Study H-821 July 14, 2005

Second Supplement to Memorandum 2005-24

Mechanics Lien Law (Material Received at Meeting)

The following material was received by the Commission at the meeting on July 14, 2005, in connection with Study H-821 on mechanics lien law, and is attached as an Exhibit:

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

COMMENTS OF NORM WIDMAN

July 11, 2005

Mr. Nathaniel Sterling
California Law Revision Commission
Delivered via email

Mechanics Lien Law Memorandum 2005-24

Dear Mr. Sterling:

As you know, I have followed this subject for the Lumber Association of California and Nevada. I admire all your commission has done.

I m writing you on a couple of specific issues. The first issue is the expungement of a false, invalid, or unenforceable claim of mechanics lien. In your memo you write on page 5, 3083.810 item 2, "...the claim of lien is invalid under section 3083.360 or is for any other reason invalid or unenforceable."

I'm concerned that the last phrase, "…or is for any other reason invalid or unenforceable." Is broader than what was discussed at previous hearings and could open up this motion to expunge an invalid lien into a trial of fact far beyond the limited scope I believe you intend.

Normally, it is at trial many of the technical fact would be heard. For example, one of the first things a defendant will challenge a material supplier on is the correctness of the information on the Preliminary Notice. We are also challenged on the procedures we used to serve the notice. Does 3083.360, as written, allow for the property owner to challenge the prelim for example?

Will 3083.360 cause owners attorneys to always ask for an expungement hearing? If this will be the case, it would significantly add to the time and expense of suppliers and contractors who justly filed the lien because they were not paid.

On notice to owners of a mechanics lien, I believe the owner should be notified. We, as a matter of routine, always notify the owners, lenders, general contractors,

and our sub that a lien has been filed. In my experience, this causes the parties to talk to one another and get problems resolved. (Sometimes the talk is productive but sometimes it only reopens the wounds that already are there between the parties.)

We in fact send out a letter 10 days in advance of filing the lien titled "Notice of Intent to File a Lien". This letter solves problems short of a lien and works more than 50% of the time.

Notices of liens and notices of intent to lien work very well. However, I disagree that the notices be recorded. I also disagree that the notice of lien be required to be sent to all the parties. I don't want my lien to be invalid under 3083.810 because I failed to notify an original contractor or a lender. Many, many times we deal with the owners directly and are not required to send a preliminary notice. Why then must I send a Notice of lien to all the parties we didn't notice to begin with? The purpose of notice to owner should be to notify the owner.

Sincerely,

Dixieline Lumber

Norm Widman
Manager Financial Services