

## Second Supplement to Memorandum 2006-48

**Mechanics Lien Law: Private Work of Improvement  
(Analysis of Comments on Tentative Recommendation)**

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The Commission has received an additional comment responding to CLRC Memorandum 2006-48 from Dick Nash, of the Building Industry Credit Association. See Exhibit p. 1.

The staff will incorporate a discussion of this comment when presenting this memorandum, and Memorandum 2006-48.

The staff has also continued discussions with attorney David Sackman of Los Angeles, working to preclude an ERISA preemption challenge to any part of the proposed law.

Following another discussion with Mr. Sackman, the staff proposes an additional revision in this area relating to contractor discipline.

**The staff will orally present an analysis of this revision at the Commission meeting.** The statutory text of the revision is attached as Exhibit p. 3.

Respectfully submitted,

Steve Cohen  
Staff Counsel

Exhibit

**COMMENTS OF DICK NASH**

From: Dick Nash <dnash@bicanet.com>  
To: Steve Cohen  
Subject: Response to Memo 2006-48  
Date: December 4, 2006

Steve Cohen  
Staff Counsel  
California Law Revision Commission

Dear Steve,

(1) Definition of “Days” –

In the comment section for 7055 (page 18) a reference is made to “Sections 10 (computing time), 11 (holidays)”. Are these sections part of the Code of Civil Procedure? We find the following sections from the code of civil procedure to be most helpful in understanding when an action must be taken under the mechanic’s lien law:

Section 10 –Holidays

Section 12 – Computation of time, first and last days

Section 12a – Computation of time where last day for performance of act is holiday

Section 12b – Public office closed for whole of day to be considered as a holiday.

I believe a reference made to these sections would be most beneficial.

(2) Section 7200 (Preliminary notice requirement) –

Staff recommends that 7200 and 7202 be combined (page 36). Proposed section 7200 in identifying who is required to be given a preliminary notice states in (a)(2):

“The direct contractor or reputed direct contractor with whom the claimant has a direct contractual relationship.”

Under this language could it be argued that a supplier who has a direct contract with a subcontractor, not the direct contractor, would not be required to send a preliminary notice to the direct contractor because he does not have a direct contract with the direct contractor. I assume that what is intended here is that notification be given to the direct contractor under whose direct contract the claimant is supplying labor or material, etc.

~~(3) Section 7208 –~~

~~I would suggest that the word “direct” be added to the recommended modification of 7208(b) (page 41) as follows:~~

~~“(b) If a claimant provides work pursuant to contracts with more than one direct contractor, the claimant shall give a separate preliminary notice with respect to work provided to each direct contractor.”~~

(withdrawn by Mr. Nash)

(4) Section 7210 (Direct contractor’s duty to provide information) –

On page 41 you report that Graniterock asserts that one of the most significant problems for lower tier subcontractors and suppliers in protecting lien rights is obtaining the information required to give a preliminary notice in a timely fashion. (This statement reflects their and my concern about the current law.) I am wondering if the new language in 7106, which now uses the word “may”, when identifying source documents which “may” be used for lender, owner, direct contractor and surety name and address information, is sufficient to relieve a claimant from the necessity of obtaining those documents. If it were to be necessary for subs and suppliers to prove that the address of the person to be notified was not shown on the documents in subdivision (a) in order to send the notice to the place of business of those parties, their ability to establish their lien rights would be greatly diminished. As indicated by Graniterock subs and suppliers have no leverage in obtaining these documents from the parties holding them nor do they (as I contend) have reasonable means to acquire those documents from public sources.

I hope these comments have been helpful and, again, I would like to express my appreciation for having the opportunity to have input in this matter.

H. Richard (Dick) Nash  
Building Industry Credit Association  
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## ADDITIONAL REVISION RELATING TO CONTRACTOR DISCIPLINE

### § ~~7072.~~ 7103. Notice of overdue laborer compensation

~~7072~~ 7103. (a) A contractor or subcontractor that employs a laborer and fails to pay the full compensation due the laborer, including any employer payments described in Section 1773.1 of the Labor Code and implementing regulations, ~~or laborers compensation fund~~ shall, not later than the date the compensation became delinquent, give the laborer, the laborer's bargaining representative, if any, ~~and~~ and the owner, notice that includes all of the following information, in addition to the information required by Section 7102:

(1) The name and address of the laborer, and of any ~~laborers compensation fund~~ person or entity described in subdivision (b) of Section 7018 to which employer payments are due.

(2) The total number of straight time and overtime hours worked by the laborer on each job.

(3) The amount then past due and owing.

(b) Failure to give the notice required by subdivision (a) constitutes grounds for disciplinary action under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

### § ~~7216.~~ Disciplinary action

~~7216.~~ A licensed subcontractor is subject to disciplinary action under the Contractors' State License Law, Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, if all of the following conditions are satisfied:

~~(a) The subcontractor does not pay all compensation due to a laborers compensation fund.~~

~~(b) The subcontractor fails to give preliminary notice or include in the notice the information required by subdivision (b) of Section 7204.~~

~~(c) The subcontractor's failure results in the laborers compensation fund recording a claim of lien, filing a stop payment notice, or asserting a claim against a payment bond.~~

~~(d) The amount due the laborers compensation fund is not paid.~~

### § 7204. Contents of preliminary notice

7204. ....

(b) If preliminary notice is given by a subcontractor that has not paid all compensation due to a laborer ~~or laborers compensation fund~~, the notice shall include the name and address of the laborer and any ~~laborers compensation fund~~

person or entity described in subdivision (b) of Section 7018 to which payments are due.

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