

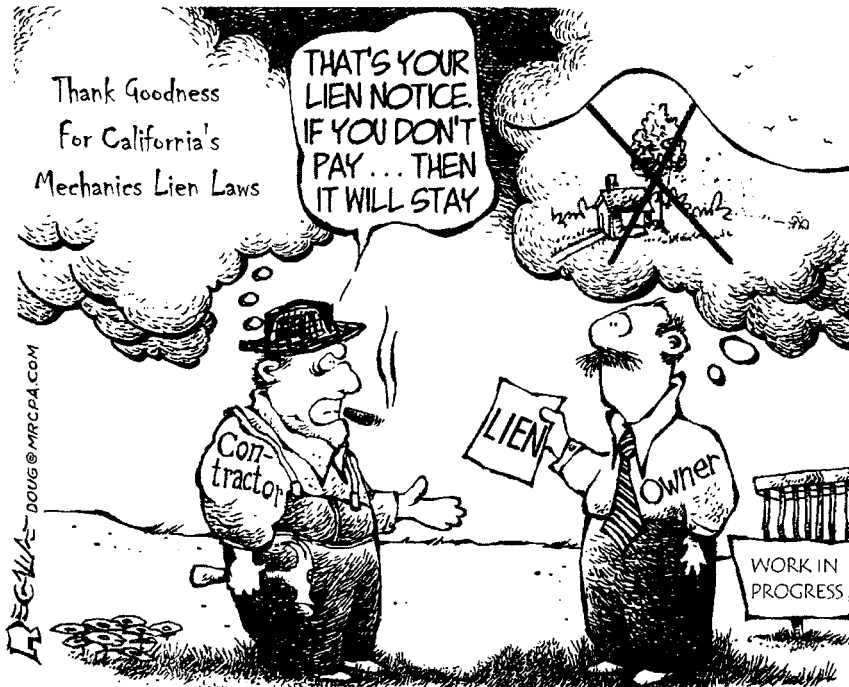


Reprinted in part from
Volume 17, Number 6 July 2007
(Article starting on page 377 in the actual issue)

ARTICLE

MECHANICS' LIENS:
PROPERTY LAW'S UNLOVED STEPCHILD

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I. INTRODUCTION

When it involves being paid for services rendered, the construction trades occupy a preferred position in our society. From the beginning, the California Constitution has nurtured those who contribute their labor and materials to construction projects, by providing them with rights to impose a lien against the property benefited by their labor and materials.¹ The mechanics' lien is a form of "super" lien, because its priority dates not from time of recordation but rather relates back to the time when work physically commenced on the project.² Over the years, the Legislature has sustained and expanded this constitutional protection through legislation dealing not only with mechanics' liens, but also related remedies, such as the right to attach construction loan funds (stop notice) and recourse to sureties (payment bonds).

Based on anecdotal evidence, law schools continue to shun teaching of these construction related subjects in their required real property courses, because, according to one professor who was asked why, "law courses teach lawyers how to think, not how to apply particular statutory procedures to specific problems—that can be learned later." Perhaps—but part of the answer also may lie in the complexity of the applicable laws and in the lack of familiarity with them among teaching scholars who have not devoted time to study of the case law and the California statutory scheme designed to protect the people who build our commercial, industrial, and residential improvements. The author of this article—along with many other lawyers—is one of those who many years ago had to learn it all on his own and that was a challenging task.

This brief survey is not intended to cover the entire subject, which would require far more space and time; rather, it is devoted to selected issues arising out of laws and cases governing mechanics' liens and related remedies. The background assumption for this approach is that each reader of this article has some familiarity with these laws and the cases interpreting them.

II. LICENSING LAWS

The limiting issue. We start by focusing on a companion body of law: the current legal requirements pertaining to California contractors' licenses and licensed status at the time of performance of the work. This is because licensed status is a limiting issue—a condition precedent—which impacts a claimant's mechanics' lien and related remedy rights, for all of those lien claimants who are required to be licensed. First tier equipment and material suppliers, who also have the right to file liens and pursue related remedies,³ are not required to be licensed.

Requirement of license. No original contractor or subcontractor can recover compensation for labor and materials supplied to a project unless it is duly licensed under the California Contractor's State Licensing Law.⁴ It is a misdemeanor for a person to engage in the contracting business

without a license.⁵ Under current Supreme Court precedents, a contractor or subcontractor need not be licensed at the time of entering into the contract for performance of the work and furnishing of the materials, but must be licensed *at all times* during the performance of the work in order to recover compensation.⁶

Retention of a contractor's license is itself an area of pitfalls which are a warning to those who are not complying with legal requirements. In the most recent case on that subject, a contractor's license was *automatically* suspended by statutory provision where that contractor engaged in the practice of understating the number of his employees in order to avoid requirements of workmen's compensation insurance. Thus, although there had been no proceedings brought against the contractor to revoke the license, he was unable to recover compensation for work performed for an owner and had to reimburse monies already paid and the owner's attorney's fees.⁷

Substantial compliance. Historically, because of the harshness of the rule which denies to a contractor the right to recover compensation if that contractor is unlicensed during all or any part of the performance of the work, the courts developed a *judicial* doctrine of "substantial compliance." This underwent significant revision over the last 20 years, both by court decision and by legislation. In the mid-1980s, the judicially developed substantial compliance doctrine reached its apex in a line of cases culminating in *Asdourian v. Araj*,⁸ where the courts took a lenient view towards the licensing laws and actually allowed a contractor to recover compensation where, for example, the license was issued to an entity that did not actually perform the work, but the responsible managing agent of that entity who qualified it for the license was the one who made the contract and performed the work as an individual.

However, thereafter, the legislature amended the applicable law⁹ to toughen licensing requirements, and this led to a rule and a line of cases which now impose a strict interpretation of the more limited *legislative* "substantial compliance" doctrine. This trend culminated in 2005 in *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.*,¹⁰ in which the California Supreme Court reconfirmed the strict approach contained in the limited "substantial compliance" exception to the strict requirements of Bus. & Prof. Code § 7031, the basic statute requiring contractors to be licensed. In that case, a subcontractor for ornamental metals work on the Disneyland Hotel did not obtain its license until about 3 weeks after commencing the work. When a dispute developed after substantial work had been performed, the contractor contended that it owed nothing to the subcontractor, because of the unlicensed status of the subcontractor during part of the time of the work, i.e. the first three weeks of the subcontractor's work. The Court held that the Legislature intended to impose a stiff all-or-nothing penalty for unlicensed work at "any" time during performance. Accordingly, the subcontractor was denied compensa-

tion even for work performed during the time that it was licensed. The subcontractor could not show that its temporary unlicensed status was the result of “excusable neglect.” Generally, this more narrow statutory “substantial compliance” standard means that if a license expires without the contractor’s actual knowledge and the contractor takes reasonable steps to promptly correct the unlicensed status, it may be able to show that it has substantially complied with the license law.¹¹

III. DESIGN PROFESSIONALS’ LIENS

“Design Professional” defined. A design professional is any certified architect, registered professional engineer, or licensed land surveyor who furnishes services pursuant to a written contract with a landowner for the design, engineering, or planning of a work of improvement. Since the priority of mechanics’ liens extends back to the date when physical evidence of work on the site first commenced,¹² such design professionals were often unable to record valid liens for work they had performed in cases where actual construction work on the project never commenced. In 1990, the California legislature mitigated this problem by providing for liens which could be filed by design professionals even though actual commencement of construction of the project never got started.¹³

Effective date of lien. A design professional has a lien upon the real property for which the work of improvement is planned to be constructed, notwithstanding the absence of commencement of actual construction, from the date of recordation of the lien. The design professional’s lien is for the amount of his or her fee for any services rendered prior to commencement of the work of improvement or the reasonable value of those services whichever is less. However, a design professional cannot record a lien unless a building permit or other governmental approval in furtherance of the work of improvement has been obtained in connection with or utilizing the services rendered by the design professional.¹⁴

Requisites for the lien claim. In order for the design professional to be entitled to a lien, *all* of the following must occur:

- (1) the landowner defaults in any payment required pursuant to the terms of the written contract or refuses to pay upon the demand of the design professional made in accordance with that contract;
- (2) not less than 10 days prior to recordation of the lien, the design professional mails by first-class registered or certified mail, postage prepaid, addressed to the landowner, a written demand for payment specifying that a default has occurred and the amount of the default; and
- (3) the design professional records in the office of the county recorder in the county in which the real property or some portion thereof is located a notice of lien which specifies that a lien is created in favor of the named design professional, specifies the amount thereof, identifies the current owner of record of the real property, provides a legal descrip-

tion of the real property to be improved, and specifies the building permit or other governmental approval for the work as a condition of recording.¹⁵

Expiration of lien. The design professionals' liens automatically expire and are of no further force or effect on the occurrence of either of the following:

- (1) the *commencement of the work of improvement* for which the design professional furnished services at the request of the landowner, or
- (2) the *expiration of 90 days after recording the lien*, unless the design professional files suit to enforce the lien within 90 days of recordation.¹⁶

Priorities. No design professional's lien affects or takes priority over the interest of record of a purchaser, lessee, or encumbrancer, if that interest was duly recorded before recordation of the design professional's lien, nor does such lien affect or take priority over an encumbrance of a construction lender which funds the loan to commence the work of improvement for which the design professional furnished services at the request of the landowner.¹⁷ Thus, unlike a mechanic's lien, there is no "relation back" priority for a design professional's lien.

Additional observations. The design professionals' lien does not apply to a work of improvement relating to a single-family owner occupied residence where the construction costs are less than \$100,000 in value. The lien can be enforced in the same manner as enforcement of a mechanic's lien. The notice of the design professional's lien must be recorded no later than 90 days after the design professional knows or has reason to know that the landowner is not commencing the work of improvement. Since the lien expires and is of no further force or effect at commencement of construction, the lien claimant thereafter may file a mechanic's lien, in accordance with the usual procedures governing that lien, assuming, of course, that the design professional lien claimant was not paid off prior to commencement of construction.¹⁸

IV. ISSUES INVOLVING PRELIMINARY 20-DAY NOTICES

Civil Code § 3097. This Civil Code section is the most complex and lengthy statute in the mechanics' lien law and gives evidence of legislative amendments over the years on a "pile on" basis. However, it is at the heart of the mechanics' lien, stop notice and payment bond laws (with an exception involving an alternative procedure for payment bonds), because it sets forth a strict requirement for service of the "preliminary 20-day notice" as the *primary condition precedent* to the filing of a valid lien or proper exercise of stop notice and bond remedies.

Who must file? Every claimant must serve such a notice, except for a laborer or laborers' compensation fund and except that an original contractor is required to give the notice only to a construction lender, not to the

owner with whom that original contractor has the direct contractual relationship.

Who must be served? The claimant must give the preliminary notice to:

- (a) the owner or reputed owner;
- (b) the original contractor or reputed original contractor; and
- (c) the construction lender or reputed construction lender, if any.¹⁹

Contents of the preliminary notice. The 20-day preliminary notice must contain a specified statutory warning in bold face type notifying the property owner that if the claimant is not paid in full for labor, service, equipment, or material provided to the construction project, a lien may be placed against the property and that foreclosure of the lien could lead to loss of the property. The notice suggests to the owner that he or she might be able to protect himself or herself by requiring the original contractor to provide a signed release against the claims of the person who served the notice or by any other method that is appropriate. It also warns the owner that within 10 days after filing *notice of completion* of construction an owner, other than residential owners of dwellings containing fewer than five units, must send a copy of such notice to his or her contractor and the person or firm that has given the preliminary notice. The copy of the notice of completion must be sent by registered or certified mail, and if not sent, this extends the deadline for claimant's recording a claim of lien.²⁰

20-day requirement. A claimant may record a claim of lien or file a stop payment notice or assert a claim against a payment bond only for provided work and materials within 20 days before giving preliminary notice or any work/materials furnished thereafter,²¹ but a design professional may exercise these remedies if the design professional gives the preliminary notice not later than 20 days after the work of improvement has commenced.²²

Preliminary notices filed with County Recorder. The recorder has a good faith obligation to serve copies of recorded notices of completion on all parties that have previously recorded preliminary notices.²³ However, there is no penalty for non-compliance and many county recorders are not performing this function.

V. SELECTED MECHANICS' LIEN ISSUES

Time for filing by original contractor and subcontractors. An original contractor may not enforce a lien unless he or she records the claim of lien:

- (1) after the contractor completes the contract;
- (2) before the earlier of the following times:
 - (a) 90 days after completion of the work of improvement;

- (b) 60 days after the owner records a void notice of completion or cessation; and
- (3) subcontractors must record their claims after ceasing to furnish labor and materials to the work and before the expiration of 90 days after completion or cessation of the project work or 30 days after recording of notice of completion or cessation.²⁴

A contract is complete within the meaning of this statute when the contractor's obligations under it are substantially performed, excused, or otherwise discharged. Even if the work is not complete, the contractor's obligations are deemed complete, where for example, the owner breaches the contract and prevents further performance by the contractor.²⁵

Content of the claim of lien. A claim of lien is required to be in writing, signed and verified by the claimant, and must include the name of the owner or reputed owner, a general statement of the kind of work provided by the claimant, a description of the site sufficient for identification, a statement of the claimant's demand after deducting just credits and offsets, and the claimant's address.²⁶

Forfeiture of lien for false claim. When a claim of lien is made with intent to slander title or defraud, it is invalid. However, mere erroneous information contained in the claim relating to the claimant's demand, credits and offsets deducted, or the work provided, if merely the result of negligence, does not invalidate the claim of lien with a major exception. An innocent third party who has no actual or constructive knowledge and becomes the bona fide owner of the property after recordation of the claim of lien where the claim of lien was so deficient that it did not put the third party on further inquiry in any matter takes free and clear of the lien.²⁷

Release bond. An owner of property subject to a recorded claim of lien or an original contractor or subcontractor affected by the claim of lien that disputes the correctness or validity of the claim may obtain a release of the property from the claim of lien by recording a surety lien release bond. The principal on the bond may be the owner of the property or the contractor or subcontractor. Such a bond must be conditioned on payment of any judgment and costs the claimant recovers on the lien and must be an amount equal to 150% of the amount of the claim. It can be recorded either before or after commencement by the claimant of an action to enforce the lien. On recordation of the bond, the property is released from the claim of lien and from any action to enforce the lien. In effect, the lien is shifted to the bond and its proceeds and no longer impacts the property.²⁸

Priority of advances by lender. A construction lender has priority over a mechanic's lien where the lender makes an optional advance of funds that is used for the construction costs. Such advances have the same priority as a mandatory advance of funds, provided that the total of all advances does not exceed the amount of the original construction loan.²⁹ This provision means that a construction lender who advances loan funds for parts of the

work that are not included within the construction loan contract can establish priority for those advances as though the work was within the terms of the contract, provided that the total of the optional and mandatory advances do not exceed the original amount of the construction loan.

Time for commencement of enforcement action. A lien claimant must commence a lawsuit to enforce a lien within 90 days after recording the lien. If the claimant does not commence an action within that time, the claim of lien expires and is unenforceable.³⁰ Most title insurance companies, however, will not insure against such an expired lien until expiration of a year because of concern over the possibility that an action on the lien has been filed but not served.

Petition for release order. The owner of property subject to a claim of lien may petition to the court for an order to release the property from the claim of lien where the claimant has not commenced an action to enforce the lean within the 90-day time period provided.³¹

Owner—Contractor Security Requirements. A fairly recent provision in the mechanics' lien law (effective January 1, 2002) imposes special requirements in certain construction situations. These apply where the owner who contracts for the work of improvement owns fee simple absolute in the property and the value of the contract for the work is more than \$5,000,000, and, also, where the owner owns a lesser interest in the property (i.e. shared title or a lessee) and the value of the contract for the work of improvement is more than \$1,000,000. In such situations, the owner must supply to the original contractor, if a lending institution is providing a construction loan, a copy certified by the county recorder of the recorded construction mortgage or deed of trust that must disclose the amount of the construction loan. In addition, the contracting owner must provide security for his or her payment obligations under the construction contract.³²

The security can be in the form of a payment bond of at least 25% of the total amount of any construction contract where the contract provides that the work must be substantially completed within 6 months or not less than 15% of the total amount of the construction contract in other cases. The payment bond is payable upon default by the contracting owner of any undisputed amount under the contract that has been due and payable for more than 30 days. As an alternative, the owner can provide an irrevocable letter of credit from a financial institution as defined in the Financial Code and providing for the same monetary limits. A third alternative permits the owner to establish an escrow account designated as a "construction security escrow account" maintained with a licensed escrow agent, in which the contracting owner must deposit funds in the foregoing amounts. The original contractor is not obligated to accept the escrow account as security unless the contractor is reasonably satisfied that the owner has granted to the original contractor a perfected, first priority security interest in the escrow account.³³

Finally, if the construction contract is not in a fixed price, the amount of the security to be provided is determined with reference to the guaranteed maximum price if there is one, or if there is no guaranteed maximum price, the amount of the security is determined with reference to the contracting owners' and original contractors' good faith estimate as to the total cost of the contract. The foregoing requirements do not apply where the contracting owner is a "qualified publicly traded company" or a wholly owned subsidiary of such a company provided that the construction contract is guaranteed by the parent, nor does it apply to a "qualified private company," which means a company that has a net worth of in excess \$50,000,000.³⁴ This construction security law does not apply to construction of single family residences, or housing developments eligible for a density bonus under a provision in the Government Code.³⁵

Lis pendens. After the complaint is filed, the plaintiff may record a notice of pendency of the action. From that point forward, a purchaser or encumbrancer of the property shall be deemed to have constructive notice of the pendency of the action.³⁶

VI. SELECTED STOP NOTICE ISSUES

Alternative remedy. Persons entitled to file mechanics' liens have an alternative remedy which they can exercise even if they have also filed mechanics' liens consisting of the right to file a stop notice against the construction fund under the control of the construction lender or the property owner (i.e., a type of attachment). If a payment bond has previously been recorded in the office of the county recorder where the site is located, the construction lender may elect not to withhold pursuant to a bonded stop notice or a stop notice given by anyone other than an original contractor.³⁷

Bonded or unbonded stop notice. Whether the stop notice is bonded or not, it shall not be effective unless the claimant has given the preliminary 20-day notice as required by Civil Code §3097. The stop notice or bonded stop notice must be filed prior to the expiration of the period within which a claim of lien must be recorded. This amounts to 30 days for subcontractors and suppliers and 60 days for original contractors after the notice of completion is filed, or 90 days after completion if no such notice is filed.³⁸

Duty of owners and construction lenders to withhold. Upon receipt of a stop notice, the owner must withhold sufficient money due or to become due to the claimant, unless a payment bond has been recorded, in which event the owner may withhold or not. If the owner elects not to withhold, then the owner must give notice to the claimant within 30 days after the receipt of the stop notice and must furnish to the claimant a copy of the payment bond.³⁹

A lender must withhold funds if it receives a bonded stop notice filed by an original contractor regardless of whether a payment bond has previously been recorded. With respect to other claimants, a lender must withhold

funds, unless a payment bond has previously been recorded, in which event the construction lender may at its option withhold funds pursuant to the bonded notice or stop notice. The claimant may ask the lender to make an election and if the lender elects not to withhold funds it must provide a copy of the payment bond to the claimant.⁴⁰

Priorities. No assignment by the owner or contractor of construction loan funds, whether made before or after a stop notice or bonded stop notice given to a construction lender, shall be held to take priority over the stop notice or bonded stop notice. If the money withheld or required to be withheld pursuant to any bonded stop notice is insufficient to pay in full the valid claims of owed persons by whom such notices were given, then that money must be distributed among such persons in the same ratio that their respective claims bear to the aggregate of all such valid claims. Bonded stop notice payments take priority over unbonded stop notices, which are governed by the same respective ratio rule, if there is sufficient money to pay all or a part of the claims of the unbonded notices after payment of the bonded notices. In each case the distribution must be made without regard to the order in time when such notices were filed.⁴¹

Enforcement of stop notice rights. An action against the owner or construction lender to enforce payment of the stop notice claim may be commenced at any time after 10 days from the date of service of the stop notice and must be commenced not later than 90 days following the expiration of the period within which claims of lien must be recorded.⁴² This can result in different time limits for filing actions to foreclose liens as contrasted with actions to enforce stop notices, although usually, the claimant will include causes of action to enforce both remedies, if applicable, in the same complaint.

Attorney's fees. In contrast to enforcement of mechanics' lien claims, an action against an owner or construction lender to enforce payment of a stop notice claim entitles the prevailing party to collect from the party held liable by the court for payment of the claim reasonable attorneys' fees in addition to other costs and in addition to any liability for damages. The court determines who is the prevailing party upon notice and motion by a party. The general rule is that the prevailing party is the party who recovered the greater relief in the action.⁴³

VII. SELECTED PAYMENT BONDS ISSUES

General. The third alternative remedy available to the claimant, exercisable independently or with the mechanics' lien and stop notice remedies, is to file a claim on a payment bond. Often, neither the mechanics' lien nor the stop notice is an effective remedy because a lender will have priority of recourse to the property and the construction funds may have been exhausted before the stop notice was filed, respectively, so a claim on the bond (assuming one has been issued) may be the only effective recourse. The claim on a payment bond is initiated by service of written notice upon

the surety *and* the bond principal. The notice must be served by mail, posted prepaid, certified, or registered. The notice must contain a description of the labor, services, equipment, or materials furnished or agreed to be furnished by the claimant, the name of the person to or for whom the labor, services, equipment, or materials were furnished and the amount in value, as near as may be determined, of any labor, services, equipment, or materials already furnished or to be furnished.⁴⁴

Preconditions to action on payment bond. No payment bond may compress the time for commencement of an action thereon to a period shorter than six months from the completion of the work of improvement. If the bond is recorded by the surety before the work is completed, then any action on the bond must be filed no later than 6 months after completion.⁴⁵

Alternative to giving of 20-day preliminary notice. It is commonly thought that in order to enforce a claim upon any payment bond, the claimant must give the same 20-day private work preliminary notice required as a condition precedent to the validity of mechanics' liens and stop notices, but since 1995, there is an alternative to this requirement. If the 20-day private work preliminary notice was not given, a claimant may still enforce a claim on a payment bond by giving written notice to the surety and the bond principal *within 15 days after recordation of a notice of completion*. If no notice of completion has been duly recorded, the time for giving written notice to the surety and the bond principal is extended to 75 days after completion of the work of improvement. Thus, claimants can salvage their claims on payment bonds, even if through neglect, they failed to serve 20-day preliminary notices and thereby have lost their lien and stop notice rights.⁴⁶

The existence and use of this alternative procedure gives rise to another issue which the courts have not decided. Under Section 3097 of the Civil Code, governing preliminary notices, a claimant is limited to recovery on the bond (as he is for mechanics' liens and stop notices) for the value of his work and materials supplied from a date 20 days prior to the time of actually serving the preliminary notice. Thus, if a claimant served the preliminary notice after his work on the job was half complete, he would be able to recover only for work and materials supplied from a date 20 days prior to the date that he served the preliminary notice. Did the Legislature intend, by enacting the alternative procedure in 1995, to permit a claimant to resurrect the *entirety* of his claim by neglecting to serve the preliminary notice and using the alternative bond notice procedure, i.e., by giving notice to the bonding company at the end of the job, within 15 days after recording of notice of completion or within 75 days after actual completion, if no such completion notice was filed? Presumably, the Legislature must have intended this result when it enacted the alternative procedure in 1995, but it may be that it did not realize the impact it would be causing to the existing law pertaining to the *amount* of the claim.

VIII. SELECTED WAIVER AND RELEASE ISSUES

Statutory requirements. Neither the owner nor original contractor shall waive, affect, or impair the claims and liens of other persons without their written consent. Any written consent given by any claimant is null and void and unenforceable unless the claimant executes and delivers a waiver and release in essentially the statutory form. There are four such forms set forth in the statute.⁴⁷ The first relates to a conditional waiver and release upon receipt of a progress payment. The second is unconditional waiver and release upon a progress payment. The third is a conditional waiver and release upon final payment, and the fourth and final is the unconditional waiver and release upon final payment. In each case, the conditional release form deals with reservations as to additional rights by the claimant or disputed claims for additional work.⁴⁸

IX. RIGHTS OF CLAIMANTS ON PUBLIC WORKS PROJECTS

No right to a mechanic's lien. The mechanics' lien laws contain a number of provisions relating to rights of claimants on public works project. For the most part, these are parallel and identical or similar to the provisions governing private works with a major exception: *there is no right to any mechanics' lien on a public works project.* This rule applies even if the public entity is merely the lessor and a private lessee is constructing the improvements.⁴⁹ Accordingly, claimants are limited to remedies based on stop notice claims and claims on payment bonds.

Public work-when payment bond is required. Where a public work contract is awarded to an original contractor involving an expenditure in excess of \$25,000, the original contractor must file a payment bond with and approved by the officer or public entity by whom the contract is or was awarded. The payment bond must meet specified statutory requirements.⁵⁰

Stop notice provisions involving public works. It is the duty of the public entity, upon receipt of a stop notice, to withhold from the original contractor an amount sufficient to answer the claim stated in the stop notice and to provide for the public entity's reasonable cost of any litigation thereunder. There is no provision in the law governing stop notices for public work contracts which distinguishes between bonded and unbonded stop notices. If the claimant has paid to the public entity the sum of \$2.00 at the time of filing his stop notice, then the public entity must give notice to the claimant of completion or cessation of labor on the project within 10 days after the filing of such notice of completion or cessation. If there is a prorated distribution of stop notice funds made by the public entity, but that distribution is insufficient to satisfy all claimants' claims, such claimants still have the right to recover any deficit remaining by suing on the payment bond.⁵¹

X. CONCLUSION

While unloved in the law schools, mechanics' liens and related remedies are of substantial importance for all those attorneys who count construction work as part of their real property practices. Currently, the California Law Revision Commission is engaged in a study of the entire subject, with the aim of recommending clarifying changes embodied in an overall reorganization of the law, but with relatively few substantive revisions. The tentative proposal being developed for submission to the Legislature involves relocation and renumbering of the reorganized statutes, and the transfer of the public works segment of these laws to the Public Contracts Code.⁵² Whether and to what extent such changes may be adopted in the future depends upon the legislative process and the influence of the varied groups which have a stake in the construction industry. For lawyers, clarifying changes will be a welcome development in this unloved stepchild's future.⁵³

NOTES

1. Cal. Const., Art. XIV § 3: "Mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens."
2. Civ. Code, § 3134.
3. See Civ. Code, § 3110 for a full descriptive list of persons entitled to file liens.
4. Bus. & Prof. Code, §§ 7031 et seq.
5. Bus. & Prof. Code, § 7028. *Banis Restaurant Design, Inc. v. Serrano*, 134 Cal. App. 4th 1035, 36 Cal. Rptr. 3d 532 (3d Dist. 2005), is a recent case again demonstrating the strict application of the licensing laws to a claim for compensation by an unlicensed party.
6. See, for example, *MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc.*, 36 Cal. 4th 412, 30 Cal. Rptr. 3d 755, 115 P3d 41 (2005).
7. *Wright v. Issak*, 149 Cal. App. 4th 1116, 58 Cal. Rptr. 3d 1, 72 Cal. Comp. Cas. (MB) 438 (6th Dist. 2007). See also the summary of this case in the Case Briefs section of this Newsalert.
8. *Asdourian v. Araj*, 38 Cal. 3d 276, 211 Cal. Rptr. 703, 696 P.2d 95 (1985).
9. Bus. & Prof. Code, § 7031.
10. *MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc.*, 36 Cal. 4th 412, 30 Cal. Rptr. 3d 755, 115 P3d 41 (2005).
11. See, e.g., *Slatkin v. White*, 102 Cal. App. 4th 963, 126 Cal. Rptr. 2d 54 (1st Dist. 2002).
12. Civ. Code, § 3134.
13. Civ. Code, §§ 3081.1 to 3081.10.
14. Civ. Code, § 3081.2.
15. Civ. Code, § 3081.3.
16. Civ. Code, § 3081.4.
17. Civ. Code, § 3081.9.
18. Civ. Code, §§ 3081.4 to 3081.10.
19. Civ. Code, § 3097, subds. (a), (b).
20. Civ. Code, § 3097, subd. (c).
21. Civ. Code, § 3097, subd. (d).
22. Civ. Code, § 3097, subd. (c)(6).
23. Civ. Code, § 3097, subd. (o).

24. Civ. Code, §§ 3115, 3116.
25. *Howard S. Wright Const. Co. v. BBIC Investors, LLC*, 136 Cal. App. 4th 228, 38 Cal. Rptr. 3d 769 (1st Dist. 2006), review denied, (Apr. 26, 2006).
26. Civ. Code, § 3084.
27. Civ. Code, §§ 3118, 3261.
28. Civ. Code, § 3143.
29. Civ. Code, § 3136.
30. Civ. Code, § 3144.
31. Civ. Code, § 3154, subd. (a).
32. Civ. Code, § 3110.5, subds. (a), (b).
33. Civ. Code, § 3110.5, subd. (b).
34. Civ. Code, § 3110.5, subds. (c) to (f).
35. Civ. Code, § 3110.5, subd. (e).
36. Civ. Code, § 3146.
37. Civ. Code, § 3159.
38. Civ. Code, § 3160.
39. Civ. Code, § 3161.
40. Civ. Code, § 3162.
41. Civ. Code, § 3167.
42. Civ. Code, § 3172.
43. Civ. Code, § 3176.
44. Civ. Code, § 3227. Under Civ. Code, § 3235, an owner can largely avoid lien claims by recording the original contract and a payment bond for 50% of the contract price *before the work is commenced*, but this procedure does not appear to be much used.
45. Civ. Code, §§ 3239 and 3240.
46. Civ. Code, § 3242.
47. Civ. Code, § 3262.
48. A subcontractor or materialman does not waive its rights to claim compensation for unpaid services and materials under the contract or as otherwise provided in law or equity simply by executing a statutory release. In other words, it does not act as an accord and satisfaction of the outstanding balance. *Tesco Controls, Inc. v. Monterey Mechanical Co.*, 124 Cal. App. 4th 780, 21 Cal. Rptr. 3d 751 (3d Dist. 2004).
49. *North Bay Const., Inc. v. City of Petaluma*, 143 Cal. App. 4th 552, 49 Cal. Rptr. 3d 455 (1st Dist. 2006).
50. Civ. Code, §§ 3247 and 3248.
51. Civ. Code, §§ 3185, 3186, 3187, 3190, 3191.
52. Copies of California Law Revision Commission staff studies on mechanics' liens and related remedies are available on the Commission's website, at www.clrc.ca.gov.
53. Cartoon at the beginning of this article drawn by Doug Regalia (dougr@mrcpa.com).

Miller & Starr Real Estate Newsalert
Volume 17, Number 6, July 2007

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Design & Layout: Specialty Composition/Rochester DTP

Miller & Starr Real Estate Newsalert (USPS # pending) is issued six times per year, published and copyrighted by Thomson West, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Application to mail at periodic rate is pending as St. Paul, MN. POSTMASTER: Send address changes to: Miller & Starr Real Estate Newsalert, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

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