

## Memorandum 2000-47

### Mechanic's Liens: Full Pay and Direct Pay Drafts

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This memorandum presents draft proposals for reform of the mechanic's lien law as it relates to single-family, owner-occupied dwellings. It also includes an introductory survey of the definition provisions in the existing statute, and some suggested approaches to consumer-friendly form to assist homeowners in understanding the existing statute.

The following materials are attached:

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#### **Direct Pay Proposal**

The Commission devoted most of the discussion to the Direct Pay Notice at the last meeting. (See Memorandum 2000-37; Second Supplement to Memorandum 2000-37.) This proposal, first put forward by Ellen Gallagher, would permit subcontractors and suppliers to request direct payment from the owner, in the amount due the subcontractor or supplier, when payment is due under the contract. The prime contractor would authorize payment under the contract, as under existing practice, but the homeowner would pay the claimant giving the Direct Pay Notice, instead of the prime contractor.

This proposal would replace the confusion of preliminary notices and conditional and unconditional releases for progress payments under existing practice, with a more logical scheme that behaves more like regular commercial transactions. The challenge, as noted above, is to merge the basic idea into the existing law and practice without complicating it out of recognition or confusing and burdening the parties, including subcontractors and suppliers. The staff's first attempt to draft language implementing this proposal is set out in the Exhibit at pages 1-3.

## **Full Payment Defense**

The defense of full payment in good faith is the simplest proposal to add to the existing statute. It is easy to understand and explain, since it comports with common expectations of how things should work.

James Acret has summarized his full payment defense proposal in the following terms:

1. A lien claimant other than an original contractor dealing directly with the owner of a home improvement project may not enforce a claim of mechanics lien if:
  - a) the original contract price established by the owner and the original contractor represents a good faith evaluation of the value of the work to be performed and the equipment and materials to be supplied under the original contract, and
  - b) the owner has paid to or for the original contractor the original contract price as established by the contract documents including any signed change orders.
2. If the owner has paid part, but not all of the original contract price, the amount of all mechanics lien claims shall not exceed the difference between the original contract price and the amounts paid by the owner in good faith to or for the original contractor.

This description is fairly simple and straightforward. The challenge, as we have seen, will be to keep the statutory drafting simple and understandable. The staff's rough draft to implement this approach is set out in Exhibit pages 5-6. A number of questions and issues are raised in staff notes following the draft sections.

## **Organization of Statute**

Since 1969, the mechanic's lien statute has been located in Title 15 "Works of Improvement" (commencing with Section 3082) of Part 4 "Obligations Arising from Particular Transactions" of Division 3 "Obligations" of the Civil Code. Legal historians will be reminded of the Field Civil Code origins of this structure. However, the original mechanic's lien code provisions appeared in the Code of Civil Procedure. (See 1872 Code of Civil Procedure §§ 1183-1199.) The entire mechanic's lien law was set out in 17 sections in the 1872 Code of Civil Procedure, covering about four pages and amounting to maybe 1200 words — less than half the length of the longest section in the current statute, Civil Code Section 3097.

The lien provisions in the 1872 Civil Code provided a cross-reference in Section 3059, which provided that the “liens of mechanics, for materials and services upon real property, are regulated by the Code of Civil Procedure.” This cross-reference section still remains, although it now refers to Chapter 2 (commencing with Section 3109) in the same Part of the Civil Code. The staff recommends repealing this cross-reference, consistent with the Commission’s disposition in the 1982 Enforcement of Judgments Law of similar cross-reference sections in former Civil Code Sections 3057 and 3058 pertaining to liens of levying officers and judgment liens, respectively.

Title 15 is divided into eight chapters, which interweave the provisions concerning private and public works:

CHAPTER 1. GENERAL DEFINITIONS .....	§§ 3082-3106
CHAPTER 2. MECHANICS’ LIENS	
Article 1. Application of Chapter .....	§ 3109
Article 2. Who Is Entitled to Lien .....	§§ 3110-3112
Article 3. Conditions to Enforcing a Lien .....	§§ 3114-3118
Article 4. Amount of Lien .....	§§ 3123-3124
Article 5. Property Subject to Lien .....	§§ 3128-3131
Article 6. Priorities .....	§§ 3134-3140
Article 7. Enforcement of Lien .....	§§ 3143-3154
CHAPTER 3. STOP NOTICES FOR PRIVATE WORKS OF IMPROVEMENT	
Article 1. Application of Chapter .....	§ 3156
Article 2. Who Is Entitled to Serve a Stop Notice and Bonded Stop Notice .....	§§ 3158-3159
Article 3. Conditions to Valid Service of Stop Notice and Bonded Stop Notice .....	§ 3160
Article 4. Effect of Stop Notice and Bonded Stop Notice .....	§§ 3161-3163
Article 5. Priorities .....	§§ 3166-3168
Article 6. Release of Stop Notice or Bonded Stop Notice .....	§ 3171
Article 7. Enforcement of Rights Arising From Stop Notice and Bonded Stop Notice .....	§§ 3172-3176.5
CHAPTER 4. STOP NOTICE FOR PUBLIC WORK	
Article 1. Application of Chapter .....	§ 3179
Article 2. Who Is Entitled to Serve a Stop Notice .....	§ 3181
Article 3. Conditions to Service of Stop Notice .....	§§ 3183-3187
Article 4. Priorities .....	§§ 3190-3193
Article 5. Release of Stop Notice .....	§§ 3196-3205
Article 6. Enforcement of Rights Arising From Stop Notice .....	§§ 3210-3214
CHAPTER 5. GENERAL PROVISIONS RELATING TO BONDS	
Article 1. Construction of and Terms and Conditions of Bonds .....	§§ 3225-3227
CHAPTER 6. PAYMENT BOND FOR PRIVATE WORKS	
Article 1. Provision for and Effect of Filing Contract and Payment Bond .....	§§ 3235-3237
Article 2. Conditions to Action on Payment Bond .....	§§ 3239-3242

CHAPTER 7. PAYMENT BOND FOR PUBLIC WORKS . . . . . §§ 3247-3252  
CHAPTER 8. MISCELLANEOUS PROVISIONS . . . . . §§ 3258-3267

This structure has lasted intact from the 1969 revision that replaced the predecessor in the Code of Civil Procedure, which had been divided into four articles in 1951. The 1969 structure has survived remarkably intact, even though its provisions have been revised in at least 62 later enactments, up to and including this year’s Chapter 13 (AB 576), an urgency measure once again amending Section 3097 (preliminary notice). As a first step, the staff proposes to attempt to separate the private and public works provisions.

**Definitions and Terminology**

To the extent possible, the staff recommends removing substantive rules from the definitional sections, in conformity with sound drafting practice. Consistent with Commission drafting style, as well as Legislative Joint Rule 8, we intend to draft short sections to aid in accessibility and to avoid having to repeat long provisions in amendatory bills. Some initial revisions and staff notes are set out in the Exhibit at pages 7-22.

**Forms for Notice to Owner and Checklists**

Sam Abdulaziz has sent the Commission a further refinement of the Notice to Owner form that is provided to the owner by the prime contractor at the beginning of the project. See Exhibit pp. 23-32. This is not a statutory form, at this point, and the staff would hope the Commission can avoid legislating the exact language of the form (as well as eliminate some of the other form language in existing law). The staff has not been able to resist its own revision of the proposed language. See Exhibit pp. 33-37.

The attempt to make more consumer-friendly forms is directed at educating homeowners about how the mechanic’s lien system functions and what they can do to avoid liens. Opinions differ on whether further attempts at education can adequately address the confusion inherent in the existing system. However, if the Commission ultimately decides to abandon deeper reforms, such as the full pay and direct pay proposals, improvement of forms may be an important approach, even if significant results are unlikely.

Respectfully submitted,

Stan Ulrich  
Assistant Executive Secretary

## DIRECT PAY NOTICE

1 ☞ **Staff Note.** This draft is not integrated with the other parts of the mechanic’s lien law, in part  
2 because the content and structure of the entire statute is subject to possible revision. If the  
3 Commission decides to pursue this approach, as the drafting is refined, the direct pay notice  
4 provisions would be integrated into the other sections, with appropriate cross-references and  
5 exceptions, depending on decisions concerning the broader statute.

6 For discussion purposes this material is placed between the definitions in Chapter 1  
7 (commencing with Section 3082) and the main mechanic’s lien provisions in Chapter 2  
8 (commencing with Section 3109).

9 If a bill is drafted to implement this type of procedure, it may be useful to include an uncodified  
10 provision making legislative findings that special protection is needed for single-family, owner-  
11 occupied dwellings. This would assist the courts in balancing the interests in case of a  
12 constitutional challenge. The staff has not yet researched the appropriate wording for this type of  
13 provision.

14 **Civ. Code §§ 3107.1-3107.6 (added). Direct pay procedure for single-family, owner-occupied**  
15 **dwellings**

### 16 CHAPTER 1.5. LIEN RIGHTS IN WORKS OF IMPROVEMENT ON 17 SINGLE-FAMILY, OWNER-OCCUPIED DWELLINGS

#### 18 § 3107.1. Scope of chapter

19 3107.1. This chapter applies only to works of improvement on single-family,  
20 owner-occupied dwellings.

21 **Comment.** Section 3107.1 provides the scope of this chapter. See also Section 3106 (“work of  
22 improvement” defined).

23 ☞ **Staff Note.** As noted in Memorandum 2000-37, there are other formulations of the scope of  
24 this type of rule that would be appropriate, such as using the definition of home improvement  
25 contract in Business and Professions Code Section 7151 of the Contractors’ State License Law.  
26 The Commission may wish to revisit this issue if work proceeds on this approach.

#### 27 § 3107.2. Direct pay notice required to enforce lien

28 3107.2. (a) A person described in Section 3110 who furnishes labor, services,  
29 equipment, or material in a work of improvement of a single-family, owner-  
30 occupied dwelling, and who does not have a direct contract with the owner, may  
31 elect to use the procedure under this chapter or may rely on the rights under his or  
32 her contract with other persons.

33 (b) Notwithstanding Sections 3097 and 3114 [or any other provision in this title],  
34 a person described in Section 3110, other than the prime contractor, is entitled to  
35 enforce a lien under this title only if the person gives the owner a direct pay notice  
36 under this chapter.

37 (c) The direct pay notice may be given as follows:

38 (1) Personal delivery.


39 (2) Leaving it at the owner’s dwelling address or place of business with some  
40 person in charge.

1 (3) First-class registered or certified mail, postage prepaid, addressed to the  
2 owner at his or her residence or place of business address.

3 (d) A copy of the direct pay notice shall also be given to the prime contractor.

4 **Comment.** Section 3107.2 provides a special rule applicable to single-family, owner-occupied  
5 dwellings. Subdivision (a) makes clear that it is the subcontractor or supplier choice whether to  
6 rely on the credit of the person he or she contracted with or to seek direct payment from the  
7 homeowner. Under subdivision (b), the giving of a direct pay notice is a prerequisite to assertion  
8 of mechanic's lien rights [and other rights] under this title. The general rules, such as the  
9 preliminary 20-day notice under Section 3097, do not apply in cases governed by this chapter.

10 Subdivision (c) is drawn from

11  **Staff Note.** This section points up the utility of a term describing persons who are potential  
12 lien claimants. The definition of "claimant" in Section 3085 seems to be intended to cover all  
13 such persons: "any person entitled under this title to record a claim of lien, to give a stop notice in  
14 connection with any work of improvement, or to recover on any payment bond, or any  
15 combination of the foregoing." However, use of "claimant" is artificial where the person is not  
16 claiming anything yet and may never claim a lien. The definition also requires one to understand  
17 who is entitled to make a claim, and that can be tricky.

18 For present purposes, this section incorporates the list of persons in Section 3110 who may be  
19 entitled to a lien:

20 Mechanics, materialmen, contractors, subcontractors, lessors of equipment, artisans,  
21 architects, registered engineers, licensed land surveyors, machinists, builders, teamsters, and  
22 draymen, and all persons and laborers of every class performing labor upon or bestowing skill  
23 or other necessary services on, or furnishing materials or leasing equipment to be used or  
24 consumed in or furnishing appliances, teams, or power contributing to a work of  
25 improvement ....

26 This language itself is seriously in need of revision.

27 Subdivision (a) attempts to point to the two options, but it may be more confusing than useful,  
28 because it is difficult to explain in statutory language the consequence of not giving the direct pay  
29 notice.

30 The staff is not sure that laborers, as such, should be included in this scheme. One would not  
31 want every employee working on a project to think he or she had to send a notice, or even leave  
32 this option open. We assume employees almost never try to assert mechanic's lien rights under  
33 existing law, so maybe it is not worth addressing in this procedure.

34 Additional provisions will be needed here, or in other related sections, to make clear how the  
35 direct pay notice fits in with and satisfies the procedural rules governing lien enforcement.  
36 Basically, it substitutes for the preliminary notice and any rules dependent on giving the  
37 preliminary notice are satisfied by giving an effective direct pay notice. It does not seem that the  
38 20-day lookback rule needs to apply here. The staff has not had time to work through all of these  
39 issues.

#### 40 § 3107.3. Limit on time of giving direct pay notice

41 3107.3. The direct pay notice is effective only if it is received by the owner  
42 before the owner makes payment to the prime contractor under the terms of the  
43 contract for the labor, services, equipment, or material provided.

44 **Comment.** Section 3107.3 provides a limit on giving direct pay notices. If the owner has  
45 already paid the prime contractor in good faith under the terms of the contract, such as pursuant to  
46 a valid progress payment schedule, the direct pay notice is ineffective, since it is too late for the  
47 owner to comply. In this case, the subcontractor or other person would have to look to the prime  
48 contractor for payment and would not be entitled to impose a lien on the owner's property (since  
49 Section 3107.2 has not been complied with).

1 ☞ **Staff Note.** This draft has focused on the lien right, but it should probably also apply to the  
2 right to sue the owner on the debt, since one purpose of the procedure is to avoid double payment.  
3 Compare the draft of the full payment defense proposal in the next section.

#### 4 § 3107.4. Contents of direct pay notice

5 3107.4. The form of the direct pay notice shall be prepared by the Contractors  
6 State License Board and shall include the following information:

7 (a) The name and address of the person furnishing labor, services, equipment, or  
8 materials, who is requesting direct payment.

9 (b) The name of the owner who contracted for the labor, services, equipment or  
10 materials.

11 (c) The address of the owner's single-family, owner-occupied dwelling.

12 (d) A brief statement of the rights and duties under this chapter in plain English,  
13 including the substance of the following:

#### 14 **Direct Pay Request**

##### 15 California Civil Code Section 3107.3

16 Do not pay your prime contractor for my services or for equipment or materials  
17 I supplied. When the prime informs you that it is time to pay for my services or  
18 for equipment or material I supplied, pay me directly instead.

19 If you pay the contractor instead of me, and the contractor does not pay me, I  
20 have the right to place a mechanic's lien on your home and enforce my debt  
21 against you.

22 **Comment.** Section 3107.3 provides for the contents of the form of a direct pay notice. Some  
23 parts of this section are drawn from Section 3097 governing the preliminary 20-day notice for  
24 private work.

25 ☞ **Staff Note.** The language has been kept to a minimum here. We could attempt to draft a full-  
26 blown sample of what the form could look like, if that would be helpful. The intent of this form,  
27 however, is to keep it short and simple. The direct pay notice is not intended to include all of the  
28 contents of the preliminary notice or to outline the entire mechanic's lien law. It would probably  
29 be a good idea to include a description of the direct pay rules in the notice to owner given by the  
30 prime contractor at the beginning of a project.

#### 31 § 3107.5 Waiver prohibited

32 3107.5. The right to direct payment under this chapter may not be waived. A  
33 contractual provision or other agreement purporting to waive rights under this  
34 chapter is void.

35 **Comment.** Section 3107.5 makes clear that the choice of using the direct pay procedure under  
36 this chapter is not waivable.

#### 37 § 3107.6. Operative date

38 3107.6. This chapter applies only to works of improvement under contracts  
39 executed on or after January 1, \_\_\_\_.

40 **Comment.** Section 3107.6 gives this chapter prospective effect, depending on the date of the  
41 contract between the homeowner and the prime contractor. The date of any contract between a  
42 prime contractor and subcontractors and suppliers is not relevant to the operation of this chapter.





## FULL PAYMENT DEFENSE

1 ☞ **Staff Note.** In its basic form, the full payment defense proposal does not dispense with any of  
2 the paper-shuffling involved in sending preliminary notices and making progress payments and  
3 seeking conditional and unconditional releases. If the proposal is kept to its simplest form, it will  
4 act primarily as a defense where good faith payment has been made and the prime contractor  
5 hasn't paid subcontractors and suppliers; it will not change other aspects of the statutory  
6 procedure.

7 The statute could be expanded to include additional clarifying rules. For example, it might be  
8 useful to add rules on releasing liens, although the effect of the discharge or nonliability rules  
9 should be obvious as applied in other sections of the general statute. Liens are lost if an action is  
10 not commenced within 90 days after completion (or 30 days after recording notice), which should  
11 take care of most cases that would arise.

### 12 **Civ. Code §§ 3155.1-3155.4 (added). Homeowner's discharge by payment under contract**

#### 13 Article 7. Homeowner's Discharge by Payment Under Contract

##### 14 **§ 3155.1. Limitation on liability of single-family, owner-occupied dwelling owner**

15 3155.1. Notwithstanding Section 3123 [or any other provision in this title], the  
16 owner of a single-family, owner-occupied dwelling who has paid the full amount  
17 due for the work of improvement under the contract with the prime contractor,  
18 including change orders, is not liable to any other claimant, if the following  
19 conditions are satisfied:

20 (a) The contract with the prime contractor represents a good faith valuation of  
21 the work to be performed and the equipment and materials to be supplied.

22 (b) At the time of payment, the owner does not have knowledge of any dispute  
23 between the prime contractor and any other claimants arising out of the work of  
24 improvement.

25 **Comment.** Section 3155.1 provides a special rule limiting liability of owners of single-family,  
26 owner-occupied dwellings under this title. Payment under this section includes direct payment to  
27 the contractor as well as payment to a joint control account or similar arrangement.

28 See also Sections 3088 ("contract" defined), 3098.5 ("prime contractor" defined), 3106 ("work  
29 of improvement" defined).

30 ☞ **Staff Note.** There are other possible formulations of the proposal. The statute could provide  
31 that the claim is "deemed satisfied" or "is satisfied" by payment in good faith to the prime  
32 contractor. Or the statute could provide that the claims are not "enforceable" under these  
33 circumstances. James Acret's proposal is phrased in terms of precluding enforcement of a claim  
34 of mechanic's lien by a lien claimant. This leaves open the possibility of an unenforceable lien  
35 existing until it is extinguished, typically 90 days after completion. It also leaves open the  
36 question of whether the owner is still liable outside of the mechanic's lien.

37 Depending on the redrafting of the other parts of the statute, the introductory "notwithstanding"  
38 clause will need revision. Section 3123 is the section descended from the 1911 amendments that  
39 characterizes mechanic's liens as "direct liens" for the reasonable value of the labor, services,  
40 equipment, or materials, subject to the *claimant's* contractual agreements, and not limited by the  
41 owner's contract with the *prime contractor*.

1 The reference to “change orders” is a shorthand for provisions such as Section 3123(c): “The  
2 owner shall notify the prime contractor and construction lenders of any changes in the contract if  
3 the change has the effect of increasing the price stated in the contract by 5 percent or more.” The  
4 term is only used once, in the unconditional waiver and release form language set out in Section  
5 3262(d)(1). The drafting would be improved if the change order concept could be included in the  
6 reference to the contract.

7 We do not think any special procedural rules should be necessary. If a subcontractor hasn’t  
8 been paid, presumably there will be communication with the contractor and the owner, and in  
9 most cases it will be clear whether it is worth pursuing the lien. In any event, commentators are  
10 unanimous that the potential for a double payment is a rare occurrence. In those few cases, if the  
11 owner hasn’t paid, the subcontractor has all the rights of the existing statute. The same is true if  
12 the owner has paid, but the good faith standards haven’t been met, although there is more of a  
13 potential for a dispute. But this subclass of a rare class of cases should not cause too much  
14 concern.

### 15 § 3155.2. Partial payments

16 3155.2. Where the owner has paid part but not all of the original contract price,  
17 the owner is not liable to a claimant to the extent of any payments satisfying the  
18 standards in Section 3155.

19 **Comment.** Section 3155.2 makes clear that the rule in Section 3155.1 applies to partial  
20 payments.

### 21 § 3155.3. Defense

22 3155.3. In an action to foreclose a lien or a personal action against the owner to  
23 recover a debt, a payment satisfying the requirements of Section 3155.1 is a  
24 complete defense to the extent of the payment.

25 **Comment.** Section 3155.3 makes clear that payment under this article is a complete defense  
26 against any mechanic’s lien claims or assertion of personal liability on the obligation discharged  
27 by payments satisfying this article. This article is intended to eliminate the possibility of a  
28 homeowner of a single-family, owner-occupied dwelling being required to pay twice for the same  
29 work of improvement.

30 ☞ **Staff Note.** This section is probably not necessary, but helps drive home the purpose of this  
31 article.

### 32 § 3155.4. Waiver prohibited

33 3155.4. The rights of an owner under this article may not be waived. A  
34 contractual provision or other agreement purporting to waive the rights of an  
35 owner under this article is void.

36 **Comment.** Section 3155.4 makes clear that the protection of owners of single-family, owner-  
37 occupied dwellings from potential double payment is not waivable.

38 ☞ **Staff Note.** A stronger rule would be to invalidate any contract that attempts to waive the full  
39 payment rights. A violation of this section should subject a contractor to discipline by CSLB.

## DEFINITIONS DRAFTING NOTES AND ORGANIZATION

1 ☞ **Staff Note.** The Commission has been focusing on the special problems involving home  
2 improvement contracts. We anticipate, however, that the bulk of the drafting and technical work  
3 revising the mechanic's lien statute will be in other areas. As noted in Memorandum 2000-37 and  
4 Memorandum 2000-47, Gordon Hunt and others have proposed a number of technical and minor  
5 substantive revisions in the broader statute that need to be considered.

6 Set out below is the first pass showing some revisions in the definitions chapter (Civ. Code §§  
7 3082-3106) in the existing mechanic's lien statute. The Commission has not decided the degree to  
8 which it is appropriate to reform the statute, but based on past experience, it may be most efficient  
9 and thorough to replace the entire statute with a new, redrafted and reorganized statute. Obviously  
10 this will disrupt section numbers and require revision of manuals, treatises, forms, and  
11 regulations, but this is always the consequence of basic law reform.

12 Whether or not a complete revision is undertaken, there are some revisions that should be  
13 implemented in the definitions. In order to show the sort of changes the staff would make, the  
14 revisions are set out in strike-out and underscore, even though this would not be the appearance of  
15 a bill if the existing law is replaced by a complete revision. Sections that would not be revised are  
16 included in the interest of completeness.

17 As noted elsewhere, the Commission strives to draft with short sections and to keep substantive  
18 rules and procedural language out of definitions. Many of the definitions below are poster  
19 children for violations of these rules.

20 It might be useful to separate the public and private construction provisions into separate titles  
21 or chapters. This would permit application of handy short titles, such as "Mechanic's Lien Law"  
22 for the private remedies, including stop notices, which we all know are included with mechanic's  
23 liens, and "Public Works Remedies." In this approach, the definitions would be in a separate  
24 chapter applicable to both the private and public statutes.

25 The staff has not researched the question yet, but it might be asked whether the public works of  
26 improvement provisions should not be in the "new" (1982) Public Contract Code, which covers  
27 contracting by state and local agencies, governs bidding processes, contract clauses, and claims  
28 and disputes. (There is some interrelation now; see, e.g., Pub. Cont. Code § 10822 (amount of  
29 bond in California State University contracts.) We would be interested in hearing the views of  
30 interested persons on this possibility.

### TITLE 15. WORKS OF IMPROVEMENT

31  
32 ☞ **Staff Note.** For now, we have not proposed renaming this title or a naming it with a "short  
33 title," as is commonly done for convenience of reference. "Works of Improvement" is not an ideal  
34 title heading or short title, but "Mechanic's Liens" is too limited and is inaccurate in the public  
35 works area where there are no mechanic's liens. This statute also includes the stop notice remedy  
36 and payment bonds, but listing "Mechanic's Liens, Stop Notices, and Payment Bonds" is not  
37 much better as a title.

### CHAPTER 1. DEFINITIONS

#### § 3082 (amended). Application of definitions

39  
40 3082. Unless the provision or context otherwise requires, the provisions  
41 definitions in this chapter govern the construction of this title.

42 **Comment.** Section 3082 is amended for conformity with the usual form of this type of  
43 provision. See, e.g., Code Civ. Proc. §§ 680.110, 1235.010; Fam. Code §§ 6, 50; Prob. Code §§  
44 20, 4603.

1 **§ 3083 [should be moved]. Bonded stop notice**

2 3083. “Bonded stop notice” means a stop notice, given to any construction  
3 lender, accompanied by a bond with good and sufficient sureties in a penal sum  
4 equal to 1-1/4 times the amount of such claim conditioned that if the defendant  
5 recovers judgment in an action brought on such verified claim or on the lien filed  
6 by the claimant, the claimant will pay all costs that may be awarded against the  
7 owner, original contractor, construction lender, or any of them, and all damages  
8 that such owner, original contractor, or construction lender may sustain by reason  
9 of the equitable garnishment effected by the claim or by reason of the lien, not  
10 exceeding the sum specified in the bond. To be effective such bonded stop notice  
11 shall be delivered to the manager or other responsible officer or person at the  
12 office of the construction lender or must be sent to such office by registered or  
13 certified mail. If such notice is delivered or sent to any institution or organization  
14 maintaining branch offices, it shall not be effective unless delivered or sent to the  
15 office or branch administering or holding such construction funds.

16 ☞ **Staff Note.** This is not really a definition. This is a substantive provision concerning the  
17 contents and effect, and procedure for implementing this remedy. It should be with the other bond  
18 provisions, e.g., in the current organization, Chapter 6 (commencing with Section 3225) on  
19 General Provisions Relating to Bonds.

20 There is not always a clear path to determining what should be defined and what should be  
21 included in the definition. The Commission’s approach can be seen by examining some of the  
22 larger statutes enacted on Commission recommendation. For example, the Attachment Law (Code  
23 Civ. Proc. § 481.010 *et seq.*) does not define a writ of attachment, a notice of attachment, a claim  
24 of exemption, or an undertaking to release an attachment. These papers cannot be simply and  
25 usefully defined in a way that is helpful to understanding and applying the law. Their meaning is  
26 clear from the sections that govern their contents, issuance, and effect without the need to provide  
27 an exemption.

28 **§ 3084 [should be moved]. Claim of lien**

29 3084. (a) “Claim of lien” means a written statement, signed and verified by the  
30 claimant or by the claimant’s agent, containing all of the following:

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

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

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

36 (4) The name of the person by whom the claimant was employed or to whom the  
37 claimant furnished the labor, services, equipment, or materials.

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

39 (b) A claim of lien in otherwise proper form, verified and containing the  
40 information required by this section shall be accepted by the recorder for recording  
41 and shall be deemed duly recorded without acknowledgment.

42 ☞ **Staff Note.** This is not really a definition. The claim of lien contents and effect should be  
43 covered with other provision dealing with claims later in the statute.

1 **§ 3085 (amended). Claimant**

2 3085. “Claimant” means ~~any~~ a person entitled [~~under this title~~] to record a claim  
3 of lien, to give a stop notice in connection with ~~any~~ a work of improvement, or to  
4 recover on ~~any~~ a payment bond, or any combination of the foregoing.

5 ☞ **Staff Note.** The “under this title” phrase looks like surplus. It could be wrong, if another  
6 statute incorporates the mechanic’s lien title. The section should probably be drafted in more  
7 general terms: “a person entitled to any of the remedies provided by this title.”

8 **§ 3086 [needs revision]. Completion**

9 3086. “Completion” means, in the case of any work of improvement other than a  
10 public work, actual completion of the work of improvement. Any of the following  
11 shall be deemed equivalent to a completion:

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

14 (b) The acceptance by the owner, or his agent, of the work of improvement.

15 (c) After the commencement of a work of improvement, a cessation of labor  
16 thereon for a continuous period of 60 days, or a cessation of labor thereon for a  
17 continuous period of 30 days or more if the owner files for record a notice of  
18 cessation.

19 If the work of improvement is subject to acceptance by any public entity, the  
20 completion of such work of improvement shall be deemed to be the date of such  
21 acceptance; provided, however, that, except as to contracts awarded under the  
22 State Contract Act, Chapter 3 (commencing with Section 14250), Part 5, Division  
23 3, Title 2 of the Government Code, a cessation of labor on any public work for a  
24 continuous period of 30 days shall be a completion thereof.

25 ☞ **Staff Note.** This section is a borderline definition, at best. Saying “completion means actual  
26 completion” violates at least one rule of definition drafting. Parts of the section need to be  
27 relocated. The public and private parts should be separated.

28 **§ 3087 (amended). Construction lender**

29 3087. “Construction lender” means any of the following:

30 (a) A mortgagee or beneficiary under a deed of trust lending funds with which  
31 the cost of the work of improvement is, wholly or in part partially, to be defrayed,  
32 or any.

33 (b) An assignee or successor in interest of either, or any the mortgagee or  
34 beneficiary under a deed of trust.

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

38 **Comment.** Section 3087 is amended to tabulate the persons included in the definition. This is a  
39 technical, nonsubstantive change.

40 ☞ **Staff Note.** The language in this section is inconsistent with the “works of improvement”  
41 language. This is a problem throughout the statute. Are “construction costs” coextensive with “the  
42 costs of the work of improvement”?

1 **§ 3088 (amended). Contract**

2 3088. “Contract” means an agreement between an owner and ~~any original a~~  
3 prime contractor providing for the all or part of a work of improvement ~~or any part~~  
4 ~~thereof~~.

5 **Comment.** Section 3088 is amended to reflect the definition of “prime contractor” in Section  
6 3098.5.

7 **§ 3089 [needs revision]. Laborer**

8 3089. (a) “Laborer” means any person who, acting as an employee, performs  
9 labor upon or bestows skill or other necessary services on any work of  
10 improvement.

11 (b) “Laborer” also includes any person or entity, including an express trust fund  
12 described in Section 3111, to whom a portion of the compensation of a laborer as  
13 defined in subdivision (a) is paid by agreement with that laborer or the collective  
14 bargaining agent of that laborer. To the extent that a person or entity defined in  
15 this subdivision has standing under applicable law to maintain a direct legal action,  
16 in their own name or as an assignee, to collect any portion of compensation owed  
17 for a laborer, that person or entity shall have standing to enforce any rights under  
18 this title to the same extent as the laborer. This section is intended to give effect to  
19 the long-standing public policy of this state to protect the entire compensation of  
20 laborers on works of improvement, regardless of the form in which that  
21 compensation is to be paid.

22 ☞ **Staff Note.** Subdivision (a) is a true definition. Subdivision (b), enacted in 1999, threatens to  
23 veer off the straight and narrow.

24 **§ 3090 (amended). Material supplier**

25 3090. “~~Materialman~~” Material supplier means any a person who furnishes  
26 materials or supplies to be used or consumed in any a work of improvement.

27 **Comment.** Section 3090 is amended for consistency with modern usage. See also Cal. Const.  
28 art. XIV, § 3 (“persons furnishing materials”).

29 ☞ **Staff Note.** From time to time, commentators mention equipment suppliers, but the usage is  
30 not consistent

31 **§ 3092 [needs revision]. Notice of cessation**

32 3092. “Notice of cessation” means a written notice, signed and verified by the  
33 owner or his agent, containing all of the following:

34 (a) The date on or about when the cessation of labor commenced.

35 (b) A statement that such cessation has continued until the recording of the  
36 notice of cessation.

37 (c) The name and address of the owner.

38 (d) The nature of the interest or estate of the owner.


39 (e) A description of the site sufficient for identification, containing the street  
40 address of the site, if any. If a sufficient legal description of the site is given, the

1 validity of the notice shall not, however, be affected by the fact that the street  
2 address is erroneous or is omitted.

3 (f) The name of the original contractor, if any, for the work of improvement as a  
4 whole.

5 (g) For the purpose of this section, “owner” means the owner who causes a  
6 building, improvement, or structure, to be constructed, altered, or repaired (or his  
7 successor in interest at the date of a notice of cessation from labor is filed for  
8 record) whether the interest or estate of such owner be in fee, as vendee under a  
9 contract of purchase, as lessee, or other interest or estate less than the fee. Where  
10 such interest or estate is held by two or more persons as joint tenants or tenants in  
11 common, any one or more of the cotenants may be deemed to be the “owner”  
12 within the meaning of this section. Any notice of cessation signed by less than all  
13 of such cotenants shall recite the names and addresses of all such cotenants.

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

17  **Staff Note.** This is not really a definition and should be moved to the relevant part of the  
18 statute.

19 **§ 3093 [needs revision]. Notice of completion**

20 3093. “Notice of completion” means a written notice, signed and verified by the  
21 owner or his agent, containing all of the following:

22 (a) The date of completion (other than a cessation of labor). The recital of an  
23 erroneous date of completion shall not, however, affect the validity of the notice if  
24 the true date of completion is within 10 days preceding the date of recording of  
25 such notice.

26 (b) The name and address of the owner.

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

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

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

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

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

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

7 ☞ **Staff Note.** This is not really a definition and should be moved to the relevant part of the  
8 statute.

9 **§ 3094 [needs revision]. Notice of nonresponsibility**

10 3094. “Notice of nonresponsibility” means a written notice, signed and verified  
11 by a person owning or claiming an interest in the site who has not caused the work  
12 of improvement to be performed, or his agent, containing all of the following:

13 (a) A description of the site sufficient for identification.

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

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

16 (d) A statement that the person giving the notice will not be responsible for any  
17 claims arising from the work of improvement.

18 Within 10 days after the person claiming the benefits of nonresponsibility has  
19 obtained knowledge of the work of improvement, the notice provided for in this  
20 section shall be posted in some conspicuous place on the site. Within the same 10-  
21 day period provided for the posting of the notice, the notice shall be recorded in  
22 the office of the county recorder of the county in which the site or some part  
23 thereof is located.

24 ☞ **Staff Note.** This is not really a definition and should be moved to the relevant part of the  
25 statute.

26 **§ 3095 (repealed). Original contractor**

27 ~~3095. “Original contractor” means any contractor who has a direct contractual~~  
28 ~~relationship with the owner.~~

29 **Comment.** The definition of “original contractor” is replaced by the definition of “prime  
30 contractor” in Section 3098.5.

31 **§ 3096 [needs revision]. Payment bond**

32 3096. “Payment bond” means a bond with good and sufficient sureties that is  
33 conditioned for the payment in full of the claims of all claimants and that also by  
34 its terms is made to inure to the benefit of all claimants so as to give these persons  
35 a right of action to recover upon this bond in any suit brought to foreclose the liens  
36 provided for in this title or in a separate suit brought on the bond. An owner,  
37 original contractor, or a subcontractor may be the principal upon any payment  
38 bond.

39 ☞ **Staff Note.** Most of this language is substantive and needs to be moved, if a definition is  
40 retained. It appears that a limited definition would be useful, since the term is used in a number of  
41 substantive provisions. See Sections 3138, 3139, 3159, 3161, 3162, 3196, 3235, 3236, 3237,



1 3239, 3240, 3242, 3247, 3248, 3249, 3250, 3251, 3252, 3258, 3262, 3267. But no bond definition  
2 needs to refer to “good and sufficient sureties” or other standard qualifications.

3 **§ 3097 [needs revision and relocation]. Preliminary 20-day notice (private work)**

4 3097. “Preliminary 20-day notice (private work)” means a written notice from a  
5 claimant that is given prior to the recording of a mechanic’s lien, prior to the filing  
6 of a stop notice, and prior to asserting a claim against a payment bond, and is  
7 required to be given under the following circumstances:

8 (a) Except one under direct contract with the owner or one performing actual  
9 labor for wages as described in subdivision (a) of Section 3089, or a person or  
10 entity to whom a portion of a laborer’s compensation is paid as described in  
11 subdivision (b) of Section 3089, every person who furnishes labor, service,  
12 equipment, or material for which a lien or payment bond otherwise can be claimed  
13 under this title, or for which a notice to withhold can otherwise be given under this  
14 title, shall, as a necessary prerequisite to the validity of any claim of lien, payment  
15 bond, and of a notice to withhold, cause to be given to the owner or reputed owner,  
16 to the original contractor, or reputed contractor, and to the construction lender, if  
17 any, or to the reputed construction lender, if any, a written preliminary notice as  
18 prescribed by this section.

19 (b) Except the contractor, or one performing actual labor for wages as described  
20 in subdivision (a) of Section 3089, or a person or entity to whom a portion of a  
21 laborer’s compensation is paid as described in subdivision (b) of Section 3089, all  
22 persons who have a direct contract with the owner and who furnish labor, service,  
23 equipment, or material for which a lien or payment bond otherwise can be claimed  
24 under this title, or for which a notice to withhold can otherwise be given under this  
25 title, shall, as a necessary prerequisite to the validity of any claim of lien, claim on  
26 a payment bond, and of a notice to withhold, cause to be given to the construction  
27 lender, if any, or to the reputed construction lender, if any, a written preliminary  
28 notice as prescribed by this section.

29 (c) The preliminary notice referred to in subdivisions (a) and (b) shall contain  
30 the following information:

31 (1) A general description of the labor, service, equipment, or materials furnished,  
32 or to be furnished, and an estimate of the total price thereof.

33 (2) The name and address of the person furnishing that labor, service,  
34 equipment, or materials.

35 (3) The name of the person who contracted for purchase of that labor, service,  
36 equipment, or materials.

37 (4) A description of the jobsite sufficient for identification.

38 (5) The following statement in boldface type:

39 **NOTICE TO PROPERTY OWNER**

40 If bills are not paid in full for the labor, services, equipment, or materials  
41 furnished or to be furnished, a mechanic’s lien leading to the loss, through court  
42 foreclosure proceedings, of all or part of your property being so improved may be

1 placed against the property even though you have paid your contractor in full. You  
2 may wish to protect yourself against this consequence by (1) requiring your  
3 contractor to furnish a signed release by the person or firm giving you this notice  
4 before making payment to your contractor, or (2) any other method or device that  
5 is appropriate under the circumstances.

6 (6) If the notice is given by a subcontractor who has failed to pay all  
7 compensation due to his or her laborers on the job, the notice shall also contain the  
8 identity and address of any laborer and any express trust fund to whom employer  
9 payments are due.

10 If an invoice for materials or certified payroll contains the information required  
11 by this section, a copy of the invoice, transmitted in the manner prescribed by this  
12 section shall be sufficient notice.

13 A certificated architect, registered engineer, or licensed land surveyor who has  
14 furnished services for the design of the work of improvement and who gives a  
15 preliminary notice as provided in this section not later than 20 days after the work  
16 of improvement has commenced shall be deemed to have complied with  
17 subdivisions (a) and (b) with respect to architectural, engineering, or surveying  
18 services furnished, or to be furnished.

19 (d) The preliminary notice referred to in subdivisions (a) and (b) shall be given  
20 not later than 20 days after the claimant has first furnished labor, service,  
21 equipment, or materials to the jobsite. If labor, service, equipment, or materials  
22 have been furnished to a jobsite by a claimant who did not give a preliminary  
23 notice, that claimant shall not be precluded from giving a preliminary notice at any  
24 time thereafter. The claimant shall, however, be entitled to record a lien, file a stop  
25 notice, and assert a claim against a payment bond only for labor, service,  
26 equipment, or material furnished within 20 days prior to the service of the  
27 preliminary notice, and at any time thereafter.

28 (e) Any agreement made or entered into by an owner, whereby the owner agrees  
29 to waive the rights or privileges conferred upon the owner by this section shall be  
30 void and of no effect.

31 (f) The notice required under this section may be served as follows:

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

39 (2) If the person to be notified does not reside in this state, by any method  
40 enumerated in paragraph (1) of this subdivision. If the person cannot be served by  
41 any of these methods, then notice may be given by first-class certified or registered  
42 mail, addressed to the construction lender or to the original contractor.

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

3 (g) A person required by this section to give notice to the owner, to an original  
4 contractor, and to a person to whom a notice to withhold may be given, need give  
5 only one notice to the owner, to the original contractor, and to the person to whom  
6 a notice to withhold may be given with respect to all materials, service, labor, or  
7 equipment he or she furnishes for a work of improvement, that means the entire  
8 structure or scheme of improvements as a whole, unless the same is furnished  
9 under contracts with more than one subcontractor, in which event, the notice  
10 requirements shall be met with respect to materials, services, labor, or equipment  
11 furnished to each contractor.

12 If a notice contains a general description required by subdivision (a) or (b) of the  
13 materials, services, labor, or equipment furnished to the date of notice, it is not  
14 defective because, after that date, the person giving notice furnishes materials,  
15 services, labor, or equipment not within the scope of this general description.

16 (h) If the contract price to be paid to any subcontractor on a particular work of  
17 improvement exceeds four hundred dollars (\$400), the failure of that contractor,  
18 licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the  
19 Business and Professions Code, to give the notice provided for in this section,  
20 constitutes grounds for disciplinary action by the Registrar of Contractors.

21 If the notice is required to contain the information set forth in paragraph (6) of  
22 subdivision (c), a failure to give the notice, including that information, that results  
23 in the filing of a lien, claim on a payment bond, or the delivery of a stop notice by  
24 the express trust fund to which the obligation is owing constitutes grounds for  
25 disciplinary action by the Registrar of Contractors against the subcontractor if the  
26 amount due the trust fund is not paid.

27 (i) Every city, county, city and county, or other governmental authority issuing  
28 building permits shall, in its application form for a building permit, provide space  
29 and a designation for the applicant to enter the name, branch, designation, if any,  
30 and address of the construction lender and shall keep the information on file open  
31 for public inspection during the regular business hours of the authority.

32 If there is no known construction lender, that fact shall be noted in the  
33 designated space. Any failure to indicate the name and address of the construction  
34 lender on the application, however, shall not relieve any person from the  
35 obligation to give to the construction lender the notice required by this section.

36 (j) A mortgage, deed of trust, or other instrument securing a loan, any of the  
37 proceeds of which may be used for the purpose of constructing improvements on  
38 real property, shall bear the designation "Construction Trust Deed" prominently on  
39 its face and shall state all of the following: (1) the name and address of the lender,  
40 and the name and address of the owner of the real property described in the  
41 instrument, and (2) a legal description of the real property which secures the loan  
42 and, if known, the street address of the property. The failure to be so designated or

1 to state any of the information required by this subdivision shall not affect the  
2 validity of the mortgage, deed of trust, or other instrument.

3 Failure to provide this information on this instrument when recorded shall not  
4 relieve persons required to give preliminary notice under this section from that  
5 duty.

6 The county recorder of the county in which the instrument is recorded shall  
7 indicate in the general index of the official records of the county that the  
8 instrument secures a construction loan.

9 (k) Every contractor and subcontractor employing laborers as described in  
10 subdivision (a) of Section 3089 who has failed to pay those laborers their full  
11 compensation when it became due, including any employer payments described in  
12 Section 1773.1 of the Labor Code and regulations adopted thereunder shall,  
13 without regard to whether the work was performed on a public or private work,  
14 cause to be given to those laborers, their bargaining representatives, if any, and to  
15 the construction lender, if any, or to the reputed construction lender, if any, not  
16 later than the date the compensation became delinquent, a written notice  
17 containing all of the following:

18 (1) The name of the owner and the contractor.

19 (2) A description of the jobsite sufficient for identification.

20 (3) The identity and address of any express trust fund described in Section 3111  
21 to which employer payments are due.

22 (4) The total number of straight time and overtime hours on each job.

23 (5) The amount then past due and owing.

24 Failure to give this notice shall constitute grounds for disciplinary action by the  
25 Registrar of Contractors.

26 (l) Every written contract entered into between a property owner and an original  
27 contractor shall provide space for the owner to enter his or her name and address  
28 of residence; and place of business if any. The original contractor shall make  
29 available the name and address of residence of the owner to any person seeking to  
30 serve the notice specified in subdivision (c).

31 (m) Every written contract entered into between a property owner and an  
32 original contractor, except home improvement contracts and swimming pool  
33 contracts subject to Article 10 (commencing with Section 7150) of Chapter 9 of  
34 Division 3 of the Business and Professions Code, shall provide space for the  
35 owner to enter the name and address of the construction lender or lenders. The  
36 original contractor shall make available the name and address of the construction  
37 lender or lenders to any person seeking to serve the notice specified in subdivision  
38 (c). Every contract entered into between an original contractor and subcontractor,  
39 and between subcontractors, shall provide a space for the name and address of the  
40 owner, original contractor, and any construction lender.

41 (n) Where one or more construction loans are obtained after commencement of  
42 construction, the property owner shall provide the name and address of the

1 construction lender or lenders to each person who has given the property owner  
2 the notice specified in subdivision (c).

3 (o)(1) Each person who has served a preliminary 20-day notice pursuant to  
4 subdivision (f) may file the preliminary 20-day notice with the county recorder in  
5 the county in which any portion of the property is located. A preliminary 20-day  
6 notice filed pursuant to this section shall contain all of the following:

7 (A) The name and address of the person furnishing the labor, service, equipment,  
8 or materials.

9 (B) The name of the person who contracted for purchase of the labor, service,  
10 equipment, or materials.

11 (C) The common street address of the jobsite.

12 (2) Upon the acceptance for recording of a notice of completion or notice of  
13 cessation the county recorder shall mail to those persons who have filed a  
14 preliminary 20-day notice, notification that a notice of completion or notice of  
15 cessation has been recorded on the property, and shall affix the date that the notice  
16 of completion or notice of cessation was recorded with the county recorder.

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

24 (4) This new function of the county recorder shall not become operative until  
25 July 1, 1988. The county recorder may cause to be destroyed all documents filed  
26 pursuant to this section, two years after the date of filing.

27 (5) The preliminary 20-day notice which a person may file pursuant to this  
28 subdivision is for the limited purpose of facilitating the mailing of notice by the  
29 county recorder of recorded notices of completion and notices of cessation. The  
30 notice which is filed is not a recordable document and shall not be entered into  
31 those official records of the county which by law impart constructive notice.  
32 Notwithstanding any other provision of law, the index maintained by the recorder  
33 of filed preliminary 20-day notices shall be separate and distinct from those  
34 indexes maintained by the county recorder of those official records of the county  
35 which by law impart constructive notice. The filing of a preliminary 20-day notice  
36 with the county recorder does not give rise to any actual or constructive notice  
37 with respect to any party of the existence or contents of a filed preliminary 20-day  
38 notice nor to any duty of inquiry on the part of any party as to the existence or  
39 contents of that notice.

40 (p)(1) The change made to the statement described in subdivision (c) by Chapter  
41 974 of the Statutes of 1994 shall have no effect upon the validity of any notice that  
42 otherwise meets the requirements of this section. The failure to provide, pursuant  
43 to Chapter 974 of the Statutes of 1994, a written preliminary notice to a

1 subcontractor with whom the claimant has contracted shall not affect the validity  
2 of any preliminary notice provided pursuant to this section.

3 (2)(A) The inclusion of the language added to paragraph (5) of subdivision (c)  
4 by Chapter 795 of the Statutes of 1999, shall not affect the validity of any  
5 preliminary notice given on or after January 1, 2000, and prior to the operative  
6 date of the amendments to this section enacted at the 2000 portion of the 1999-  
7 2000 Regular Session, that otherwise meets the requirements of that subdivision.

8 (B) A preliminary notice given on or after January 1, 2000, and prior to the  
9 operative date of the amendments to this section enacted at the 2000 portion of the  
10 1999-2000 Regular Session, shall not be invalid because of the failure to include  
11 the language added to paragraph (5) of subdivision (c) by Chapter 795 of the  
12 Statutes of 1999, if the notice otherwise complies with that subdivision.

13 (C) The failure to provide an affidavit form or notice of rights, or both, pursuant  
14 to the requirements of Chapter 795 of the Statutes of 1999, shall not affect the  
15 validity of any preliminary notice pursuant to this section.

16 ☞ **Staff Note.**

17 This section is the staff's current poster child for violating several drafting principles. It is not a  
18 real definition; it is far too long (over twice as long as the entire mechanic's lien statute in the  
19 1872 Code of Civil Procedure); and it contains much substantive and procedural material that  
20 should be located with related provisions. Our primary technical goal is to chop up this section,  
21 which has been amended about 14 times since 1969.

22 **§ 3097.1 [needs revision and relocation]. Proof of service of preliminary 20-day notice**

23 3097.1. Proof that the preliminary 20-day notice required by Section 3097 was  
24 served in accordance with subdivision (f) of Section 3097 shall be made as  
25 follows:

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

31 (b) If served by personally delivering the notice to the person to be notified, or  
32 by leaving it at his address or place of business with some person in charge, by the  
33 proof of service affidavit described in subdivision (c).

34 (c) A "proof of service affidavit" is an affidavit of the person making the service,  
35 showing the time, place and manner of service and facts showing that such service  
36 was made in accordance with Section 3097. Such affidavit shall show the name  
37 and address of the person upon whom a copy of the preliminary 20-day notice was  
38 served, and, if appropriate, the title or capacity in which he was served.

39 ☞ **Staff Note.** This is not a definition, and it is out of order. This section clearly needs to be  
40 moved to the substantive and procedural portion of the statute.

1 **§ 3098 [needs revision and relocation]. Preliminary 20-day notice (public work)**

2 3098. “Preliminary 20-day notice (public work)” means a written notice from a  
3 claimant that was given prior to the assertion of a claim against a payment bond, or  
4 the filing of a stop notice on public work, and is required to be given under the  
5 following circumstances:

6 (a) In any case in which the law of this state affords a right to a person  
7 furnishing labor or materials for a public work who has not been paid therefor to  
8 assert a claim against a payment bond, or to file a stop notice with the public  
9 agency concerned, and thereby cause the withholding of payment from the  
10 contractor for the public work, any person that has no direct contractual  
11 relationship with the contractor, other than a person who performed actual labor  
12 for wages or an express trust fund described in Section 3111, may file the  
13 preliminary notice, but no payment shall be withheld from the contractor pursuant  
14 to that notice unless the person has caused written notice to be given to the  
15 contractor, and the public agency concerned, not later than 20 days after the  
16 claimant has first furnished labor, services, equipment, or materials to the jobsite,  
17 stating with substantial accuracy a general description of labor, service,  
18 equipment, or materials furnished or to be furnished, and the name of the party to  
19 whom the same was furnished. This notice shall be served by mailing the same by  
20 first-class mail, registered mail, or certified mail, postage prepaid, in an envelope  
21 addressed to the contractor at any place the contractor maintains an office or  
22 conducts business, or his or her residence, or by personal service. In case of any  
23 public works constructed by the Department of Public Works or the Department of  
24 General Services of the state, such notice shall be served by mailing in the same  
25 manner as above, addressed to the office of the disbursing officer of the  
26 department constructing the work, or by personal service upon the officer. When  
27 service is by registered or certified mail, service is complete at the time of the  
28 deposit of the registered or certified mail.

29 (b) Where the contract price to be paid to any subcontractor on a particular work  
30 of improvement exceeds four hundred dollars (\$400), the failure of that contractor,  
31 licensed under Chapter 9, (commencing with Section 7000) of Division 3 of the  
32 Business and Professions Code, to give the notice provided for in this section,  
33 constitutes grounds for disciplinary action by the Registrar of Contractors.

34 (c) The notice requirements of this section shall not apply to a laborer described  
35 in Section 3089 or to an express trust fund described in Section 3111.

36 (d) If labor, service, equipment, or materials have been furnished to a jobsite by  
37 a claimant who did not give a preliminary notice pursuant to subdivision (a), that  
38 claimant shall not be precluded from giving a preliminary notice at any time  
39 thereafter. The claimant shall, however, be entitled to assert a claim against a  
40 payment bond and file a stop notice only for labor, service, equipment, or material  
41 furnished within 20 days prior to the service of the preliminary notice, and at any  
42 time thereafter.

1 (e) The failure to provide, pursuant to Chapter 974 of the Statutes of 1994, a  
2 written preliminary notice to a subcontractor with whom the claimant has  
3 contracted shall not affect the validity of any preliminary notice provided pursuant  
4 to this section.

5 **§ 3098.5 (added). Prime contractor**

6 3098.5. “Prime contractor” means a contractor who has a direct contractual  
7 relationship with the owner.

8 **Comment.** Section 3098.5 replaces former Section 3095 defining “original contractor.” This  
9 conforms the law to the more common usage in the contraction industry. It is a technical,  
10 nonsubstantive change.

11 **§ 3099 (unchanged). Public entity**

12 3099. “Public entity” means the state, Regents of the University of California, a  
13 county, city, district, public authority, public agency, and any other political  
14 subdivision or public corporation in the state.

15 ☞ **Staff Note.** This section should be compared to other definitions of public entity, since it has  
16 not been changed since enacted in 1969.

17 **§ 3100 (amended). Public work**

18 3100. “Public work” means any a work of improvement contracted for by a  
19 public entity.

20 ☞ **Staff Note.** This change should be made if the statute is replaced by a new statute. Where  
21 “any” is used to mean “a” or “the,” it should be replaced in accordance with good drafting style.

22 **§ 3101 (unchanged). Site**

23 3101. “Site” means the real property upon which the work of improvement is  
24 being constructed or performed.

25 **§ 3102. Site improvement**

26 3102. “Site improvement” means the demolishing or removing of improvements,  
27 trees, or other vegetation located thereon, or drilling test holes or the grading,  
28 filling, or otherwise improving of any lot or tract of land or the street, highway, or  
29 sidewalk in front of or adjoining any lot or tract of land, or constructing or  
30 installing sewers or other public utilities therein, or constructing any areas, vaults,  
31 cellars, or rooms under said sidewalks or making any improvements thereon.

32 **§ 3103 [needs revision and relocation]. Stop notice**

33 3103. “Stop notice” means a written notice, signed and verified by the claimant  
34 or his or her agent, stating in general terms all of the following:

35 (a) The kind of labor, services, equipment, or materials furnished or agreed to be  
36 furnished by such claimant.

37 (b) The name of the person to or for whom the same was done or furnished.



1 (c) The amount in value, as near as may be, of that already done or furnished and  
2 of the whole agreed to be done or furnished.

3 (d) The name and address of the claimant.

4 The notice, in the case of any work of improvement other than a public work,  
5 shall be delivered to the owner personally or left at his or her residence or place of  
6 business with some person in charge, or delivered to his or her architect, if any, if  
7 the notice is served upon a construction lender, holding construction funds and  
8 maintaining branch offices, it shall not be effective as against the construction  
9 lender unless given to or served upon the manager or other responsible officer or  
10 person at the office or branch thereof administering or holding the construction  
11 funds. The notice, in the case of any public work for the state, shall be filed with  
12 the director of the department which let the contract and, in the case of any other  
13 public work, shall be filed in the office of the controller, auditor, or other public  
14 disbursing officer whose duty it is to make payments under the provisions of the  
15 contract, or with the commissioners, managers, trustees, officers, board of  
16 supervisors, board of trustees, common council, or other body by whom the  
17 contract was awarded. No stop notice shall be invalid by reason of any defect in  
18 form if it is sufficient to substantially inform the owner of the information  
19 required.

20 Any stop notice may be served by registered or certified mail with the same  
21 effect as by personal service.

22 **§ 3104. Subcontractor**

23 3104. “Subcontractor” means any contractor who has no direct contractual  
24 relationship with the owner.

25 ☞ **Staff Note.** Several definitions depend on the meaning of “contractor.” which is not defined.

26 **§ 3105 [needs revision]. Subdivision**

27 3105. “Subdivision” means a work of improvement consisting of two or more  
28 separate residential units or two or more buildings, mining claims, or other  
29 improvements owned or reputed to be owned by the same person or on which the  
30 claimant has been employed by the same person. A separate residential unit means  
31 one residential structure, together with any garage or other improvements  
32 appurtenant thereto.

33 ☞ **Staff Note.** The reference to “mining claims” seems archaic.

34 **§ 3106 (amended). Work of improvement**

35 3106. (a) “Work of improvement” includes, but is not ~~restricted~~ limited to, the  
36 following:

37 (1) ~~construction~~ Construction, alteration, addition to, or repair, in whole or in  
38 part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence,  
39 machinery, railroad, or road, ~~the~~.

1 (2) seeding Seeding, sodding, or planting of any a lot or tract of land for  
2 landscaping purposes, ~~the.~~

3 (3) filling Filling, leveling, or grading of any a lot or tract of land, ~~the.~~

4 (4) demolition of buildings, Demolition and the removal of buildings.

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

7 **Comment.** Section 3106 is revised to tabulate the different types of works falling within the  
8 definition.

9 ☞ **Staff Note.** This definition should be modernized and further redrafted. For example, is the  
10 demolition or removal of an aqueduct or wharf a “work of improvement.” Demolition of  
11 buildings is covered in subdivision (a)(4), but buildings are distinguished from wharves et al. in  
12 subdivision (a)(1). In subdivision (a)(1), “addition to” does not fit grammatically; the phrase “in  
13 whole or in part” in subdivision (a)(1) is out of place and, if needed, should apply to all of the  
14 listed work, not just things listed in subdivision (a)(1).

## 15 CONFORMING REVISIONS

16 **Civ. Code § 3059 (repealed). Mechanic’s liens cross-reference**

17 SEC. \_\_\_\_\_. Section 3059 of the Civil Code is repealed.

18 ~~3059. The liens of mechanics, for materials and services upon real property, are  
19 regulated by Chapter 2 (commencing with Section 3109) of Title 15 of this part.~~

20 **Comment.** Section 3059 is repealed because it is surplus. The section dates back to the time  
21 when mechanic’s liens were “regulated” by the Code of Civil Procedure. The substantive  
22 provisions governing mechanic’s liens — Sections \_\_\_\_ - \_\_\_\_ — are fully effective without the  
23 need to refer to them in this part.

1 ☞ **Staff Note.** Sam K. Abdulaziz submitted a revision of his draft of a “Mechanics’ Lien  
2 Warning” and homeowner “Checklist” by email on July 12, 2000. He writes:

3 Enclosed/attached, are revised exhibits to the proposal that I had submitted prior to the last  
4 meeting. I tried to make them simpler, however, I did not get very far. I’ve had others look at  
5 them and the few changes are incorporated.

6 Mr. Abdulaziz’s letter has been converted from an emailed file, so it will look different from  
7 the original; in the interest of earlier distribution, we are sending the converted file.

8 **MECHANICS' LIEN WARNING:**

9  
10 **TO AVOID LIENS ON YOUR HOME**

11  
12 **PLEASE READ THIS WARNING CAREFULLY <sup>1</sup>**

13  
14 You probably realize that if you don't pay your contractor,  
15 the contractor has a right to place what is called a  
16 "mechanic's lien" on the home, land, or property where the  
17 work was performed, and the contractor may sue you in court  
18 to obtain payment. This means that if you lose your case  
19 after a court hearing, your home, land, and property could be  
20 sold by a court officer and the proceeds of the sale be used  
21 to satisfy what you owe.

22  
23 You may not realize, however, that subcontractors, laborers,  
24 material suppliers and other parties that contribute to your  
25 home improvement project also can place a lien on your home,  
26 land, or property. This can happen even if you have paid your  
27 contractor in full if the subcontractor or other provider of  
28 work or materials is not paid.

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<sup>1</sup> Note: This language may change based on the outcome of the Law Review Commission's recommendations.

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**HOW TO PROTECT YOURSELF**

**Inform yourself about liens and ways to prevent them.** The Contractors' State License Board (CSLB) can provide you with a pamphlet describing liens and how they work. You can get a copy of the pamphlet, "Don't Lien on Me -- Mechanic's Liens," by calling the CSLB information number 800-321-CSLB (2752) or by accessing the CSLB website ([www.cslb.ca.gov](http://www.cslb.ca.gov)).

**Watch for Preliminary Notices.** Subcontractors, material suppliers, and some other claimants are required to provide you with a document called a "Preliminary Notice" if they want to preserve their rights to record a lien against your property. This notice must be given to you within 20 days of the date the lien claimant provides materials or services. Keep the Preliminary Notices in a safe place so you can refer to them for payments. The Preliminary Notice informs you of your obligation to make sure that you or your contractor pays the claimant. Be aware that when jobs are completed quickly, the Preliminary Notice may not be sent until after the job is complete.

**Obtain a list of possible claimants.** Ask your contractor for a list of all subcontractors, laborers, and material suppliers he/she is using or might be using. Then match this list with the scheduled payments described in the contract to

1 determine when payment is due to each subcontractor, material  
2 supplier, etc., on your project. You may also want to compare  
3 this list with the possible lien claimants who send you  
4 Preliminary Notices to make sure all possible lien claimants  
5 are accounted for.

6  
7 **Ways to make sure that possible lien claimants are paid**  
8 **include:**

9  
10 **1. Get a Conditional Waiver and Release.** Prior to making  
11 payment to your contractor, obtain a Conditional Waiver and  
12 Release form signed by those who worked on your project for  
13 which payment is being made. Read that form carefully.  
14 Usually, you will be making progress payments on your  
15 project. A progress payment is an installment payment  
16 covering a portion of the total contract price, and usually  
17 represents the total amount of work completed on the project  
18 to date. The way the release process usually works is in two  
19 steps. First, you should require your contractor to provide  
20 you with a signed Conditional Release from each possible lien  
21 claimant. In each Request for Payment (bill or invoice)  
22 presented to you, your contractor should give you this  
23 Conditional Release. The Release relates only to that portion  
24 of the lien claimant's work covered by the bill. A signed  
25 Conditional Release tells you that the lien claimant has  
26 agreed to release his or her right to a lien in accordance  
27 with the release, once the lien claimant is paid. Second,

1 after you pay the contractor and before you make any more  
2 payments, you should insist that the contractor provide you  
3 with an Unconditional Release signed by each lien claimant  
4 for the part of the work for which you have made payment.

5  
6 Three things to remember: First, no matter how many separate  
7 progress payments are made in your project, there will  
8 probably be only one Preliminary Notice per claimant. Second,  
9 each Conditional or Unconditional Release covers only the  
10 subcontractor, material supplier or laborer who signs it and  
11 covers only the portion of work for which payment is made.

12  
13 The exact language of a lien release is set forth in Section  
14 3262 of the Civil Code. Most stationery stores will sell  
15 "Waiver and Release" forms if your contractor does not have  
16 them.

17  
18 **Beware:** An Unconditional Release from your contractor covers  
19 only the contractor's claim, and not the claims of his or her  
20 subcontractors, material suppliers and laborers.

21  
22 **2. Hire a joint control service.** Joint control companies,  
23 licensed by the Department of Corporations, are bonded and  
24 are available throughout the state. In using these companies,  
25 you pay the joint control company and the joint control  
26 company pays the contractor, subcontractor, material

1 supplier, etc. A good joint control company will obtain lien  
2 releases whenever they make payment.

3  
4 **3. Issue joint checks.** Another alternative is to issue joint  
5 checks, where payments are made out to **both** the contractor  
6 and the subcontractor or material supplier involved in the  
7 project. This will help to insure, although it does not  
8 guarantee, that all persons due payment are actually paid.  
9 You will still want to get Conditional and Unconditional  
10 Releases.

11  
12 **4. Require payment and performance bonds** (not a license  
13 bond). In addition to previous suggestions, you can greatly  
14 reduce the possibility that a lien will be recorded by  
15 requiring the contractor to purchase payment and performance  
16 bonds. The performance bond guarantees that if your  
17 contractor does not complete the project, the bond company  
18 will hire another contractor to finish the job and/or pay  
19 damages up to the amount of the bond. The payment bond  
20 guarantees that if a subcontractor, material supplier or  
21 laborer is not paid by the general contractor, the bond  
22 company will make such a payment. The contractor may pass the  
23 cost of this bond (1% to 5%) on to you, the homeowner.

24  
25 Finally, understand that license bonds have limitations.  
26 Although your contractor must post some form of financial  
27 security with the CSLB, usually in the form of a contractor's

1 license bond, this \$7,500 (\$10,000 for a swimming pool  
2 contractor) bond may be the only financial security available  
3 to cover all damages caused by a contractor's violation of  
4 the Contractors' License Law. Some consumers make the mistake  
5 of believing the entire bond amount will be available if they  
6 are injured. Be careful. In some cases, the owners may be  
7 competing with other consumers or the contractor's,  
8 subcontractors, and material suppliers for a payment from  
9 this same bond. Consequently, relying on the contractor's  
10 license bond to cover your loss may be a mistake.



1 **"Checklist for Homeowners"**

2  
3 Does your home improvement contract include?

4  
5 \_\_\_ The name, address, and license number of the contractor,  
6 and, if a salesperson negotiated the contract, the name  
7 and registration number of the salesperson?

8  
9 \_\_\_ The approximate dates when the work will begin and the  
10 construction will be completed?

11  
12 \_\_\_ If the work being done includes a swimming pool, a plan  
13 and scale drawing showing shape, size, dimensions, and  
14 construction and equipment specifications for the  
15 swimming pool?

16  
17 \_\_\_ A description of the work to be done, materials to be  
18 used, and the equipment to be used or installed?

19  
20 \_\_\_ If a down payment is charged, is the down payment the  
21 lesser of \$1,000 or 10 percent of the contract price,  
22 excluding finance charges (or \$200 or 2 percent of the  
23 contract price for swimming pools)?

24  
25 \_\_\_ A schedule of progress payments showing the amount of  
26 each progress payment as a sum in dollars and cents?

27  
28 The schedule of progress payments should be tied to the  
29 amount of work to be performed and to any materials and  
30 equipment to be supplied, i.e., payment is for progress.  
31 A prudent homeowner pays only as work is completed, not  
32 before. Exception: You may legally pay a contractor all  
33 or most of the money up-front if the contractor provides  
34 you with payment and performance bonds. These payment  
35 and performance bonds protect you in case the contractor  
36 is unable to perform. These bonds are not the same as  
37 the contractor's license bond.

38  
39 \_\_\_ Did your contractor give you a copy of the Mechanics'  
40 Lien Warning?

41  
42 A person or business contributing to your home  
43 improvement project may record a lien on your home to

1 insure that he or she is paid. Until "released," the  
2 lien interferes with your property title. In fact, your  
3 home could be sold, after a court trial, to satisfy a  
4 lien even if you have paid your contractor in full. You  
5 should have gotten information about liens from your  
6 contractor in the form of a "Mechanics' Lien Warning."  
7 You can get more information by accessing CSLB's website  
8 at [www.cslb.ca.gov](http://www.cslb.ca.gov) or by requesting information from the  
9 CSLB at 800-321-CSLB (2752). Ask for a copy of the CSLB  
10 pamphlet, "Don't Lien on Me!"

11  
12 — Have you arranged for your contractor to provide you  
13 with a list of all proposed lien claimants (i.e.,  
14 subcontractors, material suppliers, and laborers), and  
15 have you arranged for conditional releases signed by  
16 each proposed lien claimant to be given to you at the  
17 time you make your progress payments? Likewise, is your  
18 contractor prepared to give you unconditional releases  
19 for the work covering the last progress payment before  
20 you make another payment?

21  
22 See the Mechanics' Lien Warning and/or the pamphlet,  
23 "Don't Lien on Me!"

24  
25 — Finally, if you plan to make any changes or additions to  
26 your contract, did you know that these changes should  
27 all be in writing?

28  
29 Placing changes in writing reduces the possibility of a  
30 later dispute.

1 **"Progress Payment Checklist for Homeowners"**

2  
3 Contractor's Name:

4 Address:

5 License Number:

6  
7 Unless payment and performance bonds or a joint control  
8 company is provided, a prudent homeowner pays only as work is  
9 completed, not before. The schedule of progress payments set  
10 out in your contract should have been tied to the amount of  
11 work to be performed and to any materials and equipment to be  
12 supplied. Except for the down payment, your payments to the  
13 contractor should be for progress only. By paying only as  
14 work is completed, you maintain more control over your home  
15 improvement contract.

16  
17  
18 **Lien Prevention**

19  
20 By law, your contractor is required to give you a copy  
21 of the Mechanics' Lien Warning, a notice created by the  
22 Contractors State License Board to inform you of ways to  
23 prevent liens. A copy of that notice appears on the back  
24 of this sheet.

25  
26 As described in the Mechanics' Lien Warning, a person or  
27 business contributing to your home improvement project  
28 may record a lien on your home to insure that he or she  
29 is paid. Until "released," the lien may interfere with  
30 your property's title. In fact, after a trial, your home  
31 could be sold to satisfy a lien even if you have paid  
32 your contractor in full. Unless you and your contractor  
33 have specifically agreed in the contract on some other  
34 lien prevention plan, such as a payment and performance  
35 bond or a joint control agreement as approved by the  
36 Registrar of Contractors, you should make sure you get  
37 releases from each possible lien claimant.

38  
39 **— Conditional Releases**

40  
41 When your contractor requests a Progress Payment, he or  
42 she should also provide you with Conditional Releases  
43 signed by any subcontractors, material suppliers, etc.,

1 who provided work and equipment and contributed to the  
2 completion of the progress described for the  
3 corresponding Progress Payment. Read that document  
4 carefully. A Conditional Release affirms that the  
5 subcontractor, material supplier, etc. has agreed to  
6 waive all lien rights as stated in the release, through  
7 a certain date once he or she has been paid.  
8

9 **\_\_\_ Unconditional Releases**

10  
11 Once you have gotten Conditional Releases signed by each  
12 possible lien claimant and you have made the progress  
13 payment to your contractor, your contractor should pay  
14 those possible lien claimants and get Unconditional  
15 Releases from them after that payment. Your contractor  
16 should then provide those releases to you for your  
17 records. The most effective way a homeowner can manage  
18 payment is to require Unconditional Releases for the  
19 last Progress Payment before paying the next Progress  
20 Payment. You can get more information by accessing  
21 CSLB's website at [www.cslb.ca.gov](http://www.cslb.ca.gov) or by requesting  
22 information from the CSLB at 800-321-CSLB (2752). Ask  
23 for a copy of the CSLB pamphlet, "Don't Lien on Me!"  
24  
25

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1 ☞ **Staff Note.** The staff does not recommend enactment of statutory forms. However, it is useful  
2 to spend some time on drafting forms to get an idea of how difficult it can be to state the basic  
3 rules understandably in plain English. If the Commission decides to provide statutory forms, the  
4 staff recommends that they be offered as default forms, until superseded by forms issued by the  
5 Contractors State License Board.

6 Below is a staff revision of Sam Abdulaziz’s latest revision of his proposal (set out in the  
7 preceding pages):

## 8 **MECHANIC’S LIEN WARNING**

### 9 **TO AVOID LIENS ON YOUR HOME, READ THIS WARNING CAREFULLY**

10 If you don’t pay your contractor, the contractor has the right to place a  
11 “mechanic’s lien” on your home, land, or property where the work was performed,  
12 and the contractor may sue you in court to obtain payment. If you lose your case  
13 after a court hearing, your home, land, and property could be sold by a court  
14 officer to satisfy the mechanic’s lien.

15 You may not know, however, that people you didn’t contract with —  
16 subcontractors, laborers, material suppliers, and others who contributed to your  
17 home improvement project — also can place a mechanic’s lien on your property if  
18 they are not paid. This can happen even if you have already paid your contractor in  
19 full.

### 20 **HOW TO PROTECT YOURSELF**

21 **Inform yourself about liens and ways to prevent them.** The Contractors State  
22 License Board (CSLB) can provide you with a pamphlet describing liens and how  
23 they work. You can get a consumer information pamphlet by calling the CSLB  
24 information number 800-321-2752 or by accessing the CSLB website  
25 ([www.cslb.ca.gov](http://www.cslb.ca.gov)).

26 **Watch for “Preliminary Notices.”** Subcontractors, material suppliers, and  
27 some other claimants are required to provide you with a document called a  
28 “Preliminary Notice” if they want to preserve their right to record a lien against  
29 your property. This notice should be given to you within 20 days of the date the  
30 lien claimant provides materials or services. [*Staff Note: This is really a 20-day*  
31 *lookback period that is hard to describe simply.*] Keep the Preliminary Notices in  
32 a safe place so you can refer to them for payments. The Preliminary Notice  
33 informs you of your obligation to make sure that you or your contractor pays the  
34 claimant. Be aware that when jobs are completed quickly, you may not get the  
35 Preliminary Notice until after the job is complete [*so you should not make final*  
36 *payment until at least 20 days after work has stopped*].

37 **Obtain a list of possible claimants.** Ask your contractor for a list of all  
38 subcontractors, laborers [?], and material suppliers who might work on your  
39 project. Then match this list with the scheduled payments described in your

1 contract to determine when payment is due to each subcontractor, material  
2 supplier, etc., You may also want to compare this list with the possible lien  
3 claimants who sent Preliminary Notices to make sure you know of all possible lien  
4 claimants.

5 **Ways to make sure that possible lien claimants are paid include:**

6 **1. Get a “Conditional Waiver and Release.”** Before paying your contractor,  
7 obtain a Conditional Waiver and Release form signed by those who worked on  
8 your project for which payment is being made. Read the form carefully. Usually,  
9 you will be making progress payments on your project. A progress payment is an  
10 installment payment covering part of the total contract price, and usually  
11 represents the total amount of work completed on the project to date.

12 The way the release process usually works is in two steps. *First*, you should  
13 require your contractor to provide you with a signed Conditional Release from  
14 each possible lien claimant. In each Request for Payment (bill or invoice)  
15 presented to you, your contractor should give you this Conditional Release. The  
16 Release relates only to the part of the lien claimant’s work covered by the bill. A  
17 signed Conditional Release tells you that the lien claimant has agreed to release  
18 the right to a lien once the lien claimant is paid. *Second*, after you pay the  
19 contractor and before you make any more payments, you should insist that the  
20 contractor provide you with an Unconditional Release signed by each lien  
21 claimant for the work you have paid for.

22 **Remember:** *First*, no matter how many separate progress payments are made in  
23 your project, there will probably be only one Preliminary Notice per claimant.  
24 *Second*, each Conditional or Unconditional Release covers only the subcontractor,  
25 material supplier, or laborer who signs it, and covers only the work for which  
26 payment is made.

27 The exact language of a lien release is in Section 3262 of the California Civil  
28 Code. Most stationery stores will sell “Waiver and Release” forms if your  
29 contractor does not have them.

30 **Beware:** An Unconditional Release from your contractor covers only the  
31 contractor’s claim, and not the claims of the subcontractors, material suppliers, and  
32 laborers.

33 **2. Hire a joint control service.** Joint control companies, licensed by the  
34 Department of Corporations, are bonded and are available throughout the state. In  
35 using these companies, you pay the joint control company and the joint control  
36 company pays the contractor, subcontractor, material supplier, etc. A good joint  
37 control company will obtain lien releases whenever they make payment.

38 **3. Issue joint checks.** Another alternative is to write “joint checks” made out to  
39 *both* the contractor and the subcontractor or material supplier involved in the  
40 project. This will help make sure, although it does not guarantee, that all persons

1 due payment are actually paid. You will still want to get Conditional and  
2 Unconditional Releases.

3 **4. Require payment and performance bonds.** You can greatly reduce the  
4 possibility that a lien will be recorded by requiring the contractor to purchase  
5 payment and performance bonds (which are different from license bonds). The  
6 *performance* bond guarantees that if your contractor does not complete the project,  
7 the bond company will hire another contractor to finish the job and/or pay  
8 damages up to the amount of the bond. The *payment* bond guarantees that if a  
9 subcontractor, material supplier, or laborer is not paid by your contractor, the bond  
10 company will pay. The cost of the bonds (1% to 5% of amount) will probably be  
11 passed on to you.

12 *License* bonds provide only a very small protection. Your contractor must post  
13 some form of financial security with the CSLB, usually in the form of a  
14 contractor's license bond in the amount of \$7,500 (\$10,000 for a swimming pool  
15 contractor). But this bond may be the only security available to cover all damages  
16 caused by a contractor's violation of the Contractors State License Law. Some  
17 consumers make the mistake of believing the entire bond amount will be available  
18 to cover their own dispute. However, you may be competing with many other  
19 consumers or the contractor's subcontractors and material suppliers for  
20 reimbursement from the same license bond. Consequently, relying on the  
21 contractor's license bond to cover your loss is probably a mistake.

## Checklist for Homeowners

Does your home improvement contract include?

- The name, address, and license number of the contractor, and, if a salesperson negotiated the contract, the name and registration number of the salesperson
- The approximate dates when the work will begin and the construction will be completed
- If the work being done includes a swimming pool, a plan and scale drawing showing shape, size, dimensions, and construction and equipment specifications for the swimming pool
- A description of the work to be done, materials to be used, and the equipment to be used or installed
- If a down payment is charged, is the down payment the lesser of \$1,000 or 10% of the contract price, excluding finance charges (or \$200 or 2% of the contract price for swimming pools)?
- A schedule of progress payments showing the amount of each progress payment as a sum in dollars and cents. — The schedule of progress payments should be tied to the amount of work to be performed and to any materials and equipment to be supplied, i.e., payment is for progress. A careful homeowner pays only as work is completed, not before. *Exception:* You may legally pay a contractor all or most of the money up-front if the contractor provides you with payment and performance bonds. These payment and performance bonds protect you in case the contractor is unable to perform. These bonds are not the same as the contractor's license bond.
- Did your contractor give you a copy of the Mechanic's Lien Warning? A person or business contributing to your home improvement project may record a lien on your home to ensure that he or she is paid. Until "released," the lien interferes with your property title. In fact, your home could be sold, after a court trial, to satisfy a lien even if you have paid your contractor in full. You should have gotten information about liens from your contractor in the form of a "Mechanic's Lien Warning." You can get more information by accessing CSLB's website at [www.cslb.ca.gov](http://www.cslb.ca.gov) or by requesting information from the CSLB at 800-321-2752.
- Have you arranged for your contractor to provide you with a list of all potential lien claimants (i.e., subcontractors, material suppliers, and laborers), and have you arranged for conditional releases signed by each potential lien claimant to be given to you at the time you make your progress payments? Is your contractor prepared to give you unconditional releases for the work covering the last progress payment before you make another payment?
- If you plan to make any changes or additions to your contract, did you know that these changes should all be in writing? Placing changes in writing reduces the possibility of a later dispute.



## Progress Payment Checklist for Homeowners

Contractor's Name:

Address:

License Number:

Unless payment and performance bonds or a joint control company is provided, a careful homeowner pays only as work is completed, not before. The schedule of progress payments set out in your contract should have been tied to the amount of work to be performed and to any materials and equipment to be supplied. Except for the down payment, your payments to the contractor should be for progress only. By paying only as work is completed, you maintain more control over your home improvement contract.

### Lien Prevention

By law, your contractor is required to give you a copy of the Mechanic's Lien Warning, a notice created by the Contractors State License Board to inform you of ways to prevent liens. A copy of the Mechanic's Lien Warning is on the back of this sheet.

As described in the Mechanic's Lien Warning, a person or business contributing to your home improvement project may record a lien on your home to make sure that he or she is paid. Until "released," the lien may interfere with your property's title. In fact, after a trial, your home could be sold to satisfy a lien even if you have paid your contractor in full. Unless you and your contractor have specifically agreed in the contract on some other lien prevention plan, such as a payment and performance bond or a joint control agreement [as approved by the Registrar of Contractors], you should make sure you get releases from each potential lien claimant.

### Conditional Releases

When your contractor requests a Progress Payment, he or she should also provide you with Conditional Releases signed by any subcontractors, material suppliers, etc., who provided work and equipment and contributed to the completion of the progress described for the corresponding Progress Payment. Read that document carefully. A Conditional Release affirms that the subcontractor, material supplier, etc. has agreed to waive all lien rights as stated in the release, through a certain date once he or she has been paid.

### Unconditional Releases

Once you have gotten Conditional Releases signed by each potential lien claimant and you have made the progress payment to your contractor, your contractor should pay those potential lien claimants and get Unconditional Releases from them. Your contractor should then provide the Unconditional Releases to you for your records. The most effective way a homeowner can manage payment is to require Unconditional Releases for one Progress Payment before paying the next Progress Payment.

You can get more information by accessing CSLB's website at [www.cslb.ca.gov](http://www.cslb.ca.gov) or by requesting information from the CSLB at 800-321-2752.