

Fourth Supplement to Memorandum 2006-48

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

The Commission has received a submission responding to the Third Supplement to CLRC Memorandum 2006-48 from Lori Nord, an attorney in San Francisco and previous commenter. See Exhibit p. 1.

Ms. Nord generally agrees with comments of Associated General Contractors of California (AGC) on two issues presented in CLRC Memorandum 2006-48 and its Third Supplement, relating to proposed Sections 7420 (notice of intended lien) and 7426 (damages for false claim of lien).

Expanding on a previous comment, Ms. Nord also suggests a redrafting of proposed Section 7432 (lien limited to work included in contract), and urges a technical modification to proposed Section 7482 (demand prerequisite to lien release petition).

The issues raised by Ms. Nord's comments are addressed in CLRC Memorandum 2006-48 and its Third Supplement. To the extent a comment relates to an issue noted for discussion, the comment will be incorporated into the discussion.

Respectfully submitted,

Steve Cohen
Staff Counsel

Exhibit

COMMENTS OF LORI NORD

From: Lori Nord <lnord@mjmlaw.us>
Date: January 23, 2007
To: scohen@clrc.ca.gov
Re: California Law Revision Commission mechanics lien study

Thank you for sending this [attachment] to me, Mr. Cohen.

I previously did receive the Third Supplement to memorandum 2006-48. I just did not have a chance to review it until now. It appears to be similar, if not identical to the attachment to your current email. I am not entirely certain if it is identical because when I print it the current attachment, every line is struck out so it is difficult for me to read.

In any case, I do have a few more comments.

1) I fully agree with the AGC's comments about the new requirement contained in section 7420. Thirty days is a short time to enforce one's lien rights. The owner should be notified by being sent a copy of the notice of the lien when it is being recorded in the County Recorder's Office. This can be done by attaching a simple proof of service to the lien being recorded. Any additional requirements are a burdensome and unnecessary trap for the unwary.

2) I also fully agree with the comments of the AGC with respect to section 7426. If this is not eliminated altogether so as not to impair the constitutional lien right, I favor alternative number 1 to counter-balance this threat. This would mean that liability would only be imposed as part of the owner's lawsuit. The lien claimant would then still have had the opportunity to have released any improper lien upon his own volition or upon the owner's request. In this regard, I would also change section 7482 to provide for "written" notice as a prerequisite to the lawsuit. (Section 7482 currently does not specify what type of notice must be given.)

3) With respect to section 7432, I did state that the revision was an improvement over the original. However, I still contend that a laborer should have knowledge that the TERMS of the contract did not include the labor that they provided in order to bar their claim. It should not be sufficient that they know of a contract between the owner and the direct contractor and the way the section is currently written allows for that argument. I

therefore think that section (a) should be rewritten to state: “A lien does not extend to work not included in a contract between the owner and direct contractor if the work was authorized by the direct contractor or subcontractor and the claimant had actual knowledge or constructive notice (delete “of the contract”) before providing the work “that the contract did not provide for the work claimant provided”.

Thank you for your consideration of these comments.

Sincerely,

Lori A. Nord
McCarthy, Johnson & Miller. L.C.