

Second Supplement to Memorandum 2001-99

Mechanic's Liens: Double Payment (Additional Commentary)

This supplement forwards additional commentary received since the main memorandum was distributed. The following letters and other communications are attached:

	<i>Exhibit p.</i>
1. James Acret, Pacific Palisades (November 27, 2001)	1
2. Jan Hansen, Executive Director, Lumber Association of California & Nevada (Nov. 28, 2001)	2
3. Jan Hansen, LACN ballot sample (Oct. 23, 2001)	3
4. Jan Hansen, LACN explanatory letter (Oct. 15, 2001) [more readable copy than Memorandum 2001-99 Exhibit pp. 40-43]	4
5. Edwin Manselian, Secretary/Treasurer, Farmers Lumber & Supply Co., Fresno (Nov. 1, 2001)	7
6. Dominic M. Falasco, Los Banos Lumber & Sales Co., Los Banos (Oct. 29, 2001)	9
7. Dave Duvall fax (Oct. 18, 2001)	10
8. M.A. Muratore email (Nov. 1, 2001)	12
9. Rosemarie Crouch, Credit Manager, Pine Tree Lumber Co., Escondido (Oct. 19, 2001)	14
10. Pete Eddy, Weed Building & Home Center, Weed (Oct. 16, 2001)	15
11. Lonnie J. Reichstein, Controller, Central Valley Builders Supply, St. Helena (Nov. 1, 2001)	16

(We have omitted copies of letters faxed from LACN from Jill Saunders and Frank Rowley, because we have already received and reproduced them. See Memorandum 2001-99, Exhibit pp. 8, 36-39.)

Acret Privity Proposal

James Acret proposes an elegantly simple alternative to the 50% mandatory bond in home improvement contracts. (Exhibit p. 1.) He would limit mechanic's lien and stop notice rights in home improvement contracts to claimants (prime contractors, subcontractors, and suppliers) who have a "direct contractual relationship with the homeowner." To balance this elimination of "direct lien" rights and avoid unjust enrichment of the owner, the proposal recognizes the right of a claimant to an equitable lien.

Mr. Acret renews his privity proposal in view of the apparent rejection of the bond approach in the Commission's tentative recommendation by the people it was intended to help. The Commission made its general policy decision in February when it paired protection of owners with amelioration for the burden shifted to subcontractors and suppliers. This balance jelled into the current tentative recommendation, with protection for good faith payments by owners and with the ameliorating bond intended to compensate for potential losses to subcontractors and suppliers.

Since it appears that the mandatory 50% bond proposal is largely opposed by the contractor and supplier interests it was intended to benefit, there is some wisdom in Mr. Acret's suggestion. If these groups are likely to oppose almost any change in the law, even a balanced approach intended to protect their legitimate interests, it is best to pick the objectively "best" approach. Ideally, the best approach would be simple to implement and understand, and would rely on market principles and private relationships, rather than on paperwork and bureaucratic action. If there is no "direct lien," trade contractors and suppliers will make business judgments based on the creditworthiness of their customer, and will exact bonds or use other procedures as they desire, or they will contract directly with the homeowner.

If the Commission is interested in exploring a simple approach along the lines suggested by Mr. Acret, it would be possible for the staff to prepare a "discussion draft" (not an official Commission tentative recommendation) and circulate it for comment before the January 2002 meeting. The staff would probably suggest a modification of Mr. Acret's proposal, however, to describe the remedy in more concrete terms.

Lumber Association Survey

Exhibit items 2-11 are a packet of materials from the Lumber Association of California and Nevada. Jan Hansen, Executive Director of LACN, reports in her cover letter on the results of a member survey. (Exhibit p. 2; a sample survey is set out at Exhibit p. 3.) Three-fourths of respondents supported the simplified alternative of protecting good-faith payments in contracts under \$10,000, whereas only 2.5% "liked" the tentative recommendation. (The letter doesn't say how many responses were received, but it would have to be at least 40.) Ms. Hansen also reports that 10% felt either proposal "is okay," with 12.5% finding neither proposal is acceptable.

The sampling of letters included in these materials tends to reinforce comments reviewed in the main memorandum. Edwin Manselian, with a lumber and supply company, believes that homeowners' lack of knowledge is the fundamental problem and the state has an obligation to educate homeowners. (Exhibit pp. 7-8.) He also asks what happens if the owner makes partial payments. Would the unpaid supplier be told that the payments made were for that supplier, so that resort could only be made to the bond? The answer is no. Just like existing law. The mechanic's lien rights of all claimants are enforceable out of the "pot" available, with the pot being reduced by the amount already paid in good faith. The sharing mechanism is the same; only the pot is affected. There is no matching of payments to claimants under existing law or under the proposal.

Dominic Falasco, with a lumber company, thinks the bond will operate unfairly because if the supplier insists on a bond, the contractor may "take offense and go elsewhere." (Exhibit p. 9.) He also thinks it would be burdensome to have to check the recorder's office to determine if the bond is filed. In that, the staff agrees. We would not require recording, only a verifiable identification of the existence of the bond issued by an admitted surety insurer. We think the Commission only opted for the recording rule because it is the procedure under Civil Code Section 3235 and was urged by expert commentators who argued that the construction industry was accustomed to checking with county recorders. Mr. Falasco suggests that a copy of the bond should be provided to subcontractors and suppliers. He also argues that the \$10,000 floor amount should be reduced to \$1,000.

M.A. Muratore, a general contractor, suggests in an email message that joint checks are the way to go. (Exhibit pp. 12-13.) This message also states that very few suppliers or subcontractors give preliminary 20-day notices — "too much time and trouble for the small contractor" — and that smaller contractors won't be able to qualify for the bond.

Rosemarie Crouch, with a lumber company, urges homeowner education and also suggests that the proposal should be revised to preserve mechanic's lien rights where the homeowner "chooses to contract with an unlicensed contractor" who would not be able to get a bond. (Exhibit p. 14.) The staff would suggest a different rule: no claimant should have mechanic's lien or stop notice rights if their customer is not licensed, if required to be. This would be consistent with Business and Professions Code Section 7118: " Entering into a contract with a

contractor while such contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action.”

Finally, Lonnie Reichstein, with a builders supply company, suggests that the recording of the bond could be enforced through the building permit process. (Exhibit p. 16.) He also asks whether there would be a time limit for filing mechanic’s lien claims. Under the tentative recommendation, the mechanic’s lien claim procedure and time limits continue to apply, with the exception that the preliminary 20-day notice is not a prerequisite. (But given the reaction to the proposal to save subcontractors and suppliers the burden of giving preliminary notices, it may be best to strike that part of the tentative recommendation and continue the existing procedure, with the exception that mere giving of a preliminary notice does not disrupt the ability to make good-faith payments.)

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

JAMES ACRET
2 Coco Place
Pacific Palisades, California 90272
310.573.9164 • Fax 310.573.7558 • jacret@gte.net

VIA FAX (650) 494-1827
AND U.S. MAIL

November 27, 2001

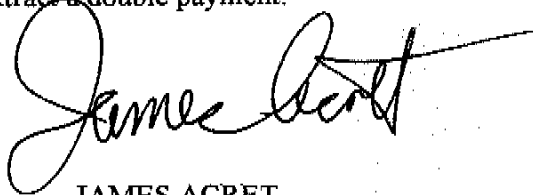
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739
Attention: Stan Ulrich

Since opposition of claimant representatives to the tentative recommendation appears to be adamant, I beg to submit for consideration the following proposal:

§3268 The right to claim a mechanics lien or stop notice on a home improvement project is restricted to parties who have a direct contractual relationship with the homeowner.

§3269 Nothing in this title prohibits a claimant from establishing an equitable lien on real property.

California courts recognize that an unpaid claimant who has supplied work or materials to a construction project may enforce an equitable lien against the property in order to prevent the unjust enrichment of the owner. Since its purpose is only to prevent unjust enrichment, the equitable lien cannot be used to extract a double payment.



JAMES ACRET

JA:ll



**Lumber Association
of California &
Nevada**

3130 Fite Circle
Sacramento, CA 95827
Phone: (916) 369-7501
Fax: (916) 369-8271
www.lumberassoc.com

November 28, 2001

Stan Ulrich
CA Law Revision Commission

RE: Mechanics lien proposal

Dear Stan:

The Lumber Association of California & Nevada sent a letter to our members in October asking for their specific input and recommendations regarding the two proposals the California Law Revision Commission was considering regarding the mechanics lien laws: A) Mandatory contractor bonding for all home improvement contracts over \$10,000 and good faith payment defense; and B) Assembly Member Howard Wayne's suggestion that only home improvement contracts under \$10,000 would be subject to the full payment defense and current lien rights would remain in effect over \$10,000.

Of our members that responded, only 2.5% liked the Commission's proposal A above on contractor bonding; however, 75% supported Howard Wayne's simpler proposal that only home improvement contracts under \$10,000 are subject to a good faith payment defense by the owner. Our understanding is this would keep existing lien rights in place for single family residence remodel contracts over \$10,000.

Ten percent of our members felt either proposal is okay; and 12.5% wrote in that neither proposal is acceptable.

I have enclosed our original letter to our members as well as several comments that were sent along with our survey that I thought the Commissioners would appreciate reading. As you are aware, we do not want any changes to the current law; however, under the circumstances, LACN members would have an easier time supporting the proposal to keep their lien rights in place for any jobs over \$10,000.

Sincerely,

Jan Hansen
Executive Director

Jan/leg/1101CLRCsummary.doc



Lumber Association
of California &
Nevada

3130 Fite Circle
Sacramento, CA 95827
Phone: (916) 369-7501
Fax: (916) 369-8271
www.lumberassoc.com

Immediate Action Required

I vote for:

- Proposal #1** **Bond in place for contracts over \$10,000**
- Proposal #2** **Current lien rights in place over \$10,000**
- Either proposal is ok**

Please fax this response back to the LACN office by November 1st.

FAX: (916) 369-8271

October 23, 2001

Bill Sullivan
Sullivan & Associate
823 Lyndon Avenue
Monterey, CA 93940

Dear Bill:

Enclosed are some very important documents regarding LACN's progress on the mechanics lien proposal from the California Law Revision Commission and an update on the mold issue.

It's very important that you review the three page summary of the CLRC proposal as it will change the way you do business and we need your input. There are actually two proposals on the table and we want to know what you think of each and how you'd like LACN to proceed on your behalf.

This has been a two year process and I'd like to thank all of our members who have attended and testified at these meetings with a special thanks to Peter Freeman, Barr Lumber, our lobbyists, Deborah Mattos & Yolanda Benson, LACN President Erik Jorgensborg, and our PAC Chair Scott Kassahn who helped draft the CLRC update.

Once you've reviewed the information, please send your comments to me so I can share your thoughts with the entire committee. I can be reached by phone (800) 266-4344, fax: (916) 369-8271, e-mail: hansenjan@worldnet.att.net or by mail: 3130 Fite Circle, Sacramento, CA 95827.

PLEASE LET US KNOW YOUR THOUGHTS AND CONCERNS BY NOVEMBER 1, 2001. WE ALSO WANT TO KNOW WHICH PROPOSAL YOU FAVOR (please see voting box above). THIS IS YOUR OPPORTUNITY TO MAKE YOUR VOICES HEARD ON HOW THE SYSTEM WILL BE CHANGED. PLEASE EXERCISE YOUR RIGHTS SO WE CAN REPRESENT YOUR INTERESTS BETTER.

I look forward to hearing from you.

Sincerely,

Jan Hansen
Executive Director

\\Server\My Documents\Jan\LEGISLAT\1001eric.doc



**Lumber Association
of California &
Nevada**

3130 Fite Circle
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www.lumberassoc.com

October 15, 2001

TO: LACN MEMBERS

**FROM: JAN HANSEN
EXECUTIVE DIRECTOR**

**RE: PROPOSED REVISIONS TO CALIFORNIA MECHANIC'S LIEN LAW --
ACTION REQUIRED**

Dear Members:

Nearly two years ago, the Legislature issued a directive asking the California Law Revision Commission (CLRC) to study possible revisions to the mechanic's lien laws in California. After numerous hearings, proposals and comments from the affected industries and associations, the Commission has prepared a Tentative Recommendation which is being circulated for public comments before the next hearing on November 16, 2001. Following the meeting, they plan to make a final recommendation that may be introduced as a legislative proposal in 2002.

The Commission believes there is a substantial "double payment" problem in California. The problem, as framed by several Legislators and legislative proposals, is that homeowners have been required to pay twice for work and/or materials, and were later required to pay subcontractors of material suppliers because of mechanic's liens recorded by the unpaid subcontractors or material suppliers. LACN has been present at all of the CLRC meetings throughout the state, and LACN has advised the Commission at several hearings that the "problem" is being greatly exaggerated and that the actual number of homeowners who are forced to pay twice for work or material is very small. However, the Commission perceives that there is a consumer protection issue here which must be addressed, and some special interests are aggressively fostering that perception.

The CLRC is looking to make recommendations to the Legislature regarding mechanic's lien laws and the following is a summary of the major points which the CLRC is seeking public comment on before issuing their final report.

1. A 50% surety bond will be required of all contractors for any home improvement contracts in excess of \$10,000.00;
2. The prime contractor must record the bond with the county recorder, and file the home improvement contract with the county recorder;

3. An owner who pays his contractor in good faith will not be subject to additional liability for mechanic's lien claims (to the extent of his payment);
4. Subcontractors and material suppliers may make a claim against the surety bond instead of a mechanic's lien claim when the owner has paid the prime contractor;
5. Stop notice and mechanic lien rights will continue to exist, but only where the owner has not paid the prime contractor;
6. Bonds will not be required for home improvement contracts under \$10,000, and mechanic's lien rights and stop notice rights exist as to amounts not yet paid by the owner; and
7. Preliminary notices will no longer be necessary or required for home improvement contracts.

The proposal uses many existing laws which pertain to the rights of an owner to limit his liability by obtaining and recording a bond for 50% of the amount of the contract, but make the bond a requirement for home improvement contracts in excess of \$10,000.

LACN believes there are problems with the proposal as it now stands: First, although mechanic's lien and stop notice rights are lost when the owner has paid the prime contractor because of the requirement of the surety bond, there is no satisfactory remedy if the prime contractor fails to obtain and record the mandatory bond. That is, your lien rights would be lost despite the fact that there is no bond, and because there is no bond, the only remedy available is to sue the contractor for the money he received from the owner and owes to you. The CLRC believes that with this mechanism, you as a subcontractor or supplier will take all necessary steps to insure that your customer, the contractor, has recorded the required bond before you sell material or provide labor.

If a subcontractor or supplier fails to ensure there is a bond, you may have no lien rights at all. We believe this is unacceptable and unfair. We suggest that the recommendation be amended to provide that lien and stop notice rights are lost upon good faith payment by the owner only when the contractor has recorded the bond as required by law, and that any contractor who fails to obtain and record a bond as required be subject to automatic license suspension by the Contractors' State License Board.

LACN also believes that discussion regarding direct pay should be incorporated into the proposal. Specifically, the proposal, which allows a subcontractor or material supplier to service a "direct pay" notice on the homeowner, should be a part of the recommended law changes. Under the "direct pay" notice, a subcontractor or material supplier could serve a direct pay notice to the owner, which would prevent the owner from making a "good faith" payment to the prime contractor that extinguishes your lien rights. Where you believe that the prime contractor is not a good credit risk, or where there have been problems with payments in the past, you should be

able to notify the owner that they may pay you directly, and if they choose to pay the prime instead, they should not benefit from the protection afforded to a good faith payment.

While we do not believe that the double payment problem is anywhere near as extensive as the CLRC has been led to believe, it is relatively certain that the CLRC will be recommending a change in the laws based upon this "problem". Many other proposals that were considered by the CLRC were much less acceptable, and would have resulted in the total loss of lien rights without the benefit of a bond in lieu of the lien. One proposal was simply for a "full payment defense", which provided that if the owner proved that he paid the prime contractor, he was not liable for any amounts that remained due from the prime to the subs or material suppliers. That proposal has potentially catastrophic results for subcontractors and material suppliers, and suggests that we must be prepared to support a change, which impacts our businesses to the least degree possible. Because the pending proposal affects only Home Improvement Contracts, as defined by Business and Professions Code Section 7151.2, there are a substantial number of projects to which this law will not apply, and the existing lien laws will remain in place as to such projects.

Finally, the CLRC has also asked for comment on a simpler concept, i.e., that only home improvement contracts under \$10,000 are subject to a good faith payment defense by the owner, and no bond would be required for such projects. LACN believes this simpler concept may be a more acceptable approach for our members rather than revising the existing structure of the mechanic's lien laws. We acknowledge that although there will be some risks for suppliers in these smaller contracts, you will continue to be served by the protections of existing law on larger projects and contracts.

We are soliciting your comments on the proposed changes which we will provide to the CLRC before its hearing in Los Angeles in November. This is your opportunity to be heard on this matter which may dramatically affect your business. Please generate a letter on your company's stationery addressed to Joyce Cook, Chair, California Law Revision Commission, and **send, fax or e-mail it to me by November 1, 2001 along with the attached cover letter designating your choice so I can share it with the Legislative Committee.**

We will assemble all responses in a single package and, to the extent possible, prepare a cover letter summarizing the common points raised by the responses as an industry response. We encourage you to review and consider this request, and to respond as soon as possible to this proposal. If you delay, you will lose the opportunity to have your opinion on this important matter aired before the CLRC.

FROM :

PHONE NO. :

Nov. 05 2001 07:39AM P2

FARMERS LUMBER & SUPPLY CO.

A CORPORATION

2190 S. EAST AVENUE, FRESNO, CALIFORNIA 93721
(559) 485-2280 FAX (559) 485-2283

November 1, 2001

Ms. Joyce Cook
Chair
California Law Revision Commission

Dear Ms. Cook,

As an independent building material dealer, we feel the repercussions from these drastic and unfair law revisions would be catastrophic to the well being of our company as well as the property owners the state is trying to protect.

The primary problem is that the majority of our sales to any particular job often do not exceed \$10,000.00 and many of these sales are to roofing contractors, whom many, unfortunately, are notorious credit risks. We feel the present laws on the books along with the California Preliminary Notice provide property owners ample opportunity to make sure suppliers are paid for their goods in full. In fact, many times we personally call owners on the phone before any materials have yet to be sent to their properties and basically warn them that failure to ensure that we are paid can and will potentially lead to foreclosure on their properties, only to have them scoff and say "We don't have any contract with you, we have a contract only with our contractor and we don't owe you anything." The problem owners face is that they are not informed by the state and are completely ignorant of state laws governing improvement done to their properties.

We feel the State of California has an obligation to educate homeowners if it feels their rights are being abused. This can be done through media and or by flyers sent along with their property tax bills (which owners receive twice yearly). We feel this would provide ample information to owners to see that suppliers are paid for the products supplied to contractors to improve the owners' properties.

PHONE NO. :

NOV. 05 2001 07:40AM P3

Also, what would happen in the event that an owner made only partial payments to the contractor? Who would collect that? Would the contractor keep it himself and then tell the supplier to file a mechanics lien, only to have the owner tell the supplier that the partial payment made was for you the supplier and that you the supplier should seek the contractor's bond? Needless to say, this would create legal chaos.

Many owners choose a lower bidding contractor even though the contract may call for the owner to pay up to one half of the total upfront before commencement of work, as opposed to paying a higher price to another contractor upon completion of work. We feel by revising current laws in the manner the CLRC is putting forth will actually do the most harm to property owners that are trying to get the lowest price available for work done to their homes by forcing many contractors out of business and leaving less bidders available, thereby, forcing the owner to pay substantially higher prices for work performed.

In closing, we strongly recommend no change be made to existing California lien law and that any changes that are made are in the best interest of property owners as well as to material suppliers.

Sincerely,



Edwin Manselian
Secretary/Treasurer
Farmers Lumber & Supply Co.

OCT.30.2001 9:03AM LOS BANOS LUMBER

NO.245 P.2/2

ACE Hardware 1518K

LOS BANOS LUMBER and SALES CO.

549 MERCY SPRINGS ROAD LOS BANOS, CALIFORNIA 93635

Telephones: Office (209) 826-5141 - Orders 826-4253 - FAX 826-4360
General & Engineering Contractor - Lic. #571757*Neither*

OCTOBER 29, 2001

RE: CALIFORNIA PRELIMINARY LIEN LAW REVISION

After reviewing the letter from LACN, my comments follow;

1. The CLRC should be mandated by the legislature to research and prove that "double payment" problems exist in California. I personally agree with the LACN that this is overstated. The current California Lien Law is effective due to the possibility of "double payment" by the homeowner. The current California Preliminary Lien form explicitly highlights the ramifications of the current law to make the homeowner fully aware of material and sub-contractor rights.
2. Regarding "the subcontractor or supplier will take steps to insure that the contractor has recorded the Bond before you sell materials or provide labor". This is not practical! The contractor may take offense and go elsewhere. The 50% Surety Bond on improvement contracts over \$10,000 will benefit the insurance bonding firms more than anyone else. It will add to the cost of the contract as well as be very cumbersome for suppliers and sub-contractors to follow, especially in areas not locally serviced by a Recorder's office. In our case, a trip to Merced to substantiate the Bond recording, or payment to Title company to investigate the Bonds recording, or a fee to the Recorder's office to release and document this information.
3. A loss of lien rights on contracts under \$10,000 is defeating the purpose of the Lien Law that was implemented to prevent subh loss of revenue. We recommend there be a Bond requirement of 100% on all Contracts \$1,000 and above.
4. If the "direct pay" law is initiated, there SHOULD NOT be any exemptions for cost of construction under \$10,000. The homeowner should be notified of "direct pay" in any case. Additionally, a copy of the Bond should be in the hands of the material supplier or sub-contractor prior to any work commencement.

We need all the protection from the Legislature that can be provided by the current California Preliminary Lien Law. It has worked quite effectively.

Respectfully submitted,

D. Falasco
LOS BANOS LUMBER & SALES CO.
Dominic M. Falasco, Managing Partner

DMF:rw

attn: Jan Hansen
from: Dave Duwall - M&S

Neither
1 of 2

- 3. An owner who pays his contractor in good faith will not be subject to additional liability for mechanic's lien claims (to the extent of his payment);
- 4. Subcontractors and material suppliers may make a claim against the surety bond instead of a mechanic's lien claim when the owner has paid the prime contractor;
- 5. Stop notice and mechanic lien rights will continue to exist, but only where the owner has not paid the prime contractor;
- 6. Bonds will not be required for home improvement contracts under \$10,000, and mechanic's lien rights and stop notice rights exist as to amounts not yet paid by the owner, and
- 7. Preliminary notices will no longer be necessary or required for home improvement contracts.

The proposal uses many existing laws which pertain to the rights of an owner to limit his liability by obtaining and recording a bond for 50% of the amount of the contract, but make the bond a requirement for home improvement contracts in excess of \$10,000.

LACN believes there are problems with the proposal as it now stands: First, although mechanic's lien and stop notice rights are lost when the owner has paid the prime contractor because of the requirement of the surety bond, there is no satisfactory remedy if the prime contractor fails to obtain and record the mandatory bond. That is, your lien rights would be lost despite the fact that there is no bond, and because there is no bond, the only remedy available is to sue the contractor for the money he received from the owner and owes to you. The CLRC believes that with this mechanism, you as a subcontractor or supplier will take all necessary steps to insure that your customer, the contractor, has recorded the required bond before you sell material or provide labor.

If a subcontractor or supplier fails to ensure there is a bond, you may have no lien rights at all. We believe this is unacceptable and unfair. We suggest that the recommendation be amended to provide that lien and stop notice rights are lost upon good faith payment by the owner only when the contractor has recorded the bond as required by law, and that any contractor who fails to obtain and record a bond as required be subject to automatic license suspension by the Contractors' State License Board.

LACN also believes that discussion regarding direct pay should be incorporated into the proposal. Specifically, the proposal, which allows a subcontractor or material supplier to service a "direct pay" notice on the homeowner, should be a part of the recommended law changes. Under the direct pay notice a subcontractor or material supplier could serve a direct pay notice to the owner, which would prevent the owner from making a "good faith" payment to the prime contractor that extinguishes your lien rights. Where you believe that the prime contractor is not a good credit risk, or where there have been problems with payments in the past, you should be

Jan - I like these ideas, best.

Dave Duwall - M&S

able to notify the owner that they may pay you directly, and if they choose to pay the prime instead, they should not benefit from the protection afforded to a good faith payment.

While we do not believe that the double payment problem is anywhere near as extensive as the CLRC has been led to believe, it is relatively certain that the CLRC will be recommending a change in the laws based upon this "problem". Many other proposals that were considered by the CLRC were much less acceptable, and would have resulted in the total loss of lien rights without the benefit of a bond in lieu of the lien. One proposal was simply for a "full payment defense", which provided that if the owner proved that he paid the prime contractor, he was not liable for any amounts that remained due from the prime to the subs or material suppliers. That proposal has potentially catastrophic results for subcontractors and material suppliers, and suggests that we must be prepared to support a change, which impacts our businesses to the least degree possible. Because the pending proposal affects only Home Improvement Contracts, as defined by Business and Professions Code Section 7151.2, there are a substantial number of projects to which this law will not apply, and the existing lien laws will remain in place as to such projects.

Finally, the CLRC has also asked for comment on a simpler concept, i.e., that only home improvement contracts under \$10,000 are subject to a good faith payment defense by the owner, and no bond would be required for such projects. LACN believes this simpler concept may be a more acceptable approach for our members rather than revising the existing structure of the mechanic's lien laws. We acknowledge that although there will be some risks for suppliers in these smaller contracts, you will continue to be served by the protections of existing law on larger projects and contracts.

We are soliciting your comments on the proposed changes which we will provide to the CLRC before its hearing in Los Angeles in November. This is your opportunity to be heard on this matter which may dramatically affect your business. Please generate a letter on your company's stationery addressed to Joyce Cook, Chair, California Law Revision Commission, and send, fax or e-mail it to me by November 1, 2001 along with the attached cover letter designating your choice so I can share it with the Legislative Committee.

We will assemble all responses in a single package and, to the extent possible, prepare a cover letter summarizing the common points raised by the responses as an industry response. We encourage you to review and consider this request, and to respond as soon as possible to this proposal. If you delay, you will lose the opportunity to have your opinion on this important matter aired before the CLRC.

\\na\c\My Documents\LEGISLATION\PROPOSED REVISION TO MECHANIC LIEN LAW.doc

JRE ASSOCIATES

FAX NO. : 1 650 365 7958

Nov. 02 2001 03:56PM P2

Returned mail: User unknown

(11/1/2001 5:22:10 PM Pacific Standard Time
 From: MAILER-DAEMON@aol.com (Mail Delivery Subsystem)
 To: MAMuratore@aol.com

The original message was received at Thu, 1 Nov 2001 20:21:36 -0500 (EST)
 from root@localhost

----- The following addresses had permanent fatal errors -----
 <hanseplan@worldnet.att.net>

----- Transcript of session follows -----
 ... while talking to gateway3.worldnet.att.net.:
 >>> RCPT To:<hanseplan@worldnet.att.net>
 <<< 550 Invalid recipient: <hanseplan@worldnet.att.net>
 550 <hanseplan@worldnet.att.net>... User unknown

Final-Recipient: RFC822; hanseplan@worldnet.att.net
 Action: failed
 Status: 5.1.1
 Remote-MTA: DNS; gateway3.worldnet.att.net
 Diagnostic-Code: SMTP; 550 Invalid recipient: <hanseplan@worldnet.att.net>
 Last-Attempt-Date: Thu, 1 Nov 2001 20:21:46 -0500 (EST)

Received: from MAMuratore@aol.com
 by imo-r08.mx.aol.com (mail_out_v31_r1.8.) id c.17.1de03e1c (4560)
 for <hanseplan@worldnet.att.net>; Thu, 1 Nov 2001 20:21:36 -0500 (EST)
 Return-path: <MAMuratore@aol.com>
 From: MAMuratore@aol.com
 Message-ID: <17.1de03e1c.29134f1f@aol.com>
 Date: Thu, 1 Nov 2001 20:21:35 EST
 Subject: Liens
 To: hanseplan@worldnet.att.net
 MIME-Version: 1.0
 Content-Type: text/plain; charset="US-ASCII"
 Content-Transfer-Encoding: 7bit
 X-Mailer: AOL 5.0 for Windows sub 139

Being as brief as possible I am responding to your call for input to the proposed legislation pending on Mechanics Liens. Being a General Contractor myself and not a supplier nor sub. my views maybe slightly slanted. Either way you cut it, it will cost the consumer more in \$. Not fair to the Consumer. There are now simple remedies in place today and have been for a long time. Require contractors to give homeowners conditional or unconditional release of liens by all parties who have supplied labor or material to date on said project but signed only upon receipt of payment from contractor. Make this a requirement on their contract. Have the owner write 2 party checks to each supplier or sub on the job. Special Interest Groups have pushed for this lien change on owner occupied job sites. These same sites are were most honest contractors problems begin. The industry must stand together to defeat these special interest groups and the dishonest contractors.

MURATORE ASSOCIATES

FAX NO. : 1 650 365 7958

Nov. 02 2001 03:57PM P3

When the contract becomes public record the client ^{will be} is very uncomfortable with this type of disclosure and I see problems that would mushroom from such a disclosure. **PROPERTY TAXES FOR ONE.**

Very few suppliers or subcontractors send preliminary notices, too much time and trouble for the small contractor.

Many of the smaller contractors will not be able to qualify for the bonds. Due to lack of funds, financials etc.

The clients is always party to looking the other way for a lower priced job and this encourages unlicensed contractors and lack of professionalism.

The owner has always had the right to request a bond but most do not want the added cost. When offered almost 98% decline the bond offered.

MA250@aol.com.

----- Headers -----

Return-Path: <>

Received: from rly-xa02.mx.aol.com (rly-xa02.mail.aol.com [172.20.105.71]) by air-xa01.mail.aol.com (v81.9) with ESMTP id MAILINXA12-1101202209; Thu, 01 Nov 2001 20:22:09 -0400

Received: from imo-r08.mx.aol.com (imo-r08.mx.aol.com [152.163.225.104]) by rly-xa02.mx.aol.com (v80.21) with ESMTP id MAILRELAYINXA23-1101202146; Thu, 01 Nov 2001 20:21:46 -0400

Received: from localhost (localhost)

by imo-r08.mx.aol.com (8.8.8/8.8.8/AOL-5.0.0)

with internal id UAA17029;

Thu, 1 Nov 2001 20:21:46 -0500 (EST)

Date: Thu, 1 Nov 2001 20:21:46 -0500 (EST)

From: Mail Delivery Subsystem <MAILER-DAEMON@aol.com>

Subject: Returned mail: User unknown

Message-Id: <200111020121.UAA17029@imo-r08.mx.aol.com>

To: MAMuratore@aol.com

MIME-Version: 1.0

Content-Type: multipart/report; report-type=delivery-status;

boundary="UAA17029.1004664106/imo-r08.mx.aol.com"

Auto-Submitted: auto-generated (failure)



October 19, 2001

Jan Hansen
Executive Director
Lumber Association of California & Nevada
3130 Fite Circle
Sacramento, CA 95827

Re: CLRC Mechanic's Lien Law Revision

Dear Jan,

Thank you for all your efforts in trying to guide the CLRC in its revision of the mechanic's lien law and for keeping association members informed. Mike Wexler has asked me to response to your letter dated Oct 16, 2001. With reservation, we will be choosing Proposal #2; however, we have one suggestion we would like you to consider incorporating into the final proposal.


First, regarding Proposal #1, we strongly agree with you that subcontractors and suppliers should not be required to give up mechanic's lien rights if the contractor has not obtained and recorded a bond. Additionally, we would like to see language added to **both proposals** preserving all mechanic's lien rights if the homeowner chooses to contract with an **unlicensed contractor**. Certainly, an unlicensed contractor would not be able to obtain a construction bond.

It has been our experience that very few legitimately licensed contractors cause the kind of problems that we are trying to remedy with this legislation. Should a licensed contractor become involved in this type of fraudulent scheme, we agree that the contractor's license should be permanently revoked. Loss of license, however, is no deterrent to the unlicensed contractor. We believe the homeowner is in the best position and has a personal stake in determining whether a contractor has a valid contractor's license before signing the home improvement contract.

Personally, I would like to see the CSLB conduct an all-out campaign to advise homeowners about contractor licensing requirements. The use of highly visible billboards on main roads, busses, and at libraries, as well as, magazine and newspaper ads would be a start. Perhaps letters to new homeowners or forms requiring the homeowner's signature at the time building permits are obtained would help raise homeowner awareness to the benefit of the entire industry.

Again, we appreciate all your work on behalf of the Lumberman's Association members.

Sincerely,


Rosemarie Crouch, Credit Manager
PineTree Lumber Co., Inc.



Lumber Association of California & Nevada

3130 Fite Circle Sacramento, Ca 95827 Phone: (916) 369-7501 Fax: (916) 369-8271

Immediate Action Required

October 16, 2001

Pete Eddy Weed Building & Home Center PO Box 870 Weed, CA 96094

Dear Pete:

I vote for:

- Proposals #1 and #2 with checkboxes and descriptions regarding bond and lien rights.

Please fax this response back to the LACN office by November 1st.

FAX: (916) 369-8271

Enclosed are some very important documents regarding LACN's progress on the mechanics lien proposal from the California Law Revision Commission and an update on the mold issue.

It's very important that you review the three page summary of the CLRC proposal as it will change the way you do business and we need your input.

This has been a two year process and I'd like to thank all of our members who have attended and testified at these meetings with a special thanks to Peter Freeman, Barr Lumber, our lobbyists, Deborah Mattos & Yolanda Benson, LACN President Erik Jorgensborg, and our PAC Chair Scott Kassahn who helped draft the CLRC update.

Once you've reviewed the information, please send your comments to me so I can share your thoughts with the entire committee. I can be reached by phone (800) 266-4344, fax: (916) 369-8271, e-mail: hansenjan@worldnet.att.net or by mail: 3130 Fite Circle, Sacramento, CA 95827.

PLEASE LET US KNOW YOUR THOUGHTS AND CONCERNS BY NOVEMBER 1, 2001. WE ALSO WANT TO KNOW WHICH PROPOSAL YOU FAVOR (please see voting box above). THIS IS YOUR OPPORTUNITY TO MAKE YOUR VOICES HEARD ON HOW THE SYSTEM WILL BE CHANGED. PLEASE EXERCISE YOUR RIGHTS SO WE CAN REPRESENT YOUR INTERESTS BETTER.

I look forward to hearing from you. #2 is the better of the two.

Sincerely, Jan Hansen Executive Director

Handwritten note: However, I believe that the current system does work. If every party concerned pays attention to business, each

\\Server\cmy Documents\Jan\LEGISL\71001\etc.doc



November 1, 2001

Ms. Joyce Cook, Chair
California Law Revision Commission

Dear Ms. Cook,

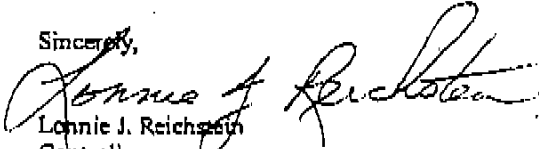
We understand that the CLRC has prepared a tentative recommendation that would revise the mechanic's lien laws in California. The recommendation calls for a 50% surety bond to be acquired by all prime contractors having home improvement contracts in excess of \$10,000. The bond must be recorded and the home improvement contract filed with the county recorder. Stop notice and mechanic lien rights will continue to exist, but only where the owner has not paid the prime contractor. Preliminary notices will no longer be necessary or required for home improvement contracts.

While the recommendation seems simple in principle, there are still questions that arise:

1. Is there some way to make the recording of the surety bond a part of the permit process?
2. What happens when an owner pays the primary contractor after a mechanic's lien has been filed by a subcontractor or supplier? There should be something in the recommendation to address "direct pay" remedies.
3. How will a subcontractor or supplier know when and how much the primary contractor has been paid? Mechanic's lien rights and stop notice rights exist only as to amounts not yet paid by the owner.
4. Will there be a time requirement for filing a mechanics lien as in current law (within 90 days after completion of project or 30 days after filing a notice of completion)?

We have only experienced one instance in the past three years where an owner was required to pay us in addition to having paid the primary contractor and it did not involve a home improvement. It has been our practice to work closely with our customers and property owners when necessary to resolve payment issues before resorting to the filing of mechanics liens. We will continue this practice regardless of what changes are made in the law.

Sincerely,


Lonnie J. Reichstein
Controller

Cc: K. Patterson
B. Jessell

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