid.

8026. "Lien" means a lien under Title 2 (commencing with Section 8160) and includes a lien of a design professional under Section 8302, a lien for a work of improvement under Section 8400, and a lien for a site improvement under Section 8402.

8028. "Material supplier" means a person that provides material or supplies to be used or consumed in a work of improvement.

8030. (a) For the purposes of Title 2 (commencing with Section 8160), "payment bond" means a bond given under Section 8600.

(b) For the purposes of Title 3 (commencing with Section 9000), “payment bond” means a bond required by Section 9550.

8032. “Person” means an individual, corporation, public entity, business trust, estate, trust, partnership, limited liability company, association, or other entity.

8034. (a) For the purposes of Title 2 (commencing with Section 8160), “preliminary notice” means the notice provided for in Chapter 2 (commencing with Section 8200) of Title 2.

(b) For the purposes of Title 3 (commencing with Section 9000), “preliminary notice” means the notice provided for in Chapter 3 (commencing with Section 9300) of Title 3.

8036. “Public entity” means the state, Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.

8038. “Public works contract” has the meaning provided in Section 1101 of the Public Contract Code.

8040. “Site” means the real property on which a work of improvement is situated or planned.

8042. “Site improvement” means any of the following work on real property:

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

(b) Drilling test holes.

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

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

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

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

8044. (a) (1) For the purposes of Title 2 (commencing with Section 8160), “stop payment notice” means the notice given by a claimant under Chapter 5 (commencing with Section 8500) of Title 2.

(2) A stop payment notice given under Title 2 (commencing with Section 8160) may be bonded or unbonded. A “bonded stop payment notice” is a notice given with a bond under Section 8532. An “unbonded stop payment notice” is a notice not given with a bond under Section 8532.

(3) Except to the extent Title 2 (commencing with Section 8160) distinguishes between a bonded and an unbonded stop payment notice, a reference in that title to a stop payment notice includes both a bonded and an unbonded notice.

(b) For the purposes of Title 3 (commencing with Section 9000), "stop payment notice" means the notice given by a claimant under Chapter 4 (commencing with Section 9350) of Title 3.

(c) A reference in another statute to a "stop notice" in connection with the remedies provided in this part means a stop payment notice.

8046. "Subcontractor" means a contractor that does not have a direct contractual relationship with an owner. The term includes a contractor that has a contractual relationship with a direct contractor or with another subcontractor.

8048. "Work" means labor, service, equipment, or material provided to a work of improvement.

8050. (a) "Work of improvement" includes, but is not limited to:

(1) Construction, alteration, repair, demolition, or removal, in whole or in part, of, or addition to, a building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road.

(2) Seeding, sodding, or planting of real property for landscaping purposes.

(3) Filling, leveling, or grading of real property.

(b) Except as otherwise provided in this part, "work of improvement" means the entire structure or scheme of improvement as a whole, and includes site improvement.

Article 2. Miscellaneous Provisions

8052. (a) This part is operative on January 1, 2012.

(b) Notwithstanding subdivision (a), the effectiveness of a notice given or other action taken on a work of improvement before January 1, 2012, is governed by the applicable law in effect before January 1, 2012, and not by this part.

(c) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof and not as a new enactment.

8054. (a) This part does not apply to a transaction governed by the Oil and Gas Lien Act, Chapter 2.5 (commencing with Section 1203.50) of Title 4 of Part 3 of the Code of Civil Procedure.

(b) This part does not apply to or change improvement security under the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

(c) This part does not apply to a transaction governed by Sections 20457 to 20464, inclusive, of the Public Contract Code.

8056. Except as otherwise provided in this part, Part 2 (commencing with Section 307) of the Code of Civil Procedure provides the rules of practice in proceedings under this part.

8058. For purposes of this part, "day" means a calendar day.

8060. (a) If this part provides for filing a contract, plan, or other paper with the county recorder, the provision is satisfied by filing the paper in the office of the county recorder of the county in which the work of improvement or part of it is situated.

(b) If this part provides for recording a notice, claim of lien, release of lien, payment bond, or other paper, the provision is satisfied by filing the paper for record in the office of the county recorder of the county in which the work of improvement or part of it is situated.

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

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

8062. No act of an owner in good faith and in compliance with a provision of this part shall be construed to prevent a direct contractor's performance of the contract, or exonerate a surety on a performance or payment bond.

8064. An owner may give a notice or execute or file a document under this part on behalf of a co-owner if the owner acts on the co-owner's behalf and includes in the notice or document the name and address of the co-owner on whose behalf the owner acts.

8066. An act that may be done by or to a person under this part may be done by or to the person's agent to the extent the act is within the scope of the agent's authority.

CHAPTER 2. NOTICE

8100. Notice under this part shall be in writing. Writing includes printing and typewriting.

8102. (a) Notice under this part shall, in addition to any other information required by statute for that type of notice, include all of

the following information to the extent known to the person giving the notice:

- (1) The name and address of the owner or reputed owner.
 - (2) The name and address of the direct contractor.
 - (3) The name and address of the construction lender, if any.
 - (4) A description of the site sufficient for identification, including the street address of the site, if any. If a sufficient legal description of the site is given, the effectiveness of the notice is not affected by the fact that the street address is erroneous or is omitted.
 - (5) The name, address, and relationship to the parties of the person giving the notice.
 - (6) If the person giving the notice is a claimant:
 - (A) A general statement of the work provided.
 - (B) The name of the person to or for whom the work is provided.
 - (C) A statement or estimate of the claimant's demand, if any, after deducting all just credits and offsets.
- (b) Notice is not invalid by reason of any variance from the requirements of this section if the notice is sufficient to substantially inform the person given notice of the information required by this section and other information required in the notice.

8104. (a) A direct contractor or subcontractor on a work of improvement governed by this part that employs a laborer and fails to pay the full compensation due the laborer, including any employer payments described in Section 1773.1 of the Labor Code and implementing regulations, shall not later than the date the compensation became delinquent, give the laborer, the laborer's bargaining representative, if any, the construction lender or reputed construction lender, if any, and the owner or reputed owner, notice that includes all of the following information, in addition to the information required by Section 8102:

- (1) The name and address of the laborer, and of any person or entity described in subdivision (b) of Section 8024 to which employer payments are due.
 - (2) The total number of straight time and overtime hours worked by the laborer on each job.
 - (3) The amount then past due and owing.
- (b) Failure to give the notice required by subdivision (a) constitutes grounds for disciplinary action under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

8106. Except as otherwise provided by statute, notice under this part shall be given by any of the following means:

- (a) Personal delivery.
- (b) Mail in the manner provided in Section 8110.

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

8108. Except as otherwise provided by this part, notice under this part shall be given to the person to be notified at the person's residence, the person's place of business, or at any of the following addresses:

(a) If the person to be notified is an owner other than a public entity, the owner's address shown on the direct contract, the building permit, or a construction trust deed.

(b) If the person to be notified is a public entity, the office of the public entity or another address specified by the public entity in the contract or elsewhere for service of notices, papers, and other documents.

(c) If the person to be notified is a construction lender, the construction lender's address shown on the construction loan agreement or construction trust deed.

(d) If the person to be notified is a direct contractor or a subcontractor, the contractor's address shown on the building permit, on the contractor's contract, or on the records of the Contractors' State License Board.

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

(f) If the person to be notified is a surety on a bond, the surety's address shown on the bond for service of notices, papers, and other documents, or on the records of the Department of Insurance.

8110. Except as otherwise provided by this part, notice by mail under this part shall be given by registered or certified mail, express mail, or overnight delivery by an express service carrier.

8114. A notice required by this part to be posted shall be displayed in a conspicuous location at the site.

8116. Notice under this part is complete and deemed to have been given at the following times:

(a) If given by personal delivery, when delivered.

(b) If given by mail, when deposited in the mail or with an express service carrier in the manner provided in Section 1013 of the Code of Civil Procedure.

(c) If given by leaving the notice and mailing a copy in the manner provided in Section 415.20 of the Code of Civil Procedure for service of summons in a civil action, five days after mailing.

(d) If given by posting, when displayed.

(e) If given by recording, when recorded in the office of the county recorder.

8118. (a) Proof that notice was given to a person in the manner required by this part shall be made by a proof of notice declaration that states all of the following:

(1) The type or description of the notice given.

(2) The date, place, and manner of notice, and facts showing that notice was given in the manner required by statute.

(3) The name and address of the person to which notice was given, and, if appropriate, the title or capacity in which the person was given notice.

(b) If the notice is given by mail, the declaration shall be accompanied by one of the following:

(1) Documentation provided by the United States Postal Service showing that payment was made to mail the notice using registered or certified mail, or express mail.

(2) Documentation provided by an express service carrier showing that payment was made to send the notice using an overnight delivery service.

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

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

CHAPTER 3. WAIVER AND RELEASE

8120. The provisions of this chapter apply to a work of improvement governed by this part.

8122. An owner, direct contractor, or subcontractor may not, by contract or otherwise, waive, affect, or impair any other claimant's rights under this part, whether with or without notice, and any term of a contract that purports to do so is void and unenforceable unless and until the claimant executes and delivers a waiver and release under this article.

8124. A claimant's waiver and release does not release the owner, construction lender, or surety on a payment bond from a lien or claim unless both of the following conditions are satisfied:

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

(b) If the release is a conditional release, there is evidence of payment to the claimant. Evidence of payment may be either of the following:

(1) The claimant's endorsement on a single or joint payee check that has been paid by the financial institution on which it was drawn.

(2) Written acknowledgment of payment by the claimant.

8126. An oral or written statement purporting to waive, release, impair or otherwise adversely affect a lien or claim is void and unenforceable and does not create an estoppel or impairment of the lien or claim unless either of the following conditions is satisfied:

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

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

8128. (a) A claimant may reduce the amount of, or release in its entirety, a stop payment notice. The reduction or release shall be in writing and may be given in a form other than a waiver and release form provided in this article.

(b) The writing shall identify whether it is a reduction of the amount of the stop payment notice, or a release of the notice in its entirety. If the writing is a reduction, it shall state the amount of the reduction, and the amount to remain withheld after the reduction.

(c) A claimant's reduction or release of a stop payment notice has the following effect:

(1) The reduction or release releases the claimant's right to enforce payment of the claim stated in the notice to the extent of the reduction or release.

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

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

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

8130. This article does not affect the enforceability of either an accord and satisfaction concerning a good faith dispute or an agreement made in settlement of an action pending in court if the accord and satisfaction or agreement and settlement make specific reference to the lien or claim.

8132. If a claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS
PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____
Through Date: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: _____
Amount(s) of unpaid progress payment(s): \$ _____

- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

8134. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the progress payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

8136. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

**CONDITIONAL WAIVER AND RELEASE ON FINAL
PAYMENT**

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date

that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: _____
Amount of Check: \$ _____
Check Payable to: _____

Exceptions

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____
Claimant's Title: _____
Date of Signature: _____

8138. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the final payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____
Name of Customer: _____
Job Location: _____
Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exception

This document does not affect the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

CHAPTER 4. BONDS

8150. The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this part, except to the extent this part prescribes a different rule or is inconsistent.

8152. None of the following releases a surety from liability on a bond given under this part:

(a) A change, alteration, or modification to a contract, plan, specification, or agreement for a work of improvement or for work provided for a work of improvement.

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

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

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

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

8154. (a) A bond given under this part shall be construed most strongly against the surety and in favor of all persons for whose benefit the bond is given.

(b) A surety is not released from liability to those for whose benefit the bond has been given by reason of a breach of the direct contract or on the part of any obligee named in the bond.

(c) Except as otherwise provided by statute, the sole conditions of recovery on the bond are that the claimant is a person described in Article 1 (commencing with Section 8400) of Chapter 4 of Title 2, or in Section 9100, and has not been paid the full amount of the claim.

TITLE 2. PRIVATE WORKS OF IMPROVEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Application of Title

8160. This title applies to a work of improvement that is not governed by Title 3 (commencing with Section 9000) of this part.

Article 2. Construction Documents

(Sections 8130, 8132, and 8134 are renumbered as Sections 8170, 8172, and 8174)

Article 3. Completion

(Sections 8150 through 8156 are renumbered as Sections 8180 through 8190)

CHAPTER 2. PRELIMINARY NOTICE

From here until end of private work provisions, all headings and numbering remain unchanged.

TITLE 3. PUBLIC WORKS OF IMPROVEMENT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Application of Title

9000. This title applies to a work of improvement contracted for by a public entity.

Article 2. Claimants

9100. (a) Except as provided in subdivision (b), any of the following persons that have not been paid in full may give a stop payment notice to the public entity or assert a claim against a payment bond:

(1) A person that provides work for a public works contract, if the work is authorized by a direct contractor, subcontractor, architect, project manager, or other person having charge of all or part of the public works contract.

(2) A laborer.

(3) A person described in Section 4107.7 of the Public Contract Code.

(b) A direct contractor may not give a stop payment notice or assert a claim against a payment bond under this title.

CHAPTER 2. COMPLETION

9200.

Section numbers in this article remain the same as in present version of bill.

CHAPTER 3. PRELIMINARY NOTICE

9300.

From here to end of public work provisions, all headings and numbering remain the same. Section 9556 has been moved to Title 1 (Section 8154).
