

Second Supplement to Memorandum 2004-31

**Mechnics Lien Law (Material Received at Meeting)**

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The following material was received by the Commission at the meeting on November 19, 2004, in connection with Study H-821 on mechanics lien law, and is attached as an Exhibit:

	<i>Exhibit p.</i>
1. Norm Widman, Dixieline Lumber Co. . . . .	1

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

Exhibit

**MECHANICS LIEN LAW**

Subject: Mechanics lien  
Date: Nov. 18, 2004  
Thread-Topic: Mechanics lien  
From: "Widman, Norm" <nwidman@dixieline.com>  
To: <commission@clrc.ca.gov>  
Cc: "Dick Nash" <Dnash@bicanet.com>,  
"Frank Collard" <Fcollard@calportland.com>,  
"Denise Duncan" <dduncan@dmattos.com>,  
"Jan Hansen" <janh-lacn@sbcglobal.net>,  
"Jim Morrow" <jimm@daviswholesale.com>,  
"Zongker, Pat" <patz@dixieline.com>

Nov. 18, 2003

California Law Revision Commission  
Delivered via Email at commission@clrc.ca.gov

Subject: Mechanics Lien

Gentlemen:

Tomorrow you are meeting to discuss, among other items, changes to the Mechanics Lien law. I have read your report and support most of the changes. I plan to attend tomorrow and will be speaking on behalf of the Lumber Association. Today, however, I am writing you as a representative of Dixieline Lumber Company only.

Dixieline has long recognized the difference in the law as to claiming attorney fees on a lien and a Stop Notice. I support the change to be in favor of attorney fees for both lien foreclosure and Stop notice actions.

I support some changes to the waivers. The conditional Final waivers should have a spot to list our customer. All the other waivers have the customer's name. Currently, we change the form to indicate that we are only giving up our lien rights for a certain customer. Often we have jobs where we supply a number of sub contractors and we need the customer to be named for clarity.

Also, Conditional Progress waivers need to be addressed. Very often we are asked by our sub to submit a conditional progress waiver when the waiver for the previous billing period has not yet been paid. We are stuck either combining the two waivers amounts or adding a qualifying statement to the new waiver that

states something like this “this release is conditioned upon payment of the previous release dated Nov 1, 2004 in the amount of \$123,456.00.”

Because state law says that only the 4 waivers approved by the state are valid, some generals refuse any changes and reject the waiver. We and our sub then have missed a billing cycle and must wait for the next billing cycle when hopefully, the first waiver has been paid.

Other state approved waivers allow for the inclusion of the disputed amounts. Some state that the waiver doesn't waive retainage not yet paid. I believe that both the conditional progress and the conditional finals should have a provision to include previous waivers not paid or the total amount outstanding as of the through date.

It is without a doubt one of the most difficult items we deal with on a daily basis. Every seminar on lien law has more questions on this one subject than any other lien law subject. Because no case law has been made on the subject, the instructor of the class is left saying that the industry practice of qualifying the release with a statement about previous unpaid releases is not the way the law is written and no case law exists on the subject. The instructor has to advise that no changes be made and that means that we and our sub must miss a billing cycle.

I hope that the commission could address this issue.

Sincerely,

Norm Widman  
Dixieline Lumber Company